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 10, 1984

VOLUME THREE

Dale Soergel Moore Shaw & Associates
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A P P E A R A N C E S

For the United States of America:

THOMAS L. SELF, ESQ.
Assistant U.S. Attorney
CHARLES L. DAUSE, ESQ.
Assistant U.S. Attorney
RANDALL KEHRLI, ESQ.

For the Defendant Edgar A. Jones:

AUBREY B. HARWELL, JR., ESQ.
ALBERT F. MOORE, ESQ.
JERRY A. PATTON, ESQ.

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

E. J. WALBOURN, III, ESQ.

For the Defendant Tim Milan:

DAN ROWLAND, ESQ.

For the Defendant Eugene Tackett:

DAVID THOMAS, ESQ.

For the Defendant Pebo Gayheart:

THOMAS K. HOLLON, ESQ.

For the Defendant Morris Ray Hall:

FRANCIS DALE BURKE, ESQ.

For the Defendant Donahue Halbert:

HERSHEL BRANSEN, JR., ESQ.

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.

REPORTER'S NOTE: The Court was called to order.

THE COURT: Will the Reporter please come up here, Mr. Spencer and Mr. Mosley, would you please come up here.

REPORTER'S NOTE: At this time the Reporters, Mr. Spencer and Mr. Linville Mosley approached the Bench and the following was heard:

THE COURT: I understand he has a kidney problem and occasionally he has to go to the bathroom. Here is what I am wanting him to realize.

He has the right to be present and does he want the entire proceeding interrupted, or will he waive his presence while he goes to the bathroom while you are here?

MR. SPENCER: I will advise him to.

THE COURT: Do you understand what I am asking, Mr. Mosley?

MR. MOSLEY: Not really.

MR. SPENCER: May I step outside and explain it to him, your Honor?

THE COURT: Sure.

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REPORTER'S NOTE: At this point Mr. Spencer and Mr. Mosley left the Court Room and upon reappearing the folowing was heard:

MR. SPENCER: Let the record reflect I took Mr. Linville Mosley outside and explained to him and he wants to answer the Court that question.

MR. MOSLEY: Just if I am not here it is okay.

THE COURT: Okay. But on the record what are we talking about here, Linville?

On the record, you tell me what we are talking about.

MR. MOSLEY: I don't need the Court to stop on my behalf.

THE COURT: To stop on your behalf - -

MR. MOSLEY: Won't stop on my behalf.

THE COURT: When?

MR. MOSLEY: If I have to go to the restroom, just continue.

THE COURT: Now, it is understood your attorney is going to be here in your place?

MR. MOSLEY: Yes.

THE COURT: Now, if it happens to where

you and your attorney both have to be absent at the same time, you need to advise the Court because - -

MR. SPENCER: (Interrupting) I have no intention of being absent unless it is an emergency.

THE COURT: If it is, we must be advised because we have to stop at that point.

MR. SPENCER: Yes, sir.

THE COURT: You understand?

MR. MOSLEY: Yes, your Honor.

REPORTER'S NOTE: End of Bench conference.

THE COURT: Are all counsel and all Defendants present?

MR. HARWELL: If the Court please, all the Defendants are present and all counsel are present.

THE COURT: Let's do this, I don't think the Jury has heard the case called, this prospective Jury, so Madam Clerk, please call the matter which is on trial.

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, and Morris Ray Hall.

THE COURT: All right. Gentlemen, please note your appearances for the purpose of the record, stating whom you represent, and whether or not your client is present.

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 representing the United States.

MR. DAUSE: If your Honor please, Charles Dause, on behalf of the United States.

MR. HARWELL: May your Honor please, Aubrey Harwell, representing Mr. Edgar Jones, who is present, your Honor.

MR. MOORE: May it please the Court, Albert Moore with Dale and Harwell, also on behalf of Edgar Jones.

MR. WALBOURN: Good morning, your Honor, E. J. Walbourn, on behalf of Mose Mead, Benny Caudill, Harold Moore, Hermit Newsome, all of

whom are present in the Court Room.

MR. PAFUNDA: May it please the Court, Bernard Pafunda, on behalf of Mr. Drexil Hall and Mr. Austin "Bo" Moore, and they are present, your Honor and we are ready for trial.

MR. SPENCER: May it please the Court, your Honor, Ed Spencer present, representing Linville Mosley, who is present.

MR. PATTON: Jerry Patton, your Honor, counsel for Edgar Jones.

MR. ADAMS: Eldred Adams, your Honor, for Ranny Blankenship who is present in the Court Room.

MR. ROWLAND: May it please the Court, Dan Rowland, on behalf of Tim Milam who is present in the Court.

MR. BRANSEN: May it please the Court, Hershel Bransen, representing, your Honor, Donahue Halbert who is present.

MR. HOLLON: Good morning your Honor, Tom Hollon on behalf of Pebo Gayheart and Morris Ray Hall, who are present in the Court Room.

MR. THOMAS: Your Honor, David Thomas, representing Eugene Tackett, who is here.

MR. KIRKLAND: May it please the Court,

William Kirkland, and I represent Jason Moore, German Stumbo, Kenneth Rolland, Raymond Hall and Teddy Kinney, and all of whom are here today, your Honor.

THE COURT: Madam Clerk, please call the roll of the Jury.

THE CLERK OF THE COURT: Yes, your Honor. Ladies and gentlemen, when I call your name and number, please stand very briefly, and then you again may be seated. Please answer present when your name is called.

Juror No. 93

Jean Marie Dorton.

MS. DORTON: Present.

THE CLERK OF THE COURT: Juror No. 95, Clifford Spencer.

MR. SPENCER: Present.

THE COURT: Let me stop you just a moment, Madam.

Now, if all of you note that you are seated numerically, the attorneys have a diagram with a number identifying each person who is seated in the place they are seated.

In the event we have a recess, all of you return back to your same seat.

Thank you..

THE CLERK OF THE COURT: Juror No. 96, Della Spicer.

MS. SPICER: Present.

THE CLERK OF THE COURT: Juror No. 100, Wilma L. Moore.

MS. MOORE: Present.

THE CLERK OF THE COURT: Juror No. 104, Jeanetta Adkins.

MS. ADKINS: Present.

THE CLERK OF THE COURT: Juror No. 105, Anna Koerner Lykins.

MS. LYKINS: Present.

THE CLERK OF THE COURT: Juror No. 106, Marie C. Vance.

MS. VANCE: Present.

THE CLERK OF THE COURT: Juror No. 108, Etta Brewer Walker.

MS. WALKER: Present.

THE CLERK OF THE COURT: Juror No. 109, Timothy Damron.

MR. DAMRON: Present.

THE CLERK OF THE COURT: Juror No. 110, James Crum.

MR. CRUM: Present.

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THE CLERK OF THE COURT: Juror No. 111, Jackie Justice Adkins.

MS. ADKINS: Present.

THE CLERK OF THE COURT: Juror No. 112, James E. Addison.

MR. ADDISON: Present.

THE CLERK OF THE COURT: Juror No. 114, Katherine G. Smith.

MS. SMITH: Present.

THE CLERK OF THE COURT: Juror No. 115, Aaron Salyer.

MR. SALYER: Present.

THE CLERK OF THE COURT: Juror No. 117, Mary Lee Curry.

MS. CURRY: Present.

THE CLERK OF THE COURT: Juror No. 118, Ollie M. Wallen.

MR. WALLEN: Present.

THE CLERK OF THE COURT: Juror No. 119, James Ray Blankenship.

MR. BLANKENSHIP: Present.

THE CLERK OF THE COURT: Juror No. 120, Ella Elizabeth Burchett.

MS. BURCHETT: Present.

THE CLERK OF THE COURT: Juror No. 122,

Doris Butcher.

MS. BUTCHER: Present.

THE CLERK OF THE COURT: Juror No. 124, Eddie Caudill.

MR. CAUDILL: Present.

THE CLERK OF THE COURT: Juror No. 125, Darrell Edward Anderson.

MR. ANDERSON: Present.

THE CLERK OF THE COURT: Juror No. 155, Charles V. Ritchie.

MR. RITCHIE: Present.

THE CLERK OF THE COURT: Juror No. 159, N. B. Bailey.

MR. BAILEY: Present.

THE CLERK OF THE COURT: Juror No. 161, Rose Mary Wallace.

MS. WALLACE: Present.

THE CLERK OF THE COURT: Juror No. 166, Kenton David Leatherman.

MR. LEATHERMAN: Present.

THE CLERK OF THE COURT: Juror No. 167, Betty J. Brandenburg.

MS. BRANDENBURG: Present.

THE CLERK OF THE COURT: Juror No. 168, William Alex Scalf.

MR. SCALF: Present.

THE CLERK OF THE COURT: Juror No. 172, Elmer Crace.

MR. CRACE: Present.

THE CLERK OF THE COURT: Juror No. 181, Bennie Lafferty.

MR. LAFFERTY: Present.

THE CLERK OF THE COURT: Juror No. 183, Gerald D. Thomas.

MR. THOMAS: Present.

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THE CLERK OF THE COURT: Number 185, Glen Charles Slone.

MR. SLONE: Present.

THE CLERK OF THE COURT: Number 188, Norcie Gervis.

MS. GERVIS: Present

THE CLERK OF THE COURT: Number 189, Vivian Tackett Miller.

MS. MILLER: Present.

THE CLERK OF THE COURT: Number 190, Kenneth Mullins.

MR. MULLINS: Present.

THE CLERK OF THE COURT: Juror No. 191, Joe M. Combs.

MR. COMBS: Present.

THE CLERK OF THE COURT: Juror No. 193, Rosa Holiday.

MS. HOLIDAY: Present.

THE CLERK OF THE COURT: Number 194, Jennifer D. Hobson.

MS. HOBSON: Present.

THE CLERK OF THE COURT: Juror No. 202, Netta Jean Francis.

MS. FRANCIS: Present.

THE CLERK OF THE COURT: Number 207,

A. J. Snyder.

MR. SNYDER: Present.

THE CLERK OF THE COURT: Juror No. 212, Gayle Dawahare.

MS. DAWAHARE: Present.

THE CLERK OF THE COURT: Juror No. 217, Philip Dotson, Jr.

MR. DOTSON: Present.

THE CLERK OF THE COURT: Juror No. 218, Alves E. Cantrell.

MR. CANTRELL: Present.

THE CLERK OF THE COURT: Juror No. 221, Earl Thompson.

MR. THOMPSON: Present.

THE CLERK OF THE COURT: Juror No. 224, Charles E. Boyd.

MR. BOYD: Present.

THE CLERK OF THE COURT: Juror No. 226, Dennis Clark.

MR. CLARK: Present.

THE CLERK OF THE COURT: Juror No. 228, Mary Ann Bowen.

MS. BOWEN: Present.

THE CLERK OF THE COURT: Juror No. 234, Laura Moore.

MS. MOORE: Present.

THE CLERK OF THE COURT: Juror No. 235, Mary A. Brandenburg.

MS. BRANDENBURG: Present.

THE CLERK OF THE COURT: 236, Clyde DeRossett.

MR. DEROSSETT: Present.

THE CLERK OF THE COURT: Juror No. 237, Gatha R. Justice.

MS. JUSTICE: Present.

THE CLERK OF THE COURT: Number 241, Ruby C. Stumbo.

MS. STUMBO: Present.

THE CLERK OF THE COURT: Juror No. 244, Michael D. Freeman.

MR. FREEMAN: Present.

THE CLERK OF THE COURT: Juror No. 245, Glenna D. Bradley.

MS. BRADLEY: Present.

THE CLERK OF THE COURT: Juror No. 246, Jackie Deskins.

MR. DESKINS: Present.

THE CLERK OF THE COURT: Juror No. 247, Ricky D. Charles.

MR. CHARLES: Present.

THE CLERK OF THE COURT: Juror No. 248, Larry Longworth.

MR. LONGWORTH: Present.

THE CLERK OF THE COURT: Juror No. 249, Ruby Collier.

MS. COLLIER: Present.

THE CLERK OF THE COURT: Fifty-seven jurors, Your Honor, answered as being present.

THE COURT: Thank you, ma'am.

Now, before I ask the Clerk to give to you the oath and answer the questions regarding your qualifications, I want to advise you that you are here for the purpose of determining whether or not you can sit on the panel as a prospective jury in this case.

I know some of you has some excuses that you desire to give to the Court. Those excuses will be considered. Those excuses will be weighed.

And I think I want to advise you of this: The Court realizes that everyone is inconvenienced. It's a convenience-- Jury service is something which is like death, taxes. It just never seems to come at the proper time. It is always a time when it is inconvenient; and the Court

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understands that. But we are going to get a jury, and a decision ultimately which is going to be my decision is I have to decide. I am assuming everyone is inconvenienced--inconvenienced by this. And I must make a decision as to whom is inconvenienced the most. So please-- I have done this before, but please look around you because when you give the reason to the Court why you can't serve, you are not giving an excuse to me. You are giving an excuse to the person beside of you. You are saying I am more inconvenienced than you are; therefore, you should stay here in my place.

So when we get to that point, I want you to understand that.

Now, as most of you are aware, the process of getting a jury is--is kind of like a beauty contest. You know, they call around so many in a beauty contest, and so many are eliminated. And then they have another proceeding, and so many are eliminated until finally you end up with the winners. Presumably the jury in this case is the winner.

But nevertheless, this is one of the proceedings. This is what is called a voir dire proceeding. Now, that is Latin. And as

you know, back in history at one time or the other, the Romans, who speak Latin, ruled the world. They sent their emissaries who were the soldiers throughout the world to maintain the rules. These soldiers spoke Latin. Soldiers don't always speak the best English. And I assume that some soldiers in someplace spoke Latin one way. Sometimes it is called voir dire, voir dire; but it is called many different things. But it all means the same thing. It is to tell the truth.

This proceeding is not to educate you nor to school you in any philosophy, any way of thought. This proceeding is as said, to tell the truth.

Now, by way of illustration, this case will involve possibly some drinking. Some people are for drinking; some people detest drinking. But the bottom line is not whether you are for or against drinking. The bottom line is whether or not you can set aside these feelings that you have with regard to drinking and give a fair and impartial decision solely upon the evidence and the Court's instructions.

Every defendant in every proceeding is entitled to a fair and impartial

hearing before a fair and impartial jury in court solely upon the evidence and the Court's instructions as to the law.

Now, Madam Clerk, will you please administer the oath to the members of the jury to well and truly answer the questions propounded to them with regard to their qualifications as jurors.

THE CLERK OF THE COURT: Yes, Your Honor. Are there any members of the jury who prefer to affirm?

Would you stand, sir?

THE COURT: Madam Clerk, I'm sorry. Not the qualifications propounded to them on voir dire.

THE CLERK OF THE COURT: Yes, Your Honor.

Do you affirm that you will true and perfect answers make to the questions that will now be asked of you touching upon your qualifications to sit as jurors in the case of the United States of America against 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, and Morris Ray Hall. Under the pains and penalty of perjury, sir, do you so

affirm?

THE PROSPECTIVE JURORS: I do.

THE CLERK OF THE COURT: Thank you. The rest of the members of the panel please stand and raise your right hand.

Do you and each of you solemnly swear that you will true and perfect answers make to questions that will now be asked of you touching upon your qualifications to sit as jurors in the case of United States of America v. 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, and Morris Ray Hall. As you shall answer unto God do each of you so swear?

THE PROSPECTIVE JURORS: I do.

THE CLERK OF THE COURT: Please be seated.

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THE COURT: Let me attempt to put all of you at ease. It is now 9:20. I assume we're going to be sitting here at three o'clock this afternoon, this is going to be quite a lengthy proceeding. In the Army they had a break every so often, we try to do that. And sometimes we go beyond the time, but we have the Marshalls here and the length of the proceeding or if it becomes an emergency we'll notify the Marshall and they will notify the Court.

As previously stated with regards to the purposes of this hearing an additional purpose is that -- to determine the making of a decision by the members of the prospective jurors. Some persons get nervous and upset over making decisions. Some persons say that -- they truthfully say that it's against their religion to make a decision regarding other persons. However, the Court wants you to bear in mind that everyone must make decisions. There are personal decisions, private decisions, public decisions, family decisions, business decisions, social decisions; there are all types of decisions. The making of those decisions, of course, are dependent upon the circumstances from which the necessity

arises for making the decision. I possibly am going to use as a basis for my discussion here what it called a family decision.

If you only had one person or an individual person who makes a personal decision based upon his own thoughts, his own personal rules and regulations, he has no conflict with anyone else. Anytime you get more than one person you have more rights involved than one person's then you have a decision which involves several people's rights.

A family decision, of course, is a decision made by a father or mother in the family. It involves the rights of all the persons who are in the family. A lot of times I use the illustration of a young lad that steals a cookie or breaks a window. A decision must be made, and this decision is made by the father or the mother and the child says I'm sorry, and the dad or mother says all right, it shouldn't be done and it's not right. That's within the family jurisdiction, that's a family decision.

But, from the shores in the East in the Atlantic to the shores in the West of the Pacific you have the United States which is a

large collection of families. It's called a Government, which it is a Government; it's a collection of families.

As a person grows up or you get a larger group of families, then we have to have matters arising wherein we have decisions which are made involving this larger collection of families. Someone in one family has done something which involves -- not done something, but is accused of doing something involving a larger collection of families, then we have a larger family decision. In this instance this is a trial.

The larger family decision -- let me go back, the family decision which I previously stated is made according to the rules and regulations of the father and mother. This is ordinarily which is based upon their training and experience of the father and the mother. Some little fellow argues with his sister and the father and mother makes a decision based upon their training and experience with regards to that matter.

In the larger collection of families which is the United States, these larger collection of families will come together

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and they have agreed as to rules and regulations as to how these families operate. These agreements are called laws.

When you have an allegation or an accusation that someone has violated these rules and regulations, then you must have a decision made with regards to this dispute. Not only do we have rules and regulations as to how these larger groups of families will operate, but we have rules and regulations as to how these disputes are to be decided. They are to be decided by a fair and impartial representative from some of the other families which are you folks. They are to be decided in a courtroom and before a fair and impartial judge. They are to be decided solely upon the evidence and the Court's instructions as to what the law is.

The law also has several other abstract principles of law which I will state to you. And then I will ask you some questions.

One of the basic things in such a hearing is that the Defendant is presumed to be innocent. This presumption will stand unless it is removed by evidence proving that the Defendant is guilty beyond a reasonable

doubt. This is one of the strongest presumptions or abstract principle of law known to law and it stays with the accused throughout the trial until overcome by evidence which establishes that guilt beyond a reasonable doubt.

Many of this panel here has served on juries before and knows during the proceedings of a trial that in the event of a recess the Court admonishes the jury that you are not to discuss the case during the recess with anyone. You're not permitted -- it's not permitted to be discussed in your presence, and you're not to finally make up your mind upon the issues of this trial until you've heard all of the evidence together with the Court's instructions.

One of the attorneys who's here today has tried several cases before this Court and the Court was always impressed with his illustrations. He says that the jury has to consider a case's evidence like looking at a hand. You can't tell what the hand is until you see both sides. Of course, in a trial or proceeding such as this someone goes first and someone goes last. You're going to hear someone's evidence first and someone's last. But you can not make a decision

until you've heard all the evidence together with the Court's instructions as to what the law is.

This presumption of evidence attaches to a Defendant before the trial commences and stays with him throughout the trial. It stays with him until you go into the jury room for your deliberation. That's because you're admonished not to make up your mind upon the decision and the issues of the trial until you've heard all the evidence together with the Court's instructions.

Of course, the presumption of innocence stays until you've heard all the evidence together with the Court's instructions. Still then, however, bear in mind this presumption of innocence is not to protect the guilty, but is to protect in so far as human agencies can help -- it helps to present the conviction of the innocent. A person is presumed to be innocent until the jury has satisfied to the exclusion of a reasonable doubt that the person has been proven guilty. At that time, the jury is satisfied in the jury room after they've heard all the evidence together with the Court's instructions,

At the point that the

jury is convinced by appropriate evidence, competent evidence to the exclusion of a reasonable doubt the person is guilty, then the presumption of innocence is no longer there.

