UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

UNITED STATES OF AMERICA

-vs- CASE NO. 83-8

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

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TRANSCRIPT OF TRIAL

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BEFORE: THE HONORABLE G. WIX UNTHANK

DATE: JANUARY 9, 1984

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VOLUME I

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THE COURT: Madam Clerk of the Court, please call the matter to be set for trial at this time.

THE CLERK OF THE COURT: Yes, your Honor. Pikeville Criminal Action 83-8, 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 for trial by jury, your Honor.

THE COURT: Will counsel for the respective parties please note their appearances for the purposes of the record.

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

MR. KEHRLI: Good morning, your Honor, Randy R. Kehrli, I am on behalf of the United States.

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

MR. HARWELL: Judge Unthank, Aubrey Harwell on behalf of Mr. Edgar Jones.

MR. MOORE: Good morning, your Honor. Albert Moore, with Mr. Harwell's office in Nashville, on behalf of Edgar Jones.

MR. WALBOURN: E. J. Walbourn, on behalf of Mose Mead, Benny Caudill, Harold Moore all of whom are present in the Court Room.

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

MR. PATTON: J. Patton, and I represent Edgar Jones.

MR. SPENCER: May it please the Court, your Honor, Lowell B. Spencer representing Linville Mosley, and he is present in the Court Room, your Honor.

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

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

MR. BRANSEN: May it please the Court, Hershel Bransen, your Honor, on behalf of Donahue

Halbert.

MR. HOLLON: Tom Hollon, on behalf of Pebo Gayheart, who is present in the Court Room.

MR. THOMAS: May it please the Court, David Thomas, on behalf of Eugene Tackett, who is here.

MR. KIRKLAND: May it please the Court, William Kirkland, I represent Jason Moore, German Stumbo, Teddy Kinney, Kenneth Rolland, and Raymond Hall, and all of whom are here today, your Honor.

THE COURT: Gentlemen, I want to apologize for having you make the rounds again, but what says the parties with regard to the trial which was scheduled for today?

What says the Commonwealth?

MR. SELF: Your Honor, on behalf of the United States, the United States is ready for trial, your Honor.

MR. HARWELL: On behalf of Mr. Jones, we are ready for trial.

THE COURT: Thank you, sir.

MR. WALBOURN: May it please the Court, Caudill, Moore, Newsome and Mead are ready for trial.

MR. PAFUNDA: On behalf of Drexil Hall

and Austin "Bo" Moore, we are ready for trial, your Honor.

MR. SPENCER: On behalf of Linville Mosley, we are ready for trial and we have one motion pending.

MR. ADAMS: On behalf of Ranny Blankenship, we are ready, your Honor.

MR. ROWLAND: On behalf of Tim Milan, we are ready, your Honor.

MR. BRANSEN: On behalf of Donahue Halbert, we are ready for trial.

MR. HOLLON: On behalf of Pebo Gayheart, we are ready for trial.

MR. THOMAS: On behalf of Eugene Tackett, we are ready for trial.

MR. KIRKLAND: On behalf of Jason Moore, German Stumbo, Teddy Kinney, Kenneth Rolland and Raymond Hall, we are ready.

THE COURT: Madam Clerk of the Court, will you make a statement for the purpose of the record with regard to the actions of the Court on pending motions with the exception of a motion to quash.

THE CLERK OF THE COURT: The matters of the motions for rule on by order of the Court

were ruled on Thursday, and it went in the mail and there is a possibility that some of the attorneys have not had a chance to get their copy.

All pending motions were overruled.

MR. SPENCER: I apologize.

THE CLERK OF THE COURT: If you would like to have a copy, at the next recess I will be glad to give you a copy.

MR. THOMAS: Your Honor, may myself along with Mr. Self approach the bench.

REPORTER'S NOTE: At this point Mr. Self and Mr. Thomas approached the Bench and after a Bench conference the following was heard:

MR. SELF: May it please the Court, this is Louis DeFlaise, who is also a U.S. Attorney and who is part of the presecution team this morning.

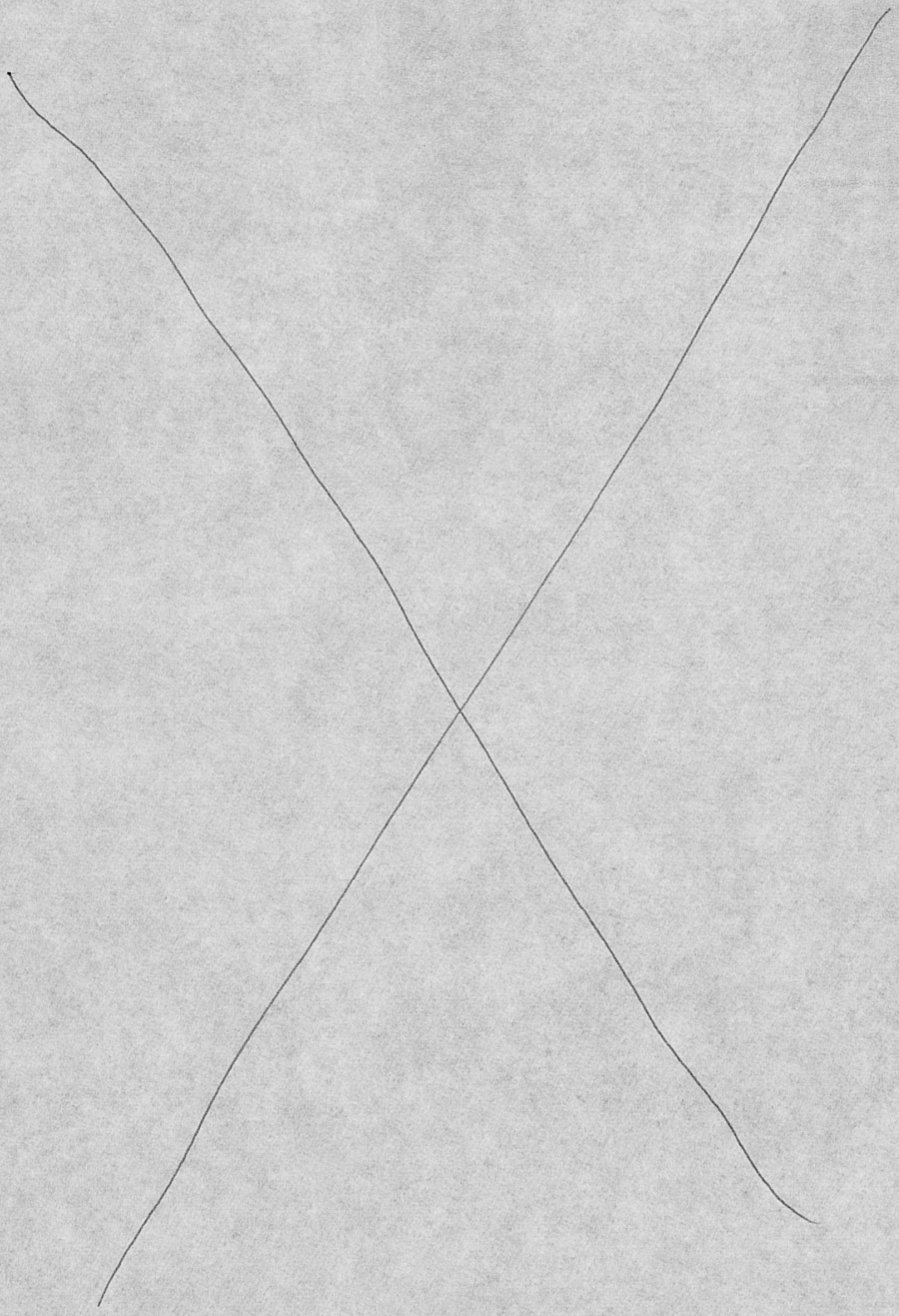
MR. DeFLAISE: Good morning.

THE COURT: Madam Clerk, I believe some housekeeping chores before we get to the matter of the jury.

You better administer the oath to the Reporters who are making the daily

copy.

REPORTER'S NOTE: At this time the daily copy Reporters were administered an oath.



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THE CLERK OF THE COURT: Ladies and gentleman, please stand very briefly as I call your name and number. Also please answer so that I know that you have heard me call your name.

THE COURT: And have them answer present.

THE CLERK OF THE COURT: That's right. Please answer present, ladies and gentlemen. Juror No. 3, Melvina C. Hall.

MS. HALL: Present.

THE CLERK OF THE COURT: No. 5, Roger Darrell Musick.

MR. MUSICK: Present.

THE CLERK OF THE COURT: Juror No. 6, Teresa L. Vanhoose.

MS. VANHOOSE: Present.

THE CLERK OF THE COURT: Juror No. 7, Donald Lee Kitts.

MR. KITTS: Present.

THE CLERK OF THE COURT: Juror No. 8, Alline Little.

MS. LITTLE: Present.

THE CLERK OF THE COURT: Juror No.]2, Elizabeth Lorraine Wright.

MS. WRIGHT: Present.

THE CLERK OF THE COURT: Juror No. 13, Doris Hall.

MS. HALL: Present.

THE CLERK OF THE COURT: Juror No. 14, Donald L. Riley.

MR. RILEY: Present.

THE CLERK OF THE COURT: Juror No. 16, Loretta Gayle May.

MS. MAY: Present, and that is no. 18.

THE CLERK OF THE COURT: Correct. That is Juror No. 18 for the record, Your Honor.

Juror No. 21, Inis Sue Charles.

MS. CHARLES: Present.

THE CLERK OF THE COURT: Juror No. 22, William R. Clay.

MR. CLAY: Present.

THE CLERK OF THE COURT: Juror No. 23, Michael G. Newsome.

MR. NEWSOME: Present.

THE CLERK OF THE COURT: Juror No. 26, Anna S. Booten.

MS. BOOTEN: Present.

THE CLERK OF THE COURT: Juror No. 28,

Susan Stamper.

MS. STAMPER: Present.

THE CLERK OF THE COURT: Juror No. 31, Linda Gail Montgomery.

MS. MONTGOMERY: Present.

THE CLERK OF THE COURT: Juror No. 32, Kernie Dean Miller.

MR. MILLER: Present.

THE CLERK OF THE COURT: Juror No. 34, Claude M. Newberry.

MR. NEWBERRY: Present.

THE CLERK OF THE COURT: Juror No. 35, Peggy Bowen.

MS. BOWEN: Present.

THE CLERK OF THE COURT: Juror No. 36, Maxine Dobson.

MS. DOBSON: Present.

THE CLERK OF THE COURT: Juror No. 39, Carl Fuller.

MR. FULLER: Present.

THE CLERK OF THE COURT: Juror No. 40, Gardis Ousley.

MR. OUSLEY: Present.

THE CLERK OF THE COURT: Juror No. 42, Herbert Spencer.

MR. SPENCER: Present.

THE CLERK OF THE COURT: Juror No. 44, Betty Ann Faulkner.

MS. FAULKNER: Present.

THE CLERK OF THE COURT: Juror No. 46, Troy S. Gullett.

MR. GULLETT: Present.

THE CLERK OF THE COURT: Juror No. 47, Danny Ousley. Your Honor, Mrs. Ousley called and said that Mr. Ousley had rheumatory arthritis, and that his joints were so swollen, that he could not appear today.

THE COURT: Mr. Marshal, please ascertain the basis of this excuse in writing under oath.

THE MARSHAL OF THE COURT: Yes, Your Honor.

THE CLERK OF THE COURT: Juror No. 48, Clyde R. Grossl.

MR. GROSSL: Present.

THE CLERK OF THE COURT: Thank you, Judge. Juror No. 50, Sarah A. Jackson.

MS. JACKSON: Present.

THE CLERK OF THE COURT: Juror No. 5], Sharlene Mosley Jacobs.

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MS. JACOBS: Present.

THE CLERK OF THE COURT: Juror No. 52, Bernice M. Jarrell.

MS. JARRELL: It's Beatrice, and I am present.

THE CLERK OF THE COURT: Beatrice. Thank you.

Juror No. 56, Dinah Ray Edwards. Juror No. 56, Dinah Ray Edwards. Your Honor, there has been no communication or excuse from Ms. Edwards.

THE COURT: Mr. Marshal, ascertain the excuse for this.

THE MARSHAL OF THE COURT: Yes, sir.

THE CLERK OF THE COURT: Juror No. 58, Rufus Irl Engle.

MR. ENGLE: Present.

THE CLERK OF THE COURT: Juror No. 60, Marcus Wells.

MR. WELLS: Present.

THE CLERK OF THE COURT: Juror No. 62, Carolyn Sandlin.

MS. SANDLIN: Present.

THE CLERK OF THE COURT: Juror No. 63, Raleigh Arnett.

MR. ARNETT: Present.

THE CLERK OF THE COURT: Juror No. 65, James S. Mooney, Jr.

MR. MOONEY: Present.

THE CLERK OF THE COURT: Juror No. 66, Philip Lozins.

MR. LOZINS: Present.

THE CLERK OF THE COURT: Juror No. 67, Jack C. Steele.

MR. STEELE: Present.

THE CLERK OF THE COURT: Juror No. 68, Cora E. Webb.

MS. WEBB: Present.

THE CLERK OF THE COURT: Juror No. 69, Rhoda Elizabeth Ison.

MS. ISON: Present.

THE CLERK OF THE COURT: Juror No. 70, Charles E. Martin.

MR. MARTIN: Present.

THE CLERK OF THE COURT: Juror No. 72, Otis Slone.

MR. SLONE: Present.

THE CLERK OF THE COURT: Juror No. 73, Paris Hall.

Juror No. 73, Paris Hall. We have no

communication from Mr. Hall, Your Honor.

THE COURT: Mr. Marshal.

THE MARSHAL OF THE COURT: Yes, sir.

THE CLERK OF THE COURT: Juror No. 74, Deborah K. Smith.

MS. SMITH: Present.

THE CLERK OF THE COURT: Juror No. 75, James R. Lacy.

MR. LACY: Present.

THE CLERK OF THE COURT: Juror No. 76, Larry Jones.

MR. JONES: Present.

THE CLERK OF THE COURT: Juror No. 77, Gertrude Sturgill.

MS. STURGILL: Present.

THE CLERK OF THE COURT: Juror No. 78, Sidney C. Muncy.

MR. MUNCY: Present.

THE CLERK OF THE COURT: Juror No. 79, Danita Burchett Sullivan.

MS. SULLIVAN: Present.

THE CLERK OF THE COURT: Juror No. 80, Billy Ray Newsome.

MR. NEWSOME: Present.

THE CLERK OF THE COURT: Juror No. 81, Gary C. Swank.

MR. SWANK: Present.

THE CLERK OF THE COURT: Juror No. 82, Geraldine Sturgill Fields.

MS. FIELDS: Present.

THE CLERK OF THE COURT: Juror No. 84, John W. Chaney.

MR. CHANEY: Present.

THE CLERK OF THE COURT: Juror No. 85, Lonnie Slone.

MR. SLONE: Present.

THE CLERK OF THE COURT: Juror No. 86, Kermit Martin.

MR. MARTIN: Present.

THE CLERK OF THE COURT: Juror No. 87, William Ray Meeks.

MR. MEEKS: Present.

THE CLERK OF THE COURT: Juror No. 88, Betty L. Stamper Turner.

MS. TURNER: Present.

THE CLERK OF THE COURT: Juror No. 90,

James Bennie Oaks.

MR. OAKS: Present.

THE CLERK OF THE COURT: Your Honor, there were fifty-five jurors out of fifty-seven that answered as being present.

THE COURT: Thank you.

Before I start with the voir dire, let me state this to the members of the jury. There is one member of the jury who is present who stated that he had an excuse that has not been ignored. At the proper time, he will be given his chance to present his excuse. But let me state to each of the prospective jury, there is another group of approximately the same size of you downstairs. The purpose of having all of you here today is from your own group who will be I suspect and I think sixteen. Is that right?

THE CLERK OF THE COURT: Yes, Your Honor.

THE COURT: There will be sixteen or seventeen. Now, before I commence, I think we have one juror who hasn't been qualified. Is that correct, Madam Clerk?

THE CLERK OF THE COURT: It is Danita Burchett Sullivan.

THE COURT: Can you stand,

Ms. Sullivan. I don't want to embarrass you. The Clerk will administer to you the oath to tell the truth and answer the questions for your qualifications.

[Whereupon the oath was administered to each of the prospective jurors by the Clerk of the Court.]

THE COURT: Please remain standing. Are you over the age of eighteen years?

MS. SULLIVAN: Yes.

THE COURT: Have you resided in the counties from which Pikeville court selects its jury which would be-- Which county do you live in?

MS. SULLIVAN: Pike County.

THE COURT: Have you resided in Pike County for the past year?

MS. SULLIVAN: Yes.

THE COURT: Do you read and write the English language?

MS. SULLIVAN: Yes.

THE COURT: Have you ever been convicted of a state or federal crime for which the punishment is one year or more?

MS. SULLIVAN: No.

THE COURT: Are you presently a member of the Armed Forces or a public official such as

a mayor?

MS. SULLIVAN: No.

THE COURT: Or a fireman?

MS. SULLIVAN: [Shaking head in negative.]

THE COURT: You don't hold any public office?

MS. SULLIVAN: No.

THE COURT: Do you know of any reason, ma'am, why you would not be able to serve as a Juror?

MS. SULLIVAN: Not at this time I don't.

THE COURT: Ma'am?

MS. SULLIVAN: No.

THE COURT: You're not a Postmistress--what is your occupation?

MS. SULLIVAN: I am a housewife and mother.

THE COURT: Do you have any children?

MS. SULLIVAN: Two.

THE COURT: What's their ages?

MS. SULLIVAN: Four and six.

THE COURT: Ma'am?

MS. SULLIVAN: Four and six.

THE COURT: Madam Clerk would you please administer the oath to the prospective members of the jury to truthfully answer questions propounded to them on voir dire?

THE CLERK OF THE COURT: Yes, Your Honor.

Are there any members that wish to affirm rather than swear? If so, would you please stand up and we'll administer

separate oaths.

Do you solemnly affirm that you will true and perfect answer made to the question that will now be asked you as to your qualifications to sit on the jury in the case of 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, Herman Newsome, Tim Milan, Mose Mead, Donahue Halbert, Austin "Bo" Moore, Pebo Gayheart, Linville Mosley, Raymond Hall, and Morris Ray Hall and under the pain and penalty of perjury do each of you so affirm?

(Reporter's Note: Both prospective jurors affirmed.)

THE CLERK OF THE COURT: Thank you.

Will the rest of the panel please stand and raise your right hand.

You and each of you do solemnly swear to truthfully and perfectly answer the questions which may now be asked of you upon your qualifications to sit as jurors in the case of 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, Herman Newsome, Tim Milan, Mose Mead, Donahue Halbert, Austin "Bo" Moore, Pebo Gayheart, Linville Mosley, Raymond Hall, and Morris Ray Hall.

And do each of you answer unto God do you so swear?

(Reporter's Note: There was a general affirmative answer from the panel.)

MR. ADAMS: May it please the Court.

THE COURT: Yes, sir.

MR. ADAMS: Eldred Adams, on behalf of Ranny Blankenship.

This morning I have handed to the Clerk two additional voir dire questions for the Court's consideration. I'd just like to call the Court's attention to that.

THE COURT: Let me ask question number one -- before I go into my flag waving, let me as usual request that each of you look on each side of you and see the persons on each side. At some point in this matter you're going to be given the opportunity to state an excuse of why you can't serve. I want to remind you that the excuse that you're giving is not to me. We're going

to get a jury out of this bunch. The excuse which you're giving is to the person that's sitting beside of you. You're telling that person that I think you should serve instead of me because of the excuse I'm giving. So, get acquainted with the person beside you because when you're giving your excuse you're giving it to him not to me.

The primary purpose which each of you have been called here is to determine whether or not you will be a member of a jury and must make a decision. Everyone regardless of who they are must make decisions in their lifetime. There are private decisions, family decisions, business decisions, social decisions, economic decisions. But the type of decision which you're making is dependent upon the circumstances.

I am going to use the family decision as a point of entry to my primary statement for this discussion which I'm going to have with you.

I guess in our country, the family is what is called the basic unit. The family decision is usually made by the father or mother, it's a decision which resolves a dispute between the children or a decision concerning what

you're going to spend money for one way or the other.

It's a decision concerning the conduct and behavior of the family. Now, this decision is usually made by the father or the mother or singly or jointly. And the rules and regulations are regulations that are adopted by the family and these rules and regulations are based upon the training, education and the experience which the father and mother has. As I say, the family is the basic unit in the United States. All the way from the Atlantic Ocean on the East to the Pacific Ocean to the West the United States is just a collection of families, that's all. The decision which you're going to make here today is just an enlarged family decision, because as I said the United States is just a huge or a large collection of families. These collections of families when they get together in the United States stated -- they agreed to rules and regulations by which the huge collection of families operate in various similar manners in which the family operates. They not only agree to rules and regulations by which these families would operate and that's called the law, but they agreed to --

how a dispute if it arose between these families, they agreed as to how this dispute would be settled and by whom it would be settled.

Now, we have here today what I guess is a family dispute. We have an accusation or an indictment and this accuses one of these defendants of violating the law or the rules and regulations by which these collection of families operate. As I say, and according to this agreement which parties have agreed that they will be tried by a jury which will be representative of the other families and this huge collection of families and you are the representatives of the other families which are here to resolve this dispute. Now, there are as I say there are certain agreements by these larger collections of families as to the rules or proceedings by which these disputes will be resolved. And it's these rules which I want to take up with you at this time.

The first one of these rules is that a defendant or a person that is accused of violating the law, he is presumed to be innocent. The accused in a criminal court is presumed to be innocent until proven guilty beyond a reasonable doubt. This presumption stands unless

it has been removed by the evidence proving the defendant guilty beyond reasons of doubt. This is one of the strongest presumptions known to law and it's stated that the accused throughout the trial and until overcome with evidence establishes the guilt beyond a reasonable doubt. This presumption is not established to protect the guilty. This presumption is established to prevent as well as human nature can the conviction of the innocent. All during the trial you will be advised by the Court that that's not to have admission and you the jury or the family we remind the jury that they are not to discuss the case among themselves and they're not to decide to make up their minds until the end of the trial and to hear all the evidence and instructions as to the law. As I say the presumption of innocence stays with the defendant as he sits here now. It stays with them all during the trial up to the jury room. At the point in the jury room that the jury becomes satisfied beyond a reasonable doubt that the defendant is guilty of the accusations stated beyond a reasonable doubt.

Now, I have stated the accusations, this accusation is contained as what is

called an indictment. The indictment is a written piece of paper which contains in writing the accusations against the defendant. This indictment is as I said a piece of paper, it's an accusation. It's not evidence of guilt. It's nothing more than a accusation. Evidence that will be gleaned to you in the testimony of the witnesses, this will be the witnesses that have been given the oath or affirmed and they will take the stand and testify. And the exhibits which have been permitted too as evidence, that is the evidence in this case. The indictment is not evidence.

In every proceeding someone must go first and someone must go last and as I stated the defendant is presumed to be innocent. The government prosecution or other collection of families, that larger collection of families which I mentioned have made accusation and it has the burden of proof. The defendant does not have the burden of proof. The prosecution has the burden of proof and the defendant may appear in the court with his counsel and listen to the testimony of the witnesses and testify as to the evidence in support of the accusation. The defendant whose counsel may cross examine these witnesses and the defendant has

no obligation to present any evidence or to take the stand. The fact that he fails to take the stand and the fact that he fails to present any evidence is not to be considered as evidence against him. The evidence against him will be that which was testified to by the witnesses and the exhibits.

I have used the exclusion of reasonable doubt. A reasonable doubt does not mean beyond all possible doubt. The Government's burden of proof is a strict and heavy burden, it's not necessarily for the defendant's guilt be proved beyond all possible doubt. It's only required that the Government prove excluding any reasonable doubt concerning the defendant's guilt. A reasonable doubt is a real doubt based upon real and common sense after careful and impartial consideration of all of the evidence in the case. Proof beyond a reasonable doubt is proof in such a convincing character that you will be willing to rely and act upon it without hesitation in the most important of your own affairs.

Another thing which a jury is entitled to is a fair and impartial jury. It's back to the basic thing, the collection of family and the accused is someone that violated the

agreement of the larger collection of families and that dispute is to be resolved and he's entitled to a fair and impartial jury to resolve that dispute. This is what is called a voir dire proceeding; in Latin it means to tell the truth. Everyone I assume considers themselves to be fairly impartial and the purpose of this proceeding is to permit questions to be asked of the jury and answers to be made, in fact I think most of you or all of you have filled out what is called the jury qualification sheets. You will not be reasked those questions. That was done in advance so that it would not be necessary for the attorneys to reask those questions. The rules of law which I'm stating to you about the fair and impartial jury, the burden of proof and the presumption of innocence, I'm stating those presumptions of law to you and it's not necessary and I remind counsel again, it's not necessary for you to rephrase what I've stated or to state it again. This one time is sufficient.

Getting back to the fair and impartial jurors. The jury has the burden of listening to the evidence which I have stated together with the report and instructions of law.

In every case there of course are two judges. The jury is one judge and the Court is the other judge. But the jury is the judge of the facts and the Judge is the jury of the law. And the jury must accept the instructions of the law which I will give to the jury. It can not single out one specific part of my instructions but it must accept all of my instructions. The jury can not substitute opinions as to what it thinks is the law; it must accept the presumptions of law as stated by me.

It is the duty of the jury as I said base its proof solely on the evidence and testimony in the case. As it finds them to be within the Court's instructions of the law without resolution or sympathy.

I want to remind you then and beginning what I will later state to you about a Hobbs Act violation and possibly what the evidence might reflect in it's not evidence in this case. This is merely for the purposes of voir dire. When you get the instructions of law from me, you don't get the evidence from me, so you will not consider what I am saying here as evidence in this case. Additionally, you will not consider what the attorneys say as evidence in this case. The only

evidence in this case again is the testimony of the witnesses and the exhibits.

However when the attorney says it is not evidence the jury should not ignore what the attorneys say because it is the attorney's duty in this case in this courtroom, we have attorneys on both sides, it's the attorneys' duty to represent their clients and present their clients' evidence in a most favorable light. Thus by not ignoring what they say they may bring to your attention something that might otherwise escape your attention.

Now, as I stated to you, what I say is not evidence. The law says that I am the one who interprets the law and in doing that I also interpret and I reside over the proceedings which takes place during the trial. In interpreting the rules I must make decisions which I will make, sometimes I must admonish a witness and sometimes I must admonish an attorney, but in so doing I want to advise you that you must not accept or imply that from any actions which I'm taking that I have any feeling with regards -- with regards to these parties, I've no feeling one way or the other. The defendants are entitled

to a fair and impartial Court as well as they're entitled to a fair and impartial jury.

In the course of this proceeding there will be witnesses who will testify. The witnesses may consist of expert witnesses, they may consist of law enforcement officers, they may consist of draft persons that might have been personally involved in the matter which is on trial. They might have entered a plea. There might be witnesses sentenced or being sentenced.

While the Court has said to you that you must consider all of the evidence in this case, this does not mean that you must accept all of the evidence as being true and accurate. There is a difference between considering and accepting.

Considering means you must listen to it and give your attention and weigh it.

Accepting means to determine how much weight and credibility you want to give it. Credibility might applicably be stated as believability. In determining the believability of a witness the jurors should consider the relationship of the witness to the parties in the

case, his or hers interest in the outcome of the case. His or her manner to testify. The opportunity to observe and require knowledge about which he or she is testifying about. The witness' character, fairness, and intelligence and the extent to which this witness has been supportive or contradicted by other credible evidence in the case. All the witnesses again do not have to be believable, the same credibility is up to the jury. Theymay believe all of it, none of it or part of what the witness' testimony is.

Now, in a criminal case the verdict of the jury is unanimous. That means that before a verdict can be reached all of the jury must agree, however each juror must decide the case for himself or herself. A juror should not hesitate to re-examine any view which he or she may have of the evidence and change his or her mind as he convinced it is erroneous. However a juror should not surrender his or her honesty or conviction. As to the weight or effect of the evidence merely to reach a verdict or get along with a fellow juror. You should first be convinced that it is erroneous. The sole interest in this proceeding here which we're going to have

and which the law requires, the sole interest is to seek the truth from the evidence.