The way a person is brought into court, the Defendant, the way he's brought into court -- and the Defendant is just a person upon whom an accusation is made. An accusation is made that the person has violated some rule or regulation of the law. The way this is done is by way of an indictment. An indictment is merely a piece of paper which contains the accusation of what the person has done. These indictments oftentimes are multi-party indictments, in other words, more than one person is named in the indictment. The indictment contains several counts. Each of those counts is an accusation of a violation. Each person named in that indictment is a separate individual against whom an accusation has been made. The mere fact that there are more than one person named in the indictment is not evidence of guilt because each person named in that indictment is presumed to be innocent. The fact that each indictment may contain more than one count or a person is accused of more than one

violation is not evidence of guilt because this person must be proved guilty to the exclusion of a reasonable doubt upon each count. And the evidence -- there must be evidence as to each count which is in the indictment.

The indictment itself as stated is not evidence, it's merely an accusation and the burden of proof -- of proving this accusation to the exclusion of a reasonable doubt to the jury is upon the one that makes the accusation. And that of course will be the one that goes first.

Now, I have stated they must prove this by competent evidence. Evidence is solely the testimony of the witnesses and the reasonable inferences which arising from this evidence, and the exhibits which may be permitted into evidence. We have this quite often. The jury will be excused, the hearing will be held outside of the presence of the jury and the jury will speculate as to what went on. But a juror can not decide a case upon speculation. The jury can not decide a case upon prejudice or merely because of the race, color, creed or something about the person they don't like; they can't try the case based upon that. They can not try a case upon sympathy, merely

because they are sympathetic, they can't try the case on that.

They try the case solely upon the evidence and the Court's instructions.

I mentioned the burden of proof. The burden of proof is upon the one that makes the accusation. In this case, the Government or the larger collection of people. But a Defendant has no burden, he's presumed to be innocent and the Government must prove him guilty to the exclusion of a reasonable doubt. The Defendant may appear in court with his counsel, sit at the table, and listen to the evidence, cross examine or not present any evidence at all. And the fact that he doesn't may not be held against him.

You have heard -- in other words, a Defendant has the right to take the stand. He has no duty to take the stand and when he exercises that right, it can not be held against him because it's not evidence. As I say, it's not whether you're for drinking or against drinking, it's can you decide this case solely upon the evidence. Set aside your feelings now. The Defendant has the right and it can not be held against him.

I mentioned to the exclusion of a reasonable doubt. A reasonable doubt, I guess, many times is cause for concern. I guess colloquially speaking the Court has heard it said sometimes beyond a shadow of a doubt, but there's no such thing as beyond a shadow of a doubt. It's beyond a reasonable doubt and a reasonable doubt is what the name implies. It's a doubt based upon reason. It does not mean beyond all possible doubt. While the Government's burden of proof is a strict or heavy burden, it's not necessary that the Defendant's guilt be proved beyond all possible doubt. It's only required that the proof exclude any reasonable doubt concerning the Defendant's guilt. A reasonable doubt is a real doubt based upon reason and common sense after a careful and impartial consideration of all the evidence in the case.

Proof beyond a reasonable doubt is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs.

Getting back to the fair and impartial jury and the Court's instructions

with regard to the law. The evidence will arise in this case. It's expected that there will be evidence concerning firearms. I think it's a matter of the Constitution that everyone has a right to bear arms and carry firearms. And the matter of regulation upon this varies among individuals.

THE COURT: But the Court will give you an instruction to the law in this matter with regard to the entire case, and a Juror is not permitted to use their own personal opinion as to what they think the law ought to be.

You must accept the law as stated to you by the Court. You cannot single out any one particular part of the Court's instruction but you must accept all of the Court's instructions.

In stating this voir dire proceeding, the Court might say to you what the evidence - - it is expected the evidence will be, and I might state to you some matter with regard to the charges, but let me say this.

That in stating this proceeding, I am just giving a running version, I am not attempting to give you any evidence in this case.

I am giving you a running version in order to acquaint you with these facts so we may ask you questions to see if you can qualify as a Juror in this case.

In every case there are two Judges. There is the Jury, and there is the

Court. The Jury is the Judge of the facts, the Court is the Judge of the Law.

The Jury determines the facts from hearing the testimony of the witnesses, and then they will apply what they have heard against the Court's instructions of the Law.

What I am telling you in this Hearing isn't the testimony of a witness; and therefore, you will not use any statement I might say as evidence.

Likewise, in asking questions, the attorneys will ask you questions, they will make statements to you regarding your feelings as to certain matters, and as stated, the purpose of this Hearing isn't to educate you or train you to any school of thought.

The purpose of their questions is to obtain information from you upon which they will make decisions.

But the questions of the Attorneys isn't evidence.

As I say, the sole evidence in this case is the testimony of the witnesses; however, do not ignore what the Court is saying or do not ignore what counsel is saying

because we might bring to your attention something which might otherwise escape your attention.

As I said, the sole evidence is the testimony of the witnesses and the exhibits.

Of course, when you get to hearing several witnesses, then a Jury must make a decision as to which of the witnesses to believe.

Many a time the Court hears the case without a Jury.

The Court acts as both the Jury and acts as the Court, and something the Court always found amusing that in an occasion it appears that four of the witnesses will get up and testify either it was nighttime, four witnesses would get up and testify, it was daytime, and then everyone looks up at the Court and smiles and says, "Judge, it is your decision."

But a Jury is often confronted with this. We are going to hear many witnesses, and the Jury must make a decision as to which of the witnesses to believe, and which to not believe, and this is called matter of credibility.

Credibility is believa-

bility. The Jury listens to the witnesses and the Jury may believe all that a witness says, he may believe none of what a witness says, or he may believe part of what a witness says.

But regardless of what the Jury believes or accepts, the Jury is required by Law to listen to all of the witnesses, to listen to all of the evidence, and to consider all of it.

Often you must make the decision as to what is believable, but you must consider or listen to all of it.

Now, there are certain suggestions, rules, which are considered or not considered, but certain rules which a Juror might consider in weighing the testimony of the witnesses. One is they can consider the relationship of the witness to the parties in the case, they can consider the interest, if any, the witness might have in the outcome of the case, they can observe the manner in which the witness testifies, the opportunity which the witness has had to observe or acquire knowledge about this matter which the witness is testifying, and whether or not the witness appears to be fair, intelligent, the witness's candor, and the extent to which the

witness's testimony is supported or contradicted by other credible evidence in the case.

As stated, a Jury does not have to believe all witnesses the same, but a Jury is required to listen to and consider all of the evidence of all the witnesses.

You must consider them the same, but you do not have to accept all their testimony the same.

Let me stop at this point, Mr. Marshall, and let's go down through.

Is there anyone at this point that is unable to accept any of the principles which the Court has stated?

That would be the presumption of innocence, the Defendant is entitled to a trial by a fair and impartial Jury, that the Government has the burden of proof, and a Defendant must be proved guilty of the accusation to the exclusion of a reasonable doubt.

If anyone cannot accept those principles, let's make it known right now.

Yes, sir. When you stand, please state your name and your number, sir.

MR. RITCHIE: Charles V. Ritchie,

No. 155.

THE COURT: Yes, sir.

MR. RITCHIE: My wife is fully disabled, she is on a walker - -

THE COURT: (Interrupting) No, we will get to the excuses later, sir. I am speaking right now of - - We get to a point later where you say Judge I agree with everything that is said, I think it is a wonderful opportunity, but - - and we are not to the but part yet, but we will get to that though.

Let me state this now. I am not wanting to embarrass anybody. This Court has been embarrassed enough in his lifetime and he doesn't want to see it spread over to someone else.

The purpose of this isn't to embarrass anyone, the questions which will be asked sometimes might appear to be embarrassing, but they aren't.

This whole thing is to find out from this group, a fair and impartial Jury, how the persons who are going to be the least inconvenienced.

All right. Now, let's

go back to our principles of Law.

REPORTER'S NOTE: No response.

THE COURT: Thank you, sir. The accusations in this - -

REPORTER'S NOTE: At this time the Marshall approached the Bench and after a brief conversation with the Court the following was heard:

THE COURT: All right. We have got to have a recess for a few minutes.

MR. HARWELL: May the Court please, at some point can counsel briefly have a Bench conference?

THE COURT: Yes, sir. We can do it at this point. The Jury will be in recess for I would think with this group you better make it fifteen minutes, because everyone cannot go to the bathroom in fifteen minutes.

All right Mr. Marshall, please excuse the Jury.

THE MARSHALL OF THE COURT: This Court will stand in recess for fifteen minutes.

THE COURT: This is only the Jury.

MR. HARWELL: Can counsel approach the Bench, your Honor?

THE COURT: Is it necessary to have a Bench conference after the Jury is out?

MR. HARWELL: I don't think so, your Honor.

THE COURT: I think some of the Defendants have to go too. Will you gentlemen waive the presence of the Defendants?

MR. HARWELL: (Nodding head affirmative)

THE COURT: Do the Defendants waive their right?

MR. HARWELL: (Nodding head affirmative)

THE COURT: The Court will be in recess for fifteen minutes.

THE MARSAHLL OF THE COURT: The Court will stand in recess for fifteen minutes.

THE COURT: After they are gone, you gentlemen come on up here.

Gentlemen, I'm sorry, we are going to discuss some housekeeping matters and it would be better if the Jury isn't in here while we are doing that.

Mr. Marshall, let's make a statement for the purpose of the record.

THE MARSHALL OF THE COURT: The Jury

is out of the Court Room, your Honor.

THE COURT: Yes, sir, Mr. Harwell.

MR. HARWELL: There are a couple of housekeeping matters which I would like to address to the Court about.

May your Honor please, I would respectfully request at some point during the course of this proceeding that you make the kind of statement to this panel that you made yesterday afternoon to the other panel in regard to this mental detector device.

Also, may the Court please, I'm a little bit concerned in that the Marshalls have been very gracious, but the Defendants and the defense lawyers seem to have to go through it, and the people who some in to serve on the Jury panel don't have to go through it and it sort of highlights.

It might be nice, Judge, if everybody can just pass through. I have no problem with passing through it, it is the difference that is drawn to the eye of the perceiver that creates a little problem.

THE COURT: Let's do this, gentlemen. This has arisen and it is understandable. You

gentlemen have, as I say, you gentlemen have worked laboriously preparing for this trial. All of the members of the Court have done the same.

MR. HARWELL: It is obvious, Judge.

THE COURT: And I think already it's been drawn to my attention what someone's personal feelings were, because they weren't consulted with something, and getting into a complex matter it is difficult sometimes to touch all bases .

And if someone - - this is a matter of tact, I guess, and sometimes maybe someone isn't consulted on something, I mean, this is not speaking with regard to Law, this is just, I guess, amenities.

If someone feels that they aren't extended in amenity, please don't accept it as being personal or something, we are just - -

MR. HARWELL: (Interrupting) Judge, that is not my concern at all, your Honor.

My concern is we have got a panel from which the Jury is going to be selected, and they are observing a lot of people in the community who are fellow panel members com-

ing in, some of whom probably haven't been here before, or only a time or two, they pass through and yet the Defendants, all of whom have got change and belts in their pockets are going through the metal detector, and it is just to head off the sort of problem that your Honor I think headed off yesterday when you said this is a permanent fixture.

THE COURT: I will do that, I understand.

MR. HARWELL: Okay.

THE COURT: You feel if they are singled out it might appear that they are criminals and they aren't ?

MR. HARWELL: No, that they are bad folks, Judge, they ought to pass through because they might be carrying something that they ought not to be carrying.

I don't have any qualm at all with going through, but I suggest that Mr. Self might want to hold my hand and walk through it together when the Jury is right there.

MR. KEHRLI: Your Honor, for the record, let me state as a member of the prosecution team I have been stopped going through metal

detectors three or four times already.

THE COURT: We will explain that.

MR. HARWELL: All right. There is one other thing I wanted to bring to the Court's attention that I am sure you already focused on, but yesterday fairly early during the course of your Honor's questions we, the prosecutor and defense counsel, alike brought to the Court's attention the fact that there were a number of people on yesterday's panel who had served on one of the two Juries for the Morris Joe Hall case.

I am advised, your Honor, and I don't know this, but I am advised that there are seven folks on this panel that served on one of those two cases and we think it is only appropriate that the Court excuse them at whatever time your Honor wishes to do so.

MR. SELF: In regard to the Jurors who previously served on the first trial of the defendant, Morris Joe Hall, your Honor, we would object to those being excused, and the matter that they required prior service on that Jury, and object to the people being excused yesterday.

I would concede to the

record there was mention of the fact of Mr. Kemp coming in, and the ATF investigation of the bombing during that case, and it was made a matter of the record.

And if the Court feels that that is a taint to that panel, then let the panel express that rather than automatically excluding them just because they had a little bit of evidence about them.

MR. HARWELL: Judge, I am surprised at that, that your Honor in Chambers yesterday brought this issue to the attention of some of us and Mr. DeFlaise, the U.S. Attorney walked in, and your Honor said what do you say about it, Mr. U.S. Attorney.

He said yes sir, Judge, and I had been assuming that there would be no controversy about that issue, although Mr. Self yesterday afternoon made some comment.

I thought it was in jest. I assumed those were gone - - Judge, I guess my point is this.

This Court, your staff, these gentlemen (indicating) and these gentlemen (indicating) have gone to a lot of trouble to

get this trial geared up, and I think all of us share the hope that there won't be a mistrial, and that this case will go all the way straight through to the Jury, and will do so with a fair and impartial Jury, and out of not an abundance of caution, but out of caution I think those people ought to be removed.

MR. SELF: Your Honor, there are only five of them.

THE COURT: Gentlemen, let's do this. Consistency they say is the hobgobling of little minds, and I have a little mind.

If I excused those yesterday, I am going to excuse those today, but don't ever make an assumption to the Court.

MR. HARWELL: Judge, I apologize for making an assumption.

When I heard the United States Attorney respond to your Honor and saw your Honor act, I made a double assumption, and I guess I shouldn't have assumed that Mr. DeFlaise spoke for this group in toto, and I won't assume about the Court anymore.

Can I go to the bathroom?

THE COURT: Yes.

MR. PAFUNDA: Your Honor ?

THE COURT: Yes, Mr. Pafunda.

MR. PAFUNDA: Due to the fact that some of these members of this Jury panel have been here before and served on other Juries, and I just noticed there are less over here in terms of the number of Defendants, but where in fact they are seated, and I think it goes in combination with the metal detector that is outside and it just came to my mind last night.

THE COURT: Well, I think we told them about the numerosity of the parties, the numerosity of counsel, and I think we have gone over that.

MR. PAFUNDA: Not with this panel, your Honor.

THE COURT: I went over it with the panel right with this proceeding, didn't I? I told them the fact that there was numerous Defendants - -

MR. PAFUNDA: (Interrupting) No, I think in where they are seated.

THE COURT: Oh, the seating arrangement for purposes of this voir dire are definite,

okay.

MR. HARWELL: Judge, what time are we due back in here, ten after?

THE COURT: Mr. Marshall, when are we due back?

THE MARSHALL OF THE COURT: Five after, your Honor.

THE COURT: Okay.

THE MARSHALL OF THE COURT: All right. The Court will be in recess until 10:05.

THE MARSHALL OF THE COURT: All rise. The United States District Court is now in session. Be seated and come to order, please.

THE COURT: Let me advise the members of the prospective jury, those of you that have been here before, you will notice that our seating arrangement is a little different. You notice that we have a metal detector outside which is a little different.

The metal detector is something which we have been after a long time. And it has taken us a while to get it, but it is going to be with us. It isn't anything different. The metal detector will be here I assume from now on and will be used. It is just a matter of security. It has nothing to do one way or the other with this proceeding. It is just a standard thing which is being utilized all over this country at this time and all over the courts. So you won't attach any significance to that. I think they use them on the airlines the same way going on the airlines. The airlines and everybody else has got them and it has taken us until now to get them. And we have finally arrived. So don't attach any significance to that.

The other, of course, is the defendants are seated here while we go through the voir dire. After the trial, the defendants will be back on the other side, back where Mr. Bailey and those other gentlemen are seated. But the only difference and the only reason for the difference in the seating is because well, you know, the ordinary trial is we have two or three defendants or one defendant. We just have several defendants in this case. So we had to arrange the seating a little differently for the convenience of everyone. So there's no significance one way or the other to be attached to the fact that the seating is a little different.

And of course, if there is any different procedures going in and out of the courtroom through the metal detector, don't pay any attention to that. That has nothing to do with it. The marshals are in charge of security. But what they are doing isn't to be considered as a compliment or demeaning to anyone. It is just a matter of procedure.

This case is to be tried, as stated, upon the evidence and the Court's instructions as to the law.

And let me state this: In

extending amenities to members of the prospective jury or the parties, I am not saying it is cabin fever. You know after a group of people get together, they start feeling excluded. But we have--we just have a large number here; and sometimes perhaps someone's feelings might be overlooked. Don't think of this personal. It is just in the hustle and bustle of things, someone isn't always able to smile or say I am sorry or something. So let's don't wear our feelings on our coatsleeves.

Now, getting back to the indictment, as I said, the indictment isn't evidence. It is merely an accusation. The accusation in this case is what is called a-- The defendants are accused of Hobbs Act violations. This accusation arises primarily in two parts: One part charges a conspiracy to commit a Hobbs Act violation. Now, a conspiracy, generally speaking-- You are going to get the law with regard to what the Hobbs Act violation is and the elements of a Hobbs Act violation and the necessary elements of a Hobbs Act violation. All of that is part of the Court's filings and instructions as to the law. This is just a running version.

But a conspiracy is commonly known as what is called a partnership or criminal

partnership. That is where a group of individuals gather together in a criminal partnership to commit a Hobbs Act violation. This in a sense is an attempt.

The second accusation would be that the defendants committed Hobbs Act violations, a completed act.

Now, under the federal law, an attempt is an offense as well a completed act is an offense.

Is there anyone on the jury who feels that the law--that an attempt is a violation is an unfair law and that you would not apply the law as given to you by the Court? Is there anyone on the jury who feels that?

THE MARSHAL OF THE COURT: [Shaking head in a negative.]

THE COURT: Now, a Hobbs Act violation, as I said, I will give you the law regarding the Hobbs Act violation, the elements. That-- Commonly speaking, a Hobbs Act violation prohibits obstruction or delay to a business which has any effect upon interstate commerce by means of wrongful use of actual or threatened force, violence, or fear.

I will go over that again.

A Hobbs Act--the Hobbs Act

prohibits obstruction or delay to a business affecting interstate commerce by means of the wrongful use of actual or threatened force, violence, or fear.

Now, does anyone feel that there should be no law regulating commerce or having anything--no law proscribing how business should be done, and that they just think any such law is unfair; and if they were given the instruction to the Court with regard to a regulation or something of business, it wouldn't apply? Is there anyone on the jury of that mind?

THE MARSHAL OF THE COURT: No, Your Honor.

THE COURT: Now, this matter is going to involve coal mines. You are going to hear evidence of coal mines. You are going to hear evidence of operators. You are going to hear evidence of coal miners of the union. And we know that some people love unions; some people detest unions. Some people likes operators; some people don't like operators. Some people like coal miners; some people don't like coal miners. And some people likes labor difficulties; and some don't. It is kind of like-- Remember the drinking thing I said. I said some like drinking; some don't.

The question of this thing

is anyone has a mind that they could not set their likes or dislikes aside and decide this case fairly and impartially and solely upon the evidence? Is there anyone with regard to those subject matters? I mean subject matters which I said. Is there anyone which has fixed opinions on their mind with regard to the subject matters that you cannot set those things aside and try this case solely upon the evidence? Mr. Marshal.

THE MARSHAL OF THE COURT: No one, Your Honor.

THE COURT: All right, sir. Now, this matter presumably or is accused, but presumably this matter arises out of a series of events which occurred in Floyd County, Kentucky, during the months of January and February, 1982.

The accusation, which is denied, is that Edgar Jones, one of the defendants, principle officer and president of the JRM Coal Corporation. It is alleged--it is alleged and it is denied that Ray-Mac Coal Company was another coal company in that vicinity.

It is alleged and it is denied that JRM Coal Corporation and Ray-Mac Coal Corporation were in competition.

THE COURT: It's alleged, and it's accused, and it's denied that Edgar Jones, Jason Moore, German Stumbo, Drexil Hall, Teddy Kinney, Benny Caudill, Wayne Kenneth Rolland, also known as 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 Van B. Patton.

It is alleged they're accused and it's denied that they entered into a conspiracy or criminal partnership to commit a Hobbs Act violation and through the use of force and violence they committed a Hobbs Act violation.

I think the evidence is going to allege and contend that there was a find of guns, there was the use of explosives, there was perhaps some fires. It's alleged and denied that this was done by these Defendants against Ray-Mac contrary to the Hobbs Act.

Now, let me get back to this one which is another one. I say the evidence may reflect the use of guns, the alleged use of guns, the alleged use of explosives. Now, as you know, guns are not -- it's not always against

the law, there are times when it's permissible to have a gun. There are times when it's not permissible to have a gun. There's times when it's permissible to use guns and there's times when it's not permissible to use guns. It just depends upon the circumstances. But, is there anyone on the jury that just merely because of the fact that there may have been guns seen, guns exploded, guns shot, and explosions and just because that you're either for or against it that this alone, you would not listen to all the evidence and make a decision based on the evidence as you hear the law. Is there anyone on the jury that has such a fixed opinion just because of the fact that there may have been guns and explosions?

THE MARSHALL OF THE COURT: No one, Your Honor.

THE COURT: All right. Has anyone on the jury read about this, discussed it with anyone, or been present while someone else was discussing this matter?

Now, when you stand, please state your name and number.

MR. THOMPSON: My name is Earl Thompson. My number is 221. I'm from Martin,

Floyd County. My brother -- I don't even know Edgar Jones --

THE COURT: (Interrupting) Let me do this, sir. Without first telling us specifically what you heard, just say you heard it discussed quite a bit and you became familiar with it, and you can kind of characterize what you've done. Then you may say who you heard it from or how you heard it.

MR. THOMPSON: Okay, I read about it a couple of times before, of course. And I heard about it from my brother who was a conductor on the railroad.

THE COURT: Now, did you become fairly well acquainted with this? Did you get into detail discussions?

MR. THOMPSON: He was familiar with Edgar Jones. I don't know him like I said.

THE COURT: Well, did they get into detail about it? I don't want you repeating what your brother said.

MR. THOMPSON: Yes, he talked about it.

THE COURT: You understand, I don't want you repeating what he said.

MR. THOMPSON: Yes.

THE COURT: Because if you repeated what was said, we would be getting into something before the jury that might be interpreted as evidence and evidence can only be what witnesses say.

Now, let me ask you, by reason of what you heard did you form an opinion?

MR. THOMPSON: I did at the time, Your Honor.

THE COURT: Do you have that opinion now to a certain extent that it would take evidence to remove it from your mind, or do you think you can sit it aside and listen to this -- the evidence in this case and make a decision solely upon the evidence and the Court's instructions?

MR. THOMPSON: I'll try to do that, we've talked about it quite a bit.

THE COURT: Well, when you say that you'll try to do it, that may kind of imply that you still have an opinion in your mind or a fixed idea in your mind which would take something to remove it. And that, of course, can't be.

Everyone is going to read something and we don't all live in a vacuum, that's understandable. But the thing of it is is

being able to set something aside and try this case solely upon the evidence and the Court's instructions; fairly and impartially.

Can you set that aside, sir?

MR. THOMPSON: Well, I said I can try, what more can I do but try?

THE COURT: Well, I guess people don't understand us mountain people. We say how good is something and they say it's pretty good. We say, will you do that and they'll say yeah, I'll try, which means that you will, but this is being tried upon the record and I'm afraid somebody who is not from our area might misunderstand what we're saying.

Now, will you or do you think you can, if you can -- if you can't, we appreciate your honesty.

I guess I'm accepting your saying that you'll try do it is a conditional answer and I don't want that, sir.

MR. THOMPSON: Well, the jury bases everything on the evidence they hear to make the decision, Your Honor.

THE COURT: Yes, will you do that?

MR. THOMPSON: Yes.

THE COURT: And at this time you have no prejudice or feelings towards these Defendants?

MR. THOMPSON: I don't have any prejudice against them, no.

THE COURT: And you harbor no feelings for or against them. You will accept their presumption of evidence?

MR. THOMPSON: Yes, sir.

THE COURT: That's required by the Court.

MR. THOMPSON: Yes.

THE COURT: And you will try this case fairly and impartially solely on the evidence?

MR. THOMPSON: Yes.

THE COURT: Thank you, sir. Next.

MS. DAWAHARE: Gail Dawahare, No. 212. I also have read about it and discussed it with someone.

THE COURT: Now, Mrs. Dawahare, the attorneys will want to know, I guess in a sense -- you read about it and with whom have you discussed it with?

MS. DAWAHARE: I discussed it with Lin Parish who works for Ray-Mac.

THE COURT: Ma'am, have you formed an opnion?

MS. DAWAHARE: Yes.

THE COURT: You think you can set that opinion aside?

MS. DAWAHARE: No, Your Honor.

THE COURT: Thank you, ma'am.

Yes, Mr. Leatherman.

MR. LEATHERMAN: 166, Leatherman. I have discussed it with some of the Ray-Mac people back when it happened. And I also believe we tried a case which is a spin-off back --

THE COURT: (Interrupting) That will be fine, Mr. Leatherman. Thank you.

Let me ask this. Madam Clerk, who all are the jurors in the prior cases?

THE CLERK OF THE COURT: In the prior case, Your Honor, the jurors were according to our list, number 166 Kenton David Leatherman.

Juror No. 168 --

THE COURT: (Interrupting) Please stand if you will.

THE CLERK OF THE COURT: No. 168, William Alex Scalf.

Juror No. 181, Benny

Lafferty.

Juror No. 217, Phillip Dotson, Jr.

And Juror No. 218, Alves E. Cantrell.

THE COURT: All right.

THE CLERK OF THE COURT: These are jurors, Your Honor, that sat in the first trial of the United States of America versus Morris Joe Hall.

THE COURT: All right, you gentlemen are excused, you may leave at this point.

Now, let's do this, remember I said the attorneys have their charts with the numbers there, don't move over and take these vacant places, stay in your same seats.

All right, Mr. Marshall, you may proceed.

THE MARSHALL OF THE COURT: Anyone in this row?

THE COURT: That's heard or discussed the matter or is familiar with it and may have formed an opinion?

MR. CRUM: James Crum, Your Honor, No. 110. I read it in the newspapers and we have

mines in Tipton and things. Sometimes we do business with Ray-Mac and Coal-Mac or whatever and we kicked this around and talked about it.

THE COURT: And during that, sir, did you form an opinion?

MR. CRUM: No.

THE COURT: Either way?

MR. CRUM: No.

THE COURT: So, if you have not formed an opinion there would be nothing to prevent you from trying the case solely upon the evidence?

MR. CRUM: I don't think so.

THE COURT: Thank you, sir.

THE MARSHALL OF THE COURT: Anyone else?

That's all, Your Honor.

THE COURT: All right. Will the Defendants at this time please stand, state your name and address to the Court and the jury so the jury may become acquainted with you gentlemen.

I guess, Mr. Jones, you can start.

MR. JONES: Edgar Jones, Prestonsburg, Kentucky, Floyd County.

MR. HALBERT: Donahue Halbert,

Langley, Kentucky, Floyd County.

MR. HALL: Drexil Hall, McDowell, Kentucky.

MR. MILAN: Tim Milan, McDowell, Kentucky.

MR. MOORE: Austin Moore, Meade, Kentucky.

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

MR. MOORE: Harold Moore, McDowell, Kentucky.

MR. GAYHEART: Pebo Gayheart, McDowell.

MR. MOORE: Jason Moore, from Price, 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.

MR. NEWSOME: Hermit Newsome, Beaver.

MR. MEAD: Mose Mead, McDowell, Kentucky.

MR. KINNEY: Teddy Kinney, McDowell, Kentucky.

THE COURT: If any member of the jury, prospective jury is related by blood or marriage or acquainted with any of these Defendants socially, economically, or let's get further. Is there any -- someone that is a friend, someone on the prospective jury that has a friend, and especially close friend that is a relative or acquainted with one of the Defendants.

All right, Mr. Marshall.

MS. BRADLEY: 245, Miss Glenna D. Bradley. Mr. Jones is married to my second cousin. I've known him all my life. And Mr. Halbert, Donahue, I've known him all my life also because I was raised up in May County, and that's where he's from.

THE COURT: Ma'am, let me ask you this. I assume this is a relationship which you recognize?

MS. BRADLEY: Yes, I do.

THE COURT: And do you think, ma'am,

that you can set that aside and try this case?

MS. BRADLEY: No, to be honest I don't think I can.

THE COURT: Well, that's what we want. Thank you very much and we appreciate your honesty.

MS. STUMBO: 241, Ruby Stumbo. The majority of the men up here do business with my husband at the service station and it's going to be very hard for me to see that they're guilty.

THE COURT: In other words, you think it would be hard for you to decide this case and if you did, then to go back and put some gas in their car or wait on them at the service station, is that what you're saying?

MS. STUMBO: What I'm saying is the men that I know are good men.

THE COURT: You have that going into this trial?

MS. STUMBO: Yes, I do.

THE COURT: And regardless of what the evidence would be, you still have that feeling and you do not feel you could make a fair and imparital decision based upon the evidence?

MS. STUMBO: I think they would have to

tell me themselves yes, I am guilty.

THE COURT: Thank you, ma'am.

MR. BOYD: Charles Boyd, 224. I'm acquainted with Donahue Halbert, we both live in the same community in Maytown.

THE COURT: You know what the bottom line is, sir? Would that have any bearing upon your services as a juror in any decision you may make as a juror?

MR. BOYD: No, it would not.

MS. MOORE: Laura Moore, 234. Austin Moore is a nephew and I know the Stumbos and the Moores and Kinneys.

THE COURT: Would it have any bearing, ma'am, upon your sitting as a juror in this case?

MS. MOORE: Yes, I think it would.

THE COURT: All right, thank you, ma'am.

THE MARSHALL OF THE COURT: That's all, Your Honor.

THE COURT: Now, will counsel, and we'll start with the extreme left here, please stand and state your name and your address, and what firm, if any, you are with to the jury and who you

represent.

MR. DAUSE: My name is Charles Dause, and I'm Assistant United States Attorney. I work out of Lexington, Kentucky and live in Wolford County. I was born and raised in Russell County, which is in the Somerset area.

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

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

MR. HARWELL: Good morning, ladies and gentlemen. My name is Aubrey D. Harwell. I practice law out of Nashville, Tennessee, but in Kentucky for a while. I'm with the firm of Neal and Harwell. I was born and raised in a little town south of Nashville called Belt Buckle, Tennessee.

MR. MOORE: Good morning. My name is Albert Moore and I work for Mr. Harwell at Neal and Harwell in Nashville, Tennessee. I was born in

Richmond, Virginia, but grew up in a little town outside of Nashville called Hendersonville, Tennessee.

MR. WALBOURN: My name is E. J. Walbourn. I'm an attorney from Ashland, and in this case it's my pleasure to represent Mose Mead, Harold Moore, Benny Caudill, and Hermit Newsome.

MR. PAFUNDA: Ladies and gentlemen, my name is Bernard Pafunda and I'm from the firm of Deskins and Pafunda here in Pikeville, and I am from Pikeville, Kentucky.

MR. PATTON: Ladies and gentlemen, my name is Jerry Patton and I'm in private practice in Prestonsburg and I was born and raised in Floyd County, which is by Beaver Creek.

MR. SPENCER; Good morning. My name is Ed Spencer and I practice law in Paintsville. I was born and raised in Paintsville, Johnson County.

MR. ADAMS: I'm Eldred Adams from Louisa, Kentucky and I practice law by myself in Louisa.

MR. ROWLAND: Good morning, ladies and gentlemen. My name is Dan Rowland and I live in Prestonsburg where I practice law and I represent

Mose Mead.

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

MR. HOLLON: Ladies and gentlemen, my name is Tom Hollon and I represent Pebo Gayheart and Morris Ray Hall and I practice law in Danville, Kentucky.

MR. THOMAS: Ladies and gentlemen, my name is David Thomas and I represent Eugene Tackett, and I practice law in Nicholasville, Kentucky. I was born in Utah but I was raised in about six other places.

MR. KIRKLAND: My name is William Kirkland and I'm from Frankfort and I practice law with the firm of McBrayer, McGinnis, Lindsey, and Kirkland. We have offices also in Lexington and I grew up in Boyle County and my grandfather was from Johnson County on Riley Branch.

THE COURT: Let me state this before I ask any questions.

The Court is crowded with counsel in this case. The quantity of it is an exception. These gentlemen are professionals, as

the Court and the members of the staff is. As professionals, they, of course, went through college, law school, and have taken examinations and they've devoted many years to the practice and they are acquainted with these rules and regulations. Some of these attorneys are not local. You can imagine any time that you get a large group such as you have, you can't have all local counsel. You have counsel here from out of state, counsel from other counties. You can understand the mere fact that we have the local counsel and we have the counsel from Lexington and from out of state. It has no bearing. All these gentlemen are professionals. And where they're from has nothing to do with it. And -- in a court in the United States if a person can afford counsel he has to hire counsel. If he can not afford counsel, then he gets counsel appointed for him. Now, many of these attorneys here are unable to devote their time to their practice. They're practicing here by appointment, and they have accepted that as part of their duties as professional persons. This has nothing to do with whether they're appointed and compensated by the United States or whether they're compensated by the client. It has nothing to do with

it. These are professional men who ethically are presenting the evidence in support of their client in its best light, and that's their duty and they will do that.

THE COURT: And it's kind of like a basketball game. They, during the time of it, they play just as hard and as zealously as they can, but after it is over they can drink coffee together because they are professionals.

You know, an amateur is a person who can only see one side of the thing.

The professional is the person who is very well trained, experienced, who can see both sides, and still not lose sight of the fact of what he is doing.

These gentlemen are all professionals.

Let me ask you this. Is there any - - and they will be considered as such. How tall they are, where they are from, such as that, has nothing to do with it.

As I say, this case is tried not on anything which has occurred outside of this Court, but everything which occurs in this Court from this witness stand and the exhibits.

Now, is anyone on the Jury related to, or know of any of these Defendant counsel, or has used them as your attorney?

Yes, sir.

MR. CHARLES: 247, Ricky Charles. Mr. Pafunda is my attorney.

THE COURT: Let me ask you this, sir. The bottom line is, he was your attorney in a proceeding. You remember I said he was a professional, he represents lots of people.

He represented you in a proceeding, he is here representing someone today.

When he was representing you, you had to rely upon his advice. When you try this case here, you try it solely upon the evidence. The mere fact he is representing someone and represented you, would that make you have tendency which you can't set aside to place more credence on what he says, or more believability in his client?

Do you think you can set that aside and try this case solely upon the evidence here and the Court's instruction?

MR. CHARLES: Yes, sir.

THE COURT: Thank you.

MS. BRADLEY: 245, Glenna Bradley. I know Mr. Patton and Mr. Rowland. And Mr. Rowland

I have known him since I was a child and I don't think I could try it honestly.

THE COURT: Thank you. I assume, Ma'am then, he has known you longer than you have known him.

MS. BRADLEY: Yes, Mr. Rowland has.

THE COURT: Thank you.

MS. BRADLEY: But I have known Mr. Patton longer than that.

THE COURT: Thank you.

MR. COLLIER: Ruby Collier.

THE COURT: What is your number, sir?

MR. COLLIER: 249. My lawyer who is in Pikeville - -

THE COURT: (Interrupting) Who is that, sir?

MR. COLLIER: I went to school with him, Mr. Hollon.

THE COURT: Mr. Hollon, oh, I'm sorry, yes, sir.

THE COURT: Repeat your name and number, I'm sorry.

MR. COLLIER: Ruby Collier, 249.

THE COURT: Now, you know him, how

did you become acquainted with Mr. Hollon?

MR. COLLIER: I know his family, just growed up together.

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

MR. COLLIER: No, your Honor.

THE COURT: Thank you, sir.

MR. BOYD: Charles Boyd, 224. I know Mr. Patton and Mr. Rowland. They live in the same community I live in.

THE COURT: Let me ask you, we are getting back, you know what the bottom line is, would it make any difference, sir?

MR. BOYD: No, it wouldn't make any difference.

THE COURT: Thank you, sir.

MS. BRANDENBURG: Betty Brandenburg, 167. I know the Hollon family.

THE COURT: You know the Hollon family. Would that make any difference, Ma'am?

MS. BRANDENBURG: No.

THE COURT: Thank you.

MR. CRUM: James Crum, 110. Mr. Self, Tommy and I grew up together, and went to

school together.

THE COURT: Let me ask you this, would you hold it against him?

MR. CRUM: I guess not.

THE COURT: Now, let's get back to this. I interjected some humor there. I make comments sometimes, don't ever interpret them.

When I said the Defendants are entitled to a fair and impartial Court, don't ever interpret what I am saying as to imply that I have a feeling one way or the other in this case. Please don't do that.

I make a statement sometimes and don't misinterpret. Go ahead, sir.

MS. MOORE: 100, Wilma Moore. I know Mr. Spencer, but an acquaintance, you know, just passing by the Courthouse or whatever but he never was my attorney.

THE COURT: Would that make any difference, Ma'am.

MS. MOORE: No.

THE COURT: Thank you, Ma'am.

MR. SPENCER: Clifford Spencer, No. 95. I know Mr. Ed Spencer, he is my attorney.

THE COURT: It wouldn't make no

difference?

MR. SPENCER: It wouldn't make any difference. (Shaking head negative)

THE COURT: Thank you, sir. Are you any relationship to him, sir?

MR. SPENCER: Maybe far.

THE COURT: Yes, sir.

MR. ADDISON: James E. Addison, 112, I am from Beattyville, and I know Mr. Hollon.

THE COURT: All right, sir.

Now, this acquaintance, is it social, business, or what, sir?

MR. ADDISON: Business.

THE COURT: All right. Has he represented you?

MR. ADDISON: No, sir.

THE COURT: You just have done business with him?

MR. ADDISON: Yes, sir.

THE COURT: What type of business?

MR. ADDISON: A mortgage on a piece of property.

THE COURT: Would that make any difference?

MR. ADDISON: No, your Honor.

THE COURT: Let me ask you this. I guess we get into it by way of this mortgage, is he in any way obligated, or are you in any way obligated to him?

MR. ADDISON: No, your Honor.

THE COURT: I assume he was the attorney that maybe checked your title when you got a mortgage ?

MR. ADDISON: Yes, sir.

THE COURT: All right. That would have no bearing?

MR. ADDISON: No, your Honor.

THE COURT: Thank you, sir.

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

THE COURT: All right. Now, I have got one last thing to say to you and then I am going to permit the attorneys to ask you individually - - permit the attorneys - - no, we better not do that, I have got several other things. I have got to go through the list of witnesses.

Let's do this, Mr. Marshall, let's have a ten minute recess and then we will go through the list of the witnesses.

THE MARSHALL OF THE COURT: All rise.

This Court will be in recess until 11:00 o'clock.

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

*** *** ***

Dale Soergel Moore Shaw & Associates
COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

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

THE COURT: In the course of this proceeding, it is expected that the jury may hear the following names of companies and/or persons associated with those companies. I am going to read these to see if any of you have worked for these companies, own any stock in these companies, or you may have been an officer or employee of these companies, or know these persons personally--to see if that in any way would hinder your services as jurors in this case.

Now, do this: If you are acquainted with or know these persons, please make that known to the attorneys. As I said, this process is a process where the final jury, which is going to consist of about sixteen people, is going to be drawn from a larger group. I am sure if I was an attorney on either side, and although a person would be a fair and impartial juror if they were acquainted with someone that they had known a long time, I might be willing to accept someone who hadn't known them that long or wasn't that well acquainted. This is a choice which is finally given to these attorneys, this is knowledge which they are wanting.

So if you can, listen carefully to all these names when they are called.

Ray-Mac Coal Company. Coal-Mac Coal Company. JRM Coal Company. Circle J Coal Company. JPL Coal Company. RDK Coal Company.