The indictment which is -- we have here today is called a multi-party indictment or a multi-count indictment. For convenience the law permits any persons to be joined together in an indictment and they permit many counts to be placed in the indictment to be joined together for the single purpose of a trial. These many counts or indictments should be considered as a separate offense. And the jury must reach a verdict as to each person with regards to each count which they are named in the indictment. They should consider it separately as to each of them. The mere fact that a large number such as we have here are joined together in one indictment is not evidence that is the mere fact that more than one are joined together and one indictment is not evidence or guilt as to the defendants. The mere fact that there are several indictments and several counts in the indictments in itself is not evidence of any facts that they're guilty -- now, these defendants who are here today in this indictment are accused in a charge of what's called the Hobbs Act violation. The Hobbs Act prescribes or prohibits obstruction

or delay to activity which effect Interstate Commerce by the means of wrongful use of actual or threatened force or violence or fear. This is just a running description of the Hobbs Act violation; you will be given instructions of the true law. This is precisely for the purpose of voir dire. One part of this indictment charges a conspiracy to commit a Hobbs Act violation. A conspiracy is just an agreement or a criminal partnership which it alleges that there was a criminal partnership or a conspiracy among and between these defendants to commit a Hobbs Act violation. The other part of the indictment charges the defendants -- the named defendants and the named counts of complete violation of the Hobbs Act itself.

Let me ask you this, Mr. Marshall --would any member of the jury wish to make any -- as I said the jury must accept the laws given to him by the Court and you can not use your own opinion as to what you think the law is or what it should be. Now, do any members of the jury feel that a conspiracy or an attempt to commit a Hobbs Act violation should not be a violation of the law.

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I think what you're getting back to is you're going to have one -- in one sense you're having an attempt to commit a violation and the completed violation but is there anyone in this protective panel that feels that the attempt to commit a violation should not be a violation and should not be a law, is there anyone that feels like that. If so, please stand and give your name and number.

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THE COURT: Is there anyone - - you remember I said a Hobbs Act violation concerns business, and it prohibits any obstruction or delay in a business which affects interstate commerce by reason of a - - by means of wrongful use of actual threatened force, violence, or fear.

Is there anyone who feels there should be no law determining how business should be conducted - - business - - that there shouldn't be any such law?

Does anyone feel that way?

REPORTER'S NOTE: No response.

THE COURT: Now, these alleged violations arose out of a series of events. Now, we are getting to the point where I am telling you this isn't evidence, this is merely something to determine if you had any knowledge of it, the evidence, as I say, is going to be what the witnesses said, but this is just for purposes of voir dire.

But this arose out of a series of events which occurred in Floyd County, Kentucky during the months of January and February, 1982, the Defendant, Edgar Jones, is the president and principal officer of the J.R.M. Coal Corporation.

This coal corporation was in business and in competition with Ray-Mac Company, another coal company in the vicinity.

MR. HARWELL: May it please the Court, may I approach the Bench, please.

THE COURT: Yes, sir.

MR. HARWELL: With Mr. Self or with Mr. Dause.

REPORTER'S NOTE: At this point Mr. Self and Mr. Dause and Mr. Kehrli approached the Bench and after a Bench conference the following was heard:

THE COURT: Are we ready to proceed?

MR. HARWELL: Yes, your Honor.

THE COURT: As I stated before, what I am saying to you isn't evidence, you understand that?

Evidence is going to be what the witnesses say. I am saying what are the allegations. Of course, it is alleged, these facts, which I am stating and the Defendants have denied, but it is alleged that J.R.M. Coal Company was in competition with Ray-Mac Coal Company, another coal company in the vicinity.

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Now, it is alleged and contended and denied that Edgar Jones, the principal officer and president of J.R.M. Coal Company, Jason Moore, German Stumbo, Drexil Hall, Ted Kinney, Benny Caudill, Wayne 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, and Ben B. Patton, is that right?

MR. PATTON: Van B. Patton.

THE COURT: Van, I'm sorry, Van Patton, I apologize, Mr. Patton.

But Van B. Patton, it is alleged and contended that these gentlemen entered into a conspiracy or criminal partnership to commit to Hobbs Act violation against Ray-Mac Coal Company.

And further it is alleged and contended and denied that through the use of force and violence, that they committed a Hobbs Act violation against the Ray-Mac Coal Company.

Has any member of the Jury read about this matter or heard this matter discussed in their opinion, and by reason of what

you heard or read or discussed, you have formed or you have formed in your mind, or you have expressed an opinion with regard to fault or made any opinion, formed or expressed an opinion, with regard to this matter in any way?

THE MARSHALL OF THE COURT: Please stand and state your name and your number.

MR. MARTIN: Kermit Martin, No. 86.

THE COURT: All right, Mr. Martin. Where are you from, sir?

MR. MARTIN: Floyd County, Kentucky.

THE COURT: You have heard this matter discussed.

MR. MARTIN: Yes, sir.

THE COURT: Was this by reason of what you heard? I mean, was it on the radio, on the television, or did you talk about it with someone else?

MR. MARTIN: Talked about it with some of the Defendants.

THE COURT: All right. By reason of your discussion with them, have you formed an opinion, sir?

MR. MARTIN: No.

THE COURT: Do you have an opinion in

your mind at this time with regard to this proceeding, or what occurred there?

Do you have an opinion as to such that it would take evidence to change your opinion which you have, or remove it?

MR. MARTIN: No.

THE COURT: Do you think you can disregard whatever you heard if you were accepted as a juror in this case, and try this case solely upon the evidence as explained by the Court fairly and impartially without any knowledge or acquaintance that you have in this case?

MR. MARTIN: Yes.

THE COURT: Let me get back to this. I assume then you have discussed it with the Defendants, you know them?

MR. MARTIN: (Nodding head affirmative)

THE COURT: What Defendants, sir, did you discuss it with?

MR. MARTIN: I don't think he is here today. It's Fillman Caudill.

THE COURT: You discussed it with Mr. Caudill?

MR. MARTIN: Yes.

THE COURT: I think later it would

be shown that Mr. Caudill is a witness.

MR. MARTIN: Yes, sir.

THE COURT: Now, what is your acquaintance with Mr. Caudill? Is it social or are you related by blood or marriage?

MR. MARTIN: Social.

THE COURT: You are socially - - how long have you known him, sir?

MR. MARTIN: About ten or twelve years.

THE COURT: Did you work with him?

MR. MARTIN: No.

THE COURT: How far do you - - do you live tobether in the same community?

MR. MARTIN: No.

THE COURT: Well, do you belong to the same club together?

MR. MARTIN: No.

THE COURT: How did you become acquainted, sir? I am not wanting to embarrass you, this is something which all of these attorneys want to know, and we are saving time.

You understand we are seeking a fair and impartial - - and I am sure you say you will be fair and impartial, but in addition to all of this, there is still a procedure, infor-

mation which must be brought out, and it is not to embarrass anyone.

How did you become acquainted with Fillman?

MR. MARTIN: Got introduced through a friend.

THE COURT: Just by being introduced by a friend.

Let me ask you this. You discussed this with Mr. Caudill, and by reason of this discussion, you haven't formed or expressed any opinion with regard to this controversy?

MR. MARTIN: Right.

THE COURT: You can try it solely, and solely upon the evidence and the Court's instructions?

MR. MARTIN: (Nodding head affirmative)

THE COURT: Without any regard to your acquaintance with him.

MR. MARTIN: Yes.

THE COURT: You understand what I said with regard to credibility?

MR. MARTIN: Yes.

THE COURT: You maybe believe all or none - - now, let me ask you this.

If Mr. Caudill testified here, before he even testified, are you going to believe him or disregard what he says before he testifies, or are you going to listen to what he says and then make up your mind?

MR. MARTIN: I have to listen to what he says.

THE COURT: All right. You understand merely because a witness - - who the witness is, you cannot predetermine and make any prior decisions with regard to his testimony?

MR. MARTIN: Yes.

THE COURT: You understand that, sir?

MR. MARTIN: Yes, sir.

THE COURT: All right. Thank you, sir, you may have a seat.

MR. NEWSOME: Michael Newsome, Juror No. 23. I live about two miles from where Ray-Mac does his mining, and I just heard about it is the thing.

THE COURT: You heard what I asked him?

MR. NEWSOME: Uh-huh.

THE COURT: By reason of what you heard, have you formed or expressed an opinion?

MR. NEWSOME: No. I just heard about it is all, I live close to where it is at though.

THE COURT: At this time, do you have any opinion with regard to this controversy?

MR. NEWSOME: No.

THE COURT: Is there anything that you know of, any reason why you can't listen to the evidence in this case?

MR. NEWSOME: The only thing is I know about half the Defendants. I mean, over there (indicating), they are good friends, some of them.

THE COURT: All right. Let me ask you this. Because they are your friends, do you think that would in any way prevent you from deciding this case solely upon the evidence?

MR. NEWSOME: No.

THE COURT: Because they are friends, does that mean that you would require more weight or less weight, or would that in any way affect your decision?

MR. NEWSOME: No.

THE COURT: Do you feel if the evidence is that they are - - that the accusations are unfounded, you would have no problem with finding

them not guilty?

MR. NEWSOME: No.

THE COURT: And if the evidence convinces you to an exclusion of reasonable doubt that they are guilty of the accusations, you could find them guilty?

MR. NEWSOME: Yes.

THE COURT: Thank you, sir.

Your number, Mr. Newsome?

MR. NEWSOME: 23.

THE COURT: All right. Yes, sir.

MR. CLAY: Number 22, William R. Clay.

THE COURT: All right, Mr. Clay. You have heard about it, how did you hear about it, sir?

MR. CLAY: Floyd County Times.

THE COURT: By reason of what you heard or read, did you form or express an opinion, sir?

MR. CLAY: No, sir.

THE COURT: You heard what I said to Mr. Newsome, in fact, you are seated beside him?

MR. CLAY: Yes.

THE COURT: Would that in any way

affect your services as a juror in this case?

MR. CLAY: No, sir.

THE COURT: Thank you, sir.

MR. RILEY: No. 14, Don Riley. I paint signs for Ray-Mac Mines.

THE COURT: Sir?

MR. RILEY: I paint signs for Ray-Mac. I put the signs on that job.

THE COURT: All right. You work for Ray-Mac?

MR. RILEY: No, I don't work, I work for myself.

THE COURT: You were an independent contractor that did business with Ray-Mac?

MR. RILEY: Yes.

THE COURT: All right. How long have you done that?

MR. RILEY: Five or six years.

THE COURT: Are you still doing it?

MR. RILEY: Yes, sir.

THE COURT: Let me ask you this. By reason of the fact that you are doing business there, do you think that - - well, let me ask you, do you think your services as a juror would jeopardize your business?

MR. RILEY: No, sir.

THE COURT: Do you think you can try this case solely upon the evidence?

MR. RILEY: Yes, sir.

THE COURT: And return a decision based upon the evidence?

MR. RILEY: Yes, sir.

THE COURT: You are willing to do that?

MR. RILEY: Yes, sir.

THE COURT: Thank you, sir.

MS. WRIGHT: No. 12, Elizabeth Lorraine Wright. I was a juror on Morris J. Hall's case, and this case was mentioned. I don't think any evidence was presented.

THE COURT: Let me ask you, Ma'am, you were a juror in Mr. Hall's case?

MS. WRIGHT: Yes, sir.

THE COURT: That will be fine, thank you.

MR. OUSLEY: No. 40, sir, I was a juror on that case, too.

THE COURT: All right, sir.

MS. CHARLES: No. 21, I also was a juror on the case.

THE COURT: All persons who were jurors on that case, please stand and give your name and number.

MR. MUSICK: I was - -

THE COURT: (Interrupting) Just a moment. Let's, so that the Clerk can get it, let's start down at the end over here with the lady, and let her give her name first.

MS. HALL: Melvina Hall, No. 3.

MR. MUSICK: Roger Musick, No. 5.

MR. KITTS: Donald Kitts, No. 7.

MS. HALL: Doris Hall, No. 13.

MR. RILEY: Don Riley, Juror No. 14.

MS. CHARLES: Sue Charles, Juror No. 21.

MR. MILLER: Kernie Miller, Juror No. 32.

MR. FULLER: Carl Fuller, No. 39. I will say this, I wasn't a juror.

THE COURT: You were an alternate?

MR. FULLER: Yes.

THE COURT: All right, fine.

Anyone else?

REPORTER'S NOTE: No response.

THE COURT: Thank you, you may have a seat.

All right. Let me ask the members of the Jury, I think, in the evidence in this matter, a jury will hear the names of the United Mine Workers of America, you will hear the name of Ray-Mac Coal Company, Coal-Mac Coal Company, J.R.M. Coal Company, Circle J Coal Company, J.P.L. Coal Company, R.D.K. Coal Company, Bizzack Brothers Construction Company, Bizwil, Inc., Bryan Coal Company, Calamity Coal Company, A & A Coal Company, Dye Coal Company, Coal-Mac Sales, Inc., Mack Allen Coal Company, Unit Coal Company, Adkins Coal Company, B & E Coal Company.

Is there any - - well, let's do this first.

Is there any member of the Jury who is a member of the United Mine Workers?

Let's go back to the back row.

MR. CLAY: Juror No. 22, William R. Clay. Yes, I belong to the United Mine Workers.

MR. NEWSOME: Michael Newsome, No. 23, I am a member of Local 8100 I believe.

MR. OUSLEY: Judge, No. 40, I am a member of the United Mine Workers. I also have some in-laws that work for the Joneses.

THE COURT: Thank you, sir. Let's do this. When you state - - let's do this on the ladies, too.

If your husband or some close member of the family or friend is a member of the U.M.W., state so; and if you have someone that owns stock in one of those companies, or works for that company, please state that.

MS. MAY: Loretta May, my husband belongs to the U.M.W.A.

THE COURT: Thank you, Ma'am.

MR. MILLER: Kernie Miller, No. 32, my brothers and my father are members of the United Mine Workers.

THE COURT: Thank you, sir.

MS. JACOBS: Sharlene Jacobs. My husband is laid off, but he worked as a mine worker.

THE COURT: You all understand now, I want anyone who works for them or own stock in any of these companies, or is an officer in any of these companies, or is an employee in one of those companies, we are asking that.

MS. JACKSON: No. 50, my husband is a member of the U.M.W.

MS. JARRELL: Beatrice Jarrell, No. 52.

My husband works for Bizzack or Bizwil Incorporated, both of them.

MR. MUSICK: Roger Musick, No. 5. My son worked for Coal-Mac for about six months in '82.

THE COURT: Just a moment, let me ask you this question. How did you cease your termination?

MR. MUSICK: They - - he was a security guard, and they hired a security guard outfit and laid him off.

THE COURT: Uh-huh.

MR. CHANEY: John Chanel, I am a member of the U.M.W.

THE COURT: All right. Let me state to you, I think the issue is going to be raised in this case that this was not a Hobbs Act violation, that this was a labor controversy, and it was - - it's alleged and, of course, it is denied, that this was a proceeding to unionize the mine, that issue may arise, and you will be given the instruction of the law regarding the Hobbs Act violation, you will be given instruction with regard to what is called an Enmons instruction, with regard to what is a labor proceeding.

Is there anyone who has a fixed opinion in their minds right now and feel that they could not, by reason of this, raise that this is a labor controversy and involves a union?

Do any of you have a fixed or settling opinion in your mind that you have an opinion right now as to this case, one way or the other, and you can't decide this case solely upon the evidence in the Court's instruction?

Is there anyone who might have a - - I understand there may be people that dislike unions and there may be people who very much like unions, but is there anyone who feels in this matter that you can't decide it solely upon the evidence and the law?

If so, let's make it known. Yes, Ma'am.

MS. SANDLIN: No. 62. Carolyn Sandlin. They was trying to put a union, they had trouble down at their mines in a union trying to get in there, and I am just against unions.

THE COURT: Do you think by reason of that, Ma'am, you can't - - you wouldn't be a fair and impartial juror?

MS. SANDLIN: I wouldn't be fair, and I wouldn't be impartial.

THE COURT: All right, thank you, Ma'am. All of you understand the person is entitled to a fair and impartial jury, and that is all we are looking for.

MR. MOONEY: No. 65, and I have a suit in the Federal Court now with U.M.W. It involves my people in a West Virginia job.

THE COURT: By reason of that, do you feel you could not be a fair and impartial juror?

MR. MOONEY: I don't think so.

THE COURT: All right, thank you, sir.

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THE COURT: Now, let me state this: In trying a case, these attorneys have what is called a list of witnesses; and in drawing up a list of witnesses, of course, the attorneys throughout the trial--they have to adjust to it and sometimes when you are to prove something in evidence, if you put down one witness to prove a fact, the witness may get ill or something happens. So oftttimes you will have two or three witnesses who may testify as to the same thing. Or you may have a list of witnesses to prove a fact, and some witnesses of another party will prove this fact which saves you the burden of having to prove that.

So the mere fact that a person is named as a witness doesn't necessarily mean that they will testify. And the mere fact that a large number of persons are named and they don't testify is not to be considered as evidence one way or the other. In other words, as I said, the evidence is solely what these witnesses will testify.

But it is anticipated that the following named persons may or may not testify. Now, I am going to read these names, and what we want you to do is if any of you are

acquainted with any of these persons by blood or by marriage or by economic or social--social--what kind of acquaintance you have with them.

So please listen carefully to these names. Let's see. Phillip Booth from Hi Hat. Pearl Booth from McDowell. Jake Moore from McDowell. Basil Ray Moore from East McDowell. Phillip Dale Moore from Price.

Let's see, gentlemen. Philman Caudill from McDowell. Wendall Ray Newman from Jack's Creek. Sam Bentley from McDowell. Ricky Dye from Pikeville.

Danny Blanton, McDowell. Ralph Mullins, McDowell. Danny Newsome, McDowell. Abner Justice, McDowell.

Lee Jones, McDowell. James Mullins, McDowell. Linville Fleming, McDowell.

Raymond Pete Barker, Stopover. Billie Lykins, Pikeville. Duran Adkins, Shelbiana. Robert O. Cole, Pikeville. Ranson Prater, Jr., Phelps.

Frank Justice, II, Pikeville. Lawrence Bentley, Teaberry. Tivious Stephens, London. David Stephens, Wayland.

Eugene Maynard, Pikeville.

Glen Hurley, Argo. Thurman Woody Barker, Stopover. Allen Jacobsen, Pikeville. Billy Gene Hurley, Jamboree. Harrison Hurley, Stopover.

James Rowe, Pikeville. Walker Blackburn, Drift. Frank Scott, Floyd County. Ernie Justice, Pikeville. Louis Burke, Wicksburg.

Billie Ray Justice, Pikeville. Donald T. Barnett, Charleston, West Virginia. Lynn Parrish, Pikeville. Gene Michael McAdams, Pikeville. Frank Justice, Pikeville. Jim McGlee, Pikeville.

Arnold Turner, Jr., Floyd County, Kentucky. Arnold Turner, Sr., Floyd County, Kentucky. Nick Cooley, Floyd County, Kentucky. Ray Carleson, Floyd County, Kentucky.

Junior Hamilton, McDowell, Kentucky. Julius Martin, Martin, Kentucky. Clarence Cobb Turner, Martin, Kentucky.

Frank Delzer, Floyd County, Kentucky. Jack Fulcas, Richmond, Virginia. David H. Padgett, Jr., Columbia, South Carolina. Michael K. Fulmer, Columbia, South Carolina.

Dennis McCallister,

Washington, D.C. Robert T. Farrar, Ashland, Kentucky. Frank Eddy, Lexington, Kentucky. Frank Rapier, Lexington, Kentucky. John Simms, Lexington, Kentucky.

Richard Kemp, Charleston, West Virginia. Paul Snabel, Louisville, Kentucky. Larry McCune, Washington, D.C. Williard Washington, Washington, D.C. Vernon McCloud, Washington, D.C.

Robert J. Myers, Ashland, Kentucky. Robert Forsythe, Pikeville. Danny Castle, Pikeville. Alan Hammond, Pikeville. J. B. McKensie, Pikeville.

Kenneth DeBoard, Pikeville. Denny Williamson, Pikeville. James Stephens, Pikeville.

George C. Brown, the custodian of records at the First Guarantee Bank, Martin, Kentucky. Don Weedman, Pikeville. The custodian of the records for the Thomas Hereford Company, Ron Whalen and John McCall of Bluefield, West Virginia.

Dennis Joe Maynard, Pikeville. Ballard Mosley, Minnie. Erwin Collins. Otis Frasier. Anna Rae Hall.

Henry Hamilton, Jr. Gary Miller. Kenneth--Lacinth Stewart. Herl Stumbo.

Harry Wallen.

Ange Elliott. Leslie Hamilton. James G. Hurley. Dennis Joe Maynard. Henderson Hillen, Jr.

Let's see. Bobby R.-- Now, I might mention some names two or three times. If I do that is because the names are mentioned two or three times.

Let's see. Milford Gayheart. Bobby Justice. Ernie Justice and Doug Tackett.

James Ramsey. Raymond Cey, Richard Crumpka. J. B. Trout.

Let's see. Betty Price-- I mean Betty Little of Price. Elmer Ray Johnson. Bob Hamilton, McDowell. Darrell Stanley. Jim Price. Mary Ellen Wilson. Louis Farrah. Thomas May. Wilbur Shorty Jamison.

Gary Rose. Gary McCoy.

Gentlemen, if I omitted calling any names, you gentlemen want to approach the Bench and advise the Court. Well, let's just do this in place. Give me the names which I might have omitted.

MR. PAFUNDA: If it please the Court, Bernard Pafunda. I believe one of the

affiliated coal companies is Crissie Coal Company, Your Honor.

THE COURT: All right. Gentlemen, if I miss calling any names...

MR. THOMAS: Your Honor, may we approach the Bench?

THE COURT: Yes, sir.

[Whereupon Messrs. Thomas, Walbourn, Pafunda, Harwell and Kehrli approached the Bench for a discussion.]

(off the record remarks.]

THE COURT: I am going to give you these names, and then think about this. We are going to have a break. We have Doug Padgett from Wheelwright and Doris Osbourne, Van Patton, and Dr. Richard Granager. And when I said McGlee, I understand that is a typo. It is McGhee.

Now, Mr. Marshal, we'll be in recess for fifteen minutes. While we are in recess, when you remember, come back and take your same seats. The reason for this is we have all the jurors--the jury. Of course, we have the defendants. They have a card with your number. And if you change your numbers around, you are going to fool them because they will think someone else is you. Let's don't do that. The Court is going to require

a card of the parties so the Court will know who is who.

But we'll be in a recess for fifteen minutes.

THE MARSHAL OF THE COURT: All rise. This court will in recess for fifteen minutes.

[Whereupon a recess was taken.]

THE MARSHAL OF THE COURT: All rise. The United States District Court is again in session. Be seated and come to order.

THE COURT: Madam Clerk.

THE CLERK OF THE COURT: Ladies and gentlemen, those jurors who sat previously in the case of United States of America v. Morris Joe Hall may be excused at this time. And those jurors are no. 3, Melvina Hall; no. 5, Roger D. Musick; no. 7, Donald Lee Kitts; no. 13, Doris Hall; no. 14, Donald Riley; no. 21, Inis Sue Charles; no. 32, Kernie Dean Miller; no. 48, Clyde R. Grossl; no. 50, Sarah A. Jackson; no. 42, Herbert Spencer; no. 40, Gardis Ousley; and the alternate was no. 39, Carl Fuller.

Is there anyone else? Number 12, Elizabeth Lorraine Wright.

Is there anyone else that I did not call that sat in on the case of the

United States of America v. Morris Joe Hall?

Those twelve jurors-you may be excused at this time.

THE COURT: Now, just please leave your number vacant there. The remaining jurors don't move over and take their place because that will throw the counsel off who have their diagrams of where everyone is seated. All right.

THE CLERK OF THE COURT: You do have permission to leave at this time, ladies and gentlemen. Please leave very quietly, and thank you for your cooperation in coming in. You will be notified of your next service by mail.

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THE CLERK OF THE COURT: Please answer present and stand very briefly as your name is called.

THE COURT: Before you start, I was given a note by a juror but any juror who is going -- is going to have to state his request or excuse in open court in the presence of his fellow jurors. I appreciate your note but we can't get around the procedure requiring the jurors to state in open court his excuse.

THE CLERK OF THE COURT: As I call your name just state present and stand very briefly, please.

No. 6, Teresa VanHoose.

MS. VANHOOSE: Present.

THE CLERK OF THE COURT: No. 8, Alline Little.

MR. LITTLE: Present.

THE CLERK OF THE COURT: No. 18, Loretta Gayle May.

MS. MAY: Present.

THE CLERK OF THE COURT: No. 22, William R. Clay.

MR. CLAY: Present.

THE CLERK OF THE COURT: No. 23, Michael

G. Newsome.

MR. NEWSOME: Present.

THE CLERK OF THE COURT: No. 26, Anna S. Booten.

MS. BOOTEN: Present.

THE CLERK OF THE COURT: No. 28, Susan Stamper.

MS. STAMPER: Present.

THE CLERK OF THE COURT: No. 31, Linda Gail Montgomery.

MS. MONTGOMERY: Present.

THE CLERK OF THE COURT: No. 34, Claude N. Newberry.

MR. NEWBERRY: Present.

THE CLERK OF THE COURT: No. 35, Peggy Bowen.

MS. BOWEN: Present.

THE CLERK OF THE COURT: No. 36, Maxine Dobson.

MS. DOBSON: Present.

THE CLERK OF THE COURT: No. 44, Betty Ann Faulkner.

MS. FAULKNER: Present.

THE CLERK OF THE COURT: No. 46, Troy S. Gullett.

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MR. GULLETT: Present.

THE CLERK OF THE COURT: No. 51, Sharlene Mosley Jacobs.

MS. JACOBS: Present.

THE CLERK OF THE COURT: No. 52, Beatrice M. Jarrell.

MS. JARRELL: Present.

THE CLERK OF THE COURT: No. 56, Dinah Ray Edwards.

MS EDWARDS: Present.

THE CLERK OF THE COURT: No. 58, Rufus Irl Engle.

MR. ENGLE: Present.

THE CLERK OF THE COURT: No. 60, Marcus Wells.

MR. WELLS: Present.

THE CLERK OF THE COURT: No. 62, Carolyn Sandlin.

MS. SANDLIN: Present.

THE CLERK OF THE COURT: No. 63, Raleigh Arnett.

MR. ARNETT: Present.

THE CLERK OF THE COURT: 65, James S. Mooney, Jr.

MR. MOONEY: Present.

THE CLERK OF THE COURT: No. 66, Phillip Lovins.

MR. LOVINS: Present.

THE CLERK OF THE COURT: No. 67, Jack C. Steele.

MR. STEELE: Present.

THE CLERK OF THE COURT: No. 68, Cora E. Webb.

MS. WEBB: Present.

THE CLERK OF THE COURT: No. 69, Rhoda Elizabeth Ison.

MS. ISON: Present.

THE CLERK OF THE COURT: No. 70, Charles E. Martin.

(Reporter's Note: No response)

THE CLERK OF THE COURT: No. 72, Otis Slone.

MR. SLONE: Present.

THE CLERK OF THE COURT: Mr. Martin is not present, Your Honor.

No. 70.

THE COURT: No. 70, he is not here?

THE CLERK OF THE COURT: Yes, Your Honor.

THE COURT: Mr. Marshall, will you

please find Mr. Martin and put him under arrest.

THE CLERK OF THE COURT: No. 74, Deborah K. Smith.

MS. SMITH: Present.

THE CLERK OF THE COURT: No. 75, James R. Lacy.

MR. LACY: Present.

THE CLERK OF THE COURT: No. 76, Larry Jones.

MR. JONES: Present.

THE CLERK OF THE COURT: No. 77, Gertrude Sturgill.

MS. STURGILL: Present.

THE CLERK OF THE COURT: No. 78, Sidney C. Muncy.

MR. MUNCY: Present.

THE CLERK OF THE COURT: No. 79, Danita Burchett Sullivan.

MS. SULLIVAN: Present.

THE CLERK OF THE COURT: No. 80, Billy Ray Newsome.

MR. NEWSOME: Present.

THE CLERK OF THE COURT: No. 81, Jerry C. Swank.

MR. SWANK: Present.

PLEASE RECYCLE
COTTON CONTENT

THE CLERK OF THE COURT: No. 82, Geraldine Sturgill Fields.

MS. FIELDS: Present.

THE CLERK OF THE COURT: No. 84, John W. Chaney.