Bizzack Coal Company or Bizzack Brothers Construction Company. Bizwil, Inc. Bryan Coal Company. Calamity Coal Company. AA--A & A Coal Company. Dye Coal Company. Coal-Mac Sales. Mack Allen Coal Company. Unit Coal Company. Adkins Coal Company. P & E Coal Company.

You may hear the names of the following individuals related with these companies: Phillip Adkins. Earl Adkins. Carson Akers. Greg Jones. Arnold Turner, Jr. Arnold Turner, Sr. Clarence Turner.

Nick Cooley. Junior Hamilton or Earl Hamilton, Jr. Frank Justice. Jim McGhee. Lynn Parrish. Raymond Roger Barker. Danny Blanton.

Gene McAdams. Dana Spurlock. Linville Fleming. Danny Newsome. Ralph Mullins. David Stephens. Glen Hurley, and Abner Justice.

All right, Mr. Marshal,

let's see if any members of the jury are acquainted with any of those named persons or have stock in those companies or worked for them.

THE MARSHAL OF THE COURT: Yes, sir.

MR. CRUM: James Crum, 110, occasionally we sell--we have an independent operation. We sell to Coal-Mac Company.

THE COURT: Would that in any way affect your services, sir, as a juror in this case if accepted?

MR. CRUM: No, sir.

THE MARSHAL OF THE COURT: Anyone else?

MR. BOYD: Charles Boyd, 224. I am acquainted with Harold Turner, Jr. as a Floyd County attorney.

THE COURT: You are a what, sir?

MR. BOYD: I am acquainted with Harold Turner, Jr.

THE COURT: How are you acquainted with him, sir?

MR. CRUM: Well, just through the County Attorney's Office, the county attorney in Floyd County.

THE COURT: You don't go to church together or belong to the same club?

MR. BOYD: No.

THE COURT: You just-- By reason of the fact that he was an elected official, you are acquainted with him?

MR. BOYD: Yes.

THE COURT: Would that in any way affect your services as a juror in this case if accepted?

MR. BOYD: [Shakes head in a negative.]

THE COURT: Thank you, sir.

MS. DAWAHARE: No. 212, Gayle Dawahare, Mr. Perry and also Mr. McGee.

THE COURT: Thank you.

MS. STUMBO: 241, Ruby Stumbo. Carson Acres. His wife is a friend of mine. Her daughter is in school with mine.

THE COURT: The bottom line, it would affect your services as a Juror if accepted in this case?

MS. STUMBO: No, I don't think so.

THE COURT: Thank you. Thank you.

MS. BRADLEY: Carson Acres, Greg Jones, Turner, Jr. and Turner, Sr. All three of them are my kin people. Greg Jones is Edgar's son. Carson is his son-in-law, and Arnold Turner, Jr and Arnold Turner, Sr. is also married into our family.

And it would affect my opinion.

THE COURT: All right. Thank you, Ma'am.

THE MARSHALL OF THE COURT: Your name and number?

THE COURT: Oh, I'm sorry.

MS. BRADLEY: 245, Glenna Bradley.

THE COURT: Thank you, Ma'am.

MR. CHARLES: 247, Rick Charles. I know Frank Justice and his family. I have known them for several years.

THE COURT: Now, is this a social, go to clubs together?

MR. CHARLES: I live next to them for several years while I was growing up. And Mr. Justice's son is a friend of mine.

THE COURT: By reason of the fact that a company of Mr. Justice or someone is associated with is involved - - would this in any way affect your services as a Juror if accepted in this case?

MR. CHARLES: No.

THE COURT: Thank you, sir.

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

THE COURT: Thank you, sir.

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

THE COURT: Yes, sir.

MR. HARWELL: Thank you, sir.

Judge, I think you

overlooked one of the companies.

THE COURT: Which one did I overlook?

MR. HARWELL: The **Crissie Company.**

THE COURT: Did I overlook that ?

MR. HARWELL: Yes, sir.

THE COURT: All right.

MR. HARWELL: Then, Judge, if I might lend this to the Court. You cut off on the Ray-Mac people the names a bit.

THE COURT: Well, I haven't called the witnesses yet.

MR. HARWELL: Oh.

THE COURT: No. These are just the names of the companies and owners of companies.

MR. HARWELL: Oh, okay. I'm sorry, Judge.

THE COURT: I'm going to get to them.

MR. HARWELL: I apologize.

THE COURT: All right. I missed a company: Crissie (Spelling) C - R - I - S - S - I - E, Crissie Coal Company. Is there anyone that owns any stock in Crissie or work for Crissie or know anybody that works for Crissie?

THE MARSHALL OF THE COURT: Anyone? No one, your Honor.

THE COURT: Thank you.

Now, I'm going to read you a list of names. These are names of possible witnesses as they are persons who may or may not testify.

The witness oftentime is called by both sides. There are witnesses called by either side.

Now, I've told you what the Rules of credibility are, and that you may believe all of what a witness says, you may believe none, or part. But are not supposed to go into the proceedings with the idea that just because a person is who we are that you are compelled to believe it. But in other words, you decide what you are going to believe based upon the factors which I stated by the relationship, opportunity to acquire knowledge, whether that is supported or contradicted by their evidence. Those are the rules, but you can't go in with a fixed idea of a witness before.

Now, what we are going to wanting to know is if any of you are acquainted with any of these persons and whether or not, by reason of

the fact that you know these persons, just from the fact alone that you know them, that you would believe or disbelieve their testimony regardless of what they say. That is what we are trying to find out.

So let me read these names, and then we will--after we find out whether or not you know them, then we will have further questions.

All right. We have Phillip Booth, Hi Hat. Pearl Booth from McDowell. Jake Moore from McDowell. Basil Ray Moore from East McDowell.

Phillip Dale Moore from Price. Van Patton from Floyd County. Philman Caudill from McDowell. Wendall Ray Newsome from Jack's Creek. Sam Bentley, McDowell.

Ricky Dye, Pike. Danny Blanton, McDowell. Ralph Mullins, McDowell. Danny Newsome, McDowell. Abner Justice, McDowell. Ed Tackett, McDowell. Lee Jones, McDowell. James Mullins, McDowell. Lenny--Linville Fleming, McDowell.

Doug Tackett, I believe from Wheelwright. Doris Osborne. Dr. Richard Granager. Ramond Pete Barker, Stopover, Kentucky. 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. James Glen Hurley, Argo. Thurman Woody Barker, Stopover. Allen Jacobsen, Pikeville. Billy Gene Hurley, Jamboree. Harrison Hurley, Stopover. James Rowe, Pikeville.

And that is Wendall Newman instead of Wendall Newsome. Walker Blackburn, Drift. Frank Scott, Pike County. Ernie Justice, Pikeville. Louis Burke, Wicksburg, Kentucky. Billie Ray Justice, Pikeville.

Donald T. Barnett, Charleston, West Virginia. Lynn Parrish, Pikeville. Gene Michael McAdams, Pikeville. Frank Justice, Pikeville. Jim McGhee, Pikeville. Arnold Turner, Jr., Floyd County. Arnold Turner, Sr., Floyd County.

Now, I am repeating some names which I have stated. And all through this I will repeat some names. But where that is duplication and you have made the answer already, that may be ignored. But do not ignore it if it is something new.

Nick Cooley, Floyd County.

Ray Carleson, Floyd County. Junior Hamilton, McDowell. Julius Martin, Martin. Clarence Cobb Turner from Martin.

Frank Delzer from Floyd County. Jack Fulcas, Richmond. David Padgett, Jr., Columbia, South Carolina. Michael K. Fulmer, Columbia, South Carolina. Dennis McCallister, Washington, D.C. Robert T. Farrar, Ashland.

Frank Eddy, Lexington. Frank Rapier, Lexington. John Simms, Lexington. Richard Kemp, Charleston, West Virginia. Paul Snabel, Louisville, or he might pronounce that Snabel.

Larry McCune, Washington. Williard Washington. McCune and Washington are both from Washington, D.C. Also Vernon McCloud from Washington.

Ray J. Myers from Ashland. Robert Forsythe from Pikeville. Danny Castle, Alan Hammond, J. B. McKensie, Kenneth DeBoard, Denny Williamson and James Stephens, all of Pikeville. George C. Brown, and the custodian of records from the First Guarantee Bank at Martin.

Don Weedman from Pikeville, the record custodian from the Thomas Hereford Company,

Prestonsburg.

Ron Whalen from McCall--from--no. Ron Whalen and John McCall from Bluefield, West Virginia.

Dennie Joe Maynard from Pikeville. Ballard Mosley from Minnie. Erwin Collins from Prestonsburg. Otto Frazier. Anna Rae Hall. Henry Hamilton, Jr. Gary Miller. Lacinth Stewart. Pearl Stumbo. Mary Wallen.

And if I named these persons and don't give an address, if a juror has a question about this person being-- We have common names. But if you want to know what county, they can inquire; and the Court will tell you where they are from.

Ange Elliott, Leslie Hamilton, James G. Hurley. Dennis Joe Maynard. Henderson Hilliard, Jr. P. Gayheart. Jake Moore. Phillip Moore. Ricky Moore. Walker Blackburn. Willie Moore. Milford Gayheart.

Bobby R. Justice. Ernie Justice. Doug Tackett. Walker Blackburn. Chester Newsome. Frank Justice. James Ramsey. Ramond Cey. Richard Crumpka. J. B. Trout. Van Patton. And Phillip Booth, again. And Pearl Booth, again.

Betty Little, Price. Elmer Ray Johnson from Hi Hat. Bob Hamilton from McDowell. Darrell Stanley from Jack's Creek. Jim Price from Hi Hat. Mary Ellen Wilson from Bypro. Louis Farrah from Bypro. Thomas May from Wheelwright. Wilbur Shorty Jamison from Bypro. Gary Rose from Ligon. Gary McCoy from Wheelwright.

Basil Ray Moore, Louis Caudill, and Harold Stumbo.

Gentlemen, have I missed any?

MR. HOLLON: Jim Page from Price I think, Your Honor.

THE COURT: Jim?

MR. HOLLON: Jim Page from Price.

THE COURT: Jim Page from Price. Have I missed anyone else?

Now, I am not saying that these people will testify. I am saying these persons may or may not testify. And the fact that I am calling their names and they don't testify isn't evidence. It is just we are merely trying to inquire and find out if anybody knows of these persons.

Now, Let me state this: Some of these persons are government agents. Some of

these persons are union officials. Some of these persons are state police officials.

But you remember what I said on credibility. The credibility is up for the jury to decide. And merely because a person is an official such as that, should not create any fixed opinion in your mind. You make your decision based upon the witness on the stand and what the witness has said and the other factors which we suggested.

Further we have possibly some persons who are named here that might develop that they are persons who allegedly were involved in this who might have entered a plea, and who had been sentenced, and who might be awaiting sentence. And the mere fact that they have done that should not create any impression in your mind before you have heard the testimonythat something did or did not occur. Everything is based upon when the witness testifies and what the witness says in accordance to those rules.

Do all of you understand that?

All right. Mr. Marshal, let's see if any of them are acquainted with any of those persons named.

MS. BUTCHER: I am not sure exactly what you mean, but I don't think anyone who lives in Pikeville would not know that Frank Justice was--I believe he was a councilman. And I know he had a shoe store.

THE COURT: First, ma'am, your name and your number.

MS. BUTCHER: Oh. Doris Butcher, 122.

THE COURT: All right. Now, Ms. Butcher. You are acquainted with Mr. Justice?

MS. BUTCHER: Oh, I know him when I see him on the street. And if he is the one that has got the shoe store I know he has got one. I think he used to be a councilman.

THE COURT: And you read about him?

MS. BUTCHER: Well--

THE COURT: [Interrupting] Ma'am, let me ask you this: By reason of what you read or your acquaintance, do you have any fixed opinion in your mind with regard to Mr. Justice and if he should testify, what he would testify about?

MS. BUTCHER: No, I don't know him well enough to--

THE COURT: [Interrupting] Do you think you can sit, if accepted as a juror, and listen

to his testimony and decide this case solely upon the testimony as such.

MS. BUTCHER: Sure. He would be just like a stranger to me, but I wanted to be truthful.

THE COURT: Thank you, ma'am.

MS. BUTCHER: And I think I recognized two other names.

THE COURT: All right. And who are those, ma'am?

MS. BUTCHER: If Eugene Maynard was a teacher and Walter Blackburn. I knew two teachers by those names. Then I knew them.

THE COURT: I don't think they are teachers, are they, gentlemen?

No, ma'am, it is my understanding that they are not teachers.

MS. BUTCHER: Okay.

THE COURT: All right. Thank you, ma'am. We appreciate your candor. That is our purpose of this.

MS. HOBSON: Jennifer D. Hobson, 194. It is possible that I know Gary McCoy and Homer Mays if they are the same ones that are in the gospel singing group.

THE COURT: Would it make any difference,

ma'am?

MS. HOBSON: It wouldn't make any difference.

THE COURT: Thank you.

MILLERS BALLS
EZERASE
COTTON CONTENT

MR. BOYD: No. 224, I know two Van Pattons in Floyd County. I don't know if it's one I know or not, but I know the two of them, Van Patton, Sr. and Van Patton, Jr.

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

MR.BOYD: I used to work with Van Patton, Sr. I know Turner, Jr. I know Walker Blackburn.

THE COURT: Let me ask you, because you know them does that mean you would accept what they say or disagree with what they say just because you know them or would you make a decision based on what they said and their relationship and how that is either supported or contradicted by other evidence, would you do that, sir?

MR. BOYD: It would not make any difference to me, I don't know them that well. I just know them.

MR. THOMPSON: I know Herl Stumbo, Your Honor. And I play basketball with Van Patton, and I know Wilbur "Shorty" Jameson.

THE MARSHALL OF THE COURT: What's your name and number?

MR. THOMPSON: Earl Thompson, 221.

Van Patton and Shorty Jameson used to teach school and I know him.

THE COURT: Was this a very close relationship?

MR. THOMPSON: It was with Van Patton and like Shorty, I teach at Floyd County and know him from there.

THE COURT: Would that make any difference in trying the case?

MR. THOMPSON: No.

MS. MOORE: Laura Moore, 234 --

THE COURT: (Interrupting) Your name and number.

MS. MOORE: Laura Moore, 234.

THE COURT: You know who?

MS. MOORE: Mosley, -- Ballard Mosley, Danny Blanton, Jay Moore, Arnold Turner.

THE COURT: Is this a close relationship, ma'am?

MS. MOORE: No, it's not.

THE COURT: Would it make any difference if you're accepted as a juror in this case?

MS. MOORE: No.

THE COURT: Thank you, ma'am.

MR. DeROSSETT: 236, Clyde DeRossett. Harris Board, he's my first cousin. I also know Stumbo.

THE COURT: Are you any relation to Stumbo?

MR. DeROSSETT: No.

THE COURT: Now, let me ask you this, some people have kinfolks they believe and some people have kinfolks they don't believe. But would this create any fixed impression in your mind that would prevent you from listening to the witnesses testify. And merely because they're kin does not mean you would accept it or not accept it. You will decide it based upon the testimony and how it's presented and the other factors, is that correct, sir?

MR. DeROSSETT: Yes, sir.

MS. BRADLEY: Here I am again, 245, Glenna D. Bradley. Julius Moore is also kin. And Don Weedman, I know him, he's a State Trooper. He and my husband are very good friends, but based on the testimony I could try it fairly.

THE COURT: Thank you, ma'am.

MR. DESKINS: Jack Deskins, 246. J. B. Trout lives right above me and I also know Ernie

Justice. But it would not make any difference.

THE COURT: Thank you, sir.

THE MARSHALL OF THE COURT: That will be all, Your Honor.

THE COURT: Now, let me get two more little things and we'll conclude this.

The questions asked of counsel, remember when I said a Defendant is entitled to a fair and impartial trial upon the evidence and the Court's instructions by an impartial jury and an impartial Court. And the question was said if you were a Defendant would you accept yourself as a juror in this case. This has several ramifications. The guideline in this case is a fair and impartial trial based upon the evidence. The only thing this side of the courtroom is asking is a fair trial, based upon the evidence. The only thing this side of the courtroom is asking is a fair trial based upon the evidence and in accordance with the rules. You've heard the old song about the preacher and the bear. The fellow says Lord, if you can't help me, don't help that bear.

Now, in this case they're wanting a fair and impartial decision, but the

question kindly brings up maybe what you might call the Golden Rule. Now, this case -- in the Golden Rule this is under the Mosaic Law "Do unto others as you would have them do unto you."

Of course, if you give another fellow a hundred dollars he should give you a hundred dollars back. But this is tried according to the rules and regulations of the law, which has been agreed upon by this collection of families. And those rules and regulations require a fair and impartial trial, based upon the evidence, nothing more, nothing less, that's all we're asking.

Now, is there anybody here that does not feel that they can try this case according to the rule and give a fair and impartial trial. If not, let's let this be known.

Now, I have something else but it slipped my mind.

MR. HARWELL: I bet you were thinking Your Honor about listening to what you referred to the panel earlier as to their personal excuses that they would give each other and to those sitting beside them.

THE COURT: That's it. This is the last thing. I'll tell you one more and I know you're

getting tired of hearing me. -- This fellow said his father told him two things; one was to never tell everything he knew. And he asked him what the second one was and he said he forgot that.

Now, I just about forgot the main part of this thing. You notice that we have -- everybody has made their answers to the questions and with the exception of a few here I have not indicated the effect of them. You remember now, I said we have to decide who is the least convenient. A decision will not be made upon your excuse. Again, remember you're telling the person next to you the reason you think he should serve instead of you. It's expected that this trial will last anywhere from one week to eight weeks. I think maybe the average is going to be five weeks, four weeks. But this is something that we'll see.

But, has anyone for some reason would be able to sit as a juror in this case or something would occur that would prevent you from sitting here and focusing your attention on this trial. Now, we're going to give you a chance, Miss Caudill.

MS. SPICER: Della Spicer, No. 96.

My mother-in-law is terminally ill and she has entered the hospital since we were here last week and she is very ill and she could possibly go at any time.

THE COURT: Thank you, ma'am.

You understand, ma'am, that we will weigh this with relation to the other excuses and then make a decision that we feel, and some will have to let go and some will have to stay. We'll try to make a fair decision.

Yes, ma'am.

MS. VANCE: No. 106, Marie Vance. The only reason I have is because I won't travel in the bad weather. I can stay here, but I won't travel.

THE COURT: Madam Clerk, tell her what the Government will do.

THE CLERK OF THE COURT: Any night that you choose to stay the Government will add to your daily allotment fifty dollars a night to help cover your expenses. You do not get your mileage for that day since you don't drive home, but you do get the subsistence of fifty dollars added to the thirty dollars.

MR. CRUM: James Crum, No. 110.

Your Honor, my wife and little boy had an automobile accident last Friday and I've got some broken bones, busted heads and faces, and I've just got a mess. He had just gotten out of the hospital on the 24th of December from another operation. She was taking him back to get the stitches out.

If there's any way possible I do need a temporary excuse so I could be with him. He has a cast up to his leg, up to his hip and he can't get around, and I've just got a problem, and I would appreciate it.

THE COURT: Thank you.

MS. SMITH: Katherine Smith, NO. 114. I've got three children, seven, nine, and twelve school age and I've got one little girl seven years old that goes to speech therapy three times a week and my husband works and can't pick them up after school. I have nobody to pick them up. And my sister goes into the hospital on the 27th. She has cancer of the bone. That's all.

MS. BURCHETT My name is Ella Elizabeth Burchett and I'm 120.

THE COURT: Ma'am, please repeat that, I did not hear you.

MS. BURCHETT: No. 120, Ella Elizabeth Burchett. I'm a hairdresser and I would have to close my shop if I'm on this case and it all depends on whether my daughter goes to college or not. She goes to the University of Kentucky.

THE COURT: Thank you, ma'am.

MR. RITCHIE: 155, Charles V. Ritchie. My wife is totally disabled, she's on a walker and I've got to do everything at the house. And I've got a boy that's nine years old that goes to school and I've got to pick him up and look after him. I've got a stomach problem, a breathing problem and I've got a doctor's appointment the 16th of this month.

THE COURT: Thank you, sir.

MS. FRANCIS: Netta Jean Francis, NO. 202. I have a son who attends TMH class at Knott County High School where I teach. And I take him to school and bring him back in the afternoon and it would be difficult for my husband to have to leave work to take him to school and pick him up. And also on days when school let out early for inclement weather I would not -- I wouldn't know what would happen to him or who would stay with him until I get home.

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THE COURT: How old did you say your son was, ma'am?

MS. FRANCIS: He's eighteen.

THE COURT: How old?

MS. FRANCIS: Eighteen.

MS. HOLLIDAY: Rosa Holliday, 193. My husband and I run a business. I say business, it's a grocery store, hardware and gas station and if this should run over an extended period of time it would be a hardship on us. He can hire someone for a little while but you can't hire anyone to take over your business.

THE COURT: Thank you, ma'am.

MR. THOMPSON: Earl Thompson, 221. I teach at Floyd County School System and I would hate to leave my classes with a substitute for two or three months, two or three days would be fine, but I'd hate to leave them for that long a time.

THE COURT: Thank you.

MS. MOORE: Laura Moore, 234. My husband is in Lexington. He just had heart surgery and I'm supposed to go back.

THE COURT: I thank you.

MR. CHARLES: No. 247, Ricky Charles. It would be hard for me to serve more than a week or

so. I work for a mining operation and we have several mines and I have to oversee those mines, and it would be hard to leave them for that extended period of time.

THE COURT: Thank you.

MS. COLLIER: Ruby Collier, No. 249. I left my little boy today with the measles and I just couldn't sit on the jury.

THE COURT: And you're sitting there with that stuff?

MS. COLLIER: Yes.

THE COURT: Ms. Dawahare, you're going to take some measles home to your children.

Thank you, ma'am.

THE MARSHALL OF THE COURT: That's all, Your Honor.

THE COURT: Well, I guess we might as well meet at one o'clock then.

MR. KEHRLI: Your Honor, we have a matter we'd like to take up outside the presence of the jury.

THE COURT: All right, Mr. Marshall, you may excuse the jury till one o'clock.

THE MARSHALL OF THE COURT: The jury is excused.

Your Honor, the jury has left the room.

THE COURT: All right, you may proceed.

MR. KEHRLI: Thank you.

After consulting with my co-counsel for the United States, we feel compelled, we do this with some reluctance but we feel compelled to move this Court to strike this entire jury panel on the grounds that it's been tainted by the statements of witness No. 241 Ruby Stumbo. In response to one of Your Honor's questions this morning, she made the following statement --

THE COURT: (Interrupting) They were good men?

MR. KEHRLI: That they were good men and the Defendants themselves would have to tell her that they were not guilty. We believe that that -- hearing that statement, the other members of the jury panel has it in -- unfair inference and a prejudicial inference to the Government's case. In effect, what has happened a character witness has testified in front of this jury without the Government being given the opportunity to cross

examine. But we believe that unfairly prejudices the Government's case and taints the jury panel and they should be stricken.

THE COURT: Thank you, do you wish to make a response?

MR. HARWELL: Yes, may it please the Court, may I be heard briefly?

THE COURT: Yes, sir.

MR. HARWELL: I sympathize with the Government to some limited degree, Your Honor. The truth of the matter is that that sort of thing can come out when there is a massive voir dire like this. By the same token I don't believe, Your Honor, that that statement was of such a magnitude that it should influence this Court in terms of granting the Government's motion. Your Honor, I respectfully suggest and I'm saying this more as an Officer of the Court as an aggregate the more appropriate way to handle this matter is to ask the panel when they're brought back in if that had any effect on them or let counsel ask them that, but I think it's premature at this point in time for this motion to be made and ruled upon.

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MR. WALBOURN: Your Honor, E. J. Walbourn. I guess just in reflection, Mr. Steele, one of the prospective Jurors yesterday, was asked the question about testifying, and he indicated that he thought that the Defendants ought to testify, that he wanted them to testify. And that - - there was no allegation or innuendos being handled from the Defendants, and I don't think we have anything different on - -

THE COURT: (Interrupting) Let me do this, gentlemen. Remember in the beginning I said the purpose of this proceeding was not to educate nor school the Jury as to any philosophy or train of thought.

Now, I told them how the witness was to be judged, and let me just reiterate for the purpose of this proceeding, during this proceeding matters and statements may come out, and they are admonished that that isn't evidence.

This evidence is tried from the witness stand, and we will do that when we come back at 1:00.

MR. KEHRLI: Your Honor, the Government respectfully requests that it also be allowed

consistent with Mr. Harwell's suggestions, to require of the Jury members in its voir dire this afternoon whether or not hearing that statement will affect the amount of proof required.

THE COURT: Well, the Court will make no admonition, you can get into that matter with your questions which you ask the Jury.

MR. KEHRLI: All right, thank you, your Honor.

THE COURT: Gentlemen, we will be in recess - -

MR. SELF: (Interrupting) Your Honor, just a housekeeping matter. Might I inquire as to what the Court has had in success of trying to obtain additional Jurors for tomorrow?

THE COURT: My phone has been busy since last night at midnight to people - - I can always tell when something happens by my telephone, and I have gotten calls from Judge's secretaries, cousins I didn't know I had.

That doesn't make any difference, and you might advise them this, gentlemen.

I have advised the Jurors that if they are flat on their back and can't get

here, to send someone in their place with medical records to establish that they are flat on their back, and that I do not accept an excuse of - - based upon transportation, because the Government pays the money for transportation.

MR. SELF: I realize that, but we have got a prediction of somewhere from three to six inches of snow here tomorrow, too.

THE COURT: We will make a decision before the day is over, gentlemen.

MR. SELF: I realize that, your Honor.

THE COURT: Yes. This is another thing, gentlemen. We will make decisions and we will work this out. We will try this case and hope everyone will be the better.

THE CLERK OF THE COURT: At this point I just wanted to inform counsel that we do have a recorded message - - we can put on a recorded message per Judge's instruction, we also have a remote control unit that we can take home with us and change that message if need be from our homes.

MR. HARWELL: Are you telling us we can call that to find out about weather and problems of the Court?

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THE CLERK OF THE COURT: You can get the same message the Jurors.

MR. SELF: Are the Jurors instructed to call in at 6:00 o'clock in the morning?

THE CLERK OF THE COURT: Well, we instruct our Jurors, Mr. Self, that if they get up and find the weather conditions that did not prevail the night before that they ought to call in that morning.

MR. SPENCER: What is the number.

THE CLERK OF THE COURT: 437-6160. And that recording will tell you that collect calls are accepted, but that is only from the Jurors, gentlemen.

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

THE MARSHALL OF THE COURT: All right. The Court will stand in recess until 1:00.

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

*** *** ***

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Diplomate American Board of Psychiatry and Neurology

Medical, Forensic and Neuropsychiatry Clinical Psychopharmacology

Robert P. Granacher, Jr., M.D. P.S.C.

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Office Rule

XXX The only way the Govt can win this if Tackett doesn't take the stand is to dismiss the indictment.

January 9, 1984

David Thomas
Attorney At Law
Route 2, Box 698A
Pikeville, Kentucky 41501

RE: Eugene Tackett

Dear Mr. Thomas:

Eugene Tackett was evaluated at my offices on December 29, 1983.

IDENTIFICATION DATA:

Mr. Tackett is a 37 year old married white male from McDowell Kentucky. He is charged under indictment number 83-8, United States District Court, Eastern District of Kentucky, Pikeville, with conspiracy. The reader is referred to that indictment for the exact nature of this conspiracy.

CONCLUSIONS:

1. In my opinion, there is reasonable medical probability, that Mr. Tackett suffers mild mental retardation.

2. In my opinion, there is reasonable medical probability, that Mr. Tackett's mental retardation is secondary to organic brain syndrome which occurred secondary to a subdural hematoma of the brain occurring in April 1974.

3. In my opinion, there is reasonable medical probability, that due to Mr. Tackett's mental retardation, he does not know the nature of the conspiracy with which he is charged.

RECORDS REVIEWED:

1. Indictment number 83-8, United States District Court, Eastern District of Kentucky, Pikeville, filed June 6, 1983.

2. Office medical notes of Roger Akers, M.D. on Eugene Tackett from March 10, 1976 through July 11, 1983.

RECORDS REVIEWED CONT.:

3. Discharge summary from Outer Drive Hospital, Michigan, A. L. Sarkissian, M.D., Neurosurgeon, dated May 6, 1974.

4. Statement of Eugene Tackett obtained by Frank E. Eddy, special agent, dated March 2, 1983.

HISTORY:

Mr. Tackett relates that in December of 1981 he started working as a foreman at the Calamity Coal Company. This was a night shift job. During February 1982, Mr. Tackett was told by a one Phillip Booth that he was to picket the Ray-Mac Coal Company and that if he did not show up with other men he would not have a job.

Apparently, some shooting occurred sometime during this month but he is unable to give me the exact date. He says he was not involved but that he was in the area for about half an hour. Some where within the same time frame, he attended a union meeting at McDowell Kentucky. He says this was across from Edgar Jones' office. He claims he attended this meeting about 8:00 at night. Since he was a foreman he did not belong to the union but he did attend. He was told, with numerous other persons, to set up a picket line the next morning. He was advised to be there before daylight. The next morning he was picked up by one Jason Moore and transported to a small farm. He was accompained by four other persons. He was given a gun. He is not sure what kind of gun but says it was a rifle and not a hand gun. He has never owned a gun and has no familarity with guns. A man by the name of Panhandle Moore showed him how to use the gun. He thought they were to go into the hills above the coal mine to be there to shoot back in case the picket line below was fired upon by outsiders. Again, he claims he was told if he did not cooperate he would lose his job.

SOCIAL HISTORY:

He has been married one time for 17 years and has three children. He is currently on unemployment. He went through the eighth grade at McDowell High School and dropped during the first year of high school. He had significant difficulty learning and reads and writes poorly. He went to Michigan, lied about his age, and got a job making shingles which are used in housing construction. He was laid off after about three months at this job and he started working for an asphalt company. He was laid off from that job slightly before his 18th birthday. After he turned 18, he got a job at Cadillac Motor Corporation. He worked there seven to eight years and left to take another job but was laid off from that job after about three months. Subsequent to this, he was employed at Detroit Steel Corporation where he worked about three months and then went back to Cadillac Motors. He worked roughly one year or longer for Cadillar Motors and then stopped employment as he thought chemicals he was using were causing a rash. Approximately nine years ago he came to Kentucky to work in the mines and has been in mining labor off and on since.

He denies any significant previous legal difficulty other than a law suit against him in 1965 which resulted from an automobile accident. He has been

SOCIAL HISTORY CONT.:

charged with driving while intoxicated in 1980, 1981, and in 1983.

PAST MEDICAL HISTORY:

He has had serious difficulty with alcohol in his life. He apparently was grossly intoxicated and fell and struck his head which resulted in a subdural hematoma. This was evacuated by neurosurgical procedures at a Michican hospital in 1974. At that time he has a hazy recollection as he had significant memory difficulty. After the accident, he was placed on Dilantin because of a seizure disorder. He discontinued this when he returned to Kentucky and his grand mal seizures returned. In 1976, Dr. Roger Akers started him back on Dilantin. He has about five to six grand mal seizures since 1976.

He had surgery on his right knee in 1968 and has had surgery on the septum of his nose while working at Cadillac Motors. He denies any allergies to drugs or medications and denies current use of any medications other than Dilantin.

MENTAL STATUS EXAMINATION:

He is a simple cooperative man who looks slightly older than his stated age. He has a significant speech articulation problem. Mood is normal. Thought is normal in form with no loosening of associations and normal in content with no delusions or hallucinations. He is right handed and has normal language function for his intellectual capacity and no motor or thought dyspraxia. He does have constructional dyspraxia and has significant difficulty drawing three dimensional objects and properly performing angles. He is very concrete in his abstracting ability. He is oriented to person, place and time. Recent and remote memory seem grossly intact. He has some impairment of new learning memory and was only ble to memorize one out of four novel words at three minutes.

PSYCHOLOGICAL TESTING:

He was administered the Intellectual Screening Battery. His sub test scores, verbal IQ, performance IQ and total IQ are noted below:

	RAW SCORE	PERCENTILE	ESTIMATED IQ
Information	6	3	
Comprehension	11	11	
Arithmetic	10	23	
Similarities	10	9	
Vocabulary	7	3	
Digit Symbol	14	NA	

PSYCHOLOGICAL TESTING CONT.:

	RAW SCORE	PERCENTILE	ESTIMATED IQ
Picture Completion	10	NA	
Spatial Orientation	10	NA	
Picture Arrangement	6	NA	
Object Assembly	3	NA	
Verbal	44	7	77
Performance	43	1	52
Total	87	1	52

As can be noted above, his verbal IQ is 77 and performance IQ is 52. This disparity of 25 points is significant. Following head injury, verbal ability generally remains intact. This man's verbal ability places him at the 7th percentile and suggests an individual who always had low verbal ability. However, his performance ability is at the 1 percentile level. The 25 point differential suggests significant organic dysfunction. This is further confirmed by his constructional dyspraxia, concreteness, and new learning memory difficulty as noted on his mental status examination. The total IQ of 52, places this man squarely in the mild mental retardation range. This range is defined as an IQ of 50 to 70. He is on the very low end of this figure. In practical terms, this puts him in the category of educable mental retardation.

DISCUSSION OF CONCLUSIONS:

Obviously, this man is not too retarded to be functional. His retardation occurred after his employment in industries in Michigan. In my opinion, he recognized his difficulties and came back to Kentucky because of impaired intellectual functioning and inability to function in an occupational setting in the Detroit area.

Obviously, if he's been employed in the coal mines he has had sufficient capacity to function in those jobs. However, when I sit down and go over the content of the indictment with him, he is so concrete and has such limited abstracting functions, that he is unable to explain to me how he fitted into the conspiracy. He admits to being in the places that he is charged and admits to using a rifle and firing it into the air. Yet, he is not able to give me any factual understanding of the nature of this conspiracy or the nature of things with which he is charged.

Even with his limitations, I find him competent to stand trial and certainly able to understand differences between defense and prosecution and the nature of a judge and jury. I do not feel that he has the intellectual capacity to have been an active participant in this conspiracy. He does have the intellectual

DISCUSSION OF CONCLUSIONS CONT.:

capacity to be manipulated and used by others for their gain.

Respectfully submitted,

Robert P. Granacher, Jr., M.D.

RPG/jlt

Enclosure

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

UNITED STATES OF AMERICA

-vs- CASE 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 10, 1984

VOLUME FOUR

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VOIR DIRE EXAMINATION

MR. KEHRLI: Pgs. 128-150

MR. HARWELL: Pgs. 150-175

MR. WALBOURN: Pgs. 175-179

MR. PAFUNDA: Pgs. 179-198

CHALLENGE FOR CAUSE

MR. HARWELL: Pgs. 212-215

MR. KEHRLI: Pgs. 216-220

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REPORTER'S NOTE: After lunch the Court was called to order.

THE MARSHALL OF THE COURT: The Court is again in session, be seated and come to order.

THE COURT: Madam Clerk.

REPORTER'S NOTE: The Clerk of the Court approach the Bench and after a brief conference the following was heard:

THE COURT: All right. Gentlemen, come up here for a Bench conference.

REPORTER'S NOTE: At this time all counsel appeared at the Bench for a conference and the following was heard:

THE COURT: Here is what we have got to decide. What we have got to decide is whether or not to let the Jury panel go home, or if you think you gentlemen can finish here within not too long a time so we can decide who will be excused and who won't be excused for the panel.

MR. KEHRLI: Judge, I think I have got at least an hour.

MR. HARWELL: I have got less than that.

MR. WALBOURN: Your Honor, some of matters

you covered yesterday, particularly about the lying has not been covered.

MR. KEHRLI: That is what I think too.

THE COURT: Let the whole bunch go and come back, I hate to, you know. Some are going to be excused. What didn't we cover yesterday?

MR. WALBOURN: What you stated about family, Unions - -

MR. KEHRLI: (Interrupting) And the mines.

THE COURT: I asked if any of them had any. If I go through that, how long will that take?

MR. KEHRLI: I suspect twenty minutes or a half hour.

THE COURT: I don't know how much time these - - it is my understanding some of them are from Lee County.

MR. HOLLON: Yes, sir. I spoke with my office in Lee County.

MR. HARWELL: (Inaudible out of the daily Reporter's hearing)

THE COURT: Well - -

MR. HOLLON: (Interrupting) The people from Lee County, that is at least thirty minutes

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and it would be extremely difficult on the road.

THE CLERK OF THE COURT: We have one Juror has gone to make arrangements to spend the night. Of course, they have that option if they so desire, but - -

MR. WALBOURN: (Interrupting) Perhaps you want to leave it to the Jurors.

MR. HARWELL: Ask them.

THE COURT: Let's see what the Jury thinks about it.

(End of Bench Hearing)

THE COURT: We have some additional questions which need to be asked the members of the Jury.

After those questions have been asked, then a decision will be made as to what Juror will be permitted to be permanently excused. The remainder of the Jury, of course, will have to come back at some other time and will be told.

The Court is presently looking outside and watching the snow fall. I know that many members of the Jury live in Lee County and Magoffin County, and they are uneasy about getting home.

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I am wondering now - - I'm trying to get the census of the Jury that would like to be in recess or adjournment and go home and then come back at a later date, or whether or not to continue today to determine who is going to be excused and then the remainder will, of course, have to come back at another time.

All who would like for it to be in recess now and permit it to come back at another time to complete the examination, hold your hands up. All right.

Now, those who would like to stay and complete this proceeding so that you know who is going to be finally excused and who has to come back, raise your hand.

It looks like the majority would like to stay, doesn't it.

I apoligize. We will just stay and see how we finish it out then. I will state at this point we won't have Court tomorrow if this keeps like it is, but always remember to call the Code-a-phone of the Clerk's office because she will advise you with regard to the docket of the Court.

Ladies and gentlemen of the Jury, I want to know - - let me see, first, if

any members of the Jury belong to the U.M.W. of A., we will let the Marshall go to you and state your name and number. If you belong to the U.M.W. of A. or you have a member of your family or close friend or relative who belong to the U.M.W. of A.

MR. CAUDILL: Eddie Caudill, No. 124. I belong to the U.M.W.A.

THE COURT: All right.

Let me ask you this. What was your name again?

MR. CAUDILL: Eddie Caudill, 124.

THE COURT: All right. Mr. Caudill, you heard what I said in the beginning about some people are for drinking, some are against, and some people are for the Union and some are against the Union, you heard that?

MR. CAUDILL: Yes, sir.

THE COURT: Let me ask you this. If the evidence in this case reflects that there was a thing going on at the mines and there might be evidence that it may or may not have been Union activity; it might be contended some that it's Union activity, some might have contended it wasn't Union activity.

Do you think by reason

of the fact that you belong to the U.M.W. of A., and this may involve whether or not there is labor organization, whether or not it is Union activity, may involve all of that, do you think that would prevent you from making a fair decision in this case based upon the evidence?

MR. CAUDILL: No.

THE COURT: You think just the fact that you belong to the U.M.W. of A. is going to have any bearing in this case?

MR. CAUDILL: That is right.

THE COURT: All right. Let me ask you this further. As a member of the U.M.W. of A., have you ever participated in the strike - -

MR. CAUDILL: (Interrupting) No.

THE COURT: Organizing activity?

MR. CAUDILL: No.

THE COURT: All right.

MR. CRUM: I have been on this floor twenty times. James Crum, 110. My father is retired from the U.M.W.A.

THE COURT: You heard what I asked him - -

MR. CRUM: (Interrupting) Wouldn't have any bearing.

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THE COURT: It would not have any bearing?

MR. CRUM: It wouldn't make any difference.

THE COURT: Have you ever been - - I guess what we get to, have you ever been involved in any organizing activities, strikes - - of course, this was your father, it wasn't you?

MR. CRUM: I have been on the other side two or three times, but I am not Union. I have not been on that side, I have been on the other side.

THE COURT: Well, having been on the other side, do you still think that you can disregard all of that and still try this case solely upon the evidence?

MR. CRUM: Well yes, I think I could. I have had a few windows knocked out, a few tires busted, and a few threads, but I would be honest about it.

THE COURT: Thank you, sir.