MR. CHANEY: Present.

THE CLERK OF THE COURT: No. 85, Lonnie Slone.

MR. SLONE: Present.

THE CLERK OF THE COURT: No. 86, Kermit Martin.

MR. MARTIN: Present.

THE CLERK OF THE COURT: No. 87, William Ray Meeks.

MR. MEEKS: Present.

THE CLERK OF THE COURT: No. 88, Betty L. Stamper Turner.

MS. TURNER: Present.

THE CLERK OF THE COURT: And No. 90, James Bennie Oaks.

MR. OAKS: Present.

THE CLERK OF THE COURT: Other than Juror No. 72, Your Honor -- No. 70, I'm sorry, Charles E. Martin, all jurors have been present and accounted for.

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THE COURT: All right, ladies and gentlemen of the jury. You heard the names and -- that I have read of the prospective witnesses.

Mr. Marshall, you want to go back there and row by row find out if any of the prospective jurors are acquainted or related to any of the witnesses --

MR. HOLLON: (Interrupting) Your Honor, I think when you called the roll of the witnesses, you called one witness, Mr. Jim Price, I think that should have been Jim Page of Price, Kentucky.

THE COURT: Jim Page of Price, Kentucky, thank you, sir.

Anyone acquainted, related by blood or marriage to any of the witnesses or acquainted with them -- he'll come down row by row.

Yes, sir.

MR. CLAY: Yes, I know several of the names you mentioned. William R. Clay, No. 22.

THE COURT: Mr. Clay, of course I guess the other attorneys want to know specifically who you know and how well you know them. Then after you get through of all of that we'll get to the bottom line and I'll ask you. But for their information tell who you know and how well you know

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them and who you're acquainted with.

MR. CLAY: Phillip Booth and Phillip Moore. I went to school at McDowell. Pearl Booth, Phillip's wife. Gary Rhodes is a neighbor of mine. Cobb Turner, as I know him from Drift. Several more but I have forgotten their names.

THE COURT: Well, let me ask you this. By reason of you knowing them you understand I said the jury would be the judge of the credibility, do you know of anything that would prevent you from listening to their testimony in trying this case fairly and impartially and solely upon the evidence itself?

MR. CLAY: No.

THE COURT: Thank you, sir.

MR. NEWSOME: Michael Newsome, No. 23. I know just about every one of them boys that you called out from McDowell, plus Frank and Billy Justice, and Richard Tompkins, I know all of them.

THE COURT: By reason of you knowing them, Mr. Newsome, would that in any way without considering what was said does that make you place anymore weight to their testimony or any less weight to their testimony, and can you try this case

solely upon the evidence itself?

MR. NEWSOME: Yes.

THE COURT: Mr. Newsome, let me ask you this, how long have you served as a juror here in this court?

MR. NEWSOME: About two years and two months I guess.

THE COURT: Thank you, sir.

MS. JARRELL: No. 52, Beatrice Jarrell. I know Gary McCoy, Harold Stumbo and the two Martins. Harold -- I said Harold, there was two or three others, I don't remember their names. I know them to speak to them, but I don't have any dealings with them.

THE COURT: You don't go to church with them?

MS. JARRELL: No.

THE COURT: You don't go to school with them?

MS. JARRELL: No.

THE COURT: You don't do any business with them?

MS. JARRELL: No, I've never went to school here, I'm not from here.

THE COURT: Would that in any way

effect your services as a juror, ma'am?

MS. JARRELL: No, I just know some people.

MR. MOONEY: James Mooney, No. 65, I know Frank Scott. They've handled grievances against my company and stuff. And Julius Martin, if it's the one I'm thinking of, handles all the insurance with all my equipment, his business is down in Martin.

THE COURT: Let me ask you this by reason of your acquaintance, would that in any way effect your services as a juror if you were accepted in this case?

MR. MOONEY: Not as far as either of them testifying, no.

THE COURT: Thank you.

MR. STEELE: No. 67, Jack Steele. Gary Rhodes is a friend of mine. I'm with the Corps of Engineers and I'm acquainted to him through my work.

THE COURT: Mr. Steele, you understand merely because a person is a law officer or a friend, just from that fact alone, from that fact alone you can not give any more credence than you would someone else. That means you don't have to

believe everything what he is saying, it's based upon the guidelines which is what I said, how he testified, your opportunity to acquire the information, whether or not what they say is supported by other evidence. You think that you would ignore those other guidelines and decide this evidence merely because you know this gentleman?

MR. STEELE: No.

THE COURT: You're willing to try this case according to the law and the evidence in this case?

MR. STEELE: Yes.

THE COURT: Thank you, sir.

MS. STURGILL: Bertrude Sturgill, No. 77 and I know -- only through doing some exams for him when I worked for the Disability Claims.

THE COURT: Would that make any difference, ma'am?

MS. STURGILL: No.

MR. CHANEY: John W. Chaney, No. 84 I know Frank Scott. I worked with him for about four years and I knew him about a year before that.

THE COURT: Would that make any difference or effect your services as a juror?

MR. CHANEY: No.

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MR. SLONE: No. 85, Lonnie Slone. I know several people you mentioned. I owned a service station for about three years and did some business -- some of them did business with me. A couple -- let's see, two of them are related to my wife -- well, I think it's my wife's first cousin, husband's sister or brother.

THE COURT: Well, the mere fact would that tend to make you believe them anymore or less than you would any other witness?

MR. SLONE: No.

THE COURT: You're willing to decide on what is said and the other guidelines which is stated by the Court, is that correct?

MR. SLONE: Yes.

MR. MARTIN: Kermit Martin, No. 86, and I know several of them.

THE COURT: Who do you know, sir?

MR. MARTIN: Arnold Turner, Jr., Arnold Turner, Sr., Julius Martin.

THE COURT: You know, this courtroom's got different sides. If you know one side what may be a witness from one side the other side might be suspect and vice versa. They kind of like to know -- who do you know and how well you know them.

Let me ask you this, is that all you recall of knowing?

MR. MARTIN: No, I know Gary Rhodes.

THE COURT: Anyone else?

MR. MARTIN: Donnie Blanton, I believe you called him.

THE COURT: Well, I could have called the number, that's confusing.

Let me ask you this, would it make any difference whether or not you knew a witness in listening to the testimony and making your decision?

MR. MARTIN: No.

THE COURT: Thank you, sir.

Now, let me do this, let me start back with the attorneys again and let's start at the end. Would you gentlemen please stand and state your names and your address. These are attorneys, and what firms you're with so the jury can know.

MR. DAUSE: My name is Charles Dause. I am the Assistant United States Attorney. I work out of Lexington and live in Versailles, Woodford County, and I am a native of Russell County which is down in the Somerset area.

THE COURT: Thank you, sir. Next.

MR. KEHRLI: My name is Randall Kehrli. I am an attorney for the United States Department of Justice. I am from Alexandria, Virginia and I was born and raised in Cedar Rapids, Iowa.

MR. SELF: My name is Thomas L. Self, I am Assistant United States Attorney and I work out of the United States Attorney's Office in Lexington, Kentucky. I'm originally from Elkhorn City.

MR. HARWELL: My name is Aubrey D. Harwell. Although I'm not from Kentucky, I'm from Nashville, Tennessee. I was raised in a little town south of Nashville, called Bell Buckle, Tennessee. I practice law in private practice now with the law firm in Nashville called Neil and Harwell.

MR. MOORE: My name is Albert F. Moore, I work for Mr. Harwell at Neil and Harwell in Nashville, Tennessee. I live in Hendersonville, Tennessee which is just outside of Nashville.

MR. WALBOURN: My name is E. J. Walbourn from the firm of Cummings, Fulton and Templeton in Ashland, Kentucky and I live in Ashland.

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COTTON CONTENT

MR. PAFUNDA: Ladies and gentlemen, my name is Bernard Pafunda. I am from Pikeville, Kentucky and I practice with the firm of Deskins and Pafunda.

MR. PATTON: My name is Jerry Patton and I'm in private practice in Prestonsburg. I was born and raised in Pike County which is by Beaver Creek.

MR. SPENCER: My name is Ed Spencer. I practice law in Paintsville and I was born and raised in Kentucky in Johnson County.

MR. ADAMS: I'm Eldred Adams. I was born in Louisa, Kentucky. I practice law by myself in Louisa and I was born and raised in Louisa or Lawrence County, Kentucky.

MR. ROWLAND: My name is Dan Rowland and I practice law in Prestonsburg and I went to high school in Mayfield and grew up in Floyd County.

MR. BRANSEN: My name is Hershel Bransen, Jr., I practice law in Jackson, Kentucky and I was born and raised in Jackson.

MR. HOLLON: My name is Tom Hollon, and I'm from Danville, Kentucky where I practice law and I was born and raised in Meade County, Kentucky.

MR. THOMAS: My name is David Thomas and I practice law by myself in Nicholasville, Kentucky and by the time this trial is over I will have spent as much time here as in Nicholasville.

MR. KIRKLAND: My name is Bill Kirkland. I live and practice law in Frankfort with the firm of -- Gravel Switch, Kentucky.

THE COURT: All right, now, under the rules which I have stated to you for settling a dispute, not only is one entitled to an impartial jury, but it's entitled to counsel. If they can not afford counsel, then one is appointed for them. Whether their counsel is compensated by those persons or one is furnished by the United States it's of no consequence. Whether the attorney is from Nashville or whether he's from here in Pike County that has no consequence. I think when we end up we'll find that Mr. Harwell and the gentlemen with him, they are more like Pikevillians than Pikevillians themselves, you won't be able to determine it. But I think all of you understand whether it's a local counsel or someone from out, Mr. Kirkland for many years has been here in Pikeville and the United States and Frankfort, but all these counsel are professionals.

You will find that they will do the job well. This is their job to represent their clients. As professionals, they know these rules and regulations, but they will present their clients' evidence in the most favorable light. And whether they're from -- how they're compensated has nothing to do with it. The point we want to know now and we're going to go through the jury is to see if any of you are acquainted with any of these attorneys or you have ever utilized their services as an attorney for you.

Is anyone acquainted with any of these attorneys or have you ever used them as your attorney?

MR. WELLS: Marcus Wells, No. 60, I've used Mr. Ed Spencer's services.

THE COURT: As using Mr. Spencer as your counsel you had to rely on his information at that time because he was your attorney, do you understand that?

MR. WELLS: Yes.

THE COURT: You understand in this courtroom he's representing someone else. Counsel can't represent one client, they have to represent

many, but because you had to rely on him when he was your attorney do you think that would make you have any feelings or tendency to rely on what he's going to say in this case or could you just consider him as just another attorney in this case, do you have any problem with that, sir?

MR. WELLS: No, I don't.

MR. NEWBERRY: Number 34, Claude M. Newberry. I'm acquainted with Dan Rowland.

THE COURT: How are you acquainted with Mr. Rowland?

MR. NEWBERRY: Well, he and I worked together approximately twenty years ago at a local radio station.

THE COURT: What are you doing now, sir? I know he's no longer with the radio station.

MR. NEWBERRY: Now I am an automotive supplier.

THE COURT: Let me ask you, sir, does that make any difference in your considering the evidence in this case?

MR. NEWBERRY: No, sir.

MS. WEBB: Cora Webb, No. 68, I know Mr. Ed Spencer. His offices are right upstairs from where I work.

THE COURT: Does that make any difference to you, ma'am?

MS. WEBB: No.

THE COURT: Now, Mr. Thomas made a statement at the time this trial was over he would be here as long as he was in doing his job -- Mr. Martin, do you remember I named the potential witnesses in this case?

MR. MARTIN: I don't think I do, you mean this morning?

THE COURT: Yes, before the break.

MR. MARTIN: Well --

THE COURT: I understand, Mr. Martin, you have a hearing problem?

MR. MARTIN: Yes.

THE COURT: You've been downstairs, but did you hear the names of the witnesses that I read off before the break?

MR. MARTIN: I guess I did, I don't remember any of them, though.

THE COURT: What's your jury number?

MR. MARTIN: 70.

THE COURT: Thank you, Mr. Martin. You may have a seat, sir.

Now, getting back to the

statement of Mr. Thomas some estimates say this trial is going to last eight weeks. Some estimates says it's going to last four weeks, but anyway, it's going to take several weeks to try this case.

Now, this is where the courtroom proceedings gets pretty near a church service, you know, at the end of the church service the minister has the altar call and he's pretty persuasive. You get to the point of this where you say well, has anyone got any reason why they can't serve. Now, this is not brothers -- druthers, because when you druther serve, it gets down to druthers, I like the jury would rather be in Florida fishing than being sitting here in this courtroom. But as I say this case has to be tried, and this is a dispute between the Defendants and the larger collection of families as I said. It's a larger family dispute which has to be decided. Under our rules and regulations, some representatives from other families which are you people are going to have to decide it.

Now, is there anything which you have which is going to prevent you from sitting here and being a fair and impartial juror in this trial, if it should last four to eight weeks.

He's coming down row by row.

Now, this is your excuse of why you want off the jury and you can't serve. Remember as you talk look down to the person beside you and tell them why.

Yes, ma'am. State your name and number please.

MS. STAMPER: Susan Stamper, No. 28.

I keep a five year old grandson and send him to school, and if it's just a few days I could do it, but that long it would be hard because I have to get him up to my son's house to get him on the bus.

THE COURT: And you think those two ladies standing beside you should serve because of that?

MS. STAMPER: Well, no.

THE COURT: All right, thank you, ma'am. Go to the next one.

MS. BOOTEN: Anna Booten, No. 26.

I am a public school teacher and that long out of the classroom, it would be havoc.

THE COURT: Thank you.

MS. FAULKNER: Betty Ann Faulkner, No. 44.

My husband fell and broke his leg and he's in a full cast on the right leg. He had an appointment today and we had to cancel it till Wednesday. So the doctor is in on Monday and Wednesday and he's off all through the week.

THE COURT: Thank you, ma'am.

MS. EDWARDS: Dinah Ray Edwards, No. 56. First, I'm not saying that I don't want to sit on the jury, I'm just saying that it could be a baby-sitting problem that could arise in the future.

THE COURT: What's the problem?

MS. EDWARDS: Well, my family, they all work and they all go to school and if somebody's not going to work then I have a babysitter, but if somebody's not going to school I have to get a babysitter. So it's kind of hit and miss.

THE COURT: Well, let me ask you this. If it's a case of a necessity or have-to you can say it.

MS. EDWARDS: Well, probably so.

THE COURT: Well, if it's not too inconvenient for someone else, then it'd be more convenient for you if they'd sit, I guess the question is weighing which is the biggest

inconvenience. We've got to find what's going to be the least inconvenience for the members of the jury and the ones that stay or the less inconvenienced are going to be the ones that serve, you understand that?

MS. EDWARDS: Yes.

THE COURT: It's a question of rating them.

MR. ENGLE: Rufus Engle, No. 58, been laid off work for a year and a half and I got my call back slip and I don't have transportation whatsoever to get down here for four to eight weeks, it'll take me two months to get enough to buy a car to go to work.

THE COURT: Well, of course, I think you understand -- what is it, thirty dollars a day?

THE CLERK OF THE COURT: Yes, Your Honor, thirty dollars plus twenty and a half cents a mile.

THE COURT: You get thirty dollars a day plus twenty and a half cents for transportation. If a person has transportation they keep the twenty and a half cents. If they have no transportation then they take the twenty and one-half cents per mile in order to get transportation.

Now, let me explain this to you. Mr. Newsome said he's been on this jury for two years and something. But everyone who is subpoenaed as a juror in the United States District Court must get thirty days actual service before you are released. If you are not accepted, you get credit for one day you come here. That means you have to come back twenty-nine other times in order to get your service over. This is the opportunity, a juror who sits in this case will most probably get rid of their jury service very quickly. And they won't have to be like Mr. Newsome and keep coming back for two and a half years to get it over.

MS JARRELL: Beatrice M. Jarrell, No. 52. I have got five kids and in order to come down here I've got to get them up at 5:30 -- I had to get them up at 5:30 this morning and my husband may have to miss work today and if the roads would get bad there'd be no way I could get down here.

MR. MOONEY: James S. Mooney, No. 65. I have a company that has jobs in West Virginia. The ones that were in business were shut down prior to a contract that was supposed to be executed. We were supposed to do it today, but we've moved it

to sometime next week. We're supposed to be -- the IRS is going to audit my company on the 23rd of this month. So I don't know if my presence is required or what, but they said they were coming in on Monday the 23rd and they said want me and the other officers present.

THE COURT: Thank you, sir.

MS. WEBB: Cora Webb, No. 68. I take care of my father. He's not very well. So as far as I know -- I can't say, I'm not sure.

THE COURT: Thank you.

MS. SMITH: Deborah Smith, No. 74. I'm currently being treated by a doctor for an injury to my back. I take treatments once a week and I'm on medication and I don't think I can sit all day let alone two or three weeks. I also have a transportation problem.

THE COURT: Well, I won't worry about the transportation problem, just like I told him, you know, the Government pays the money for the transportation and the juror has to take the money and get their own transportation. That's the reason the Government gives them the money, otherwise the Government could keep the money and provide transportation. I'm not permitted to consider the

transportation as an excuse, because they provide the money.

Now, the other matters they will consider.

MR. LACY: James Lacy, No. 75. I have two problems, I raise cattle and during this time of year it's very important that they be fed. For a few days I could hire somebody, but when it gets that long it will be difficult for me to get somebody. The other problem I am a school teacher and that does not matter to me but it does matter to the school system that I be gone that long.

MR. JONES: Larry Jones, No. 76. Mine would be a financial problem. Last Friday I talked to my employer and I told him, you know, I was selected to this thing for that long period of time he told me that it might -- he might get temporary help to fill in for me and without me getting that money I couldn't meet all my bills.

THE COURT: Thank you.

MR. MEEKS: William Ray Meeks, No. 87. I think it would be a fine experience to be over here --

THE COURT: (Interrupting) But --

MR. MEEKS: (Continuing) -- my boss

has already said he was not going to pay me, so if I had to come to Court to get him to pay me, I'm sure he's going to fire me.

THE COURT: Mr. Self, what are you shaking your head for?

MR. SELF: I don't think his employer would wish to fire a juror for being on jury duty. That would be a bitter headache than he would ever imagine.

MR. MEEKS: There was one man that worked where I work now, it was a couple of years ago, a guy was on jury duty and I know he wasn't paid for it and still has not been. He took him to court.

THE COURT: He's what?

MR. MEEKS: He hasn't been paid.

THE COURT: Well, I don't know about that, they can't fire you, I know that, but I don't know about making them pay additionally, I don't think there's any law that says you have to do that. Some of the companies pay them while they sit on the jury, some of the companies pay -- take the pay which they get as jurors and give them their regular pay. And some of the companies just don't pay them. But, they hire temporary substitutes.

But they have to take them back if they come back. They can't fire you because you served on a jury.

But your statement is -- what is your statement in the event that --

MR. MEEKS: Well, I work the third shift and I would be missing two shifts work because I'd have to be over here early in the morning and I get off work at seven in the morning and by the time I get back over there I wouldn't have any sleep because I'd have to get back at eleven.

THE COURT: Well, I don't understand that, you missing two shifts. You only work one shift in a twenty-four hour period, can't you?

MR. MEEKS: Well, I have to go to work at eleven.

THE COURT: Well, that's one shift in a twenty-four hour period, right?

MR. MEEKS: Right. I drive from work to here and I sit here all day till the court commences then I go back home and it's almost time for me to go back to work.

THE COURT: But if you sat here a week, you would only miss - - you would be here Monday, Tuesday, Wednesday and Thursday, four days.

MR. MEEKS: I go to work on Sunday night.

THE COURT: If you sit here as a Juror four days, you are going to miss four shifts, aren't you?

MR. MEEKS: I will miss two shifts. By the time I get home, I will miss two shifts.

THE COURT: Thank you.

MS. TURNER: Betty Turner, No. 88. I have a sick son which is twelve years old, and he has been sick since four months, so I have no one to take care of him.

THE COURT: Is he going to school?

MS. TURNER: Three days a week.

THE COURT: Is he on that I.E.P. program?

MS. TURNER: He goes to L.P.J. Jackson Wednesday and Fridays.

THE COURT: He is twelve years old?

MS. TURNER: Yes. He has been on the disability program.

THE COURT: Is he under a disability program?

MS. TURNER: Yes.

THE COURT: Thank you Ma'am.

THE MARSHALL OF THE COURT: That is all, your Honor.

THE COURT: Who wants to be first? The attorneys will be given an opportunity to begin - -

MR. DAUSE: Your Honor, may I approach the Bench?

REPORTER'S NOTE: At this time Mr. Dause, Mr. Kehrli, Mr. Self, and Mr. Harwell approached the Bench and after a Bench conference, the following was heard:

THE COURT: All right, gentlemen. I made my first mistake of the day. What I want, I want each Defendant, if you will, gentlemen, to stand and state your name and your address to the members of the Jury, so we can see if any of them are acquainted with the Defendants.

Mr. Jones, let's start with you, please, sir.

MR. JONES: My name is Edgar Jones. I live in May Springs, Prestonsburg, Kentucky, Floyd County.

THE COURT: Thank you, sir.

MR. MOORE: Austin Moore, I live at Minnie, Kentucky.

MR. HALL: Drexil Hall, McDowell.

MR. MILAN: Tim Milan, McDowell, Kentucky.

MR. HALBERT: Donahue Halbert, Langley, Kentucky.

MR. HALL: Morris Ray Hall, Hyatt, Kentucky.

MR. MOORE: Harold Moore from McDowell, Kentucky.

MR. GAYHEART: Pebo Gayheart, Stewart (?), Ohio.

MR. MOORE: Jason Moore, Price, Kentucky.

MR. TACKETT: Eugene Tackett, McDowell, Kentucky.

MR. BLANKENSHIP: Ranny Blankenship, Louisville, Kentucky.

MR. ROLLAND: Kenneth Rolland, McDowell, Kentucky.

MR. STUMBO: German Stumbo, McDowell, Kentucky.

MR. HALL: Raymond Hall, McDowell, Kentucky.

MR. CAUDILL: Benny Caudill, Drift, Kentucky.

MR. MOSLEY: Linville Mosley, Pikeville, Kentucky.

MR. NEWSOME: Hermit Newsome, Beaver.

MR. MEAD: Mose Mead, McDowell, Kentucky.

MR. KINNEY: Teddy Kinney, McDowell, Kentucky.

THE COURT: Mr. Marshall, if you would go back and go by row and go and see if there is any of the Jurors that is acquainted with any of the Defendants and how they are acquainted with them, by blood or marriage or business or economics, and then whether or not it would make any difference by reason of the fact that you know them.

MR. CLAY: No. 22, William R. Clay. Yes, I know some of them.

THE COURT: Who do you know, sir?

MR. CLAY: Benny Caudill, Linville Mosley - - I can't remember their names now. When you get up in front of a crowd, you can't talk.

THE COURT: That is all right.

MR. NEWSOME: Michael Newsome, Juror No. 23. I know about four or five of them.

THE COURT: Now, Mr. Clay, would it make any difference to the fact that you know them?

MR. CLAY: No.

THE COURT: Mr. Newsome - -

MR. NEWSOME: (Interrupting) Well, I know four or five of them. I know German Stumbo hunts with my brother-in-law, Hermit hunts with my brother-in-law. My brother works for Linville's older two brothers for a coal company, and I know three or four more of them.

I've seen them all, but I know - -

THE COURT: (Interrupting) Would it make any difference?

MR. NEWSOME: No.

THE COURT: Anyone else?

MR. NEWBERRY: Claude Newberry, No. 34. I am acquainted with Jason Moore, your Honor.

THE COURT: How did you get acquainted with Jason?

MR. NEWBERRY: Approximately five years ago, he and I worked together.

THE COURT: How long did you work together?

MR. NEWBERRY: Three or four months.

THE COURT: Would you say you are real good friends?

MR. NEWBERRY: No, sir. I have to admit no offense to him, I was basically familiar, but I couldn't put a name on him when I seen him walk in.

THE COURT: I assume it would make no difference to you?

MR. NEWBERRY: No.

THE COURT: Thank you, sir.

MR. MARTIN: I am a distant relative of Mr. Stumbo's wife, even though I don't know either one of them.

THE COURT: Would it make any difference to you, Mr. Martin?

MR. MARTIN: No.

THE COURT: Okay.

MR. SLONE: No. 85, Lonnie Slone. I know Morris Ray Hall, and I have met Mr. Newsome, I met him before. I have known Mr. Hall for about twenty years, and I would say in that neighborhood, not on a real personal relationship, I just know him.

THE COURT: Would it make any difference to you, sir?

MR. SLONE: No, sir.

THE COURT: Thank you.

MR. MARTIN: No. 86, I know a couple.

THE COURT: Who do you know, sir?

MR. MARTIN: Linville Mosley, Benny Caudill.

THE COURT: How did you get acquainted with them, sir?

MR. MARTIN: Just days off.

THE COURT: Just social acquaintance?

MR. MARTIN: Right.

THE COURT: You meet at a corner some place and talked with them?

MR. MARTIN: Right.

THE COURT: Would that make any difference to your sitting as a Juror in this case?

MR. MARTIN: No.

THE COURT: Thank you, sir.

THE MARSHALL OF THE COURT: That is it.

MR. SELF: May we approach the Bench?

REPORTER'S NOTE: At this time Mr. Self, Mr. Kehrli, and Mr. Dause, along with Mr. Harwell and other unidentified Defendants'

REPORTER'S NOTE: (Continued) counsel approached the Bench and they were basically out of the hearing of the daily Reporter except for the Judge's comment as follows:

THE COURT: We are going to have to - - let's do this. You gentlemen have voir dired these, let's get them off who we are going to get off for cause, and then we have got - - then we have got a prospective panel for the preemptory.

Now then we can go to the others.

MR. HARWELL: The second time.

THE COURT: I suspect that we are not going to have enough after we go through the others and we are going to have to continue this trial and get more Jurors.

It would be at least that, but I think we better find from this how many we are going to have left from this.

I think we ought to let's be ready for counsel's voir dire, there shouldn't be too much voir dire.

MR. HARWELL: You covered a lot of it already.

THE COURT: And then we will know, because we are going to go through the same thing with this group, that is, ask them the questions.

MR. ROWLAND: I know Mr. Martin personally, and I question if he has been able to hear in Court. I don't know whether he made that aware to you or not, but he doesn't seem to be having trouble.

THE COURT: I think the questions I have asked him, I don't think he's had a hard time or any problem hearing.

MR. ROWLAND: It is a pretty bad problem, but we can discuss it.

THE COURT: We can discuss that later. He seems to be answering my questions.

MR. ROWLAND: He has answered every one perfectly.

THE COURT: We will be in recess until 1:00 o'clock then.

REPORTER'S NOTE: After a recess for lunch, the following was heard:

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

UNITED STATES OF AMERICA

-vs- CASE NO. 83-8

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

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TRANSCRIPT OF TRIAL

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BEFORE: THE HONORABLE G. WIX UNTHANK

DATE: JANUARY 9, 1984

****

VOLUME II

Dale Soergel Moore Shaw & Associates
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For the Defendants Benny Caudill, Harold Moore, Hermit Newsome, and Mose Mead:

E. J. WALBOURN, III.

For the Defendant Tim Milan:

DAN ROWLAND, ESQ.

For the Defendant Eugene Tackett:

DAVID THOMAS

For the Defendant Pebo Gayheart:

THOMAS K. HOLLON, ESQ.

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For the Defendant Donahue Halbert:

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For the Defendant Linville Mosley:

LOWELL E. SPENCER, ESQ.

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

BERNARD PAFUNDA, ESQ.

For the Defendant Ranny Blankenship:

ELDRED E. ADAMS, JR., ESQ.

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

WILLIAM D. KIRKLAND, ESQ.

THE MARSHALL OF THE COURT: All right. The United States District Court is now in session.

THE COURT: Do you waive a call of the Jury?

MR. SELF: Your Honor, I think we better after the recess.

THE COURT: Madam Clerk, please call the roll again.

THE CLERK OF THE COURT: Yes, your Honor. Ladies and gentlemen, please stand briefly as I call your name.

Juror No. 6, Teresa L. Vanhoose.

MS. VANHOOSE: Present.

THE CLERK OF THE COURT: Juror No. 8, Alline Little.

MS. LITTLE: Present.

THE CLERK OF THE COURT: Juror No. 18, Loretta Gayle May.

MS. MAY: Present.

THE CLERK OF THE COURT: Juror No. 22, William R. Clay.

MR. CLAY: Present.

THE CLERK OF THE COURT: Juror No. 23, Michael G. Newsome.

MR. NEWSOME: Present.

THE CLERK OF THE COURT: Juror No. 26, Anna S. Booten.

MS. BOOTEN: Present.

THE CLERK OF THE COURT: Juror No. 28, Susan Stamper.

MS. STAMPER: Present.

THE CLERK OF THE COURT: Juror No. 31, Linda Gail Montgomery.

MS. MONTGOMERY: Present.

THE CLERK OF THE COURT: Juror No. 34, Claude M. Newberry.

MR. NEWBERRY: Present.

THE CLERK OF THE COURT: Juror No. 35, Peggy Bowen.

MS. BOWEN: Present.

THE CLERK OF THE COURT: Juror No. 36, Maxine Dobson.

MS. DOBSON: Present.

THE CLERK OF THE COURT: Juror No. 44, Betty Ann Faulkner.

MS. FAULKNER: Present.

THE CLERK OF THE COURT: Juror No. 46, Troy S. Gullett.

MR. GULLETT: Present.

THE CLERK OF THE COURT: Juror No. 51, Sharlene Mosley Jacobs.

MS. JACOBS: Present.

THE CLERK OF THE COURT: Juror No. 52, Beatrice M. Jarrell.

MS. JARRELL: Present.

THE CLERK OF THE COURT: Juror No. 56, Dinah Ray Edwards.

MS. EDWARDS: Present.

THE CLERK OF THE COURT: Juror No. 58, Rufus Irl Engle.

MR. ENGLE: Present.

THE CLERK OF THE COURT: Juror No. 60, Marcus Wells.

MR. WELLS: Present.

THE CLERK OF THE COURT: Juror No. 62, Carolyn Sandlin.

MS. SANDLIN: Present.

THE CLERK OF THE COURT: Juror No. 63, Raleigh Arnett.

MR. ARNETT: Present.

THE CLERK OF THE COURT: Juror No. 65, James S. Mooney, Jr.

MR. MOONEY: Present.

THE CLERK OF THE COURT: Juror No. 66,

Phillip Lovins.

MR. LOVINS: Present.

THE CLERK OF THE COURT: Juror No. 67, Jack C. Steele.

MR. STEELE: Present.

THE CLERK OF THE COURT: Juror No. 68, Cora E. Webb.

MS. WEBB: Present.

THE CLERK OF THE COURT: Juror No. 69, Rhoda Elizabeth Ison.

MS. ISON: Present.

THE CLERK OF THE COURT: Juror No. 70, Charles E. Martin.

MR. MARTIN: Present.

THE CLERK OF THE COURT: Juror No. 72, Otis Slone.

MR. SLONE: Present.

THE CLERK OF THE COURT: Juror No. 74, Deborah K. Smith.

MS. SMITH: Present.

THE CLERK OF THE COURT: Juror No. 75, James R. Lacy.

MR. LACY: Present.

THE CLERK OF THE COURT: Juror No. 76, Larry Jones.

DALE SOERGEL MOORE SHAW & ASSOCIATES
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(502) 587-6006

MR. JONES: Present.

THE CLERK OF THE COURT: Juror No. 77, Gertrude Sturgill.

MS. STURGILL: Present.

THE CLERK OF THE COURT: Juror No. 78, Sidney C. Muncy.

MR. MUNCY: Present.

THE CLERK OF THE COURT: Juror No. 79, Danita Burchett Sullivan.

MS. SULLIVAN: Present.

THE CLERK OF THE COURT: Juror No. 80, Billy Ray Newsome.

MR. NEWSOME: Present.

THE CLERK OF THE COURT: Juror No. 81, Jerry C. Swank.

MR. SWANK: Present.

THE CLERK OF THE COURT: Juror No. 82, Geraldine Sturgill Fields.

MS. FIELDS: Present.

THE CLERK OF THE COURT: Juror No. 84, John W. Chaney.

MR. CHANEY: Present.

THE CLERK OF THE COURT: Juror No. 85, Lonnie Slone.

MR. SLONE: Present.

THE CLERK OF THE COURT: Juror No. 86, Kermit Martin.

MR. MARTIN: Present.

THE CLERK OF THE COURT: Juror No. 87, William Ray Meeks.

MR. MEEKS: Present.

THE CLERK OF THE COURT: Juror No. 88, Betty L. Stamper Turner.

MS. TURNER: Present.

THE CLERK OF THE COURT: Juror No. 90, James Bennie Oaks.

MR. OAKS: Present.

THE CLERK OF THE COURT: All forty-three jurors, Your Honor, are present.

THE COURT: Gentlemen, I notice one chair vacant over there among the attorneys and defendants. Are all of the defendants present in the courtroom?

MR. ROWLAND: Yes, sir.

THE COURT: All right. And all attorneys are present accordingly.

All right. You may proceed on behalf of the United States.

MR. DAUSE: Thank you, Your Honor.

Ladies and gentlemen, I

want to thank you in advance for your patience. I know it has been a long morning already, and hopefully it won't be too terribly much longer.

I would also like to say that I appreciate the frank manner in which you responded to Judge Unthank's questions. And I certainly hope that you will respond to the questions that I ask in an equally frank manner. That, after, all, is the objective of this process we are going through.

If I ask a question that you don't understand, please let me know; and I will try to rephrase it.

The first thing I would ask of you is having had a lunch break, and having thought about what Judge Unthank went over with you this morning, did any of you have any responses to Judge Unthank's questions that did not occur to you prior to the lunch break?

I take it that none of you do.

The next thing that I would like to ask is this: Do any of you have any moral, religious, or ethical beliefs, political beliefs which preclude you from sitting in

judgment on another person, on the acts of another person? Do the precepts of your religion, the beliefs of your religion and teachings of whatever political groups that you might belong to-- Do any of those preclude you from sitting on judgment on another human being?

Prior to coming here today, have any of you, except for the service of the subpoena on you by the Marshals for coming to this jury panel, have any of you been contacted by any of the defendants, by any federal agents, or any of the lawyers or anyone else concerning this case except for the Marshals and the Clerk's Office in dealing with you and in coming in to be potential jurors?

I take it that none of you have as there is no response.

Do you understand, as Judge Unthank went over early in his questions with you this morning in his commentary to you, do you understand that if you are selected to be a juror that your job as a juror is to weigh and make a determination of the facts, and to apply those facts to the law as the Judges give it to you at the end of the case? Your job is not to

question or determine the law, but only to determine the facts of the case. Does anyone have any doubt in their mind about that?

Judge Unthank--I will not belabor this point. But he briefly talked about reasonable doubt. And I want to ask this one question about that.

THE COURT: I sustained the objection as to that.

MR. DAUSE: All right, Your Honor.

THE COURT: Let me state this: As I said to thejury, my sustaining of objections doesn't indicate a feeling one way or the other. I feel like, in my commentary, I made sufficient notice of this fact. And I don't think it is necessary to dwell upon it any more.

Proceed.

MR. DAUSE: Thank you, Your Honor.

Do any of you ladies and gentlemen or your spouses or close friends or relatives--are you employed by the federal government in any fashion?

Would you rise and state your name and number, sir?

MR. STEELE: I am Jack Steele, No. 67.

I work for the Army Corps of Engineers.

MR. DAUSE: All right, sir. Thank you. Anyone else have close friends, relatives.

THE MARSHAL OF THE COURT: I believe we have one more.

MR. LACY: I am James Lacy, no. 75. My brother works for the federal government.

MR. DAUSE: In what capacity?

MR. LACY: Farmer's Home Administration.

MR. DAUSE: Can you tell us where?

MR. LACY: Lexington.

MR. DAUSE: Is your brother Walter Lacy?

MR. LACY: Yeah.

MR. DAUSE: Ladies and gentlemen, have you or your spouses or any of your close family members had a dispute with any federal agency whether it took the form of a civil lawsuit against the federal government or an administrative process concerning social security benefits or black lung benefits or any other kind of benefits or any other disputes with the federal government, any of you?

Now, in this case, there

will be witnesses which will be law enforcement officers. Have any of you-- Some of these witnesses will be agents of the Bureau of Alcohol, Tobacco and Firearms of the United States Treasury Department. Have any of you or any of your spouses or close friends or relatives had any disputes with the Bureau of Alcohol, Tobacco and Firearms, and their law enforcement personnel?

Have any of those personnel ever cited any of your relatives or your friends for violations of federal law to your knowledge?

Now, as most of you know, the federal government has reservations, federal reservations, recreational areas, things like that, and a lot of them around in Kentucky. Have any of you or your family members, close relatives, friends ever been cited by any of the law enforcement personnel for traffic offenses or any type of offense involved with the federal reservations or any of their federal reservations?

Yes, sir.

MR. ENGLE: Rufus Engle, no. 58. Yes, sir, I have been cited for a traffic citation on one of those recreation areas.

MR. DAUSE: Which recreation area, sir?

MR. ENGLE: Fishtrap Dam.

MR. DAUSE: Sir, would the fact that you have been cited for this traffic offense on Fishtrap Dam, would that affect your ability to look objectively at the facts and to make a determination of this case without any bias towards the United States.

MR. ENGLE: No, sir, it wouldn't.

MR. DAUSE: Thank you.

Just to be sure the scope of that question is understood, have any of your family members or close friends been cited criminally in a federal court at any time?

Now, in order for the rest of my questions to make sense, I need to just give you a real brief statement of additional facts.

The Judge told you the time and the place of this violation--of the allegations that are in indictment. The allegations include these firearms and explosives. Now, with that in mind, ladies and gentlemen, I want to ask you a few more questions.

With the knowledge that firearms were alleged to have been used in the conduct of this offense, do any of you have any

personal opinions, political beliefs, or any feeling of any type in regard to the correctness of laws that regulate these firearms?

Do any of you believe that laws simply should not exist which regulate these firearms; and by firearms, I mean handguns, rifles, things of that nature?

I take it since no one is answering that none of you hold the opinion that firearms restrictions, federal laws restricting the use of firearms should simply not exist and should not be enforced? Do any of you or your family members or spouses or brothers and sisters, uncles and aunts, whatever, close friends, any of them involved in the business of buying and selling firearms either as a hobby or as a way of making a living?

MR. ENGLE: Rufus Engle, no. 58. I trade on guns every now and then, shop guns, rifles, whatever.

MR. DAUSE: You are not--you are not saying you are a licensed dealer. You do it as a hobby. Is that correct?

MR. ENGLE: Yes, sir.

MR. DAUSE: All right, sir.

Specifically to you then, do you have any feelings about the enforceability of laws whether they should exist, laws that regulate the use of firearms.

MR. ENGLE: I don't exactly understand what you are saying.

MR. DAUSE: Well, if the law existed which said that firearms can't be possessed or owned by certain groups of people, or that they cannot be used in engaging a certain kind of conduct, would you believe that those laws would be proper?

MR. ENGLE: I still don't know what you are talking about. But I think in their constitutional rights, we have the right to bear arms.

MR. DAUSE: All right, sir. There are federal laws which say certain classes of people are not permitted to own firearms. They are not involved in this action, but for instance there is a law which says that someone who is a convicted felon is not entitled to possess a firearm and travel in interstate commerce. And there are other laws which are on the books now and have been for a number of years.

Now, do laws of that nature cause you a problem? Do you disagree with

laws like that?

MR. ENGLE: No, sir. I don't think you should give a killer a gun and let him do it again. No, I don't.

MR. DAUSE: All right, sir. Thank you.

I think there was another hand.

MS. STURGILL: Gertrude Sturgill, no. 77. My father-in-law deals in the gun business and selling.

THE COURT: They didn't catch your name and number.

MS. STURGILL: Gertrude Sturgill, no. 77.

THE COURT: Thank you, ma'am.

MR. DAUSE: You say your father-in-law?

MS. STURGILL: Uh-huh.

MR. DAUSE: And whereabouts is he located?

MR. STURGILL: Auxier, in Auxier.

MR. DAUSE: Okay. And he does this for a living?

MS. STURGILL: No.

MR. DAUSE: As a hobby then?

MS. STURGILL: Yeah, more or less, but he

is licensed to.

MR. DAUSE: He is licensed by the Bureau of Alcohol, Tobacco, and Firearms probably to do that then.

MS. STURGILL: [Nodded head in the affirmative.]

MR. DAUSE: Does he have a store?

MS. STURGILL: No.

MR. DAUSE: He does it out of his home?

MS. STURGILL: Uh-huh.

MR. DAUSE: You know what kind of firearms he deals with?

MS. STURGILL: [Shakes head in a negative.]

MR. DAUSE: Does the fact-- Well, do you have any opinion about laws that regulate the use and buying and selling of firearms, about the validity of those laws?

MS. STURGILL: No, sir.

MR. DAUSE: Thank you.

THE MARSHAL OF THE COURT: Anyone else?

MR. DAUSE: Now, ladies and gentlemen, do any of you, your family members, or close friends-- Do you know anyone who is engaged in the business of

buying and selling of explosives, dynamite and things of that nature? Yes, sir.

MR. MOONEY: James Mooney, no. 65. My coal company buys explosives.

MR. DAUSE: Buys it for use in the coalfields?

MR. MOONEY: Right.

MR. DAUSE: All right, sir. Do you personally work with the dynamite?

MR. MOONEY: Yes, sir.

MR. DAUSE: In what way do you work with the dynamite?

MR. MOONEY: Well, I oversee it, and sometimes I help to load it in the shop.

MR. DAUSE: Do you personally participate in the use of dynamite in the coal business?

MR. MOONEY: I am there like every day in the shop. Like I say we handle the caps.

MR. DAUSE: You help set it up so that it can be used to blow away rock or whatever?

MR. MOONEY: That's right.

MR. DAUSE: I thank you.

Yes, sir.

MR. MEEKS: William Meeks, No.87. I worked in the coal mines and I'm a certified shop foreman.

MR. DAUSE: All right, sir. You use dynamite on a regular basis then, is that right?

MR. MEEKS: Yes.

MR. DAUSE: What other kind of explosives do you use in your work?

MR. MEEKS: Just dynamite and blasting caps.

MR. DAUSE: How long have you been doing that?

MR. MEEKS: Five years.

MR. DAUSE: What kind of formal training do you have to be certified?

MR. MEEKS: I went to school.

MR. DAUSE: Do you know who conducted the school?

MR. MEEKS: No, I don't.

MR. DAUSE: Was it a federal agency?

MR. MEEKS: Yes, it was.

MR. DAUSE: Do you personally know other than just happen to know if dynamite was bought by your company, do you personally know persons that deal in the business of dynamite?

MR. MEEKS: They bought it at Cedar Valley, they buy it at Cedar Valley.

MR. DAUSE: Thank you.

Yes, sir.

MR. LACY: James Lacy, No. 75. My father-in-law owns a strip mine operation and sometimes I go down there.

MR. DAUSE: Where is this strip mine located?

MR. LACY: Logan County.

MR. DAUSE: Now, you say you helped him, do you do this on a regular basis?

MR. LACY: No.

MR. DAUSE: You're not regularly employed by him in this strip mining operation?

MR. LACY: No, in a round about way I own stock in the company, so even though I don't participate in it, I am involved.

MR. DAUSE: Do you participate in sitting the dynamite up to blow up rock and things like that or do you help him carry it around when it needs to be carried or what do you do?

MR. LACY: No, I have to -- unless it's an emergency or something I'll help him.

MR. DAUSE: Are you familiar with

any other kind of explosives other than dynamite?

MR. LACY: No.

MR. DAUSE: Thank you, sir.

Yes, sir.

MR. JONES: Larry Jones, No. 76. I drive a truck for Austin Powder and we deliver explosives.

MR. DAUSE: How long have you been doing that?

MR. JONES: Since June of '77.

MR. DAUSE: What kind of explosives do you haul?

MR. JONES: All kinds of dynamite.

MR. DAUSE: Are you trained in or do you ever -- even if you weren't formally trained, do you use dynamite in your job, do you use the dynamite, set it up and blow up rocks or whatever?

MR. JONES: Yes, sometimes we do some surface mining, mostly.

MR. DAUSE: Now, you're doing that on a surface mine job -- is your employer a coal company?

MR. JONES: It's Austin Powder.

MR. DAUSE: It's just a explosives company?

MR. JONES: Yes.

MR. DAUSE: Did they contract you to mine operations to handle the explosives for them when they need it done or were the circumstances when you're up there handling the dynamite?

MR. JONES: Well, we have a man and that's his job to shoot, he shoots for them most of the time.

MR. DAUSE: And other than dealing with corporations are you familiar with invididual people that deal in the dynamite business?

MR. JONES: No.

MR. DAUSE: All right, thank you, sir.

Yes, sir.

MR. WELLS: Marcus Wells, No. 60. This pertains to your question before, I do have a dealer's license in ammunition.

MR. DAUSE: You have a license from the Bureau of Alcohol, Tobacco and Firearms Department of the Treasury?

MR. WELLS: Yes.

MR. DAUSE: How long have you had that license?

MR. WELLS: Ever since it first come

out.

MR. DAUSE: Do you buy and sell ammunition?

MR. WELLS: Ammunition.

MR. DAUSE: What kind of ammunition?

MR. WELLS: .22's and shotgun shells, deer rifle shells.

MR. DAUSE: Do you sell and buy guns as well even though that's not your primary use?

MR. WELLS: No, primarily no, I don't deal with them.

MR. DAUSE: Do you on occasion do that?

MR. WELLS: It's possible, just if someone wanted it.

MR. DAUSE: Are you familiar with the record that the Bureau of ATF requires a dealer keeps on guns?

MR. WELLS: Yes.

MR. DAUSE: And also the records on ammunition?

MR. WELLS: Yes.

MR. DAUSE: Thank you, sir. Was there anyone else either on the guns or explosives?

MR. CHANEY: John W. Chaney, No. 84. My father, he like raises horses and he dabbles around with guns on the side, it's not really his business.

MR. DAUSE: He does it more as a hobby more or less?

MR. CHANEY: Yes.

MR. DAUSE: Thank you, sir.

MS. SANDLIN: Carolyn Sandlin, No. 62. My husband is a certified shot fireman and my brother-in-law owns part of a mining company. But that's all I know about them, that's all. They've fooled with dynamite, my husband has in the past six months, and I don't know what my brother-in-law has.

MR. DAUSE: Your husband, is he presently employed in a coal mine?

MS. SANDLIN: Yes.

MR. DAUSE: As a certified --

MS. SANDLIN: No, he's a scoop driver.

MR. DAUSE: He's a scoop driver?

MS. SANDLIN: Yes.

MR. DAUSE: But in the past he's done shooting?

MS. SANDLIN: Yes.

MR. DAUSE: Does he work for your brother-in-law?

MS. SANDLIN: Yes.

MR. DAUSE: Do they work together?

MS. SANDLIN: Yes.

MR. DAUSE: Do you know anybody else personally that deals with dynamite?

MS. SANDLIN: No, I don't.

MR. DAUSE: Thank you.

Anyone else?

Now, ladies and gentlemen again dealing with the case and evidence that will come up, I expect that there will be evidence that certain individuals may have been involved in some of the activities that you will hear about who have not been charged for one reason or the other. Now, as to those individuals will you as jurors be able to make the determination of guilt and innocence, guilt or innocence of the Defendants that will be on trial without regard to your opinion or feeling as to whether or not other individuals should have been charged and should have been on trial? Or is that question not very clear?

Sitting as jurors in this case would you be able to set aside any

opinions that you might have as to the guilt or the innocence of other persons and focus solely on the facts and the law given to you by the Judge as to the guilt or innocence of the people who are actually Defendants in this case.

Would any of you be affected, would it have any impact on your thought as to guilt or innocence by virtue of the fact that a particular person or several people who the evidence might show was involved are not Defendants in this case --

THE COURT: (Interrupting) Pardon me, just a moment. Isn't normally the cause for feedback too much power?

MR. ROWLAND: Yes, sir.

THE COURT: Does anyone know how to cut the power down?

MR. ROWLAND: That mike right there. You should either stand back from it a little bit.

THE COURT: Feedback is that ringing that we're getting.

MR. DAUSE: I take it then ladies and gentlemen that you -- each of you would be able to look at this case solely on the merits of this case as to these Defendants and not be influenced,

not let it effect your deliberations as to whether or not someone else additionally should be on trial?

Now, I urge you if you have any thoughts on this matter to speak, because this is your opportunity to do so.

Would the mere fact that some of the witnesses, some witnesses pled guilty to a friend relating this case to a -- would that fact alone make that witness unbelievable to you?

Would any of you ladies and gentlemen object to the testimony of such a witness out of hand? Or would you evaluate that evidence along with the other evidence in this case?

Again I would urge you if you have any feelings on this matter to speak, because this is your opportunity and as the Judge has said in making a family decision not only is it these members of family, not only are they entitled to a fair trial, but the larger family group, the rest of the citizens of the country are entitled to that fair trial as well. So, I don't -- I urge you to speak if you have any hesitance.

Do any of you ladies and gentlemen, do you know or do you have any business relationships with Phillip Adkins, Earl Adkins,

Carson Akers, Fred Jones, Junior Hamilton, do any of you know any of those people?

MR. NEWSOME: Michael Newsome, Juror No. 23, I know the two Akers boys, I work with their brother-in-law.

MR. DAUSE: Thank you, sir.

MR. NEWSOME: Billy Newsome, No. 80, I know the Adkins boys, live next door to them.

MR. DAUSE: All right, would the fact that you know the Adkins have any effect on you one way or the other?

MR. NEWSOME: No, I just wanted to let you know that I knew them.

MR. DAUSE: I appreciate that.

And you, sir, you're No. 23.

MR. NEWSOME: Yes, sir.

MR. DAUSE: Does the fact that you know the Akers have any effect on you in this case?

MR. NEWSOME: No.

MR. DAUSE: Have any of you ladies and gentlemen or any of your close family or friends ever been involved in a work stoppage, picket, strike, whatever you want to call it with the UMW or any other union?

MR. CHANEY: I have, sir.

MR. DAUSE: You're No. 84?

MR. CHANEY: Yes.

MR. DAUSE: Would you tell me what kind of work stoppage it was?

MR. CHANEY: I worked at the Scotts Branch and we had a work stoppage when the contract ran out and then we had a wildcat.

MR. DAUSE: All right, sir. Now, let me take it one at a time. You said the Scotts Branch, you had a contract stoppage, is that a mine operation, sir?

MR. CHANEY: Yes, sir.

MR. DAUSE: And what is that, is -- was that a strike?

MR. CHANEY: U.M.W.

MR. DAUSE: Who called that strike?

MR. CHANEY: It was a contract strike with International.

MR. DAUSE: So, the union -- you're talking about the International called the strike?

MR. CHANEY: Yes.

MR. DAUSE: Leaving out the wildcat strike, have you had any other strike that you participated in other than the two general U.M.W.

strikes?

MR. CHANEY: Yes.

MR. DAUSE: Now, tell me something about the wildcat strike, how many of those have you been on?

MR. CHANEY: I honestly couldn't tell you, several.

MR. DAUSE: Quite a few?

MR. CHANEY: Quite a few.

MR. DAUSE: Were they all coal related strikes?

MR. CHANEY: Well, generally most of them were labor disputes between labor or management and the company.

MR. DAUSE: But they were all involved in coal mining, is that right?

MR. CHANEY: Yes, they were.

MR. DAUSE: You have not been involved in any strikes other than coal mine strikes?

MR. CHANEY: Yes.

MR. DAUSE: All right, can you tell me what you mean by a wildcat strike?

MR. CHANEY: Well, when the officers of the union don't sanction the strike, when the workers just walk out without the approval of the

officers or the go-ahead of the officers of the union.

MR. DAUSE: By officers of the union you mean the International officers?

MR. CHANEY: International or local.

MR. DAUSE: Do you consider a wildcat strike if the local sanctions the strike and the international does not?

MR. CHANEY: I would guess you'd have to say that's a wildcat strike. I have never come out on any strikes that the local officers did not appear and ask the men to work.

MR. DAUSE: All right, sir. Do you know whether or not the local officers have authority under the U.M.W. constitution to call a strike, do you know?

MR. CHANEY: No, I don't.

MR. DAUSE: All right, sir. What local do you belong to?

MR. CHANEY: 2264.

MR. DAUSE: Where is that located?

MR. CHANEY: Scott's Branch.

MR. DAUSE: Scott's Branch.

MR. CHANEY: District Thirty.

MR. DAUSE: Just let me ask one other question.

I think when you were being questioned by the Judge you alluded to knowing Frank Scott. Now, is he a U.M.W. district organizer?

MR. CHANEY: I don't honestly know. I believe his title is secretary treasurer. I don't know whether he is actually involved in organizing or not, secretary treasurer for Local 2264.

MR. DAUSE: Other than knowing him, just simply the secretary treasurer of that local, what other kind of involvement have you had with Frank Scott?

MR. CHANEY: We went to school, vocational school for over five years. But prior to that, I didn't know him.

MR. DAUSE: Have you been on strikes that he called?

MR. CHANEY: Never called a strike.

MR. DAUSE: He never caused a strike. Have you ever - - assuming he is and he may not be, have you ever assisted him in doing surveys in nonunion mines?

MR. CHANEY: No.

MR. DAUSE: Have you ever personally been involved in any organizing efforts?

MR. CHANEY: No.

MR. DAUSE: How long have you been a member of that local?

MR. CHANEY: Four years. November of '79, I believe - - '78 to '79 - - '79, November of '79.

MR. DAUSE: You are presently a member and you are presently employed?

MR. CHANEY: I am presently laid off.

MR. DAUSE: Laid off. Do you still consider yourself to be a miner?

MR. CHANEY: Yes, sir.

MR. DAUSE: Thank you very much.

MR. MOONEY: No. 65. I have had two strikes against my company in West Virginia.

MR. DAUSE: I'm sorry, I stepped on your words, what kind of strikes were they?

MR. MOONEY: Just - - we subcontract for Union Carbide, and some of the men that were cut off by Union Carbide didn't want us to work.

MR. DAUSE: Were those what would be known as wildcat strikes, or union called strikes?

MR. MOONEY: They were not union called, they were wildcat.

MR. DAUSE: They were wildcat. Did any of those strikes have any violence connected with them?

MR. MOONEY: No.

MR. DAUSE: All right, sir, thank you.

If I can ask Juror No. 84 another question, sir. Would you stand.

Any of the wildcat strikes you have been involved in, or the two international called strikes, been any instance of violence that occurred during those strikes?

MR. CHANEY: No.

MR. DAUSE: Thank you.

Is there anyone else that wishes to - - yes, Mr. Lacy.

MR. LACY: James Lacy, 75. In late 1960, K.E.A. had been out on strike, and I didn't consider it a union one.

MR. DAUSE: That is during the Breathitt administration?

MR. LACY: Don't ask me, it was in the late '60's.

MR. DAUSE: Thank you.

Other than Juror 65 who told us about being affiliated with the company that was an object of a strike, have any of the rest of you, or close relatives or friends been affiliated with companies who have been an object of a strike?

Have had a union or some other group gone on strike against you?

MR. CLAY: No. 22, William Clay. Right, I have been a member from about June 10th of '71, and I have been on strike, contract strikes, and a few other wildcats, as you put it, and we have honored the picket line.

MR. DAUSE: All right, sir. Other picket lines from other unions is what you are saying you have honored those?

MR. CLAY: Yes.

MR. DAUSE: Other than general industry-wide strikes called by your International Unions, we will exclude those, have you been on any strikes that were called by your Local Union officer?

MR. CLAY: It's been five to seven years, something like that, but yes, I don't remember what it was for.

MR. DAUSE: Did you participate in picketing?

MR. CLAY: No.

MR. DAUSE: You just honored the strike?

MR. CLAY: Honored the strike.

MR. DAUSE: What local do you belong to?

MR. CLAY: Wheelwright Local in Floyd County, but I don't know the number.

MR. DAUSE: All right, sir. Who is the secretary for that local, do you know?

MR. CLAY: Oh no, I don't.

MR. DAUSE: It is not Walter

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Blackburn, it is not the same local, is it?

MR. CLAY: (Shaking head negative)

MR. DAUSE: You said that you were involved in, possibly were involved in wildcat strikes also, is that correct?

MR. CLAY: Yes.

MR. DAUSE: Now, who called those strikes?

MR. CLAY: The Union member.