MR. SNYDER: A. J. Snyder, No. 207. I am a member of the U.M.W.A.

THE COURT: Have you ever been in an organizing - -

MR. SNYDER: (Interrupting) No.

THE COURT: (Continuing) Matter, been on strike, involved in any violation - -

MR. SNYDER: (Interrupting) On strike, we all have, we all have been on strike, all miners have been.

THE COURT: Yes, sir. Have you ever been involved, Mr. Snyder, in any alleged violence with a strike or something like that?

MR. SNYDER: (Shaking head negative)

THE COURT: Mr. Snyder, do you think by reason of your belonging to the U.M.W. of A., as you said, do you think that would in any way - -

MR. SNYDER: (Interrupting) No, I don't.

THE COURT: Affect your services as a Juror in this case, if accepted?

MR. SNYDER: I don't think so.

THE COURT: Thank you, sir.

MR. BOYD: Charles Boyd, 224. I am a retired member of the U.M.W. of A.

THE COURT: As a member of the U.M.W. of A., did you participate in strikes or any organizing activity?

MR. BOYD: Participated in strikes.

THE COURT: Any organizing activity?

MR. BOYD: No.

THE COURT: In any of those strikes has violence been involved?

MR. BOYD: No.

THE COURT: Do you think that - - your experience in any way affects your services as a Juror in this case if accepted?

MR. BOYD: No, it would not.

THE COURT: Thank you, sir.

MS. BOWEN: Mary Ann Bowen, No. 228. My father is a retired miner and U.M.W. of A.

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

MS. BOWEN: No.

THE COURT: All right.

*** *** ***

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MS. MOORE: Laura Moore, No. 234. My husband belongs to U.M.W.A.

THE COURT: Does that make a difference, ma'am?

MS. MOORE: No, it doesn't. I don't think so.

MR. DESKINS: No. 246, Jack Deskins, I belong to the U.M.W.A. and I work on the organizing committee.

THE COURT: Would it make a difference?

MR. DESKINS: No.

THE COURT: Let me ask you this, I notice where Richard Crumlin, and I assume that's going to be the President of the U.M.W.A. is listed as a witness, is that correct?

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

THE COURT: Let me ask you, by reason of the fact that the President of the U.M.W.A. testifies in this matter, and you are members of the U.M.W.A., do you think that that would add any significant bearing on what your decision would be in this case?

MR. DESKINS: No, it wouldn't.

THE COURT: You would try it on all the evidence in the case?

MR. DESKINS: Yes, I would.

THE COURT: Does anyone feel to the contrary.

All right.

MR. CHARLES: No. 247, Ricky D. Charles. My wife works for District 30 of the U.M.W.A. However, I work non-union myself.

THE COURT: Would it make any difference?

MR. CHARLES: No, I don't think so.

THE COURT: All right, we asked on one side of the coin, and you understand we've got the other side of the coin.

You've got a group that's not particularly for unions and non-unions. In this county, we have a lot of non-union mines. Is there anyone so prejudiced against the union and the fact that this comes up that they could not try this case solely upon the evidence?

You may ask on the behalf of the United States.

MR. KEHRLI: Thank you, Your Honor.

Good afternoon, ladies

and gentlemen. As you heard earlier my name is Randall Kehrli and I represent the United States in this matter. On behalf of the Government, I'd like to thank you for your patience this morning in responding to Your Honor's questions and your frankness and honesty in doing so. I'd like to ask you to do the same things for me. I'm going to ask you a couple of questions. Some general questions first of all, and then I may be asking you -- specifically some of you individually certain specific questions. If I do that, I don't want any of you to think that I'm singling you out or prying or trying to get into your personal lives. The reason we're here and I guess maybe I can explain that perhaps with an analogy. One of the claims to fame you can have right now from being -- and being from Washington, D. C. is the Washington Redskins. And naturally as you can expect I'm a pretty avid Redskins fan. I can assure you that if the purpose -- if what we were doing this afternoon is selecting a referee for say a Redskins-Dallas Cowboys game and Tom Landry was sitting on this side of the table and Joe Gibbs was sitting on this side of the table, you can bet if I was in the back of the room Tom Landry would want to know who I am

and the fact that I am an avid Redskins fan.

That's the purpose for both parties in this case, to make sure we get a fair trial.

The important thing is that it's -- it's more important than just a game, it's more important than a football game, and it's extremely important to these Defendants and the defense counsel. It's also important to the larger family that the Judge told you about this morning, that is the United States. So, that's why we need to have your honesty and frankness in answering these questions.

In light of the weather, I'll try to be as brief as possible.

First of all, to follow up on the Judge's questions concerning some of your union affiliations.

Juror No. 124, I believe that's Mr. Caudill. Would you stand, please?

You said you belong to the United Mine Workers, what local is that, sir?

MR. CAUDILL: 1645.

MR. KEHRLI: Where is that located?

MR. CAUDILL: Lackey, Kentucky.

MR. KEHRLI: Juror No. 207, I believe that is Mr. A. J. Snyder, would you stand, please.

Mr. Snyder, what local do you belong to, or did belong to?

MR. SNYDER: 1741 Whalin.

MR. KEHRLI: And where is that located?

MR. SNYDER: Whalin.

MR. KEHRLI: Have you ever been an officer of that local?

MR. SNYDER: No, not that one.

MR. KEHRLI: Thank you, Mr. Snyder.

Juror No. 224, Boyd. Would you tell me what local you belong to?

MR. BOYD: 1373.

MR. KEHRLI: Were you an officer of that local at any time?

MR. BOYD: Not in that local, I was an officer of the Elkhorn local which I believe is 5262. I was recording secretary.

MR. KEHRLI: You were the recording secretary?

MR. BOYD: Yes.

MR. KEHRLI: How long were you the recording secretary?

MR. BOYD: I believe several years.

MR. KEHRLI: Thank you.

Juror No. 246, Mr. Deskins. And what local do you belong to?

MR. DESKINS: It's District 17 in Pike County.

MR. KEHRLI: And were you ever an officer of that local?

MR. DESKINS: No, I'm not.

MR. KEHRLI: How long have you been a member?

MR. DESKINS: About three years.

MR. KEHRLI: Thank you very much, Mr. Deskins.

As a general question, would any of you who have any moral or religious or ethical beliefs that would preclude you from sitting on judgement of another human being in this trial, would you please so indicate by raising your hand?

Have any of you been contacted by any of the Defendants or their attorney concerning this matter?

All right, ladies and gentlemen, other than officers of this Court, and

the Clerk's office, has anyone from the Government contacted you concerning this matter other than making the arrangements for you to appear here today?

Does anyone here have -- first of all, are any of you personally employed by the federal government?

Do any of you have any relatives or close friends who are employed by the federal government?

Yes, sir.

MR. LONGWORTH: 248, Larry Longworth.

MR. KEHRLI: Yes, sir.

MR. LONGWORTH: I have a cousin that works for the Post Office.

MR. KEHRLI: Where is that, sir?

MR. LONGWORTH: Langley, Kentucky.

MR. KEHRLI: Do you know his name, sir?

MR. LONGWORTH: Lillian Porter.

MR. KEHRLI: Thank you, sir.

MS. HOLLIDAY: No. 193, Rosa Holliday. My husband has a first cousin that's the Postmaster, Pat Bradley.

MR. KEHRLI: Okay, thank you, ma'am.

Vivian Miller.

MS. MILLER: 189, Vivian Miller. My sister works for the Post Office in Ohio.

MR. KEHRLI: What is her name?

MS. MILLER: Beatrice Vine.

MR. KEHRLI: Thank you.

Juror No. 194, Jennifer Hobson.

MS. HOBSON: My father has in the past worked for the Housing and Urban Development before, but he isn't right now.

MR. KEHRLI: Where would that have been?

MS. HOBSON: He worked in Atlanta, Georgia at one time. He also worked here in Pikeville.

MR. KEHRLI: Thank you very much.

MR. CLARK: Dennis Clark, Juror No. 226. I have a son-in-law that works for the Department of Labor here in Pikeville.

MR. KEHRLI: What is his name?

MR. CLARK: Jack Labriech.

MR. KEHRLI: Thank you very much, Mr. Clark.

Anyone else?

MR. SALYER: Aaron Salyer, I have a daughter-in-law that works for the Post Office.

MR. KEHRLI: And where does she work?

MR. SALYER: At Gypsy, Kentucky.

MR. KEHRLI: What's her name?

MR. SALYER: Melody Salyer.

MR. KEHRLI: Thank you very much. Any other jurors?

MS. CURRY: Mary Curry, No. 117, I have a son-in-law that used to work for the Social Security in Pittsburg.

MR. KEHRLI: Where was that, please?

MS. CURRY: Pittsburg.

MR. KEHRLI: Pittsburg, Pennsylvania?

MS. CURRY: Yes.

MR. KEHRLI: Thank you. What was her name?

MS. CURRY: Ethel Turner.

MR. KEHRLI: Thank you. Any other jurors? Juror No. 245 Glenna D. Bradley.

MS. BRADLEY: I know Edward Robinson and he's the Postmaster.

MR. KEHRLI: Thank you very much.

MR. KEHRLI: Any other jurors have any other relatives who are federal employees?

Now, I am going to have to tell you just a little bit about this case in order to answer this next question or ask you this next question.

THE COURT: Let me do this: I hate to be backseat traffic, but may I suggest that you ask them the bottom line, if that fact would affect their services. That might expedite matters.

MR. KEHRLI: All right. Is there anyone here who responded to the last question affirmatively that they had relatives who were close friends who were federal employees, did any one of you-- Would your judgment in this case be affected by at all by that fact, or would it cause you to not be a fair and impartial juror.

All right. I don't see any response to that, Your Honor. So I assume--

THE COURT: [Interrupting] Thank you. You may proceed, sir.

MR. KEHRLI: The next question is the case was investigated by officers from the Bureau of Alcohol, Tobacco, and Firearms. Have any of you at any time had any dispute with an employee or an

official of that agency, of the ATF?

All right. I see no response. I assume that none of you have.

Ma'am, I understand that in the state of Kentucky, in fact I have seen some of them. There are a number of federal lands or federal reservations. Have any of you at any time ever been cited by a federal law enforcement officer or personnel for an infraction that occurred on one of those federal reservations?

I see no response. I take it that none of you have.

As the Judge indicated to you, some of the charges in this case involve federal statutes that regulate possession or the registration or the use of federal firearms--or pardon me--firearms, guns, and explosives, that type of thing. Would any juror who has strong personal or political beliefs that the regulation of firearms-- Would you please indicate that by raising your hand?

All right. Thank you.

Are any of you personally or are any of your relatives or friends involved with the sale or trade of firearms?

Yes, ma'am?

MS. HOBSON: Jennifer Hobson, 194. My husband-- I wonder if that included explosives or not.

MR. KEHRLI: Yes.

MS. HOBSON: Okay, my husband used to be a dynamite salesman. He no longer is.

MR. KEHRLI: How long did he sell dynamite?

MS. HOBSON: I think he started around '79 or '80 and he has been selling--he sold explosives up until a little over a year ago as I remember.

MR. KEHRLI: And do you recall did he sell it to any particular industry, ma'am?

MS. HOBSON: He sold to coal miners in different places.

MR. KEHRLI: Ms. Hobson, would that in any way affect your judgment, or would that keep you from being a fair and impartial juror on this case?

MS. HOBSON: No, in no way whatsoever.

MR. KEHRLI: All right. Thank you, ma'am. Anyone else involved with the sale or trading of firearms?

Okay. Do any of you personally--are you involved in a business or in an

industry where you use firearms or explosives?

Yes, sir?

MR. CRUM: We use them around the mines.

MR. KEHRLI: We need your name and number.

MR. CRUM: James Crum, 110. Explosives.

MR. KEHRLI: All right. What type of use do you put them to?

MR. CRUM: Well, we shoot rock, coal.

MR. KEHRLI: Uh-huh, do you do that yourself personally or is that your employees that are involved?

MR. CRUM: I use them too, you know.

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

Any other members of the jury panel? Yes, sir?

MR. CHARLES: 247, Rick Charles. Myself and my employees for coal in the mines.

MR. KEHRLI: All right. Thank you, sir. Anyone else?

Thank you.

Do any members of the

jury panel--do any of you drive or operate coal trucks? Yes, sir? Tell me your name and number, please.

MR. CAUDILL: Ed Caudill. I drive a truck.

MR. KEHRLI: And you drive a coal truck, Mr. Caudill.

MR. CAUDILL: Yeah.

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

MR. CAUDILL: About eight years.

MR. KEHRLI: And I believe you said earlier you are a member of the United Mine Workers?

MR. CAUDILL: Yes.

MR. KEHRLI: Where are you employed, sir?

MR. CAUDILL: [Inaudible]

MR. KEHRLI: Where is that?

MR. CAUDILL: [Inaudible]

MR. KEHRLI: All right. Thank you, sir. Anyone else? Yes, sir?

MR. CRUM: James Crum, 110. Yeah, we have got coal trucks.

MR. KEHRLI: All right. Do you drive or operate them yourself personally?

MR. CRUM: Sometimes.

MR. KEHRLI: Okay. How many coal trucks do you have, sir?

MR. CRUM: A couple I guess, three trucks.

MR. KEHRLI: All right. Thank you. Anyone else, any other members of the jury?

Judge Unthank asked you earlier this morning whether of you knew the defendants. Well, I would like to ask you now do any of you know members of the defendants' family; if so would you please raise your hand.

Yes, ma'am? Ms. Stumbo, Juror No. 241.

MS. STUMBO: Yes, I know Mr. Jones. I know Mr. Moore's wife, Phyllis, his son. Raymond Hall and his wife, Margie. German Stumbo and his wife, of course. Herman Newsome, Mr. Rolland, Austin Moore. I think that is all.

MR. KEHRLI: Ma'am, would those friendships or relationships that you have with these people--would that affect your ability to be a fair and impartial juror in this case?

MS. STUMBO: Well, like I stated before, it would be very hard for me.

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MR. KEHRLI: All right. Thank you. Sir, yes, sir.

MR. BOYD: Charles Boyd, no. 224. I know Mr. Hall's wife.

MR. KEHRLI: And how long have you known her?

MR. BOYD: Three years. He growed up in the community.

MR. KEHRLI: So, would that acquaintanceship in any way affect your ability to be a fair and impartial juror on this case?

MR. BOYD: No.

MR. KEHRLI: Thank you, sir. Yes, ma'am.

MS. MOORE: Laura Moore, 234. I know Austin Moore, his mother and wife, Jason Moore and his wife. I know the Halls, Raymond Hall and his wife. Well, there are more of them.

MR. KEHRLI: Ma'am, are you related in any way to either Austin Moore or Jason Moore?

MS. MOORE: My husband's nephew.

MR. KEHRLI: And I believe you may have answered this question this morning earlier, but would those relationships affect your ability to be a fair and impartial juror in this case?

MS. MOORE: I think it would.

MR. KEHRLI: Thank you, ma'am.

Yes, ma'am.

MS. BRADLEY: 245, Glenna Bradley. I spoke this morning. I didn't know you wanted me to stand back up again. But Edgar is married to my second cousin and I know their whole family.

MR. KEHRLI: That's right. And I believe you told us about that this morning.

MS. BRADLEY: Yes.

MR. KEHRLI: But again, ma'am, would that affect your ability to be a fair and impartial--

MS. BRADLEY: [Interrupting] Yes, it would.

MR. KEHRLI: Thank you, ma'am.

Anyone else?

All right. Along those lines, again, please don't think that I am singling anyone out here. This morning, Juror No. 241, Ruby Stumbo, in a response to one of the Judge's questions indicated that she knew the defendants and that they were good men, and they themselves would have to admit to her that they were guilty.

Now, the rest of you heard that statement. But I want to know, and I would

like an honest answer to that, please, is there anyone here having heard that statement here this morning feel that would influence them or that that would now require more proof to return a guilty verdict than if the statement had not been made? I would sincerely like an honest answer to that question. The question is you all heard the statement that was made concerning the defendants by Ms. Stumbo that they were good men and they would have to admit that they were guilty before she could--she could return a guilty verdict. Now, the question is you people individually, having heard that statement, how did it affect you? With that now--having heard that statement, would that now require you to hear more proof than it would ordinarily have required you to hear to find a reasonable doubt that a defendant is guilty? In other words, does that statement that was made this morning that you all heard somehow affect you? Does anyone--can anyone respond to that question affirmatively?

All right. Thank you. And again, Ms. Stumbo, I didn't mean to single you out. We are, as I said, trying to insure everyone, including the Government, gets a fair trial.

Juror No. 124, Mr. Eddie Caudill.

MR. CAUDILL: Yes.

MR. KEHRLI: Are you any relation to an individual by the name of Delvin or nicknamed Deb Caudill of near Hazard in Perry County, Kentucky?

MR. CAUDILL: No, I don't think so.

MR. KEHRLI: Do you know that individual?

MR. CAUDILL: No, I don't.

MR. KEHRLI: Thank you, sir.

One of the jurors this morning, in a response to the Judge's questions, indicated that Mr. Pafunda was his or her attorney. Would that juror please raise their hand again?

Yes, sir. Would you please stand up, please, what is your name and number?

MR. CHARLES: 247, Rick Charles.

MR. KEHRLI: Mr. Charles, how long has Mr. Pafunda been your attorney?

MR. CHARLES: About a year and a half.

MR. KEHRLI: All right. And again, I think you may have answered that question this morning, but would that somehow affect your ability to be a fair and impartial juror on this case?

MR. CHARLES: No, sir.

MR. KEHRLI: All right. Thank you.

Your Honor, may I have a moment to consult with cocounsel?

THE COURT: Yes, sir. While he is consulting, let me state this: Remember I said what an attorney says isn't evidence in a case. And it is the same way in answering these questions. The juror isn't giving evidence. That is not evidence. That is like an attorney's statement. That isn't evidence. The evidence is going to be what these witnesses say. So if something is said back there, you are not to consider that as evidence.

MR. KEHRLI: Just a couple of more questions, Your Honor.

Juror No. 95 is Clifford Spencer. Would you stand, please.

I believe you indicated this morning that Mr. Edd Spencer had been your attorney?

MR. SPENCER: Yes, sir.

MR. KEHRLI: Is he now your attorney?

MR. SPENCER: Yes, sir.

MR. KEHRLI: How long has Mr. Spencer been your lawyer?

MR. SPENCER: About two weeks.

MR. KEHRLI: All right. Did you have

any prior attorney/client relation with him before that time?

MR. SPENCER: No.

MR. KEHRLI: Is that matter still pending?

MR. SPENCER: Yes, sir.

MR. KEHRLI: Would the fact of that legal matter still pending affect your ability to be an impartial juror on this case?

MR. SPENCER: No, sir.

MR. KEHRLI: All right. Thank you. Juror No. 115, Aaron Salyer. Mr. Salyer, are you any relation to Skip Salyer, the former sheriff of Magoffin County?

MR. SALYER: No, sir. Might be far-off related.

MR. KEHRLI: Do you know Mr. Skip Salyer?

MR. SALYER: Yes, sir.

MR. KEHRLI: How long have you known him?

MR. SALYER: I guess twenty-five years.

MR. KEHRLI: Are you friends with Mr. Salyer, Mr. Skip Salyer?

MR. SALYER: Well, no, not exactly

friends.

MR. KEHRLI: How do you know him? In what respect do you know him?

MR. SALYER: Well, one thing I don't think he-- He was sheriff of the county. I don't think he done his duty as sheriff.

MR. KEHRLI: I see. So you know him by reputation maybe?

MR. SALYER: No, sir, I wouldn't say so.

MR. KEHRLI: All right. Thank you, Mr. Salyer. That is fine.

One last question, and I know lawyers always say one last question and they ask about ten more. In fact, law professors' claim to fame I think is teaching young people how to say in thirty words what they could ordinarily say in three; but I will try to hold my prediction to this one last question.

MR. KEHRLI: We expect that certain of the Defendants in this case, there will be evidence that will be introduced that will tend to show that certain of the Defendants in this case are or were officers of the United Coal Workers Local.

Is there anyone on the Jury panel who, because of the mere fact that the Defendants are or were United Mine Worker officers, that that would affect your ability to be fair and impartial Jurors?

REPORTER'S NOTE: No response.