MR. DAUSE: Union members?

MR. CLAY: (Nodding head affirmative)

MR. DAUSE: Were these all poll related strikes?

MR. CLAY: Right.

MR. DAUSE: Did you participate in picketing or other activities in those?

MR. CLAY: No, sir.

MR. DAUSE: All you did was honor the existence of the strikes?

MR. CLAY: Yes.

MR. MOONEY: Thank you, Mr. Clay.

Yes, sir.

MR. NEWSOME: Michael Newsome, No. 23. We have U.M.W.A. strikes which comes up about every three or four years, whatever.

MR. DAUSE: Are you talking about the international-wide - -

MR. NEWSOME: (Interrupting) Yes, sir.

MR. DAUSE: What local do you belong to, sir?

MR. NEWSOME: 8100.

MR. DAUSE: Is that a different local that Mr. Caudill belonged to?

MR. NEWSOME: Yes.

MR. DAUSE: Where is that located?

MR. NEWSOME: Breeding, Kentucky.

MR. DAUSE: Had you ever been involved in a wildcat strike?

MR. NEWSOME: Not as I know, but I have been working thirteen years. I don't know, not as I recall.

MR. DAUSE: Thank you, sir. Anyone else have any response to the questions?

MR. MEEKS: William Meeks, No. 87. My work is nonunion but U.M.W.A. has stopped us from working.

MR. DAUSE: All right, sir. You are not a Union member then, is that right?

MR. MEEKS: No.

MR. DAUSE: When did the U.M.W. ever

strike your - -

MR. MEEKS: (Interrupting) The contract time.

MR. DAUSE: Just the general industry-wide strikes?

MR. MEEKS: Yes.

MR. DAUSE: Have there ever been any strikes at your mine, from the best of your observation, where that was the only one or two mines that were being struck?

MR. MEEKS: No, sir. The company I worked for is the subcontractor off of Wolf Creek, and we honor - - when Wolf Creek strikes, we honor their picket line.

MR. DAUSE: All right, sir. Did you say you honor the picket line?

MR. MEEKS: (Nodding head affirmative)

MR. DAUSE: So you quit working during the term of the strike then?

MR. MEEKS: Well, I go up there, if the picket line is up, I went home.

MR. DAUSE: And if it wasn't there, you would go on and work?

MR. MEEKS: Uh-huh.

MR. DAUSE: And any of those strikes,

have there ever been any instance of violence which occurred?

MR. MEEKS: Well, the U.M.W.A., there wasn't no violence, but they were prepared for it.

MR. DAUSE: What do you mean by that, sir?

MR. MEEKS: They wore masks.

MR. DAUSE: By masks, do you mean ski masks, the bottom kind of goes over the eyes and nose and has holes and all that?

MR. MEEKS: Yes.

MR. DAUSE: Did they carry any firearms, did you see?

MR. MEEKS: I didn't see no firearms, but I did see bottle caps.

MR. DAUSE: Anyone else ever respond to the Union strike question? Yes, sir.

MR. ARNETT: Raleigh Arnett, No. 63. As a plumber in Pikeville - - as a plumber and pipefitter I used to do that sort of work and perhaps there has been what they call wildcat strikes, strikes, although I don't recall ever being involved in it.

MR. DAUSE: Where were you - -

MR. ARNETT: It would perhaps be some other crafts that would be having some sort of

dispute. I worked in Virginia and West Virginia and Ohio, mostly.

MR. DAUSE: And you were members of various locals in those areas?

MR. ARNETT: No, sir. I don't remember - - I don't remember anything about the strikes. What was the cause of it or what the determination was, it really didn't amount to very much.

MR. DAUSE: All right, sir. You at least at that time were a member of the Pipefitters Union?

MR. ARNETT: Yes, Local No. 49 in Stubenville, Ohio.

MR. DAUSE: You probably don't remember then other violent activities occurring?

MR. ARNETT: No, sir.

MR. DAUSE: Thank you, sir. Anyone else on that question? Yes, Ma'am.

MS. SANDLIN: Carolyn Sandlin, No. 62.

MR. DAUSE: Yes, Ma'am.

MS. SANDLIN: My husband works as a nonunion miner, and the Union tried to move in on them last September, and they had some trouble and nothing violent and work stoppage.

MR. DAUSE: The work was stopped?

MS. SANDLIN: No.

MR. DAUSE: No work stopped.

MS. SANDLIN: No.

MR. DAUSE: Violence?

MS. SANDLIN: No violence.

MR. DAUSE: What was the trouble?

MS. SANDLIN: Well, the Union was trying - - they got all the second shift men to agree to sign papers to bring the Union in the mines, and the owners of the mine and the first shift didn't want it in, they just went on and on for two or three weeks.

MR. DAUSE: Do you know, is the mine still nonunion?

MS. SANDLIN: It is still nonunion.

MR. DAUSE: All right, thank you. May I have just one moment, please, your Honor.

THE COURT: Yes, sir.

MR. DAUSE: Ladies and gentlemen, I know in the Judge's questions and on the Jury questionnaire, you were asked about connections with organizations, memberships, unions, spouses of organizations.

Without getting into that, you have heard the questions today, and has it occurr-

ed to you that anybody else who was closely related to you, or with whom you have a close personal relationship with if it is not a relative who has a Union job, works as an organizer, or worked in an antiunion fashion in any way? Yes.

MR. MEEKS: William Meeks, No. 87. My brother-in-law, they fired him from a Union mine because he wanted the U.M.W.A. to come in, he went and organized it and went out on strike for about two weeks.

MR. DAUSE: All right, thank you. Do any of you have any friends or relatives, or just simply know anybody that belongs to the U.M.W.A. Local 5967 at the East McDowell and Floyd County?

Do either of you gentlemen know anybody except for the Defendants, perhaps?

MR. MEEKS: I don't really know.

MR. DAUSE: I am going to ask these specific questions of these specific Jurors, and it is designed only to get some more information.

Please don't take any offense by it.

Ms. Edwards, No. 56, is that correct, would you stand, please?

I want to see if I under-

stand what the basis of your problem is that you told the Judge about.

Are they your children?

MS. EDWARDS: I just have one, yes.

MR. DAUSE: All right. Is that baby -- is your babysitting problem with that child or is it with someone else's children?

MS. EDWARDS: No, it is with mine.

MR. DAUSE: With yours. And you think you have a problem arranging for someone to sit?

MS. EDWARDS: For a long time, yes, I do.

MR. DAUSE: If you were concerned about that child, would that detract from your ability?

MS. EDWARDS: Yes, it definitely would.

MR. DAUSE: From your ability to pay attention?

MS. EDWARDS: Yes, it would.

MR. DAUSE: How old is that child?

MS. EDWARDS: He is four.

MR. DAUSE: Thank you.

Juror No. 34, would you please stand, sir. I think you testified that you knew Dan Rowland and Jason Moore, is that correct?

MR. NEWBERRY: Yes.

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MR. DAUSE: And that you have known them, to your knowledge, from years ago, is that correct?

MR. NEWBERRY: Yes.

MR. DAUSE: I think you said it was fifteen to twenty years.

Had you had any contact with them at all in the last fifteen years that you are aware of?

MR. NEWBERRY: No, sir. Just Dan Rowland, I saw him two or three months ago at the restaurant we were having supper at.

MR. DAUSE: Other than casually speaking, have you had any contact with them at all?

MR. NEWBERRY: Nothing at all.

MR. DAUSE: Thank you, sir.

Mr. Martin, Juror No. 70.

MR. MARTIN: Yes.

MR. DAUSE: Would you stand, sir?

MR. MARTIN: Yes.

MR. DAUSE: Do you wear a hearing aid, Mr. Martin?

MR. MARTIN: No, I don't.

MR. DAUSE: Do you have any difficulty hearing what is being said from here?

MR. MARTIN: I beg your pardon?

MR. DAUSE: Hearing me when I talk to you?

MR. MARTIN: Distance, yes.

MR. DAUSE: If you were sitting in this box over here (indicating), sir, do you think you would be able to hear what was being said at all various places in the Court Room?

MR. MARTIN: Well, if it's amplified.

MR. DAUSE: Pardon me?

MR. MARTIN: If it's amplified.

MR. DAUSE: Would you be able to understand the amplified voice?

MR. MARTIN: I probably hear it with an amplified voice, yes.

MR. DAUSE: Do you think that you would be able to hear sufficiently well that you would be able to hear the entire case and be able to make a judgement based on it?

MR. MARTIN: I would think so, yes.

MR. DAUSE: Thank you, Mr. Martin.

Could I have Juror No. 85 to stand for me, please, sir.

MR. SLONE: Lonnie Slone.

MR. DAUSE: Mr. Slone, I think you

said you ran a service station some place in Floyd County, I believe.

MR. SLONE: About three years ago, I don't anymore.

MR. DAUSE: All right, sir. Where in Floyd County did you run that service station?

MR. SLONE: Bevinsville, close to - -

MR. DAUSE: (Interrupting) Are you personally familiar with the area of Bill Hall Branch, John Hall Branch, Drift, in that area?

MR. SLONE: I used to teach school on Mudd Creek, and I have traveled that road.

MR. DAUSE: All right, sir. I think you said you had known the Defendant, Morris Ray Hall for some time?

MR. SLONE: Yes.

MR. DAUSE: How many of the other Defendants do you know? If you can, name them for me.

MR. SLONE: Just Mr. Hall, and like I said, I met - - I got you again.

MR. DAUSE: Mr. Mosley, Linville Mosley?

MR. SLONE: No.

MR. DAUSE: Kermit Newsome.

MR. SLONE: Yes. I didn't know his last name, I just met him again.

MR. DAUSE: Have you had pretty close contact with Morris Ray Hall?

MR. SLONE: No.

MR. DAUSE: You just know who he is?

MR. SLONE: I just know him. I have known him for a long time. Like I said, I know - - no lengthy conversation or anything like that.

MR. DAUSE: Does the fact that you have known him in the community, would that have any bearing on your ability to judge this case based on the facts that were presented in this Court Room and nothing else?

MR. SLONE: No, sir.

MR. DAUSE: Now, I think if I remember correctly, you said your wife was perhaps related to some of these - - some of your wife's relatives?

MR. SLONE: To the witnesses.

MR. DAUSE: The witnesses, which of the witnesses?

MR. SLONE: Let's see, the Newman -- my wife's first cousin married the Newman's brother.

MR. DAUSE: Is that Wendell Ray Newman?

MR. SLONE: That is right. And his

sister is a Booth, Phillip Booth's wife, or whatever.

MR. DAUSE: All right, sir. And any of the others? Is that the only relationship that you were thinking of?

MR. SLONE: No, that is all.

MR. DAUSE: Thank you, sir.

Ladies and gentlemen, thank you for your responsiveness to my questions.

THE COURT: Mr. Harwell, let's go down the line.

MR. HARWELL: Ladies and gentlemen, the Government has three attorneys, and as you know they are over here (indicating), and there are a number of attorneys for the Defendants.

I will tell you again who I am and who I represent. Aubrey Harwell and I represent Mr. Edgar Jones, along with Mr. Al Moore.

I guess I ought to start out my questioning by telling you that I am always a little uneasy when it comes time for voir dire.

I always respect a man or woman's right of privacy, and I want you to know that I have no intention for prying into your personal lives or embarrassing you.

The way the system works is such that a lawyer has an obligation during voir dire to ask questions, and I am going to ask you some questions.

If there is anything I ask that causes you some concern, I am sure the Court would be happy to talk to you privately, and understand that I don't mean to cause any anxiety or pry into your lives.

Let me start out by asking you all if you would, have any of you at any point in time in your lives been employed in law enforcement, in the military, in private security work, police departments, anything like that?

Yes, sir.

MR. STEELE: Jack Steele No. 67.

MR. HARWELL: Yes, Mr. Steele.

MR. STEELE: I worked for the Park Ranger in the State of Ohio.

MR. HARWELL: A Park RAnger?

MR. STEELE: For ten years.

MR. HARWELL: Is that a sworn law enforcement official?

MR. STEELE: Yes.

MR. HARWELL: Carry a badge and gun?

MR. STEELE: Yes, sir. No gun.

MR. HARWELL: A badge and a can of mace, I guess.

MR. STEELE: Yes, a club.

MR. HARWELL: How long were you employed in that capacity?

MR. STEELE: Eleven years.

MR. HARWELL: Eleven years. When did that end, sir?

MR. STEELE: 1965.

MR. HARWELL: 1965. Does that fact, sir, have any impact on your judgement about the testimony of law enforcement officers?

MR. STEELE: No.

MR. HARWELL: Is that a position where you go to training school, and you go to the F.B.I. Academy?

MR. STEELE: I was trained by the Ohio Highway Patrol.

MR. HARWELL: The Ohio Highway Patrol, all right, sir. Thank you, sir.

Is there anyone else who has been in that position? Yes, sir.

MR. MOONEY: James Mooney, No. 65.

MR. HARWELL: Yes.

MR. MOONEY: Part-time Deputy Sheriff, Johnson County.

MR. HARWELL: Mr. Mooney, as you know, I am not from your state and I am not so sure how that works.

Part-time Deputy Sheriff, is that a paid job?

MR. MOONEY: No, it is not a paid job.

MR. HARWELL: Are you able, under the law of this state, to carry a sidearm?

MR. MOONEY: Yes, sir.

MR. HARWELL: Are you able, under the law of this state, to make arrests and carry people down to be locked up?

MR. MOONEY: Yes, sir.

MR. HARWELL: Have you done that?

MR. MOONEY: No, sir.

MR. HARWELL: All right, sir. Do you report regularly to the Sheriff or whoever the boss of the office there is?

MR. MOONEY: NO, sir. When you say regularly, you mean everyday?

MR. HARWELL: Well, every month or a period - -

MR. MOONEY: (Interrupting) Oh yes, once every month, yes, sir.

MR. HARWELL: Is there a meeting with various deputies?

MR. MOONEY: Yes, sir.

MR. HARWELL: What happens in that meeting? Is that a training session?

MR. MOONEY: Yes, sir. Review of the law, you know, usually that is what it usually is.

MR. HARWELL: I see. How long have you done that?

MR. MOONEY: I have done it for about seven years, but it's been - - it's been three years since I've been active in it.

MR. HARWELL: I see. Four years before that, the first part you were active, I take it?

MR. MOONEY: Yes, sir.

MR. HARWELL: All right, sir. Let me ask you this, sir.

Is that fact and relationship that you had with those law enforcement officials, and what you did as a special deputy, does that cause you to have any judgements before you hear a man testify who is a law enforcement officer?

MR. MOONEY: No, sir.

MR. HARWELL: Do you look at his testimony differently because he is a law enforcement officer?

MR. MOONEY: No, sir.

MR. HARWELL: Thank you for your candor.

Anybody else on that question?

Let me change my question around a little bit and ask the same thing.

Look at your immediate families, you ladies - your husbands, and you men - your wives, and your children, and have any of those people been involved in law enforcement functions, military, civilian, private security?

I don't know which way to start, let me start on one side, the side that only has one arm up.

Yes, sir.

MR. OAKS: James Oaks, my father was a police officer for the City of Jackson.

MR. HARWELL: Let me - - stand up just a minute, let me ask you this now.

I am a little bit like this gentleman here (indicating), I don't wear a

hearing aid but I have a hearing problem. I heard you say my father, and I didn't get the rest of it, so speak up.

MR. OAKS: My father is a police officer in the City of Jackson, Breathitt County.

MR. HARWELL: How long has he been a police officer?

MR. OAKS: About six or seven years.

MR. HARWELL: All right, sir. Was he, prior to that time, involved in law enforcement?

MR. OAKS: No.

MR. HARWELL: What is his job? What does he do as a police officer.

Is that traffic, or how does that work?

MR. OAKS: He makes arrests, whatever, they only have three men on a shift.

MR. HARWELL: On the police department?

MR. OAKS: On a shift. He works nights.

MR. HARWELL: I see, sir. Does your - - do you live with or close to your father?

MR. OAKS: About five miles.

MR. HARWELL: Are you all - - do you still see him regularly?

MR. OAKS: Yes, sir.

MR. HARWELL: You all are close, I take it?

MR. OAKS: Yes, sir.

MR. HARWELL: I see. Would that fact have any impact on you in making judgements about the testimony of a law enforcement officer?

Would you automatically assume that that was totally honest testimony just because it is an officer's testimony?

MR. OAKS: No, sir. And he retired the 20th of December.

MR. HARWELL: You dad retired?

MR. OAKS: Yes.

MR. HARWELL: Is he working now, sir?

MR. OAKS: No.

MR. HARWELL: Thank you, sir.

I think there was nobody else on the right - - yes there is too, Ms. Edwards.

MS. EDWARDS: I have a father-in-law that is a Deputy Sheriff in Pike County.

MR. HARWELL: Pike County. What is his name?

MS. EDWARDS: Wayne Edwards.

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MR. HARWELL: How long has he been a Deputy Sheriff?

MS. EDWARDS: For about seven or eight years, I suppose.

MR. HARWELL: I see. Now, is he not a special deputy like we heard about a minute ago? He is a full-time paid regular deputy?

MS. EDWARDS: No, just like that gentleman, no, he is voluntary.

MR. HARWELL: Voluntary, I see.

Do you know whether he knows any of these Federal Agents that the Judge named out earlier, Mr. McAllister or - -

MS. EDWARDS: (Interrupting) I wouldn't know, I'm not for sure.

MR. HARWELL: All right. Does the fact that your father-in-law served as a special deputy, would that have any impact on your judgement as to the credibility of any of those folks that testified in law enforcement?

MS. EDWARDS: I don't believe so.

MR. HARWELL: Thank you, Ma'am. I think there was one more hand on the right.

Yes, sir.

MR. ENGLE: No. 58, Rufus Engle,

and my stepfather used to be a constable.

MR. HARWELL: Used to be what, sir?

MR. ENGLE: Constable.

MR. HARWELL: Constable. Is that a full-time job?

MR. ENGLE: Yes, sir.

MR. HARWELL: That is where you get paid and law enforcement is your life, so to speak?

MR. ENGLE: Yes, sir.

MR. HARWELL: Is that your father-in-law?

MR. ENGLE: No, my stepfather. Used to be.

MR. HARWELL: You say he used to be, I take it he is not doing that now.

MR. ENGLE: No, he ain't my stepfather now either.

MR. HARWELL: I have got two quick questions for you.

First when did he stop being your daddy-in-law, second when did he stop being a constable?

MR. ENGLE: It is my stepfather, and he was elected - - an elected official around - - well, he served as constable, and he quit

January of 1982.

MR. HARWELL: All right, sir. Thank you, sir.

I believe, Mr. Engle - - one other question for you. Does that fact - - I think I know the answer to this, but does that fact have any impact on you assessing the credibility of a witness who testifies just because he is a law enforcement officer?

MR. ENGLE: I would have to question his ability as a law officer, because all law officers aren't the same.

MR. HARWELL: All right, sir. You didn't hold your hand up, did you?

Now, there were a couple of you folks over here that I saw the corner of my eye, let's go to - - nobody on the first row, nobody on the second row, let's go to the third row.

Yes, Ma'am.

MS. ISON: Ms. Ison, No. 69, Rhoda Ison. I have a son as a security guard, and I work for Blue Diamond.

MR. HARWELL: When was he a security guard?

MS. ISON: He is now.

MR. HARWELL: He is now?

MS. ISON: Uh-huh.

MR. HARWELL: How long has he been a security guard?

MS. ISON: About six months because he was laid off from the engineering department.

MR. HARWELL: As part of that job, does it involve him having a firearm and carrying a firearm?

MS. ISON: Yes.

MR. HARWELL: Does he work in a uniform?

MS. ISON: No. It is considered part-time right now until he gets called back.

MR. HARWELL: How old a boy is he?

MS. ISON: Twenty-one.

MR. HARWELL: Does he live at home?

MS. ISON: No.

MR. HARWELL: He is out and gone from the nest?

MS. ISON: Right.

MR. HARWELL: I see. Has he, Ma'am, since he became a security guard, been involved in any problems or acts of violence?

MS. ISON: No.

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MR. HARWELL: Has he had any training in law enforcement?

MS. ISON: No.

MR. HARWELL: Okay. Let me ask you this, if I might, Ma'am.

Does the fact that your son is a security guard in and of itself put any predispositions in your mind about the testimony of law enforcement officers being credible or not credible?

MS. ISON: No.

MR. HARWELL: Thank you, Ma'am. Yes, sir. No. 67.

MR. STEELE: My brother-in-law is with the State Police in Frankfort.

MR. HARWELL: I'm sorry, Mr. Steele, I am having trouble hearing you.

MR. STEELE: My brother-in-law is with the State Police, and he is a Captain stationed in Frankfort, Kentucky.

MR. HARWELL: Has he ever been stationed in this area?

MR. STEELE: No.

MR. HARWELL: In the last five years?

MR. STEELE: No. Richmond is the

closest.

MR. HARWELL: Are you and he close, Mr. Steele?

MR. STEELE: Yes, sir.

MR. HARWELL: All right, sir. I will ask you as I have asked the others, by virtue of that closeness and relationship, does that, sir, create in your mind any predisposition as to the testimony of law enforcement officers?

MR. STEELE: No.

MR. HARWELL: Either way?

MR. STEELE: No.

MR. HARWELL: Thank you, Mr. Steele. There was one other hand. Yes, sir.

MR. MARTIN: No. 86, Martin.

MR. HARWELL: Yes, sir, Mr. Martin.

MR. MARTIN: My sister is a security guard.

MR. HARWELL: I'm sorry.

MR. MARTIN: My sister is a security guard.

MR. HARWELL: Where is she, sir?

MR. MARTIN: Floyd County.

MR. HARWELL: Does she work for a business of what kind?

MR. MARTIN: Security guards, I forget what company it is.

MR. HARWELL: Is that one of the companies that provides bunches of security guards and security services?

MR. MARTIN: Right.

MR. HARWELL: As a contract?

MR. MARTIN: Right.

MR. HARWELL: Does she work at one place, one company that her company provides guard services for and she doesn't have to go to different places?

MR. MARTIN: She goes to different places that they send her.

MR. HARWELL: I see. How long has she done that, sir?

MR. MARTIN: Two or three years.

MR. HARWELL: Does part of her job require her being armed?

MR. MARTIN: Yes.

MR. HARWELL: Has she ever worked for the Creasy Coal Company?

MR. MARTIN: No.

MR. HARWELL: Has she ever worked for the Ray-Mac Coal Company?

MR. MARTIN: I don't think so.

MR. HARWELL: Has she ever worked for Coal-Mac?

MR. MARTIN: I don't think so.

MR. HARWELL: Has she ever worked for any companies that are owned in whole or in part by a fellow named Frank Justice, as far as you know?

MR. MARTIN: Not as far as I know.

MR. HARWELL: How about a Mr. Lin Parish?

MR. MARTIN: (Shaking head negative)

MR. HARWELL: All right, sir. I take it that the fact that she has been a security guard does not have any impact on your judgement about the testimony of law enforcement officers, would it?

MR. MARTIN: No.

MR. HARWELL: Thank you, sir. I believe I have got everybody on this side.

Is there anybody that I left out?

REPORTER'S NOTE: No response.

MR. HARWELL: Do any of you all feel like you have ever been the victim of a crime that so-ebody done you wrong and in so doing has committed

a crime against you? If you hold up your hands, let me take them one at a time. Yes, Ma'am.

MS. ISON: No. 68. About two months ago they took a battery out of my car. I consider that a crime.

MR. HARWELL: That happened to me last summer on a fishing trip.

MS. ISON: I don't think it makes any difference, but.

MR. HARWELL: Do you know who did it?

MS. ISON: No.

MR. HARWELL: Is there anyone else that feels like he or she has been - - yes, sir.

Let me start at the left end if I may.

MR. CHANEY: My car has been burglarized twice last year, and I feel like I have been a victim of a crime.

MR. HARWELL: I am probably talking a little fast, and it is difficult for this lady to take down the names and the numbers and I will try to slow down and you all state your names so that Ms. Lindstrom will get it.

Yes, sir.

MR. MEEKS: No. 87, I'm trying to

build a house and last summer somebody burned it down and never did find out who it was.

MR. HARWELL: When was that, Mr. Meeks?

MR. MEEKS: Last summer.

MR. HARWELL: This last or past summer?

MR. MEEKS: No. I started my other house this past summer.

MR. HARWELL: Do you know or have any idea how that happened? How come someone would be motivated to do that?

MR. MEEKS: No, I called the Fire Marshall, and he come up and checked and he couldn't find nothing.

MR. HARWELL: All right, thank you, sir. Yes, sir.

MR. OAKS: My name is Oaks, No. 90, my house was burglarized three years ago.

MR. HARWELL: All right, sir. Did they apprehend whoever it was that burglarized it?

MR. OAKS: No, sir.

MR. HARWELL: Sit down, thank you, sir.

Those of you that said

yes to that question, let me ask you this. And I will address my question just to those of you who stood up.

Does that fact or those facts which you have told me have any bearing on your ability to hear the proof for both the Government and the Defendants and listen to the Judge's charge and make your decisions in this case based on those things instead of what ever happened to you that you told me about?

REPORTER'S NOTE: No response.

MR. HARWELL: Okay, thank you.

Mr. Dause asked you a few questions, and I am going to follow up on those.

I may cover a little bit of ground, very little bit of ground that he covered, but I will try not to.

Okay. Is there any - - any member of this panel who favors gun control, that is, who would like to see laws passed in this country that would tighten up the possession or ownership of the use of firearms?

Any of you have any philosophical belief or opinion? You are certainly

entitled to, but I would be grateful if you would tell me.

Now, Ms. Edwards.

MS. EDWARDS: Juror 56, yes, I do. I believe it should be done.

MR. HARWELL: I'm sorry, Ma'am.

MS. EDWARDS: I believe it's too lenient and it should be tightened some.

MR. HARWELL: You don't have to stand up, Ma'am, unless the Judge wants you to.

THE COURT: She better stand. I am going to get a little humorous, but the Reporter's husband says that he can talk to a friend in the living room and she can hear it in the kitchen, but now she is on business now and she doesn't hear as well, so you better stand up so she can hear you better.

MR. HARWELL: I believe she might be related to my wife, Judge.

MS. EDWARDS: You were telling me about the feelings concerning gun control, and I did wrong and suggested you sit down when the Judge wants you to stand up.

Tell me what your feelings are, how you feel about it?

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Tell me what your feelings are, how you feel about it?

MS. EDWARDS: I feel it is entirely too lenient. I do believe it should be tightened.

MR. HARWELL: If you could waive a magic wand - -

MS. EDWARDS: (Interrupting) I would get rid of them.

MR. HARWELL: And caused Congress to do whatever you believe in in gun control, what would you do?

MS. EDWARDS: Well, I believe I would start with - - I would go - - I don't know how to explain it - - well, there is a lot of people that can use guns without having been registered or licensed, whatever it is, it is too easy.

MR. HARWELL: You just want to tighten it up?

MS. EDWARDS: Yes.

MR. HARWELL: Okay, I thank you, Ma'am. Is there anyone else who has an opinion similar to or along the lines of that which Ms. Edwards takes?

REPORTER'S NOTE: (No response)

MR. HARWELL: I take it by your silence nobody else wants to comment on that.

Getting back to some of

the questions Mr. Dause posed, he asked you all, and I am going to paraphrase, because I don't remember and I didn't write out every word, but he asked you all or said to you all that you should not effect your deliberations if you felt someone else should be on trial in this case other than these Defendants, and they were on trial, then he asked you if you understood that.

Let me change his question around just a little bit and ask you if you can respond to this.

Suppose the witness in this case could have been but was not charged, would you consider that fact, consider it in regard to the credibility of that witness, that is, in determining if that witness was telling the truth or not telling the truth, would you be willing to consider the fact that that witness could have been charged and wasn't charged?

Am I making myself clear? Is there anybody who would not be willing to, at least consider that fact?

REPORTER'S NOTE: No response.

MR. HARWELL: I take it by your silence all of you would consider, am I right, you kind of

nodded your heads? Am I right?

MS. LINDSTROM: Mr. Harwell, at this time I have to change my paper.

*** *** ***

THE MARSHALL OF THE COURT: All rise. United States District Court is again in session. The proceeding will come to order.

THE COURT: Madam Clerk, Mr. Marshall. Mr. Walbourn, are you ready to proceed?

MR. WALBOURN: I think I have concluded, Your Honor.