MR. KEHRLI: I will stay true to my word and thank you very much ladies and gentlemen. I will turn, your Honor to Mr. Harwell.

THE COURT: Mr. Harwell.

MR. HARWELL: Thank you your Honor. Ladies and gentlemen, there are so many lawyers on this side of the room that I fell compelled to re-introduce myself.

My name is Aubrey Harwell, along with Mr. Moore and Mr. Patton who represent Mr. Edgar Jones.

Mr. Jones, would you stand up so the folks can see you?

REPORTER'S NOTE: Mr. Jones stood up.

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MR. HARWELL: Sit down, sir. In representing him, I, just as Mr. Kehrli has said, am attempting to get a fair and impartial Jury, a Jury that will seek the truth and will cause justice to be done. There was another panel here yesterday, and I made a comment to them that I frequently make when I am getting ready to voir dire a Jury, because I myself have a certain pride and independence, and my right of privacy.

Putting myself in your positions, I can appreciate how you might find some of those things that some of those lawyers ask you to be personal or private, or maybe something you really want to go into.

If that occurs during the course of my questioning, please understand that I am not prying, and by all means if you let me know that something I have asked causes some concern, then I suspect that Judge Unthank would certainly want to take that up with you privately.

The fact of the matter is, it is my obligation to my client to ask some questions.

I thought Mr. Kehrli made a pretty good statement. It is kind of like the

Redskins and the Cowboys, and I expect a lot of you all, certainly you men, and maybe some of you ladies, have got pretty strong feelings. I do too.

As a matter of fact, I guess one of the few things Mr. Kehrli and I agree on is that I do believe in Redskins.

There are a couple of things that I want to talk to you all about and ask you about.

Mr. Kehrli made a comment a minute ago to Ms. Stumbo that he wasn't singling her out. I am going to ask some of you individually some questions beause you have made statements that I want to know a little bit more about.

Just as he said, understand, I am not singling any of you out.

Mr. Thompson, No. 221, could you stand up please, sir.

I understood you to say that you had grown up with a fellow by the name of Van Patton?

MR. THOMPSON: Yes, sir. I didn't grow up with him, I played basketball against him.

MR. HARWELL: Against him. Did you

win?

MR. THOMPSON: We both won.

MR. HARWELL: All right, sir. Mr. Thompson, I am told by some folks around here that there are three or four Van Pattons in this part of Eastern Kentucky. Can you tell me a little bit more about the Van Patton you played basketball with?

MR. THOMPSON: He was from Whalen and six foot five.

MR. HARWELL: From Whalen and six foot five.

MR. THOMPSON: It is the same one.

MR. HARWELL: I apologize for not knowing, but do you know if that Van Patton had any problems with the law lately?

MR. THOMPSON: No, sir, I haven't seen him in years and years.

MR. HARWELL: Do you know if he ever lived in Minnie, Kentucky or McDowell, Kentucky?

MR. THOMPSON: He lived in Whalen. We played basketball is all I know.

MR. HARWELL: Yes, sir. Tell me a little bit if you would, Mr. Thompson. Is Whalen near Minnie?

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MR. THOMPSON: No.

MR. HARWELL: Is it near McDowell?

MR. THOMPSON: No.

MR. HARWELL: All right, sir. Thank you sir. I think you did say that regardless of knowing him, it wouldn't make any difference if he were a witness or not in terms of your past relationship with him, is that true?

MR. THOMPSON: That is true.

MR. HARWELL: All right, sir, thank you, sir. Sit down if you would, Mr. Thompson.

Mr. Crum, No. 110. You have been on your feet, sir, more than most of the lawyers here today.

MR. CRUM: I reckon I have.

MR. HARWELL: Mr. Crum, I guess I am a little concerned about a couple of the answers that you gave. The one that causes me as much concern as anything else is friendship. I value folks that I grew up with, and I kept in touch with over the years, and you were candid enough to tell us that Mr. Self and you had grown up, and I think you said had gone to school together.

MR. CRUM: Yes, sir.

MR. HARWELL: And you and I have never

laid eyes on each other before today?

MR. CRUM: No.

MR. HARWELL: Would it be a fair statement that you would, naturally because of friendship, be more likely to believe a statement that Mr. Self made to you than you would a statement that I made, since you don't know me from Adam?

Is that a fair statement?

MR. CRUM: Mr. Self and Mr. Self's family has a very good reputation in our community.

MR. HARWELL: Yes, sir.

MR. CRUM: His father - -

MR. HARWELL: (Interrupting) His father is a banker, isn't he?

MR. CRUM: Not his father, his grandpa.

MR. HARWELL: His grandfather was.

MR. CRUM: I do business with his father, used to, he has just closed his hardware store down. I am pretty well going to believe what he tells me.

I know he isn't going to tell me no lie.

MR. HARWELL: Sure, I - - and I appreciate that.

MR. CRUM: And he ain't never told me no lie before.

MR. HARWELL: And you might, as a matter of fact believe him than believe somebody from Tennessee that you didn't know, isn't that a fact?

MR. CRUM: That might be right.

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

THE COURT: Let me ask Mr. Crum a question.

MR. CRUM: Yes.

THE COURT: Do you remember what the Court said to what the attorneys say isn't evidence?

MR. CRUM: Yes.

THE COURT: Would that make any difference?

MR. CRUM: Well, sure.

MR. HARWELL: I noticed - - I noticed that No. 161, Ms. Wallace, are you - - you are from Elkhorn City.

MS. WALLACE: Yes, sir.

MR. HARWELL: Did you know Mr. Self?

MS. WALLACE: They came in the store occasionally where I work.

MR. HARWELL: But you didn't know them.

MS. WALLACE: I didn't know them.

MR. HARWELL: Did you know his daddy or do you know his daddy and did you know his grand-daddy?

MS. WALLACE: I know his grandpa.

MR. HARWELL: How about his father.

MS. WALLACE: Just when he came in the store.

MR. HARWELL: Are they regular customers?

MS. WALLACE: No, sir.

MR. HARWELL: Just occasionally come in?

MS. WALLACE: Uh-huh.

MR. HARWELL: Thank you Ma'am, you may sit down.

193, Ms. Holliday.

MS. HOLLIDAY: Yes.

MR. HARWELL: Ms. Holliday, I have a hearing problem and I didn't hear what you said. You said that your husband had two cousins that were Federal employees, am I right?

MS. HOLLIDAY: Yes.

MR. HARWELL: One of them was a Post Master, and then I didn't hear what the other one

does for a living.

MS. HOLLIDAY: He was Probation Officer during Pikeville, I reckon he still is, Gary Davis.

MR. HARWELL: Gary Davis.

MS. HOLLIDAY: Uh-huh.

MR. HARWELL: Do you see him regularly?

MS. HOLLIDAY: No, not very often.

MR. HARWELL: Does your family get together for family reunions and Christmas and holiday times, the whole family?

MS. HOLLIDAY: No.

MR. HARWELL: Would you mind telling me, Ma'am, when you last saw him?

MS. HOLLIDAY: I saw him in the hallway, but I didn't speak to him.

MR. HARWELL: Let me ask you this, Ms. Holliday, that was not a very well worded question. When did you last see him to talk or visit with him?

MS. HOLLIDAY: I guess it was here earlier on this.

MR. HARWELL: In the last couple of months? I know some of you have been on Jury, could it have been - -

MS. HOLLIDAY: (Interrupting) Longer than that probably.

MR. HARWELL: Okay, thank you, Ma'am.

Judge, I may be causing that racket. Ladies and gentlemen, I want to ask you all some questions now as an entire panel. Have of you ever been employed by a law enforcement agency, be it Federal or County or State, and I also include in that question a private security firm?

REPORTER'S NOTE: (No response).

MR. HARWELL: Have any of you got close friends or relatives, or who have been employed in law enforcement? If you have, if you would raise your hands I think the Marshall is going to - - Marshall, I don't know how you want to go down the rows.

THE MARSHALL OF THE COURT: Over here (indicating).

A JUROR: Are you talking about lawyer friends, if you have friends who are lawyers?

MR. HARWELL: No, Ma'am. A law enforcement officer like a policeman or F.B.I. agent or the Bureau of Alcohol and Tobacco or Firearms Agent,

but not a lawyer, but a law enforcement officer, a policeman.

MS. VANCE: 106, Marie C. Vance, I have a second cousin, I guess who is a Park Ranger is all I know at Jenny Wiley Park.

MR. HARWELL: Jenny Wiley Park?

MS. VANCE: Right.

MR. HARWELL: Thank you, Ma'am.

MS. LYKINS: Anna Koerner Lykins, No. 105. My husband used to be a security guard up in Detroit, Michigan.

MR. HARWELL: How long ago has that been Ms. Lykins?

MS. LYKINS: Ten years ago.

MR. HARWELL: You are not related to Billy Lykins, are you?

MS. LYKINS: Not that I know of.

MR. HARWELL: Thank you, Ma'am. Is there somebody else in the front row?

MS. WALKER: Etta Brewer Walker, 108, my brother-in-law is the Sheriff of Wolfe County.

MR. HARWELL: What is his name?

MS. WALKER: Rolland Dunn.

MR. HARWELL: I see. Can you tell me

one other thing, how far is Wolfe County from Floyd County, is that a good piece orclose?

MS. WALKER: It's fifty-nine miles from here.

MR. HARWELL: Thank you, Ma'am.

MR. SALYER: Aaron Salyer, No. 115, I work the Magoffin County Fiscal.

MR. HARWELL: District Court, sir?

MR. SALYER: No, Fiscal Court, Magoffin County.

MR. HARWELL: Fiscal Court. Is that a police sort of a job or law enforcement?

MR. SALYER: No, foreman over the roads and equipment and things.

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

Anybody else in the front row?

JEANETTA ADKINS: Jeanetta Adkins, my grandfather was a Magistrate.

MR. HARWELL: Thank you, Ma'am.

MR. COMBS: Joe Combs, 191. My dad was a policeman.

MR. HARWELL: Mr. Combs, where was that?

MR. COMBS: Whitesburg.

MR. HARWELL: Whitesburg. How long ago was that?

MR. COMBS: About ten years.

MR. HARWELL: Had been in law enforcement for ten years?

MR. COMBS: Uh-uh.

MR. HARWELL: You are not in law enforcement?

MR. COMBS: No.

MR. HARWELL: All right, sir.

MS. HOBSON: Jennifer D. Hobson, 194. I have had friends who have been in law enforcement, and a couple of them still are and one is in security with the railroad.

MR. HARWELL: One is what, Ma'am?

MS. HOBSON: Security with the railroad.

MR. HARWELL: Would you mind, I don't want to pry with you, but would you mind telling us who they are or by whom they are employed?

MS. HOBSON: Okay. Lacy Goodman is by the railroad.

MR. HARWELL: Okay.

MS. HOBSON: The only other one would be an uncle that is on the State Police.

MR. HARWELL: State Police Board?

MS. HOBSON: State Police.

MR. HARWELL: Do you know where he is stationed?

MS. HOBSON: Post Nine.

MR. HARWELL: Post Nine here in Pikeville?

MS. HOBSON: Uh-huh.

MR. HARWELL: Have you see him lately or talked to him?

MS. HOBSON: No.

MR. HARWELL: Thank you, Ma'am.

MS. FRANCIS: Netta Jean Francis, 202. My husband is a military policeman in the Marine Corps Reserve in Lexington.

MR. HARWELL: In Lexington. He served active duty with the U.S. Marines, did he not?

MS. FRANCIS: Yes.

MR. HARWELL: When was that?

MS. FRANCIS: He served active duty and I think he got out in '63, so four years in active duty and he has been in the reserves for about seventeen to eighteen years now.

MR. HARWELL: Did you say '63 or '73.

MS. FRANCIS: '63.

MR. HARWELL: Was he a military policeman

then?

MS. FRANCIS: No.

MR. HARWELL: Just became military police and went in the reserves after active duty?

MS. FRANCIS: Yes, sir. That has been ten years or so, but he is a military policeman.

MR. HARWELL: You heard Judge Unthank when he was running down the witness list mentioned some agents of the Bureau of Alcohol, Tobacco and Firearms.

A Mr. Farrar, a Mr. Eddy, and a Mr. McCallister.

Do you know any of those folks yourself?

MS. FRANCIS: No, I don't.

MR. HARWELL: Okay, thank you.

MR. SNYDER: A. J. Snyder, No. 207. I have a State Policeman for a cousin.

MR. HARWELL: For a son?

MR. SNYDER: First cousin.

MR. HARWELL: First cousin.

MR. SNYDER: State Policeman, Gary Rose.

MR. HARWELL: Where is he based, sir? Where is he stationed?

MR. SNYDER: I believe he is down here (indicating).

MR. HARWELL: I see. Do you all see each other regularly?

MR. SNYDER: Well, maybe once or twice a year.

MR. HARWELL: Do you remember when you last visited with him?

MR. SNYDER: Yes. My uncle died just before.

MR. HARWELL: She didn't hear what you said.

MR. SNYDER: Last visited with the State Police, I had an uncle that passed away down in Prestonsburg, and that has been about two months ago.

MR. HARWELL: Have you ever had any conversation with him about any problems in February of '82 up around McDowell area?

MR. SNYDER: (Shaking head negative)

MR. HARWELL: All right. The fact - -

MR. SNYDER: (Interrupting) I don't talk to him about his business.

MR. HARWELL: May the Court please, is that gentleman one of the witnesses your Honor read

out, or might I ask the government?

THE COURT: Who is that?

MR. HARWELL: Gary Rose.

MR. SPENCER: Yes, he is one of the witnesses.

MR. HARWELL: Sir, when the Court was reading out the people that might testify, he read out the name of Gary Rose.

Would the fact that he is related to you influence you in regard to your serving as a fair and impartial Juror or not?

MR. SNYDER: No, it wouldn't.

MR. HARWELL: Wouldn't influence, all right, sir, thank you, sir.

MS. HOLLIDAY: Rosa Holliday, 193. I have a son-in-law that is in State Patrol in - -

MR. HARWELL: (Interrupting) Is he stationed in this area?

MS. HOLLIDAY: Perry County.

MR. HARWELL: Ma'am?

MS. HOLLIDAY: Perry County.

MR. HARWELL: Where is that, Ma'am, is it close or far?

MS. HOLLIDAY: Seventy or eighty miles.

MR. HARWELL: Was he ever based here in

the Pikeville area?

MS. HOLLIDAY: No.

MR. HARWELL: You said you had some close friends too?

MS. HOLLIDAY: Yes.

MR. HARWELL: Can you briefly tell us about those?

MS. HOLLIDAY: I don't think there is any here in Floyd County and Perry County.

MR. HARWELL: Thank you, Ma'am.

MR. THOMPSON: Earl Thompson, 214, I have a good friend, I guess he is stationed here.

MR. HARWELL: What does he do, sir?

MR. THOMPSON: Information officer.

MR. HARWELL: Is that State Patrol, State Trooper?

MR. THOMPSON: (Nodding head affirmative)

MR. HARWELL: All right, sir. And you have seen him regularly?

MR. THOMPSON: I see him quite a bit and talk to him quite a bit.

MR. HARWELL: You all visit together?

MR. THOMPSON: Yes.

MR. HARWELL: Have you ever talked to him about any problems concerning Ray-Mac in February

of 1982 up towards McDowell?

MR. THOMPSON: No, I haven't.

MR. HARWELL: Thank you.

MS. BUTCHER: Doris Butcher, 122. I have a son-in-law that occasionally helps them out in the police force.

MR. HARWELL: What is his name, Ms. Butcher.

MS. BUTCHER: John Scott Moore.

MR. HARWELL: I beg your pardon?

MS. BUTCHER: John Scott Moore.

MR. HARWELL: Ma'am, I have sensed that you are a little nervous and I don't mean to do that to you, I apologize.

I will tell you something, I get a little nervous, too.

MR. BOYD: Charles Boyd, 224. I have a brother-in-law that is a member of the Indiana State Police Force.

MR. HARWELL: Has he ever been a law enforcement officer for the State of Kentucky?

MR. BOYD: No, not to my knowledge.

MR. HARWELL: Are you all close, sir?

MR. BOYD: Not really.

MR. HARWELL: Thank you, sir.

MR. DeROSSETT: Dwayne Borden is my first cousin.

MR. HARWELL: I'm sorry, I didn't hear you.

MR. DeROSSETT: Dwayne Borden is my first cousin.

MR. HARWELL: Is he a law enforcement officer?

MR. DeROSSETT: State Police.

MR. HARWELL: State Police here. Are you all close.

MR. DeROSSETT: No.

MR. HARWELL: Do you see him regularly?

MR. DeROSSETT: Occasionally.

MR. HARWELL: Once a year, twice a year, something like that?

MR. DeROSSETT: Yes.

MS. BRADLEY: 245, Glenna Bradley. My husband used to be one five years ago, and also we had a good friend who is a State Trooper, and we visit about once a month.

MR. HARWELL: Once a month?

MS. BRADLEY: Uh-huh.

MR. HARWELL: Thank you, Ms. Bradley.

MR. LONGWORTH: Larry Longworth, 248, I

used to work on Metro Security in Cincinnati, Ohio.

MR. HARWELL: Is Metro Security a private security company or - -

MR. LONGWORTH: Private.

MR. HARWELL: Not a government agency?

MR. LONGWORTH: No, sir.

MR. HARWELL: How long ago was that?

MR. LONGWORTH: About twelve years ago.

MR. HARWELL: Can you briefly tell us what your job was, was it security in a bank?

MR. LONGWORTH: Riverfront Stadium.

MR. HARWELL: Riverfront Stadium.

MR. LONGWORTH: Yes, sir.

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

THE MARSHALL OF THE COURT: No one else.

MR. HARWELL: Let me ask you all, I direct this question to everybody, but I guess most particularly to those of you who answered questions concerning involvement directly or indirectly with law enforcement officers.

Have any of you all had any thoughts about the testimony of a government agent or another law enforcement officer being given more weight or having greater significance attached to it

just because the person testifies he is a law enforcement officer, for that reason alone?

If you do, hold up your hand, please.

REPORTER'S NOTE: (No response)

MR. HARWELL: All right. Let me ask you all, do any of you feel that you have ever been a victim of a crime, or have got any close damily, friends, that have been a victim of a crime?

If you do, I would like to ask you about it, and if you do I would like for you to hold up your hand.

REPORTER'S NOTE: (No response)

MR. HARWELL: Nobody?

Yes, sir.

MR. BOYD: Charles Boyd, I don't know exactly what you mean but I have a cabin down on Cave Run Lake, and I have been broken into two or three times and lost things, stuff which the crime has never been solved.

MR. HARWELL: That is exactly the sort of thing I am asking about, sir.

MR. BOYD: Two or three times I lost roughly seven or eight thousand dollars and it's never been settled.

MR. HARWELL: Thank you, Mr. Boyd.

MS. VANCE: Well, what do you mean by crime?

MR. HARWELL: Well, ma'am, any act that's illegal.

MS. VANCE: Well, I don't know if this was illegal --

THE COURT: (Interrupting) Please stand.

MR. HARWELL: I guess you better stand, ma'am.

MS. VANCE: Number 106, Marie C. Vance. My brother was home visiting from Florida and they were stopped in a motel and two colored people broke in and he killed one.

MR. HARWELL: That's the kind of thing I'm talking about.

MS. VANCE: It was in Nashville.

MR. HARWELL: Nashville, my home town?

MS. VANCE: Yes.

MR. HARWELL: Well, I guess like the law professor that Mr. Kehrli made mention of, you

won't hold that against me because I'm from Nashville, will you?

MS. VANCE: No.

MR. HARWELL: The Judge has suggested, strongly suggested that the attorneys not duplicate questions that he has asked.

May the Court please, I want to comply with what you have directed us to do. I'd like to ask my question, then if you think that I'm not complying I'll withdraw it.

THE COURT: That's fine.

MR. HARWELL: I'll address this to all members of the panel. Are there any members of this panel who are in favor of gun control, that is is there anybody on this panel who believe that we need to have stronger laws in regards to the control of firearms and if there is, please hold up your hand. If the Court says that's proper.

THE COURT: Let them hold up their hands.

MR. HARWELL: Anybody?