THE COURT: All right. Mr. Pafunda. That's right.

MR. PAFUNDA: Yes, Your Honor, we are ready.

THE COURT: All right.

MR. PAFUNDA: May it please the Court, ladies and gentlemen of the jury or prospective jury, my name is Bernard Pafunda. I practice law here in Pikeville, Kentucky at the firm of Deskins and Pafunda. I represent Drexil Hall and Austin "Bo" Moore. I would ask Austin and Drexil to stand up. Thank you.

And I would like to thank Mr. Engle for seconding the motion. I was in the middle of a nicotine fit.

Ladies and gentlemen, several of the lawyers that have spoken have

indicated the purpose of these questions. Briefly, as Mr. Harwell indicated, my questions are not designed in any way to pry into your private lives or to in any way embarrass you here, while you sit here with the fellow people who may be selected for the jury. These questions more or less that I have proposed to you are designed not only to help ourselves but also yourselves to determine whether you may have some built-in prejudices which you may wish to speak about and you may wish to let us know about so that we may consider and yourself can consider before you may possibly be selected to sit on the jury in the trial of this matter.

At the outset, if you are selected as a prospective juror -- and sometimes lawyers overlook this point, although it is a very minor point. It deals with procedure. If you are selected as a prospective juror, do all of you understand that it is the Government, the prosecution who puts its case on first. And then the Defendants, Drexil Hall and Austin Moore, we shall put on our case after the Government has concluded its case-in-chief. And that will be our first opportunity to defend this action. Do you all understand that?

The reason I mention this is is because there has been some brief discussion about reasonable doubt.

THE COURT: Mr. Pafunda.

MR. PAFUNDA: Your Honor, I'm not going to discuss what reasonable doubt is or is not. I am not going to go into that. And with the Court's permission, just one question. If I step over the bounds --

THE COURT: (Interrupting) Please proceed, we will see if you have or not.

MR. PAFUNDA: If at the conclusion of all of the evidence, if you are selected to sit on the jury in this matter, you feel that the Government has failed to prove its case beyond a reasonable doubt, how would you vote; guilty or not guilty? And I would ask you to raise your hand to indicate your response. If the Government has failed to prove its case beyond a reasonable doubt, how many of you here would vote not guilty.

MR. KEHRLI: Your Honor, the Government is going to object to that question.

THE COURT: Sustained.

MR. PAFUNDA: I withdraw the question. I am sorry, Your Honor.

THE COURT: That's all right.

MR. PAFUNDA: Several of the attorneys have mentioned credibility or witnesses testifying. And if you are selected as members of the jury, you are to judge the facts because you are the judge of the facts. In that same vein, if you are selected to serve on this jury, do you also understand that you are the judge of the credibility of the witnesses who may testify in this case? Do you all understand that?

I take it by your silence that you do so.

In judging that credibility as each witness testifies, will you also take into account their motive or their bias with regard to what testimony they are giving from the witness chair? Again, I take it by your silence that you will, in determining a witness' credibility, consider their motive or potential bias.

As you know by this time -- it is nearly three o'clock in the afternoon -- that this case will involve United Mine Workers of America or members of the United Mine Workers of America. In that regard, is there anyone here who is employed in a supervisory capacity at either

a union coal company or a union corporation or union business, Mr. Muncy.

MR. SLONE: No. 72, Otis Slone. I am second shift mine foreman.

MR. PAFUNDA: I believe you said you were a second shift mine foreman?

MR. SLONE: Yes, sir.

MR. PAFUNDA: I take it from the questions that have already been raised by the other attorneys, including Mr. Self of the Government -- or Mr. Dause for the Government, excuse me, and Mr. Walbourn, do you know that this case will involve men who are members of United Mine Workers of America. Is that correct, sir?

MR. SLONE: (Mr. Slone nodding head in the affirmative.)

MR. PAFUNDA: Mr. Slone, how long have you served as a foreman at Scotts Branch?

MR. SLONE: As a foreman?

MR. PAFUNDA: Yes, sir.

MR. SLONE: Since 1971.

MR. PAFUNDA: During that period of time, I take it from Mr. Chaney's remarks, since he worked at the Scotts Branch, also, you have been involved or been there while certain work

stoppages have occurred. Is that correct?

MR. SLONE: I have tried to help.

MR. PAFUNDA: Excuse me, sir?

MR. SLONE: I have tried to help.

MR. PAFUNDA: In that regard, sir, have you formed an opinion, and don't tell us at this time, but have you formed an opinion as to the United Mine Workers of America?

MR. SLONE: I'd have to say that I have.

MR. PAFUNDA: All right. Now, given that opinion, Mr. Slone, and being candid with yourself -- and again, I'm not trying to embarrass you in front of these people or anything. And if it sounds like that, I sincerely apologize. But given that opinion, and again being candid with yourself, do you feel that you can serve as a juror in this case and be impartial?

MR. SLONE: Yes, sir.

MR. PAFUNDA: Along that line, Mr. Slone, do you feel in your opinion, and again being candid with yourself, that every work stoppage is wrongful?

MR. SLONE: No.

MR. PAFUNDA: I take it from your

response then that you believe that work stoppages can be just. Is that correct?

MR. SLONE: I did not hear all of that.

MR. PAFUNDA: You believe certain work stoppages in certain circumstances can be just work stoppages? Is that correct, sir?

MR. SLONE: Yes, sir.

MR. PAFUNDA: Have you, as a mine foreman, had any occasion to handle grievances of members of United Mine Workers which your local over there at Scott's Branch?

MR. SLONE: Yes, sir.

MR. PAFUNDA: Mr. Slone, in that regard can I take it from your previous remarks, that you would say that working men who are members of United Mine Workers at your particular mine have just grievances. Is that right?

MR. SLONE: A few of them.

MR. PAFUNDA: Mr. Slone, I didn't see you raise your hand when the witnesses were called off by the Court, Ernie Justice and Bobby Roy Justice--I believe also a Franklin Scott was called off or named by the Court. Do you know any of--

MR. SLONE: [Interrupting.] I know

the Justices.

MR. PAFUNDA: Do you, sir. And what has been your experience? What has been the nature of your business with Mr. Justice? Is he an associate?

MR. SLONE: During arbitration cases.

MR. PAFUNDA: And approximately how many, Mr. Slone?

MR. SLONE: I don't know. Quite a few.

MR. PAFUNDA: More than ten?

MR. SLONE: Yeah.

MR. PAFUNDA: Along that same line, if Mr. Ernie Justice is called as a witness in a trial of this matter, would you be able to assist if you were selected to sit on the jury as a fair and impartial juror and judge his testimony fairly and impartially, sir?

MR. SLONE: I think I could.

MR. PAFUNDA: I take it, and to be rather blunt, also, Mr. Slone, from your remarks that even though you served as foreman at a coal company in a supervisory position, that you do not have anti-union feelings. Is that a correct conclusion on my part?

MR. SLONE: It is.

MR. PAFUNDA: Thank you very much, Mr. Slone.

Is there anyone else here who has served--who has been in a supervisory capacity as either a union coal mine or a union business or has had immediate-- Mr. Mooney.

MR. MOONEY: James Mooney, no. 65. Yes, I have.

MR. PAFUNDA: I think you've answered the previous questions of the other lawyers amply, and there would be no need to go into it. Thank you very much.

Is there anyone else?

MS. EDWARDS: Number 56, Dinah Ray Edwards. My husband works at Simco Coal Company.

MR. PAFUNDA: And Simco is a non-union?

MS. EDWARDS: No, it is union, but he is after it. He is not in any union.

MR. PAFUNDA: And how long has he been so employed?

MS. EDWARDS: Four years.

MR. PAFUNDA: Prior to that, was he in a supervisor's position with another company?

MS. EDWARDS: No, he wasn't.

MR. PAFUNDA: And has he discussed with you his feelings concerning union labor as opposed to non-union labor without telling us specifically what he said?

MS. EDWARDS: Yes, he has.

MR. PAFUNDA: And have you formed an opinion, Ms. Edwards?

MS. EDWARDS: Yes, I have.

MR. PAFUNDA: Now, given that opinion, Ms. Edwards, do you believe-- And again, the facts during the course of this trial would reveal that a number of men were members of the United Mine Workers of America, Local 5967 at McDowell and Floyd County. And in your opinion do you believe that you would be able to sit in fair and partial judgment?

MS. EDWARDS: I believe so.

MR. PAFUNDA: Thank you very much.

Is there anyone else who has worked in such a capacity or has close friends that worked in such a-- Yes.

MS. SULLIVAN: Danita Sullivan, no. 75. My husband works for a union mine, but he is a salaried employee.

MR. PAFUNDA: How long has he been so

employed?

MS. SULLIVAN: About eight and a half years. He has been salaried for about seven and a half.

MR. PAFUNDA: You say he is doing that work at the present time, ma'am?

MS. SULLIVAN: Yes.

MR. PAFUNDA: Without telling us what you discussed specifically. I take it you and your husband have discussed union labor and non-union labor. Is that correct?

MS. SULLIVAN: Some. To an extent.

MR. PAFUNDA: And formed opinions in that regard?

MS. SULLIVAN: As far as forming an opinion for or against union, no, because union is good and bad in different ways.

MR. PAFUNDA: All right. Thank you very much. I appreciate it.

Is there anyone else either themselves or has family members or very close friends who worked in such a capacity? Mrs. Ison, I believe.

MS. ISON: I'm Rhoda Ison, 69. I am an office manager at Blue Diamond Coal Company

and I know everybody at Blue Diamond, Scotia mines and they are union members.

MR. PAFUNDA: And in that capacity, how long have you worked in that capacity?

MS. ISON: Fifteen years, going on fifteen years.

MR. PAFUNDA: And do you have relatives who are members of the union?

MS. ISON: No, not real close family.

MR. PAFUNDA: Have there been work stoppages at Blue Diamond?

MS. ISON: Yes, there have.

MR. PAFUNDA: Have there been work stoppages at Scotia?

MS. ISON: Yes, there have.

MR. PAFUNDA: During that fifteen-year period of time, would you--- Excuse me. Would you agree with Mr. Slone that there are instances of just work stoppages?

MS. ISON: Sure.

MR. PAFUNDA: During that period of time and in conversations with your family as well as close friends and the people that you know, have you formed an opinion concerning union labor and non-union labor without telling us what that opinion is?

MS. ISON: Sure. There are good and bad both.

MR. PAFUNDA: Thank you very much. Is there anyone else whom I may have missed? John, I know all about it.

MR. CHANEY: My father-in-law is supervisor over in Scottsburg.

MR. PAFUNDA: He is no longer there, though, is that correct?

MR. CHANEY: No.

MR. PAFUNDA: When did he stop working over there, John?

MR. CHANEY: It will be a year. I'm not sure. Mr. Slone might know.

MR. PAFUNDA: Did he work with him?

MR. SLONE: It was during the last cutback. We had the cutback back in June.

MR. CHANEY: Last spring sometime.

MR. PAFUNDA: Thank you very much. Is there anyone else who I may have missed other than Mr. Mooney? So all of the lawyers have asked concerning people who are in law enforcement or have been in law enforcement. And I have missed a question; and if I did, excuse me. But has

anyone here who has served as a security guard or has an immediate family member who's a security guard or a very close friend who's a security guard at a coal mines, if so, indicate that by raising your hand?

I will start over here.

MS. ISON: Number 69, Rhoda Ison. As I said before, I have a son who is a security guard at Blue Diamond.

MR. PAFUNDA: Thank you very much.

Ms. Edwards, I believe you raised your hand up.

MS. EDWARDS: Dinah Edwards, no. 56. Yes, my brother-in-law is a security guard, but I don't know what coal company it was.

MR. PAFUNDA: And I believe you have to give your number, also.

MS. EDWARDS: Number 56.

MR. PAFUNDA: And you don't recall the name of the coal company?

MS. EDWARDS: No.

MR. PAFUNDA: How long ago was that?

MS. EDWARDS: About three years ago.

MR. PAFUNDA: And again, I apologize if this question has been asked before, but was that

during a period of work stoppage?

MS. EDWARDS: I think so.

MR. PAFUNDA: Anyone else in your family, ma'am?

MS. EDWARDS: No.

MR. PAFUNDA: Have you--was he involved in any violence at that time?

MS. EDWARDS: No.

MR. PAFUNDA: Thank you very much.

Rufus?

MR. ENGLE: Yes, sir, I used to be a security guard.

MR. PAFUNDA: You have to--

MR. ENGLE: [Interrupting] Yes, sir, no. 58. I was a security guard back in '74, '75, '76.

MR. PAFUNDA: And what mine?

MR. ENGLE: I don't exactly recall the mine. I just know I had to be there after dark.

MR. PAFUNDA: Was it a union mine?

MR. ENGLE: No, it was not union.

MR. PAFUNDA: Here in Pike County?

MR. ENGLE: Yes, sir. I have got one more question. I haul coal for non-union mines.

MR. PAFUNDA: That was my next question.

Go ahead. We are on the same wavelength.

MR. ENGLE: I know it. I haul coal for a non-union mine. Would that have anything to do with this union?

MR. PAFUNDA: No, but it does lead me to my next question. Is that the job you were indicating to the Court earlier that you were going back to?

MR. ENGLE: Yes, sir. I just started last week.

MR. PAFUNDA: And what mine is that, Mr. Engle?

MR. ENGLE: Red River Fuel.

MR. PAFUNDA: Here in Pike County?

MR. ENGLE: Yes, sir.

MR. PAFUNDA: And in that regard, are you paid by the ton or by the hour?

MR. ENGLE: By the load.

MR. PAFUNDA: I will direct this question to the panel, and you may sit down.

Is there anyone-- As Mr. Engle has indicated, is there anyone who has worked as a coal truckdriver or had an immediately family member work as a coal truckdriver or very close friend as a coal truckdriver hauling coal?

There is only one person on this side of the room, so I will start over here.

THE COURT: Two.

MR. PAFUNDA: Two? Thank you, Your Honor.

Ms. Ison.

MS. ISON: Rhoda Ison, 69. I have a brother in the coal mine business. He also owns trucks. My daddy also is a coal miner, and he has trucks.

MR. PAFUNDA: John.

MR. CHANEY: John Chaney, no. 84. I have a close friend. He's got a truck. He is non-union.

MR. PAFUNDA: Mr. Meeks.

MR. MEEKS: William Meeks, no. 78-- or 87. Excuse me. Where I work I have friends that are truckdrivers.

MR. PAFUNDA: I will return to you all in just a moment. I just want to go around the courtroom.

Mr. Mooney, I figure you would be.

MR. MOONEY: I own trucks.

MR. PAFUNDA: Thank you. Mr. Mooney,

how big is your operation? You said West Virginia, Kentucky.

MR. MOONEY: We employed approximately one hundred forty to one hundred sixty people.

MR. PAFUNDA: And does that in all three states I just mentioned?

MR. MOONEY: Yes, sir, that was prior to the cutoff in November or December. Now we only employ approximately seventy-five people.

MR. PAFUNDA: And you live in Van Lear, I believe?

MR. MOONEY: Yes.

MR. PAFUNDA: Do you know Mr. Frank here in Pikeville that lives down at Quail Ridge?

MR. MOONEY: No.

MR. PAFUNDA: Mr. Gene McGhee of Pikeville?

MR. MOONEY: No.

MR. PAFUNDA: He lives in the Bowles Division.

MR. MOONEY: [Shaking head in a negative.]

MR. PAFUNDA: Mr. Lynn Parrish?

MR. MOONEY: No. This is the only time I am up this way.

MR. PAFUNDA: Is with this court?

MR. MOONEY: Yeah.

MR. PAFUNDA: Thank you very much, sir.

MR. OAKS: Bennie Oaks. I worked for five years. And I hauled about two months. I think for Miller Rose Construction. It is non-union.

MR. PAFUNDA: When was that, sir?

MR. OAKS: Oh, about a year ago. I have two brothers. Both have been truckdriving five or six years. They own trucks.

MR. PAFUNDA: They are still in the trucking business, sir?

MR. OAKS: Yes. And I quit. I teach school.

MR. PAFUNDA: When did you stop hauling coal?

MR. OAKS: I'm sorry?

MR. PAFUNDA: When did you stop trucking?

MR. OAKS: About a year ago. I hurt my back and I can't drive any more.

MR. PAFUNDA: And I presume that was coal that you hauled, sir?

MR. OAKS: Yeah.

MR. PAFUNDA: Okay. Ma'am.

MS. MAY: I am Loretta Gayle May. I am eighteen. My husband is a truckdriver.

MS. MONTGOMERY: I am Linda Gail Montgomery, no. 31. My husband is presently operating hauling coal for non-union coal companies.

MR. PAFUNDA: In Magoffin County, ma'am?

MS. MONTGOMERY: Yes.

MR. PAFUNDA: Are you any relation to the sheriff, Pat Montgomery, in Magoffin County?

MS. MONTGOMERY: Distant.

MR. PAFUNDA: Okay. Thank you, Ms. Montgomery.

I believe I saw Ms. Edwards has her hand up.

MS. EDWARDS: Dinah Ray Edwards, no. 56. I have a brother-in-law that was working and driving a truck.

MR. PAFUNDA: Here in Pike County. And that was a union or non-union?

MS. EDWARDS: Union.

MR. PAFUNDA: Thank you very much. And the lady seated next to you?

MS. JARRELL: Number 52, Beatrice Jarrell. I have a twenty-four-year-old son who hauls coal in Martin County and lives there in

Martin.

MR. PAFUNDA: And for what mine?

MS. JARRELL: Marteeke.

MR. PAFUNDA: Marteeke Coal Company?

MS. JARRELL: [Nodding head in the affirmative.]

MR. PAFUNDA: Thank you very much. I will address my next question to you folks--

MR. LACY: [Interrupting] Mr Lacy.

MR. PAFUNDA: Excuse me, Mr. Lacy.

MR. LACY: Number 75. My father-in-law ran a coal company, and I used to--

MR. PAFUNDA: [Interrupting] You used to drive down, Mr. Lacy?

MR. LACY: No. I used to pay the drivers. I took care of the books.

MR. PAFUNDA: And that coal company is in what county?

MR. LACY: Magoffin.

MR. PAFUNDA: And that was non-union operated?

MR. LACY: Right.

MR. PAFUNDA: My next question is--and this question may be very pertient to Ms. Montgomery.

Is there anyone who either themselves or their immediate family or their close friends who in the course of hauling coal, and I believe there are a certain facts that have come up as coal truckdrivers who may have encountered an organization, the United Mine Workers line, and either had to turn the trucks around? Has anyone encountered that specific type experience either themselves or immediate family member or close friends?

Mrs. Montgomery.

MS. MONTGOMERY: Linda Gail Montgomery, no. 31. Some of our close friends a few years ago.

MR. PAFUNDA: All right. That was during the national strike, I believe, ma'am?

MS. MONTGOMERY: Yes.

MR. PAFUNDA: Ms. Montgomery, during that period of time and since then, have you had discussions with those friends about hauling coal either union or non-union?

MS. MONTGOMERY: Yes. There's some of the trucks were shot up and damaged.

MR. PAFUNDA: And that was in Magoffin County, back several years ago?

MS. MONTOMGERY: The shots were, yes.

MR. PAFUNDA: Have you since that time formed an opinion as to either coal truck drivers who are either union or non-union without telling us what that opinion is at this time?

MS. MONTGOMERY: No, I have not.

MR. PAFUNDA: So, I take it from your comments then, Miss Montgomery, if you were selected as a juror in this particular case that you could fairly and impartially listen to the evidence although certain of the men here are members of the United Mine Workers of America and may have been in the past coal truck drivers that hauled coal, is that correct?

MS. MONTGOMERY: Yes, sir.

MR. PAFUNDA: Thank you very much.

Is there anyone else that I might have overlooked?

There has been some mention by several of the lawyers of the National Energy Association and certain other matters and some talk about guns. If you are selected as prospective jurors in this case or you selected as a

juror in this case do you all understand that the mere possession of a firearm is not a crime?

Along that same line I would emphasize that there may be evidence concerning some shooting in this matter. If you are selected as a juror do you all understand that not every shooting is a crime?

I take it by your silence then that you agree that not every possession of a firearm nor not every shooting constitutes a crime, is that correct?

MR. DAUSE: Your Honor, the Government is going to object to this line of questioning on the grounds that counsel is misstating or perhaps misstating a principle of law and asks for an opinion rather than elicit facts from the jury.

THE COURT: Well, at this point I overrule the objection. I gather from the thrust of his questions that merely because of the mention of the fact of guns or shooting does not in itself determine that a crime is committed, it depends on the other circumstances, is that correct?

MR. PAFUNDA: That's correct, Your Honor, if I may just give a short example, for

instance --

THE COURT: (Interrupting) Well, let's don't get into examples, just ask the jury the questions.

MR. PAFUNDA: Thank you, Your Honor.

THE COURT: Finish out the questions, sir. I'm not ready to foreclose that.

MR. PAFUNDA: Along that same line if an individual has in his possession a firearm and discharges that firearm in a reasonable belief that he's acting in self defense would you all agree with the proposition of law that an individual is -- it's his privilege or is justified and acted upon self defense based upon a reasonable belief.

I see a few of you nodding your head yes and the rest of you remaining silent. Do I take it by your silence that you agree with the principle of self defense, is that correct?

I believe the Government asks one question whether any of you had been contacted either by anyone other than the United States Marshall who served you the summons for you to appear in court here today, I believe that's the correct paraphrasing of his question.

I would ask that if you are selected as a juror during this case, and should the case go on for say four, six, eight weeks, whatever, should it last that long, or even if it lasts a few days. If anyone should attempt to contact you please immediately notify the lawyers involved in the case or the Court itself.

Thank you very much, ladies and gentlemen.

THE COURT: While this I guess is on the board perhaps let the Court state this with the understanding that one attorney can get up and ask a question and the other attorney can ask a counterquestion.

Now, what Mr. Pafunda was asking I think is a very legitimate matter that there are situations which one may have possession of a firearm or there are situations where one may discharge a firearm and that of course isn't a crime, but it depends upon the circumstances and the law. This Court upon the conclusion of the trial will instruct you as to that law as to what is a violation, we will instruct you on the law as to defenses, and that is what this case is going to be tried upon.

Let's see, Mr. Spencer.

MR. SPENCER: Your Honor, there's several questions that I could ask, but I'm going to pass and not ask any. I see no reason to go back over the same grounds.

THE COURT: Thank you, sir.

Mr. Adams?

MR. ADAMS: Thank you, Your Honor.

THE COURT: Any possible questions which you could ask are getting fewer and fewer each time, right, Mr. Spencer?

MR. SPENCER: I could get up for a good fifteen or twenty minutes and maybe not ask the same question.

THE COURT: Well, we can't do that, can we?

Proceed.

MR. ADAMS: Ladies and gentlemen, my name is Eldred Adams from Louisa, Kentucky and I represent Mr. Ranny Blankenship. Will you please rise?

Fortunately I only have very few questions because the other attorneys I think have fairly well covered it.

Now, there has been some

talk about how people feel about firearm laws, but I have a more specific question. Has any member of the prospective jury panel or member of your immediate family ever been injured by a firearm under any circumstance?

MS. EDWARDS: Yes.

MR. ADAMS: Yes, Miss Edwards.

MS. EDWARDS: Juror 56, Dinah Edwards, about three years ago my first cousin, he was a State Policeman was killed with a gun.

MR. ADAMS: Your husband was a State Trooper?

MS. EDWARDS: No, a cousin, first cousin.

MR. ADAMS: Who was that trooper?

MS. EDWARDS: Jerry Cleveland.

MR. ADAMS: And he was a State Trooper killed as a State Policeman?

MS. EDWARDS: Yes.

MR. ADAMS: I take it in the line of duty?

MS. EDWARDS: Yes.

MR. ADAMS: Any other members of your family?

MS. EDWARDS: No.

MR. ADAMS: Any other members -- prospective jurors.

Okay, Mr. Martin.

MR. MARTIN: Kermit Martin, No. 86. I had a son that shot himself right down.

MR. ADAMS: All right, sir. Thank you, sir.

Any other members?

MS. SANDLIN: Carolyn Sandlin, No. 62. Some real close friend or relation to my husband, their little girl was shot in an accident by a gun.

MR. ADAMS: All right, thank you, ma'am. Any other members of the prospective jurors with families that were injured by firearms?

Ladies and gentlemen, there is going to be some evidence in this case that when some of these things supposedly happened some of the Defendants may have been drinking alcoholic beverages. Now, some people have various sincere feelings against alcoholic beverages, and I'm not here to discuss that here today.

My only question to the jury panel would be if it develops in this case that there has been evidence that some of the Defendants may have been consuming alcoholic beverages when

some of these things happened would that influence your verdict in any way. The fact some of them may have been drinking, because of your personal feelings about alcohol, would that influence anybody's decision in any way, anyone?

MS. EDWARDS: Yes.

MR. ADAMS: Yes, Mrs. Edwards.

MS. EDWARDS: Dinah Edwards, No. 56. I believe it would.

MR. ADAMS: Would it influence in the negative?

MS. EDWARDS: Yes.

MR. ADAMS: Thank you, I appreciate your honesty.

Yes, Mr. Meeks.

MR. MEEKS: William Meeks, No. 86. I believe it would.

MR. ADAMS: Influence negatively?

MR. MEEKS: Yes.

MR. ADAMS: Thank you, sir.

I appreciate your honesty.

Yes, Miss Sullivan.

MS. SULLIVAN: Danita Sullivan, No. 79, I believe it would influence me in a negative way.

MR. ADAMS: Thank you, I appreciate your honesty.

Yes, ma'am.

MS. SANDLIN: Carolyn Sandlin, No. 62. Yes, it would influence me.

MR. ADAMS: I appreciate your honesty.

Yes, sir.

MR. LOVINS: Phillip Lovins, No. 66. I think it would in a negative way.

MR. ADAMS: Influence in the negative way?

MR. LOVINS: Yes.

MR. LACY: Yes, Jim Lacy, No. 75.

MR. ADAMS: Yes, Mr. Lacy.

MR. LACY: After dealing with young people all the time I think it would influence it in the negative way.

MR. ADAMS: Yes, just that fact alone?

MR. LACY: I think it being involved, it could.

MR. ADAMS: That would effect your judgement?

MR. LACY: Yes.

MR. ADAMS: Thank you. Any other members of the prospective jury panel?

MR. JONES: Yes.

MR. ADAMS: Okay, Mr. Jones, it would effect it?

MR. JONES: Yes, it would.

MR. ADAMS: That alone?

MR. JONES: Yes.

MR. ADAMS: Any others?

Yes, Miss Webb.

MS. WEBB: I think it might influence me. It would depend the circumstances that went with it.

MR. ADAMS: You think it would have an influence?

MS. WEBB: I think it would depend on the circumstances.

MR. ADAMS: Well, that fact alone?

MS. WEBB: Well, not particularly alone, it would have to depend on the circumstances that went along with it, I have to know what was said before I could say.

MR. ADAMS: Well, I don't say you have to approve of it, I'm just saying that fact alone, that somebody was drinking, would that by

itself influence it?

MS. WEBB: It would have to depend on the circumstances, the best I can do.

MR. ADAMS: Thank you, any others?

THE COURT: Well, I think in fairness if the question is whether the fact they were drinking would make it go contrary to the evidence.

MR. ADAMS: Okay, let me restate the question. Would the fact that some of the Defendants may have been drinking at the time make you go contrary to the evidence, would that -- yes, Mr. Meeks?

MR. MEEKS: William Meeks, No. 87. I'd like to explain why it would cause a negative on my side. My father is an alcoholic and he and my brother were out drinking and he cut my brother pretty bad and that just about did me in for drinking, I don't have nothing to do with drinking.

MR. ADAMS: So, that alone would make you go contrary to the evidence?

MR. MEEKS: Yes, I think so.

MR. ADAMS: Thank you, I appreciate your honesty and candor.

Miss Webb, would it make you go contrary to the evidence the fact that you do

not approve of alcoholic beverages?

MS. WEBB: I don't know, I don't think that has anything to do with the evidence, it would depend on the circumstances,

MR. ADAMS: That alone would not make you --

MS. WEBB: (Interrupting) Yes.

MR. ADAMS: Miss Sandlin, would that factor alone make you go contrary to the evidence?

MS. SANDLIN: Yes, it would.

MR. ADAMS: It would, would it?

MS. SANDLIN: Yes.

MR. ADAMS: Well, thank you for your honesty, ma'am.

Miss Edwards, would that fact alone make you go contrary to the evidence?

MS. EDWARDS: Yes.

MR. ADAMS: You think it would?

MS. EDWARDS: Yes.

MR. ADAMS: Thank you for your honesty.

Mr. Lacy.

MR. LACY: No, sir.

MR. ADAMS: That would not make you --

MR. LACY: (Interrupting) No, sir.

MR. ADAMS: Now, Mr. Jones, would that make you go contrary to the evidence?

MR. JONES: Yes, I believe it would.

MR. ADAMS: It would?

MR. JONES: Yes.

MR. ADAMS: Did I miss anybody?

MR. LOVINS: Yes.

MR. ADAMS: What is your name and number, sir?

MR. LOVINS: Phillip Lovins, No. 66.

MR. ADAMS: That alone would make you go contrary to the evidence?

MR. LOVINS: Yes.

MR. ADAMS: Anyone else I missed? Yes, Miss Fields.

MS. FIELDS: Yes, it would.

MR. ADAMS: That factor alone, no matter what the evidence was, that factor would make you go contrary to the evidence?

MS. FIELDS: Yes, it would.

MR. ADAMS: Yes, Miss Sullivan.

MS. SULLIVAN: It would not make me go contrary to the evidence, but it would leave me with a negative attitude.

MR. ADAMS: That by itself would not?

MS. SULLIVAN: No, but I'd probably go about it with a negative attitude.

MR. ADAMS: Anybody else?

Mrs. Jarrell, I believe you indicated that your husband works for Bizzack?

MS. JARRELL: Yes, he does.

MR. ADAMS: And is that union or non-union?

MS. JARRELL: It's the steel workers.

MR. ADAMS: He's in the steel workers union?

MS. JARRELL: Yes.

MR. ADAMS: Thank you very much, ma'am.

Mr. Meeks, I'm not picking on you.

MR. MEEKS: It's okay with me.

MR. ADAMS: The fact that U.M.W. shut down your mine in Martin County, would that make you have any feelings against the union?

MR. MEEKS: I'm glad they did.

MR. ADAMS: Thank you for your honesty.

THE COURT: Mr. Rowland.

MR. ROWLAND: May it please the Court

I am Dan Rowland on behalf of Tim Milan, Tim and I don't have any questions.

THE COURT: Mr. Bransen.

MR. BRANSEN: May it please the Court, I am Hershel Bransen, Jr., I practice law in Jackson County and I represent Donahue Halbert, and Mr. Adams stole all my questions.

THE COURT: Mr. Hollon.

MR. HOLLON: Your Honor, I am Thomas K. Hollon, and I represent Morris Ray Hall and Pebo Gayheart and all the questions that I have to ask have been asked.

THE COURT: Mr. Thomas.

MR. THOMAS: I hate to bust everybody's bubble but I do have a few questions, Your Honor, on behalf of Eugene Tackett.

THE COURT: Be our guest.

MR. THOMAS: The first question I have, ladies and gentlemen of the prospective jury, is I hope you don't hold it against my client by me asking you these questions. I think you're already off anyway.

Now, I've only got three areas I want to cover and the Judge has explained to us all that we're sort of like a family here, or

you all are sort of like a family here, and we've got to keep our distance from you.

But I was just wondering if any of you all were feeling a little nervous out there having to be brought into a strange room and having fifteen lawyers question you, and having the Judge up there in his black robe questioning you on personal matters. Does that scare any of you? Raise your hand if it does, because it scares the heck out of me.

I assume enough questions have been asked that you'll be a little less nervous, but how many of you have never served on a jury before?

I'd say about half of you, are you interested in knowing the procedure that goes on? Raise your hand if you are.

Nothing has been explained about this other than this portion here, which is known as voir dire or voir dire, depending on what part of the country you come from, but after this happens, after we ask the questions of this panel and that panel and we get a jury, and the Government here will get up and state its case and that's known as the opening statements.

And then if the defense lawyers want to they can get up and make their opening statements. If they don't want to at that time, they can wait till the Government puts on their proof and they can waive until after the Government finishes their case and then they can make their opening statements; or they don't have to make an opening statement at all.

After the opening statements have been made by both sides; then the Government will put on its case in chief and bring it -- well, you've heard all the witnesses and we'll bring a good part of those witnesses here and ask questions to show -- to prove their case.

And after their case in chief, then the defense attorneys, if they think it's proper, will bring in witnesses to either dispute the case of the Government or to prove something on the Defendant's behalf.

After that is done then the prosecution or the Government will come back with other witnesses to dispute what some of our clients or witnesses say, that's called the rebuttal time. After that, then we are instructed by the Judge as to what the law is. He will read

it out and it will take some time for him to read it to you.

Then after that, the Government will have a chance to argue its case, the closing arguments. And they'll argue why these men should be convicted and then we'll have our chance to argue why they should not be.

And then the Government will get the last chance -- if I'm familiar with the rules here they'll get the last chance to come back and say again why they should. That's basically the procedure. I hope you feel a little more comfortable with it.

My question concerning this is: Is anybody out there so scared or so frightened to come in here at this time that they just would rather not have to sit in judgement?

I ask that, and I know it's been asked, but at this time has anybody changed their mind out there?

Yes, sir.

MR. MEEKS: William Meeks.

MR. THOMAS: Number?

MR. MEEKS: No. 87.

I haven't changed my mind,

I'd like to see how it all goes, but like I said before, I'm worried about my job. You all know my boss and if I'm subpoenaed -- spend two or three days, I know I will lose my job because he has fired men who have got hurt.

MR. THOMAS: Well, I know a lot of lawyers that have kids and homes and families like you all have kids and homes and you need babysitting and I know you're worried about all of that and things outside here, but I just wanted to know if you're so worried you can't sit here for a four to six week trial. That's really all I want to know.

Now, as I stated --

MR. SELF: (Interrupting) Let the record reflect that Mr. Meeks did indicate that he did have such a concern.

MR. THOMAS: Okay.

Ladies and gentlemen, there are nineteen defendants if I counted correctly and fifteen lawyers here. There are charges against all of these defendants, some -- a few of the charges -- more against one defendant than the others, but my concern is are all of you willing to give each defendant a fair trial. Do all of you know all of the defendants' names at this point?

Do any of you all know all of the Defendants' names at this point?

Raise your hand if you will attempt to make a good faith effort during the trial to learn all the Defendants' names.

Are there any of you that do not desire to learn each of the Defendants' names, please raise your hand.

How many of you would like to see the Defendants take the stand after the Government puts on its proof?

MR. STEELE: I would.

MR. THOMAS: Your name and number.

MR. STEELE: Jack Steele, No. 67.

MR. THOMAS: Yes, Mr. Mooney. I think you've been taken care of too.

Would anybody else like to see any of the Defendants --

MR. ENGLE: Rufus Engle, No. 58, I'd like to see the man have a right to defend himself if they're going to have him sent to the pen.

MR. THOMAS: I think the Judge will instruct you that they can take the stand, he does not have to. My question is do you want to require them to take the stand? If you do, please speak

now, I'd really like to know.

Anybody else?

MR. MEEKS: William Meeks, No. 87. I think the man ought to say what he wants to say when he wants to, if he wants to.

MR. THOMAS: Are any of you going to hold it against him if he don't take the stand? Please raise your hand?

One more question, and it may go into a few subquestions.

My client, Eugene Tackett, will you please stand?

Thank you.

I feel that there will be evidence or there may be evidence in this case relating to Mr. Tackett's intellectual capacity; his mental ability to function. And this evidence will be in the form of both the people that know him and the psychiatrist.

Have any of you had any dealings with a psychiatrist? Do you know one?

MR. ENGLE: Yes.

MR. THOMAS: Yes, sir.

MR. ENGLE: Rufus Engle, No. 58. They sent me to one when I was in the second grade.

MR. THOMAS: I won't ask about what. I'll end this quickly by asking you, I know you all have feelings about lawyers as a group, and doctors as a group, do you have negative feelings about a psychiatrist as a group, any of you, please let me know now. Thank you very much.

MR. PAFUNDA: Someone raised their hand.

MR. THOMAS: Thank you. Yes.

MR. OAKS: James Oaks, No. 90. I think some people know it, but I teach handicapped and mentally retarded children.

MR. THOMAS: You teach mentally handicapped kids?

MR. OAKS: Yes.

MR. THOMAS: Where?

MR. OAKS: Breathitt County.

MR. THOMAS: Have you had any dealings with psychiatrists relating to their treatment?

MR. OAKS: I read their referral reports.

MR. THOMAS: All right, thank you very much.

THE COURT: All right, Mr. Kirkland.

MR. KIRKLAND: I'm the last one and I'm sure you're thankful for that.

I'm Bill Kirkland and I have five people over there, why don't you people stand up over there. You'll get to know them through the trial.

There's just a few things here. Notice we've got two people with the last name of Slone, No. 72 and No. 85. Are you all related?

MR. SLONE: No, not that I know of.

MR. KIRKLAND: There is a Mr. Slone from Knott County on the other panel, the other half. Are either of you fellows related to him?

MR. LONNIE SLONE: My family is originally from Knott County, but I don't know the other person, who is it?

MR. KIRKLAND: Mr. Glen Charles Slone, you do not know him?

MR. LONNIE SLONE: No.

MR. KIRKLAND: And you're No. 72?

MR. LONNIE SLONE: No. 85.

MR. KIRKLAND: You're No. 72, is that right?

MR. OTIS SLONE: Yes, sir.

MR. KIRKLAND: Thank you very much.

Let me ask all of you this question, There will be witnesses on both sides who are just ordinary citizens that are not law enforcement officers. Would you tend to believe a witness that's offered by the Government more than a witness who testifies for these Defendants merely because he is offered by the Government?

In other words, would you assume that a person who testifies for the Government should be believed more or more quickly than a person who is brought in to testify for these people?

I take it that none of you would necessarily believe that the Government witnesses merely because he is a Government witness?

I would like to ask this: How many of you have ever crossed a picket line either to go to work or to go to a store or to go to do anything. I'm talking about a lot of little picket lines that are fairly insignificant, you know, a couple of signs or maybe even more, but how many of you have ever crossed a picket line to go to work or transact business.

Yes.

MS. BOOTEN: Anna Booten, No. 26.

MR. KIRKLAND: You're a school teacher, is that right?

MS. BOOTEN: Yes.

MR. KIRKLAND: Where did you cross the picket line?

MS. BOOTEN: Several years ago I needed a lawn mower. My grass was getting high and I crossed a picket line.

MR. KIRKLAND: Did you have any trouble with crossing the picket line?

MS. BOOTEN: Before I got home they called my family and told them that I had crossed the picket line.

MR. KIRKLAND: Did they try to keep you from using the lawn mower?

MS. BOOTEN: No, I bought the lawn mower and went home.

MR. KIRKLAND: Anybody else ever cross a picket line?

MS. ISON: No. 69, Rhoda Ison. I crossed one two or three times.

MR. KIRKLAND: Did it cause you any problems?

MS. ISON: No, just someone came up and was trying to stop me from going over.

MR. KIRKLAND: All right.

MR. MOONEY: James Mooney, No. 65. No major problems, no trouble or major problems.

MR. KIRKLAND: Thank you.

MR. SLONE: Otis Slone, No. 72. I crossed a picket line, but I did not have a choice, I was a foreman.

MR. KIRKLAND: You did cross it -- did you have any problems when you crossed the picket line?

MR. SLONE: No, other than name calling.

MR. KIRKLAND: Did you go back to work with the same people that called you names?

MR. SLONE: Yes.

MR. KIRKLAND: Thank you.

Yes, ma'am.

MS. SMITH: Deborah Smith, No. 74. And I have crossed the picket line.

MR. KIRKLAND: Did you have any trouble?

MS. SMITH: No.

MR. KIRKLAND: Do you work at a nursing home?

three Government lawyers -- there's four here today. And there will be a lot of Government agents testifying and attorneys, that something has happened that's illegal, does anybody assume that at this point?

Do you assume that you would not be here if something wrong or illegal had not happened?

I think you've probably answered this sort of, but I'll ask you this. If the Judge instructs you that the law is a particular way that you don't personally agree with, will you go along without hesitation with what the Judge instructs in spite of the fact that you might not personally agree with it. Do you understand my question?

For example, if there's something that develops of a technical nature and you think it should not be a law but the Judge instructs you that it is, would any of you have any hesitancy whatsoever in going along with what the Judge instructs, even though you did not like it? Would anybody hold out against a law they didn't like or an instruction they did not like.

I take it that all of you

MS. SMITH: No, I work with a medical supply company.

MR. KIRKLAND: All right, thank you.

So, have you ever had a picket line at your company?

MS. SMITH: No, not at this company.

MR. KIRKLAND: Did you have any problem or difficulty because you crossed the picket line?

MS. SMITH: No, not really, other than name calling. No trouble or anything.

MR. KIRKLAND: Did that bother you, did you worry about it for a long time after you crossed the picket line?

MS. SMITH: No.

MR. KIRKLAND: Now, let me ask you this question: Is there anybody that believes that you should never have a picket line? You understand that there's differences sometimes between having a picket line and having a strike. Is there anybody that believes that you should never be permitted to have a picket line? Some of you may feel that, I heard people say that.

Does anybody here feel because we're in a Federal Courthouse and we've got

-- I guess they teach this in citizenship, sometimes you necessarily have to go along with the law even though you don't like it, even though it works against what you think is proper. Could all of you do that, if you were instructed by the Judge to do that?

Mrs. Smith, did you have a reaction to something that I asked, on something?

MS. SMITH: No.

MR. KIRKLAND: I think maybe somebody reacted and I did not see it when I asked that merely because we're here in a Federal Courthouse and there is a lot of federal lawyers and federal agents that there must be something that happened that's illegal. Were there any reactions to that? You understand there should be no such assumption that something wrong has happened. Is there anybody that thinks that there must be something big or must be something wrong for all of us to be here?

That's all I have, Your Honor, thank you.

THE COURT: Now, let me state this to the members of the jury. You understand that we have another panel like you. This other panel like you has been excused, they will come back tomorrow

morning at nine o'clock. I will assume they will be here all day just as you have been. But we're going to permit you to be adjourned for -- until quarter till five. Then at quarter till five we will tell you which one of you are excused and which ones of you will be required to come back the day after tomorrow. Do all the members of the jury understand that?

We're going to be on recess and you can go outside until quarter till five -- let's say until 4:30, and you will come back at 4:30 and we'll make an announcement which of you will be excused in further participation in this matter. Is there anyone that does not understand that?

The ones that are excused don't have to come back at all, they will be permanently excused. The ones that are not permanently excused they won't come back tomorrow, but they will be required to come back the day after. Is there anyone that does not understand that?

Mr. Marshall, would you excuse the members of the prospective jury until 4:30?

THE MARSHALL OF THE COURT: The jurors are

excused until 4:30. You may leave now and please leave quietly.

MR. PAFUNDA: There is one matter, Your Honor. If it pleases the Court that we could possibly take up with the jurors.

If it pleases the Court Mr. Walbourn and I have been sitting here talking and I think there's a matter that needs to be addressed to the jury panel that has been brought in and it concerns the metal detector. For the reasons you have members of this jury panel come in on other trials and it was not present in the courtroom. We request, Mr. Walbourn and myself, that the Court make some indication that it's not here to reflect on these Defendants solely. I'm just afraid the jury panel has that impression and I'd like to resolve this.

THE MARSHALL OF THE COURT: Your Honor, if I may, that is a new fixture that we've wanted for a long time and we finally got it and it will be a permanent fixture.

MR. PAFUNDA: Will you please explain that to the jury so they don't think we're armed with guns and everything?

THE COURT: Well, we're going to tell

them the same thing -- that's the same thing as one of these things with the slot machine, you can't use slugs.

MR. PAFUNDA: It doesn't work anyhow, I just came in here with all this metal in my pocket.

THE COURT: We're stopping people from bringing slugs into the courtroom.

No, we'll straighten that out.

MR. PAFUNDA: Thank you, Your Honor.

THE COURT: Now, you gentlemen want about ten minutes to get together and talk about and decide who's going to be excused for cause. We'll give you ten minutes to get your thoughts together. I'm sure you gentlemen want to get together, so let's do that. We'll take a ten minute recess.

I thought of this several different ways, but after we clear this panel and then possibly we can see how many we need to bring this panel up to par and we'll let the Clerk here call the Clerk in Lexington and she can be subpoenaing by telephone twice that number to be in here the day after tomorrow. And that will make up the persons

that are excused today and plus possibly some of the people that are excused tomorrow. I thought that might work than the other thing. But let's be in recess until four o'clock.

THE MARSHALL OF THE COURT: This Court is now in recess.

(Reporter's Note: Let the record show that at 3:50 P.M. the Court was called to recess.)

(Reporter's Note: Let the record show that at 4:05 P.M. the Court was called back in session.)

THE COURT: All right, gentlemen. Who wants to be first? The United States.

MR. DAUSE: Thank you, Your Honor. The United States move the following members of the panel be excused for cause. Juror No. 22, Mr. William Clay.

Does Your Honor want me to state the reasons as to --

THE COURT: (Interrupting) Just give the numbers and then we'll go into that later.

MR. DAUSE: Yes, Your Honor.

Juror No. 23, Michael Newsome.

Juror No. 44, Betty Ann Faulkner.

Juror No. 56, Dinah Edwards.

Juror No. 58, Rufus Engle.

Juror No. 62, Carolyn Sandlin.

Juror No. 65, James Mooney.

Juror No. 70, Charles Martin.

Juror No. 74, Deborah Smith.

Juror No. 84, John Chaney.

Juror No. 87, William Meeks.

Juror No. 88, Betty Stamper Turner.

THE COURT: All right, now, let me go over here, gentlemen, and see who you gentlemen challenge for cause.

MR. HARWELL: May the Court please, I'm Aubrey Harwell.

May I turn this around, Your Honor?

THE COURT: Yes, this late in the day we need something to lean on.

MR. HARWELL: That's true, Your Honor.

MR. HARWELL: If you'll give me a minute, Your Honor, I'll try to line up the Government's list and our list.

THE COURT: Well, you tell me the ones you agree with. Let me get something to write on.

MR. HARWELL: Has Your Honor got a list of those members the Government --

THE COURT: (Interrupting) Yes, but let me get something to write them down. Just a moment now.

MR. HARWELL: May the Court please I am Aubrey Harwell representing Edgar Jones. Obviously I speak only for my client. We don't agree with the Government's challenge of cause with Mr. Clay, No. 22.

We don't agree with the Government's challenge of cause on Mr. Newsome, No. 23.

May the Court please --

THE COURT: (Interrupting) We won't argue the reason.

MR. HARWELL: I understand.

May the Court please as to Mrs. Faulkner -- hold on just a moment, please. Ms. Faulkner, we do agree on Ms. Faulkner. And we'll give the reasons later.

May it please the Court the next Government witness is No. 56, Mrs. Edwards, we agree that so far as Mrs. Edwards is concerned challenge for cause.

The next may the Court please is No. 58, Mr. Engle. We don't agree with the Government's challenge of cause on him.

The next one may the Court please is No. 62, Mrs. Sandlin. We do agree with the Court please that Ms. Sandlin probably should be challenged for cause.

The next one may Your Honor please is No. 65 -- No. 65 we also agree with the Government that it should be challenge for cause.

The next one Your Honor is No. 70.

THE COURT: Is he the elderly

gentleman?

MR. DAUSE: Yes, he is, Your Honor.

THE COURT: All right.

MR. HARWELL: We do not agree as to the Government's challenge of cause for No. 70.

And next one may the Court please the Government challenges for cause is No. 74, may the Court please we think that she properly should be challenged for cause.

The next Government challenge is as to Juror Panel No. 84, may the Court please in so far as that is concerned we do not believe that there lies a challenge for cause.

The Government's next number is No. 87. We do believe that Mr. Meeks, No, 87, should be challenged for cause.

The next number may Your Honor please is Mrs. Turner, No, 88 -- excuse me, Judge. But we think given the situation concerning her sick child that that's a proper challenge for cause.

THE COURT: Now, who do you challenge for cause?

MR. HARWELL: May the Court please -- Your Honor, I'm going to give them to you not in

order, not in chronological, but rather in the order in which they answered questions when they were asked.

We think No. 82, Mrs. Fields should be challenged for cause.

We think that No. 68, Mrs. Webb should be challenged for cause.

We think that No. 76, Mr. Jones should be challenged for cause.

We think that No. 79, Mrs. Sullivan should be challenged for cause.

We think No. 66, Mr. Lovins should be challenged for cause.

We also think may the Court please that we have 62 which the Government agrees on.

56, which the Government agrees on.

65, which the Government agrees on.

May the Court please we think there lies a challenge of cause for No. 67, Mr. Jack Steele.

We think there is a challenge of cause on No. 75, which is Mr. James

Lacy. And we are in agreement with the Government on No 87, Mr. Meeks. I believe there is a challenge of cause.

May the Court please, we believe the challenge of cause lies as to No. 26, Ms. Booten. I've compared my lists with the Government's -- let's see, 68, 74, that was a Government challenge.

May the Court please in so far as Mr. Edgar Jones is concerned, that is the list as to the challenges for cause.

THE COURT: Mr. Walbourn.

MR. WALBOURN: I would join in the statements of Mr. Harwell and adopt his strikes.

THE COURT: Mr. Pafunda?

MR. PAFUNDA: May it please the Court, I'll do the same thing as Mr. Walbourn.

THE COURT: Mr. Spencer?

MR. SPENCER: I'll join with the other three counsel, Your Honor.

THE COURT: Mr. Adams?

MR. ADAMS: Eldred Adams, on behalf of Ranny Blankenship, Your Honor. I will join Mr. Harwell.

MR. ROWLAND: I believe I join on behalf of Tim Milan, your Honor, Dan Rowland.

MR. BRANSEN: May it please the Court, I will also join, your Honor.

MR. HOLLON: Tom Hollon, your Honor, I agree with Mr. Harwell and joint in also.

MR. THOMAS: Your Honor, David Thomas, on behalf of Eugene Tackett, and I agree to join in.

MR. KIRKLAND: May I consult about five more seconds, your Honor?

THE COURT: Yes.

MR. HARWELL: While he is consulting, may I consult with my client too?

THE COURT: Yes. All right. Mr. Kirkland?

MR. KIRKLAND: Your Honor, I have to ask for five more seconds.

THE COURT: Okay. Mr. Kirkland.

MR. KIRKLAND: Your Honor, we don't like to disagree, but we respectfully disagree about No. 68, Ms. Webb, otherwise we adopt the suggestions of Mr. Harwell.

THE COURT: All right. Now, gentlemen, let's see, I believe we had - - wasn't it two

ladies that said they had fixed opinions and they couldn't be fair under any circumstances? Didn't we have that? Or did we have - -

MR. WALBOURN: (Interrupting) No. 62 and 65, your Honor early on said that - - 62, Ms. Sandlin, and I think she said that she had made up her mind and couldn't give a fair trial.

In fact, the Government also moved to strike her.

And 65, Mr. Mooney, hit about nineteen different lists for cause, and he said he had a suit against the Union and could not fairly try it.

THE COURT: Okay. So there is no question as to 62 and 65.

Now, don't we also have two gentlemen that said that they couldn't live on the thirty dollars a day? That is all they got, they had a family to support and - -

MR. WALBOURN: (Interrupting) Yes, your Honor. One of those was Mr. Meeks, and I think the Government and the Defendants are in agreement with him.

I recall another one, but I don't - -

MR. HARWELL: (Interrupting) Yes.

MR. WALBOURN: 76.

MR. HARWELL: 76, Mr. Jones and Mr. Engle made some reference to that. No. 58.

THE COURT: Right, 58. And who is the other one?

MR. HARWELL: Mr. Meeks, No. 87.

THE COURT: All right.

MR. HARWELL: Some question about No. 76.

THE COURT: What was 76?

MR. HARWELL: He said he had his doubts about his getting paid if he was off more than a day or two, according to my notes, and I have no independent memory.

MR. DAUSE: No. 76, is the truck driver for the explosives, and he said he had doubts that he would not get paid but, of course, that he would receive the witness fee that he had doubts that he would be solvent based on the Government's witness fee.

MR. WALBOURN: 76, your Honor, also indicated that because of the alcoholic beverages he would not listen to the evidence, it would overwhelm the evidence.

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THE COURT: Well, who was - - I'm trying - - where is 76 sitting?

MR. SELF: 76 was the gentleman in the blue Windbreaker, your Honor, blue Wildcat Windbreaker.

THE COURT: I remember this gentleman sitting back here.

MR. SELF: Mr. Meeks.

THE COURT: Mr. Meeks, David should have told him - - he thought he talked his way out of this too.

Did he state that - - if alcohol was involved he would disagree with the evidence ?

MR. HARWELL: He did, your Honor.

THE COURT: Most of them said, you know, they would consider the evidence, he didn't like alcohol - -

MR. WALBOURN: (Interrupting) There were about six, your Honor, I respectfully submit that when Mr. Adams asked the follow-up question at the Court's suggestion, some of them said it may give me a negative impression, but I think I could hear the evidence.

About six of them said

regardless what the evidence is, alcohol - - in fact, Ms. Field, the lady that sat in the back row, was very emphatic about it.

That if there was going to be alcohol I can't try this case.

THE COURT: I didn't think there were six of them.

MR. HARWELL: I got them listed, Judge.

THE COURT: What is their number?

MR. HARWELL: No. 82 may the Court please, No. 68, No. 76 Larry Jones, No. 56 - -

THE COURT: (Interrupting) Let me go over that again on the alcohol. That was - -

MR. HARWELL: (Interrupting) 82, Judge.

THE COURT: All right, 82.

MR. HARWELL: 68.

MR. SELF: I disagree with 82. I don't think that has- -

MR. WALBOURN: (Interrupting) I do, your Honor. I have an emphatic recollection it was alcohol. Back row. I recall it clearly, your Honor.

THE COURT: All right. 82. Let's see, could go contrary to the evidence. Okay.

68?

MR. HARWELL: 68, 76 - - gentlemen, somebody is going to have to help me.

THE COURT: 68 said she could not go contrary to the evidence.

MR. HARWELL: Would not go contrary to the evidence?

THE COURT: 76 said he would. 76 said he would, that is right.

MR. HARWELL: Now, 79, Ms. Sullivan - -

THE COURT: (Interrupting) She said she wouldn't go contrary.

MR. ADAMS: I think in response to my follow-up question, I think she said she wouldn't go contrary to the evidence, but she would sure go into a negative field.

MR. PAFUNDA: That is not a correct recollection.

THE COURT: I'm not going to excuse on that feeling, gentlemen. If they said they won't go contrary to the evidence - -

MR. HARWELL: (Interrupting) Judge, would it be appropriate to ask her, if we take any proof, to dislodge that negative feeling - - I would hate with all the trouble this Court has

gone through and all the staff has gone through to have a problem with that Jury selection.

THE COURT: Well, gentlemen, this isn't a question whether they like alcohol or not. Some like to have a little toddy, and some don't.

MR. HARWELL: You don't want to submit whether they do or not with this Jury panel, do you?

THE COURT: No. But the Court is going to accept their statement. If they won't go contrary to the evidence, I will accept it.

MR. HARWELL: I have got Mr. 66 that will go contrary, Lovins - -

THE COURT: (Interrupting) Okay. That is fine, yes, sir.

MR. HARWELL: And then No. 62 - -

MR. ADAMS: (Interrupting) She has already gone.

MR. HARWELL: Carol Sandlin which I think has already gone.

THE COURT: Right.

MR. HARWELL: And No. 56, which is likewise already gone, Ms. Edwards.

THE COURT: Well, Just because you gentlemen don't agree doesn't mean that the Court

is, the Court can go contrary to you gentlemen.

MR. HARWELL: Okay. She said, No. 1 - - THE COURT: (Interrupting) 56. What do we have on 56?

MR. HARWELL: She said that drinking would make her go contrary to the evidence.

THE COURT: What else?

MR. HARWELL: Judge, she is the lady that said that she thought the gun laws ought to be changed. In addition to that - -

THE COURT: (Interrupting) I remember the young lady.

MR. HARWELL: She had a problem with, may the Court please, with a baby-sitting problem.

THE COURT: All right. 56 is gone.

MR. HARWELL: Then she had - -

THE COURT: (Interrupting) 56 is gone, so we can go on.

MR. HARWELL: I am sure glad for that, Judge.

THE COURT: I don't know that she had some relationship with the Deskins law firm. That wasn't clear?

MR. PAFUNDA: No.

MR. HARWELL: Judge, is 65 gone?

THE COURT: We have 56 gone, 62 gone, 65 gone, 82 gone, 76 gone - - all right. Let's see, 56 will be excused.

MR. HARWELL: Right, sir.

THE COURT: 62 will be excused. 65 will be excused. 66 will be excused. 76 will be excused.

MR. ADAMS: If it please the Court about 75, I believe he indicated some antilacest and antialcohol - -

MR. HARWELL: (Interrupting) He said he was antialcohol, Judge, and he also said his first cousin was ATFH in Lexington, and we have been told that he is a supervisor to some of the possible government witnesses, the first cousin.

THE COURT: We mentioned that and they said notwithstanding all of that they thought - - MR. HARWELL: (Interrupting) Did you believe it?

THE COURT: Let me say - -

MR. DAUSE: (Interrupting) He said it would not by itself govern his opinion as to whether or not it would weigh any of the evidence.

THE COURT: This is what, 75?

MR. ADAMS: I think it had a bearing, because of all these kids.

MR. HARWELL: Young people.

THE COURT: We have it he would not go contrary to the evidence, gentlemen.

MR. ROWLAND: I don't want to give up on Lacy yet, Lacy is an owner of a nonunion coal mine, his uncle worked in the Pentagon, first cousin or something, he is the head of the ATFH office, and we understand in Lexington, and he said he worked with children and alcohol - - is he the one that said that - -

MR. HARWELL: (Interrupting) (Nodding head affirmative)

MR. ROWLAND: What about his brother?

MR. ADAMS: He is the F.H.A. that is over - -

THE COURT: (Interrupting) Yes. He says - - you are saying that his implied bias, he says there is no actual bias, he said he can fairly try the case based upon the evidence.

MR. ROWLAND: I guess we are saying the cumulative effects of all of those things could leave him much room for any discernment as the evidence, because he has too many areas where he

has already decided.

THE COURT: Thank you gentlemen. You have got it on the record.

MR. HARWELL: Judge, from 75, 87, the Government - -

THE COURT: (Interrupting) Let's see, 76 - -

MR. HARWELL: (Interrupting) 76 you struck.

THE COURT: And 82?

MR. HARWELL: 82, your Honor, yes.

THE COURT: Now - -

MR. HARWELL: (Interrupting) Your Honor, that leaves 87. Well, the Government asks for 84, we didn't, then they asked for 87 challenged for cause.

THE COURT: Let's go down this first. On 22, what is the problem on 22?

MR. DAUSE: Your Honor if I may, I think the comments address themselves to the Jurors 22 and 23 almost identically.

Both of these gentlemen are from Floyd County. They both are from the area where the Ray-Mac mine site is. Juror 23 said he

lives two miles from it. They both know a substantial number of Defendants, a substantial number of the defense witnesses, and a substantial number of the Government's witnesses.

They both have had conversations with persons outside the Court; and Juror No. 22 said he read articles in the Floyd County Times concerning it.

It is our position that all of those are cumulative effects.

THE COURT: Let me ask you, isn't this the - - just the counterpart of the gentleman that is actually a nonunion miner?

MR. HARWELL: Exactly.

THE COURT: We are going to leave them all in, gentlemen.

MR. DAUSE: If I may say, and recognize your ruling, Judge, that the difference is the personal involvement of Jurors 22 and 23, as opposed to Mr. Lacy, where there is a presumption that he is going to be biased because of contact.

He has no personal contact with the facts and subject matter of the case.

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He has contacts with Mr. Lacy, referring with Government employees.

Jurors 22 and 23 have had multiple personal contacts with the which would cause them an apparent bias, where Mr. Lacy does not have.

Mr. Lacy has answered to no personal contact with this case, and I would submit that is the difference, your Honor.

THE COURT: I recognize the thrust of your arguments, sir, and regretfully I can't agree with you.

But as to 22, 23 and - - is that other gentleman, 75 which you are talking about - -

MR. HARWELL: (Interrupting) We asked for Mr. Lacy, who is 75, and your Honor said he wasn't challenged for cause.

THE COURT: Right. 75 is the one that owns the nonunion mines, as well as the - -

MR. HARWELL: (Interrupting) Right.

THE COURT: Now, overruled as to 75, 22 and 23.

Now, what about 26?

MR. HARWELL: That, may the Court

please, is Ms. Ousley, Ms. Booten, and the basis for that, may the Court please, is that she is a school teacher who said that her students would have severe problems given the length of this absence, and I will be frank with you, Judge, I can't speak for the Government, but I have a hunch somebody who is going to have really severe professional problems because of the length of this is going to be an unhappy Juror, and not be likely to pay any attention to the Government's case or our case.

I guess that is part of the reason I felt sorry for her.

THE COURT: Well, I am not going to excuse her. I realize that this - - from the Court's personal family, that is my father and mother, brother, my wife, there has been over two hundred years of teaching experience, one family.

MR. HARWELL: In your family, Judge?

THE COURT: And that would be my mother and my father and my wife, my brother and her brother - - well, she has three brothers that teach, but - - and the Court calls schooling - - so I'm sympathetic with teachers.

But also am faced with

getting a fair and impartial Juror, and she is an intelligent Juror, an educated Juror, and I guess I am thinking about the financial crunch on her won't possibly be as bad as it is for this fellow who hauls the load of coal and gets paid by the load, gentlemen.

MR. HARWELL: Let me ask you a question. I was under the impression that the law provided, number one, the employer could not deprive an individual on jury duty a job; and number two, he could not take punitive action by cutting his compensation, giving him no pay while he is off, unless it was vacation and hospital time.

THE COURT: No. Maybe I am wrong, but now, it is my feeling that they can't deprive him of his job.

MR. HARWELL: Can't deprive him.

THE COURT: But if he isn't there, they are not required to independently pay him. Most of these companies, that is voluntary, am I wrong?

MR. HARWELL: Judge, I have seen a couple of people locked up - - employer's locked up for contempt by virtue of not paying the employees - - the way I understand the law, and my research is you don't have to pay full pay, but the employer

must pay an amount added to what is received by the Jury pay. He is not penalized by the service.

THE COURT: I am not - -

MR. HARWELL: (Interrupting) Your Honor knows better than I, I am just curious.

THE COURT: No, I don't. As we say, that is why we call it the practice of law, because none of us knows all of it, we are still practicing.

MR. PAFUNDA: If it please the Court, I think there is a recent case that a man can be fired in Kentucky.

THE COURT: Fired?

MR. PAFUNDA: Yes, because he is engaged - - if his employer asks him to do any illegal act and he doesn't do it and the employer fires him, then he can be sued.

If you were here on Jury duty, I believe there is recent case laws in the law summary of a couple of months ago that - - Mr. Meeks may be out of that - -

THE COURT: (Interrupting) Said they could be fired?

MR. PAFUNDA: It would be interesting

in whose law office he goes to - -

THE COURT: (Interrupting) Well, I don't think he can be fired. We are not speaking of being fired, we are speaking of depriving him of his compensation that he only gets what he gets as a Juror.

MR. PAFUNDA: He would like to go back to the job, I believe.

THE COURT: Right. But I think the Federal Law will make sure he has his job coming back.

But now, we are speaking of compensation, and I could be in error, but I think we are going to let the teacher stay.

MR. HARWELL: Okay, your Honor. We are going to let the teacher stay.

THE COURT: 44.

MR. HARWELL: 44.

THE COURT: Yes, sir.

MR. HARWELL: May it please the Court, Mrs. Faulkner. May your Honor please, the basis for that is that she said that her husband has to see a physician by virtue of his medical problem, and I don't remember what it was, but he has to go on Mondays and Wednesdays every week, and I

fear, your Honor, that - -

THE COURT: (Interrupting) Did she say he was in a cast, or something?

MR. HARWELL: Both double full cast, your Honor.

THE COURT: Well, we will excuse her.

MR. HARWELL: All right, sir.

THE COURT: 58.

MR. HARWELL: If the Court please, insofar as 58 is concerned - -

THE COURT: (Interrupting) You disagree, let the Government state the reasons for that, then you can respond.

MR. DAUSE: Your Honor, there are multiple reasons for Juror 58. The first is he is an individual trucker who has been out of work for a year, and it is just in the past few months he has returned to that work, that is the first reason.

And I think beyond any economic impact of this on that gentleman, that it would probably serve to detract him considerably to being a Juror in this case.

THE COURT: Let's hear what Mr. Harwell has to say.

MR. DAUSE: I have other reasons.

THE COURT: Yes, sir.

MR. DAUSE: If your Honor please, in addition to that, the gentleman, Juror No. 58 said that he saw a psychiatryst at age two, and that I guess that would have some impact upon his thinking about psychiatrists.

That is under Mr. Thomas's questions.

Additionally, your Honor, Mr. Thomas, and I don't know if the record caught this comment or not, but I think it did, and I am certain that I caught it.

Mr. Thomas made the comment, "I hope none of you hold it against me, because I am getting up here to ask these questions."

Now, I believe this gentleman said that he would. So I thought that my reasons - -

MR. HARWELL: (Interrupting) And my response is that that is true that Mr. Thomas would have a challenge for cause, but I don't think he would lie to the government, Judge.

THE COURT: Go ahead.

MR. HARWELL: I'm trying to be candid

with the Court. I think in my own mind's eye, to classify Mr. Engle sort of like No. 26 and Mrs. Booten, I don't really think that the economic situation, the employment situation, given your Honor's ruling on her, justifies on this one, you said he could hear the evidence and be fair about it, and we don't agree on him, Judge.

THE COURT: I am going to excuse 58, gentlemen.

MR. HARWELL: All right, sir.

THE COURT: I'm excusing him on he said he has been out of work, starting back, if he don't get the money he doesn't get, gentlemen, and that is kind of ironic.

Here you gentlemen are giving up your money and you are in here, and I'm excusing him and I wouldn't excuse you.

I am just being inconsistent, gentlemen.

MR. SELF: Your Honor, I think this is the same problem we have had with some of these Jurors with their transportation, and during the middle of the trial not shown up and caused the Court the loss of a daily trial and other Jurors - - and he also has stated that one of the reasons

he had no transportation - - I realize the Court - - THE COURT: (Interrupting) I'm going to stop this transportation bit mighty quick. The Government pays for - -

MR. HARWELL: I think you stopped a lot of them when you said you were going to send the Marshall out to arrest them for being late coming back from lunch.

It got my attention, Judge.

THE COURT: No gentlemen, we have to get on with this. We have got twenty minutes, gentlemen, and we want to tell this Jury so they can - - we have got some that has got a hundred miles to go, gentlemen, and we want them to get on the road before 5:00 o'clock.

What about 70?

MR. SPENCER: 67.

MR. HARWELL: 67, may the Court please, that was Mr. Jack Steele, and first of all, he is an employee of the Federal Government who is prosecuting this case.

Secondly, he said that he wanted the Defendants to testify, he was the only one that had answered that he said he would be more

comfortable if they testified.

THE COURT: Did he say he had a ride?

MR. HARWELL: I don't have a note, and I don't remember.

MR. WALBOURN: He testified he wanted them to testify.

MR. KEHRLI: Your Honor, my recollection is he felt more comfortable if they testified, but he did not respond that he would hold it against them.

MR. WALBOURN: There was other ones that followed that up. Mr. Steele is the gentleman with the coat and tie in the middle, he was a former Park Ranger, and he said, "I want them to follow up."

And Mr. Adams or Mr. Thomas or Mr. Adams even followed that up and said, "I want them to testify.

MR. DAUSE: I disagree with Mr. Walbourn's thinking on that characterization.

THE COURT: 67 we will ask him, gentlemen.

All right. 68?

MR. HARWELL: If the Court please, so

far as 68 is concerned, that is Cora Webb, and I have a note, your Honor that indicates that drinking was a problem. I don't remember if she is one who said that drinking was such a problem that she would - -

THE COURT: (Interrupting) Go contrary?

MR. HARWELL: Go contrary to that, but she is relating that she has a father that lives with her, if the Court please, and asks your Honor to let her off because of her father. There was no one else to take care of him, my notes reflect.

THE COURT: You said she wouldn't go contrary to the evidence. Let's see about her father.

*** *** ***

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THE COURT: What is her age? What is her education?

MR. SPENCER: Your Honor, she works at Hobbs Five and Ten Store there and her father I guess is seventy or older.

THE COURT: What is her age, and how far does she have to travel?

MR. HARWELL: She was born in 1938, if the Court please.

MR. SPENCER: She travels from here to Paintsville.

MR. HARWELL: She is from Johnson County. She works in Paintsville. She takes care of her seventy-nine-year-old father. She has problems with her eyes, if the Court please.

THE COURT: That is sixty-eight. All right, what is seventy?

MR. HARWELL: I beg your pardon, Judge.

THE COURT: Seventy.

MR. DAUSE: That is one of ours, Your Honor. That is Mr. Martin and an elderly gentleman who was late in returning. On the merits of Mr. Martin's qualifications, the Government has no qualms.

THE COURT: I am going to excuse

Mr. Martin.

MR. SPENCER: Did you excuse sixty-eight, Judge?

THE COURT: I excused sixty-eight, too. I excused seventy. He just didn't return back. At the end of that period he was sitting downstairs. That kind of indicates confusion, not hearing, or something.

MR. PAFUNDA: Your Honor, he has been on a previous jury panel if I am not mistaken. I don't think he is a confused man as he portrayed this afternoon. I kind of like Mr. Martin.

THE COURT: I like Mr. Martin, too.

MR. PAFUNDA: I think he was inadvertently late, and for a few moments was rattled. The Marshal asked him to stand and so on and so forth.

THE COURT: And at times--at times he would answer--he would answer when we talked in a low voice; and at other times, he doesn't appear so. It is apparently one of those things that comes and goes.

Gentlemen, I think you want someone sitting who is going to listen to the evidence and won't in and out, and who is

going to hear it. So I am going to excuse him.

MR. PAFUNDA: I may not want him to hear everything, Your Honor.

THE COURT: Let's go now to seventy-four, gentlemen.

MR. DAUSE: Your Honor, seventy-four is a lady that has the back problems and said she would have difficulties sitting through the trial. That is the reason the United States moves to strike her.

MR. HARWELL: May the Court please, she said that she was on constant medication and it was hard for her to sit through one day much less multiple days. Plus she was having regular treatment. I didn't make a note whether it was weekly or daily or what. But she has a medical problem.

THE COURT: Well, I think the medication-- We can go into that, tranquilizers or whatever it is.

MR. ROWLAND: She also has a full-time job. You know, that is a contradiction there.

THE COURT: What is she working at?

MR. ROWLAND: She works at a medical equipment supply.

MR. HARWELL: I understand that was a

sales position that didn't require-- I don't know.

MR. WALBOURN: Perhaps she gets her therapy at her place of work. I don't know.

THE COURT: All right. What about seventy-nine?

MR. HARWELL: I beg your pardon?

THE COURT: Seventy-nine.

MR. HARWELL: Judge, did you rule on seventy-four, sir?

THE COURT: Yes. I will reluctantly excuse her.

Seventy-nine.

MR. HARWELL: Seventy-nine-- May the Court please, someone is going to have to assist me. She said she had a problem with drinking. And my notes reflect, Judge, drinking may go contrary to evidence, but I am not sure if that is pointing to seventy-nine or eighty-two. Somebody is going to have to assist the Court on that.

MR. DAUSE: That is eighty-two, Mr. Harwell.

THE COURT: Seventy-nine said-- The Clerk said that she said it wouldn't go contrary to the evidence. Anyone have that different?

MR. HARWELL: Okay, then my note refers

to eighty-two, Judge.

THE COURT: Eighty-two. What about eighty-four, gentlemen? Eighty-two has been excused.

MR. HARWELL: Eighty-four ?

THE COURT: Yes, sir.

MR. DAUSE: That is one of ours, Your Honor.

THE COURT: All right. What do you say about it. Let's go on. Eighty-four, eighty-seven, eighty-eight.

MR. DAUSE: All right. Your Honor, eighty-four is juror, John Chaney. He is well acquainted with Frank Scott, one of the witnesses. The thing that disturbed me the most about Mr. Chaney, Your Honor, in addition to the fact that he has engaged in multiple wildcat strikes which may bring bias to his mind--

THE COURT: [Interrupting] Oh, that is the little fellow from Scott's Branch.

MR. PAFUNDA: If it please Your HOnor, Franklin Scott--and the Court can check its own records--is secretary of that local union that just paid a contempt fine about a week ago of a thousand dollars.

THE COURT: We will say you and I are acquainted with Scott's Branch.

MR. PAFUNDA: We could say that, Your Honor. We have got Otis Slone here for the goose and Mr. Chaney for the gander.

MR. DAUSE: Your Honor, an additional comment that I have, and I may have mischaracterized the conversation, and perhaps I misremembered also. But I do not believe that Mr. Chaney said anything about not knowing any of the attorneys when Your Honor asked that question. I got the impression and he and Mr. Pafunda knew one another. Now, only because of the interchange. Now, if my impression is correct, I think that is something --

THE COURT: (Interrupting) Let me make this on the record. The reason that I say that Mr. Pafunda and I are acquainted with Scott's Branch, Mr. Pafunda is the attorney for the local at Scott's Branch. This Court has held numerous PRO's on Scott's Branch. Scott's Branch I think was found in contempt twice.

MR. PAFUNDA: That is correct, Your Honor.

MR. DAUSE: I might add, Your Honor, I am not trying to imply anything wrong as far as

Mr. Pafunda goes. The interplay --

THE COURT: (Interrupting) Now, let me say this. I think Mr. Pafunda would agree that I think the difficulty at Scott's Branch has not been overall membership of the local. It has been several individual members I think of the local. Am I in error, Mr. Pafunda?

MR. PAFUNDA: We argue that every time.

THE COURT: And I think I'm going to permit 84 --

MR. PAFUNDA: (Interrupting) I think to direct to Mr. Dause question, which is a legitimate question, that prior to today, if I had met Mr. Chaney, I do not recall it. And to answer his question even further so we won't have any doubt as to my representations here today, when we do come to Federal Court, it is just with the local union officers. And there is times when we come in with a whole line of three hundred men. They may know me, but I don't know them.

MR. DAUSE: All right, Your Honor.

THE COURT: All right. 87 --

MR. HARWELL: (Interrupting) Your Honor, what did you do on 84?

THE COURT: 84 we're going to keep.

MR. HARWELL: Keep. All right, 87, Your Honor, that is the one that the Government -- the Government challenges for cause. And likewise we challenge for cause.

THE COURT: All right, give me the reasons why both of you --

MR. DAUSE: (Interrupting) Mr. Meeks is an employee that works the third shift mine that was sitting in the back, Your Honor.

THE COURT: All right.

MR. HARWELL: He said contrary to evidence about drinking I think. I am pretty sure he did.

THE COURT: I will excuse 87. What about 88?

MR. DAUSE: 88, Your Honor, I think that we agreed on making that recommendation. She is the lady that has the twelve year old handicapped child that goes to the LBJ School. That was our basic reason.

THE COURT: I agree on that.

All right, gentlemen, the Court is going to excuse 44, 56, 58, 62, 65,66, 70, 74, 76, 82, 87, and 88.

Now, is there any that I

overlooked?

MR. HARWELL: 68, you said, Your Honor.

THE COURT: All right, 68.

MR. HARWELL: And, if the Court please, you said 70?

THE COURT: Yes, sir.

MR. HARWELL: Sua Sponte on the Court's motion I think, Judge.

THE COURT: Yes.

MR. HARWELL: Sua Sponte-70.

THE COURT: Let the Clerk call off and see what we have.

THE CLERK OF THE COURT: Okay. I have marked them, your Honor as you ruled.

I have No. 44 as excused. No. 56, No. 58, No. 62, No. 65, No. 66, No. 68, No. 70, No. 74, 76, 82, 87, and 88.

THE COURT: All right. Now, have I overlooked one that we haven't discussed, gentlemen?

All right. Let's bring this Jury in. Let's let the Clerk announce which ones are excused. Then you will advise this panel to return Wednesday morning at 9:00 o'clock.

And then after they are excused, then we can discuss this matter a little more.

MR. SELF: Judge, with this number of Jurors excused - - I don't know how many it is at this point in time. It looks like we are going

to half to - - I surmise you are going to have to call in an additional Jurors.

THE COURT: Well, she can advise them on the telephone.

MR. SELF: That is what I am saying. Be sure to advise them that tomorrow night to call the code-a-phone before they do come back.

THE COURT: Yes, tell them to be sure to call tomorrow night. But unless they are advised to the contrary, they report back Wednesday morning at 9:00 O'clock.

Gentlemen, I will tell you this in advance. We now have thirty. We started out with fifty-six. which we would need twenty-six Jurors to get back to 56.

I'm going to have the Clerk call Lexington. And they will subpoena 51 Jurors to get new Jurors to appear here Wednesday morning at 9:00 o'clock. That will take care of what we lost today, and hopefully some of what we lose tomorrow.

MR. SELF: How many are you leaving as far as tomorrow, your Honor?

THE COURT: Well, that leaves us a cushion of twenty-six.

MR. SELF: Don't we have to have eighty-four to begin with?

THE COURT: No. We started out with fifty-six today. We started out with fifty-six.

Bring them in, Mr. Marshall. We can discuss this later on down the road.

Ladies and gentlemen of the Jury, I don't know what President it was or had the sign that says the buck stops here. But we have heard arguments of counsel, and a decision has been made as to which **Jurors** would be excused. That is the Court's decision.

Don't get mad at the parties because the buck stops here, and I am the one that made the decision.

Madam Clerk, please tell the Jury who may be excused and when the remainder will report back.

THE CLERK OF THE COURT: Yes, your Honor. Ladies and gentlemen, I will call your name as to those who are excused and do not need to report back.

Those are the names I will call. If your name is not called, you

are to report here on Wednesday morning at 9:00 o'clock sharp. Okay, so please listen carefully.

The following Jurors have been excused and do not need to return to further service during trial:

Juror No. 44, Betty Ann Faulkner. Juror No. 56, Dinah Ray Edwards. Juror No. 58, Rufus Irl Engle. Juror No. 62, Carolyn Sandlin. Juror No. 65, James S. Mooney, Jr. Juror No. 66, Phillip Lovins. Juror No. 68, Cora E. Webb. Juror No. 70, Charles E. Martin. Juror No. 74, Deborah K. Smith. Juror No. 76, Larry Jones.

Juror No. 82, Geraldine Sturgill Fields. Juror No. 87, William Ray Meeks. Juoror No. 88, Betty L. Stamper Turner.

These people that I called off - do not need to report back. The remainder of the Jurors, you do need to report on Wednesday morning. And as always, check your message on Tuesday evening after 6:00 P.M. before reporting in; otherwise, we will see you on Wednesday morning at 9:00 o'clock.

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MR. HARWELL: May the Court please, may I approach the Bench for just a moment before the jury is excused?

THE COURT: Yes.

MR. HARWELL: I understood you to say that you were going to ask some questions of Mr. Steele, Juror No. 67, who has been employed at the Army Corps of Engineers. And I think you wanted to clarify whether or not -- whether or not there was impact of the witness not taking the stand or not.

THE COURT: All right, that was Mr. Steele.

MR. HARWELL: Yes, Your Honor.

THE COURT: Mr. Steele, please stand. Mr. Steele, you understand I think in my original statement of the principles of law regarding a trial that a person has the right to take the stand or not take the stand. That is a personal decision. You understand that, don't you?

MR. STEELE: Yes.

THE COURT: You understand that it is a principle of law the fact that if he elects not to take the stand, that may not be held against him, and that isn't evidence.

Now, let me ask you this, sir: Do you think -- do you disagree with that principle, and are you willing to accept that as a principle of law to try this case?

MR. STEELE: I accept it as a principle of law.

THE COURT: Thank you, sir. Let me explain one more thing before you leave. We have a metal detector outside. And I jokingly made the statement that this is like the thing of the slot machine to keep the slugs from being used. We don't permit slugs in the courtroom. This metal detector is something we haven't had. We have been trying to get it for a long time. And anything with the Government is very slow. And we are just now getting it.

So it is nothing special. There isn't anything extraordinary about this case. This is a simple case.

And I have a statue which I would like to bring in here. It is the Goddess of Justice. She has a blindfold around her head. She is holding a pair of scales out, and of course a sword. That means that the thing is being tried according to the weight, the evidence, the blind to

race, color, or creed. And that is what we are doing here. This case isn't anything special. It is another case. It is special in this: It is special to these gentlemen. It is special to those gentlemen. It is special because it is to them individually. And you are -- what they are asking for is a fair and impartial trial. And that is what we are asking for you to do. And that is what we think you will do.

MR. HARWELL: Your Honor, may I sit down?

THE COURT: Yes, sir.

All right. You understand then, you know, the metal detector doesn't mean anything at all. It is going to be here from now on, and is nothing special.

All right. Madam Clerk, would you please excuse the members of the jury?

THE CLERK OF THE COURT: Okay, Your Honor. Ladies and gentlemen, we thank you for your patience today, for your cooperation, and you are free to leave at this time. Please leave quietly, and we will se the remainder of you on Wednesday morning at nine o'clock. Please check your message before reporting in on Tuesday evening.

Thank you very much, travel safely home.

THE COURT: Let the Court apologize to these Defendants. I was requested to admonish the jury with regard to the metal detector so that they wouldn't think there was something special or foreboding attached to this trial. And when I told them that this wasn't anything special, that is what I meant. I realize it is special to you gentlemen. And if the Court were sitting over there, it would special to him. There is nothing wrong with it being special to you. I was just merely trying to tell the jury that we are not wanting them to think that this is something foreboding or something like that. That is all.

All right. Yes, sir. Now, Madam Clerk, would you please -- I was advised that we now have twenty-nine in the panel, and I ask you, Madam Clerk, to subpoena by telephone, fifty-four additional jurors to be here on Wednesday morning. Now, we will know tomorrow whether or not they will be here on this thing. And we can make arrangements accordingly. And if we can't, it will all work out, gentlemen. We will be back here in the morning at nine o'clock to proceed with the

other jurors.

MR. HARWELL: Yes, sir. Your Honor, there is one other thing that I don't know the Court's feelings on, but I would like to get the Court's direction about. I think, Your Honor, that the jury questionnaire, which may have created some additional problems for Ms. England's staffs; but nonetheless, step this up or we would have been here all day. A lot of questions. I'm wondering, if the Court please, if it would not be proper as to those who are coming in on Wednesday morning to have that questionnaire passed out. If you took an hour's break and let us look over it, it would save a lot of questions.

THE COURT: Well, of course, they will have to fill those out after they come in.

MR. HARWELL: That is all right. My thinking is this, Your Honor: Rather than asking each -- asking all those questions or many of those questions which customarily we do in the voir dire -- and that does save some time. I can't speak for the Government, although I think they endorse the idea.

THE COURT: Let's think about it tomorrow.

MR. HARWELL: All right.

THE COURT: Because it is my understanding that when she calls, the subpoenas are issued. When they come in, then the subpoenas are given to them. If they don't respond to the telephone call, then the Marshall goes out with a subpoena to serve them.

So we have no assurance that those fifty-four are going to be here Wednesday morning.

So everyone think of that, and tomorrow maybe we can think of something which may make it easier.

MR. KEHRLI: Your Honor, today the United States has filed proposed jury instructions. Because we did not want to overburden the Clerk's office with photocopy and xeroxing, we have not made a copy for each defense counsel at this point. We do have two copies available in the office downstairs if they would like to see it. We have a photocopier arriving here on Wednesday. At that point, we will make copies for each defense counsel and distribute them.

THE COURT: All right. Marshall, we will be in adjournment until tomorrow morning at

nine o'clock.

THE MARSHALL OF THE COURT: All rise. This court is adjourned until nine A.M. tomorrow.

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STATE OF KENTUCKY)
)
) SS.
COUNTY OF JEFFERSON)

WE, BRUCE D. HANDY, WILLIAM J. KALBFLEISCH, & JAMES E. EDMONDSON, 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 proceedings were reduced to short-hand writing by us in the presence of the Court; 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 9th day of January, 1984.

Bruce D. Handy
Notary Public

James E Edmondson
Notary Public

William J. Kalbfleisch
Notary Public
State at Large, Kentucky