I guess what I'm getting at is there anybody here that's just simply opposed to firearms? There's people I know, some friends of mine that are just opposed to firearms. Is there

anybody here that's got that philosophical feeling or judgement?

Okay. Ladies and gentlemen, the Government and the Defendants, these gentlemen over here are both entitled to a fair trial. They're both entitled to a fair and impartial jury. The truth of the matter is that we lawyers can stand up here all day and ask you all questions. And it's possible that those questions won't bring forth some response that would indicate that you've got a positive feeling or a negative feeling. I may have not asked the right questions. There's one last question, and I promise you unless I get some response it will be my last question, but I want to address this to you.

I'd like you in your mind to assume that you're Edgar Jones. Put yourself in the position of Edgar Jones sitting up here, being charged with an indictment with some of these other folks. I want you to search your heart and be honest with yourself; I'm sure you will.

If you were in his position, are you the kind of a juror, are you the kind of a juror that if you were in his position would want making judgements about your life and your

future. And if there's not, if there's anything that causes you to be uncomfortable with that or tends to make you say no, I really would not want to swap places and serve. If there's anyone like that, please hold your hand up and let's talk about it.

Judge, for the record, I see no hands held up. So, I promise the Court and this panel that I sat down, and I won't ask anything else right now.

Thank you.

THE COURT: Mr. Walbourn.

MR. WALBOURN: Thank you, Your Honor.

THE COURT: Is that humming coming from that mike?

MR. HARWELL: Well, it may have bumped it with my clipboard.

MR. WALBOURN: One of the advantages of not going first is all the questions have been asked. I've only got a couple.

Let me reintroduce myself. I'm E. J. Walbourn from Ashland. I'd like to introduce you to my clients. I have four different clients in this matter. I'll ask them to stand up as I say their names. Mose Mead, Hermit Newsome, Benny Caudill and Harold Moore.

So, I'm the one that you associate with them and them with me.

I think Mr. Kehrli asked the question if any of you were either employed or have friends or relatives employed by the federal government. Let me expand that just a little bit. Do any of you or are any of you employed or have relatives or close friends employed either by the State or the local government. If that applies, would you please hold your hands up?

MS. VANCE: 106, Mary Vance, and I just retired from State government.

MR. WALBOURN: And where were you employed, ma'am?

MS. VANCE: Department of Libraries out of Frankfort.

MR. WALBOURN: Thank you.

MS. BRANDENBURG: Betty Brandenburg, 167. My husband is a educational and vocational person with the State.

MR. WALBOURN: Where is he?

MS. BRANDENBERG: Lee County.

MS. HOBSON: Jennifer D. Hobson, 194. I am presently employed by the Pike County Fiscal Court at this time. My mother I think is

employed by the State and my sister is employed by the State.

MR. WALBOURN: And how are your mother and sister employed by the State?

MS. HOBSON: My mother is employed by the educational -- it's ECP, Educational Credibility Program.

My sister is with the Department of Human Resources.

MR. WALBOURN: Are they in Pikeville?

MS. HOBSON: No, Magoffin County.

MR. WALBOURN: Thank you.

MR. BOYD: Charles Boyd, No. 224. My daughter-in-law is the Floyd County Court Clerk.

MR. WALBOURN: Is that circuit court or district court?

MR. BOYD: Court Clerk.

MR. WALBOURN: County Court Clerk?

MR. BOYD: Yes.

MR. WALBOURN: All right, thank you.

Anyone else?

MS. BRADLEY: 245, Glenna Bradley, my sister is the County Court Clerk of Floyd County, Mr. Boyd's daughter-in-law. And I am also employed there.

MR. WALBOURN: Thank you. Anyone else?

MR. LONGWORTH: Larry Longworth, No. 248. My brother-in-law's wife is the Circuit Court Clerk of Lee County.

MR. WALBOURN: Thank you. Anyone else?

Let me ask you this, do any of you have relatives or close personal friends that are attorneys, not law enforcement officers, but attorneys?

MS. VANCE: I have several -- Marie Vance, No. 106. David Barber in Prestonsburg and also Mr. Burchett.

MR. WALBOURN: How are you related to Mr. Burchett?

MS. VANCE: Just friends.

MR. WALBOURN: Thank you.

You're Ms. Dorton?

MS. DORTON: Jane Dorton, No. 193. My brother-in-law is William Mullins. He's an attorney in Paintsville.

MR. WALBOURN: Anyone else, please?

Ms. Dawahare?

MS. DAWAHARE: Gail Dawahare, No. 212. My sister-in-law and brother-in-law are both attorneys and I have several friends that are lawyers.

MR. WALBOURN: Are they in the Pikeville area?

MS. DAWAHARE: My friends are in the Pikeville area, but my sister is not.

MR. WALBOURN: Okay, I believe that's all the questions I have, thank you.

THE COURT: Mr. Pafunda.

MR. PAFUNDA: Thank you, Your Honor. Ladies and gentlemen, my name is Bernard Pafunda. I'm with the firm of Deskins and Pafunda here in Pikeville, and I represent Drexil Hall and Austin Moore, and I'll ask them to stand up.

Thank you.

As the other lawyers have stated most of the questions have already been asked by the Court as well as Mr. Kehrli and Mr. Harwell and Mr. Walbourn to this point. I only have a few questions.

Does anyone here other than -- other than Mr. Crum engage at the present time or in the past in the coal business as an owner or operator?

MS. ADKINS: Jeanetta Adkins, No. 104.

MR. PAFUNDA: I'm going to have to ask you to stand up, please, ma'am.

MS. ADKINS: Jeanetta Adkins, No. 104. My husband is a coal operator at the Silver Dollar Mine.

MR. PAFUNDA: Is that here in Pike County, ma'am?

MS. ADKINS: Yes.

MR. PAFUNDA: And the name of his coal company, ma'am?

MS. ADKINS: Silver Dollar Mine.

MR. PAFUNDA: And that's a non-union operation, I believe?

MS. ADKINS: No, it's union.

MR. PAFUNDA: And how long has he been in that business?

MS. ADKINS: Well, he's been in the business about two years, this one here just six months.

MR. PAFUNDA: Then, he just recently opened up here in Pike County?

MS. ADKINS: Yes.

MR. PAFUNDA: And approximately how many employees does he have?

MS. ADKINS: Thirteen maybe.

MR. PAFUNDA: And how long has he been in the coal business as an owner/operator?

MS. ADKINS: About two and a half years.

MR. PAFUNDA: During that two and a half year period, Ms. Adkins, has he had any difficulty whatsoever with United Mine Workers of America?

MS. ADKINS: Yes,they just had a case. It's over with now.

MR. PAFUNDA: All right, an arbitration case?

MS. ADKINS: Yes.

MR. PAFUNDA: During the course of that -- and I'll ask you not to --

MS. ADKINS: (Interrupting) But that case was from his other coal mine, the one he had two years ago.

MR. PAFUNDA: All right, that other coal mine that he was in for two years, what was the name of that mine?

MS. ADKINS: Little Dollar.

MR. PAFUNDA: You want this microphone, I mean I don't want it either, I've tripped over them enough, they're dangerous.

And who was he in business with in that company?

MS. ADKINS: In Little Dollar?

MR. PAFUNDA: Yes.

MS. ADKINS: It was him and Clinton Belcher, they were the owners.

THE COURT: Ma'am, when you talk, talk actually -- actually talk to me so I can hear, if you will. Mr. Pafunda is closer so please speak so I can hear.

MR. PAFUNDA: And he is the Judge.

During the course of the time that your husband has been an owner/operator of a coal company, have you and he discussed union labor -- and don't tell me what you've discussed, but union employees as opposed to non-union employees, and how they work and so forth?

MS. ADKINS: That's all he talks about, but I don't listen.

MR. PAFUNDA: And you don't listen.

MS. ADKINS: Well, after you hear it so much you sort of shut your ears off.

MR. PAFUNDA: The same thing happened to me last night.

You just hit home. You can ask me some questions.

I take it then, Ms. Adkins, that you feel that you would be able to sit

on this case even though in all likelihood there'd be evidence that the United Mine Workers of America -- some of these men belong to the United Mine Workers of America and judge the evidence fairly and impartially?

MS. ADKINS: Yes.

MR. PAFUNDA: Thank you very much, ma'am. I appreciate it.

Mr. Anderson I believe.

MR. ANDERSON: Darrell Anderson, No. 125. I was in partnership business on a trucking mine and also a coal truck. L. E. Hunt was my partner. It was the L and E Coal Company.

MR. PAFUNDA: How long was that?

MR. ANDERSON: 1976.

MR. PAFUNDA: For one year?

MR. ANDERSON: No, it was for three years.

MR. PAFUNDA: And you're presently engaged in that business?

MR. ANDERSON: No.

MR. PAFUNDA: What do you do now?

MR. ANDERSON: I'm employed by the McCoy Elkhorn Coal Company.

MR. PAFUNDA: In a supervisory capacity?

MR. ANDERSON: No, I run heavy equipment--I'm a heavy equipment operator for them.

MR. PAFUNDA: During the course of your business as an owner/operator in the coal business, as well as your experience with McCoy Elkhorn Coal Company, have you had -- and don't give us any specifics, but have you had contact with the United Mine Workers of America?

MR. ANDERSON: Do you mean do I belong to them?

MR. PAFUNDA: No, just contact, organizational type drives.

MR. ANDERSON: No.

MR. PAFUNDA: Have you formed as an owner/operator, and I believe Mr. Crum indicated earlier in response to several lawyers' questions, any opinions as to union employees as opposed to non-union employees?

MR. ANDERSON: None whatsoever.

MR. CRUM: May I say something?

MR. PAFUNDA: Yes.

MR. CRUM: James Crum, No. 110. You know, I don't say nothing bad about the union, that's their business and this is my business.

THE COURT: I don't think she got the

witness' answer.

MR. ANDERSON: Your Honor, I'm Darrell Anderson, 125. Do you mean to ask me, Your Honor, about the questions about whether there was a difference about non-union employees and the union employees? If so, my answer was no, I did not.

THE COURT: Will you state your name again, please?

MR. ANDERSON: Darrell Anderson, No. 125.

THE COURT: I think actually what it is, she is sitting there and she is not looking at the person that is talking. A lot of times it helps you hear, and she can't see him. Mr. Pafunda is in between you all so you'll have to speak a little louder.

MR. PAFUNDA: I'll move.

You have not had any unpleasant experiences with union labor, would that be correct?

MR. ANDERSON: Yes, I have.

MR. PAFUNDA: Without telling us specifically that experience, whatever it was in the past, concerning labor organizations?

MR. ANDERSON: No.

MR. PAFUNDA: So, you would be in the

same position as Miss Adkins, you feel you could sit here if you were selected, sit on the jury in this case and listen to the evidence and even know the evidence will come out that some of these men belong tc United Mine Workers of America you can sit here and listen to that evidence and judge it fairly and impartially, is that correct?

MR. ANDERSON: Yes, I could, we all have got to make a living and we all can't work in union mines.

MR. PAFUNDA: Thank you very much, Darrell, I appreciate it.

Is there anyone here that works in a supervisory capacity in a coal company or any other type business -- is there anyone else other than Mr. Dye and Mr. Crum that work in a supervisory capacity at the present time or has in the past or have an immediate famlly member or close friend?

MS. HOBSON: Jennifer D. Hobson, No. 194. I work as a director for senior citizens. I'm not in a hiring and firing position, but I'm over about five employees.

MR. PAFUNDA: Is that here in Pikeville or Virgie?

MS. HOBSON: That's in Virgie.

MR. PAFUNDA: Is there anyone else?

MS. JUSTICE: Gatha Justice, No. 237. Did you say family in supervisory position?

MR. PAFUNDA: Yes, I did.

MS. JUSTICE: My husband is manager of Commonwealth Equipment.

MR. PAFUNDA: Ms. Justice, you'll have to state your number.

MS. JUSTICE: No. 237.

MR. PAFUNDA: And he's with who, ma'am?

MS. JUSTICE: Commonwealth Equipment, the John Deere dealership in Pikeville.

MR. PAFUNDA: He's been with them for how long?

MS. JUSTICE: Six years.

MR. PAFUNDA: Does he sell that equipment to coal companies, go on the jobs?

MS. JUSTICE: I suppose they do, but mostly it's logging companies.

MR. PAFUNDA: Thank you very much. Yes, ma'am.

MS. DORTON: Jean Marie Dorton, my husband is vice-president of the Citizens Fidelity Bank of Pineville, Kentucky.

MR. PAFUNDA: Thank you very much, ma'am.

Is there anyone else I may have overlooked?

Is there anyone here who has recently or who has ever had or has a member of their immediate family or close friend or relative ever worked in a business while a union was trying to organize?

MR. DESKINS: No. 246, Jack Deskins. I work for a coal company and they tried to organize it at one time.

MR. PAFUNDA: Thank you, Mr. Deskins.

Anyone else?

MR. CLARK: Dennis Clark, No. 226. I worked for the Kentucky Power when it was trying to be organized.

MR. PAFUNDA: By whom was it trying to be organized?

MR. CLARK: The International Brotherhood of Electrical Workers, I.B.E.W.

MR. PAFUNDA: How long ago was that?

MR. CLARK: That was in the early fifties.

MR. PAFUNDA: And at that time what was

your position with the Kentucky Power Company?

MR. CLARK: I was in the position of a lineman, climbing poles, building poles and maintaining lines.

MR. PAFUNDA: Did you participate in that organizational effort?

MR. CLARK: Yes, sir.

MR. PAFUNDA: Let me ask you, if you don't mind, were you for it or against it?

MR. CLARK: I was for it.

MR. PAFUNDA: Thank you very much.

Is there anyone else I may have overlooked?

I believe it was Mr. Kehrli that asked, but I'd like to reiterate the question. Is there anyone here who themselves are engaged at the present time or have been in the past or has an immediate family member or close relative that's engaged in the trucking business, either hauling coal, gravel, stone or anything of that nature, other than Mr. Crum?

MS. COLLIER: Yes.

MR. PAFUNDA: Yes, Ms. Collier, is that correct?

MS. COLLIER: Yes, my husband has a

gravel bed.

MR. PAFUNDA: Your number?

MS. COLLIER: No. 249.

MR. PAFUNDA: Is that in Dorton?

MS. COLLIER: Dorton.

MR. PAFUNDA: And Miss Collier, how long has your husband been engaged in that business?

MS. COLLIER: About ten or eleven years, I guess.

MR. PAFUNDA: And that's his own business, an independent business?

MS. COLLIER: Yes.

MR. PAFUNDA: Does he haul coal for various coal companies?

MS. COLLIER: Yes, he has.

MR. PAFUNDA: You recall the names of any of those coal companies?

MS. COLLIER: Logan and Lucas.

MR. PAFUNDA: Logan-Lucas?

MS. COLLIER: Yes. And I believe it was Charles Bolin.

MR. PAFUNDA: Were they both in Pike County, ma'am?

MS. COLLIER: No, I believe Logan-Lucas was in Magoffin County, I'm pretty sure.

MR. PAFUNDA: Thank you, madam, very much.

Ms. Hobson?

MS. HOBSON: Jennifer D. Hobson, No. 194. I have a brother-in-law and he owns two coal trucks. He Hauls for some coal companies. And I have several friends, but I would not be able to tell you all of them.

MR. PAFUNDA: I was just speaking generally of close friends with whom you have conversations and discussions and you could form opinions and so on.

MS. HOBSON: Well, to discuss the coal business or anything like that, no one really, other than the brother-in-law.

MR. PAFUNDA: Thank you very much.

MR. LONGWORTH: Larry Longworth, No. 248. I have a brother-in-law that hauls gravel.

MR. PAFUNDA: And that's in what county, sir?

MR. LONGWORTH: Lee County.

MR. PAFUNDA: Thank you very much.

I'll address this to all the individuals that just responded to my last question.

Do any of you individuals or your close relatives have any difficulty with regards to labor unions in the process of when they were hauling coal, either your immediate family or your close friends.

I take it by your silence that your answer is no.

Ms. Walker, I believe you stated your brother-in-law is the sheriff of Wolfe County?

MS. WALKER: Yes.

MR. PAFUNDA: For the record, this is No. 108, Ms. Walker.

How long has your brother-in-law been sheriff of Wolfe County?

MS. WALKER: Two years.

MR. PAFUNDA: So, he took office in 1982, would that be correct?

MS. WALKER: Yes.

THE COURT: Let's have them stand when you're talking to them.

MR. PAFUNDA: Thank you, you don't have to stand, that was my last question.

Yesterday when I was asking the panel questions, I brought up a point

that I believe that sometimes is overlooked by lawyers, particularly for people that's never served on a jury before. The question in this regard is how many people here today have served on a jury here in the Federal Court either in a civil or criminal case?

I think the easier question would have been who has --

(Reporter's Note: There was a response from the jury panel)

MR. PAFUNDA: If you don't mind, I'll start -- you haven't -- Mr. Deskins, I believe you have not?

MR. DESKINS: I have not --

THE COURT: (Interrupting) Mr. Pafunda, you're getting into a private conversation. Let's do this so the Clerk can -- so the court reporter can get this.

MR. PAFUNDA: I'm sorry. Let's go in reverse just for a change of pace.

MR. BLANKENSHIP: James Blankenship, I have not.

MS. BURCHETT: Ella Burchett, No. 120, I have never served.

MS. BUTCHER: Doris Butcher, No. 122.

I've never seen a trial.

MR. CAUDILL: I have not.

MR. ANDERSON: I have never.

MR. WALLEN: I have not.

MS. DAWAHARE: No. 212, yes, I have.

MR. CRUM: No.

MR. DAMRON: No.

MS. WALKER: No.

MS. LYKINS: I have not.

MS. ADKINS: 104, Jeanetta Adkins. You said that this Court.

MR. PAFUNDA: Yes, I did, ma'am.

MS. MOORE: Wilma Moore, no. 100.

MS. SPICER: Della Spicer, no. 96.

MR. SPENCER: Clifford Spencer, 95.

MS. DORTON: Number 93, Jean Dorton.

MR. PAFUNDA: Thank you. The reason I asked that question, I wished to explain something to you for those of you who have never served on a jury before. And if you are selected to serve on the jury, in the trial of this case.

Do you understand that at the outset, it is the Government that puts its case on first. And at the conclusion of their case, then it is the opportunity for the defense, if it feels that it would be proper, for the defense to put on its case.

And the reason I raised this is sometimes people ask why didn't you go first. You understand as prospective jurors, that is the law that requires that the Government go first, and the defense must wait until the Government has concluded its case in chief before it can put on any evidence whatsoever.

In that regard, there has been mentioned by the Court in enumerating of listing witnesses, naming witnesses to determine if anyone here in the courtroom knows those witnesses. This one point in this one regard I would like to make.

Ladies and gentlemen, the witnesses do not belong to either the Government or the defense. Do you understand that? In other words the Government may call some people as witnesses, and I may call the same people as witnesses in the defense of the case. Do you all understand that?

Along that same line, as the Court has already indicated and explained to you as well as Mr. Kehrli, Mr. Harwell, and Mr. Walbourn, the case is decided on the evidence. However, the sheer number of witnesses in and of itself on one side or the other does not indicate which side wins or loses. Does everyone understand that proposition?

I take it by your silence then if you are selected as a juror in this case you will not decide the case simply by the sheer number of witnesses who are called by one side or the other. Is that correct?

As you have gathered at this point in time there are a number of men from

Floyd County, Kentucky, who have been charged. My clients, Austin Bo Moore and Drexil Hall sit among these men. However if you are selected as a juror and as you sit here today, you understand that their individual cases are being tried with the other men, and that Drexil Hall and Austin Bo Moore are entitled to have the merits of their each individual case decided by you if you selected as a juror independently of the other men who sit there. Is there anyone that has a question about that?

I take it then by your silence that you all accept the proposition of the law simply because a man is sitting over here in a group, you still have to, if you are selected as a juror, judge his case individually and independently on the merits of the evidence as presented as to his case and his case alone.

The Court asked in its last round of questions if anyone had any personal reasons why they did not want to sit on this jury. I will ask the question this way: Is there anyone here who feels that they are under either a--they themselves such as a hearing disability that if this case were to go on, or any type of physical disability that they could not sit through the course

of this trial and give it the full attention that it deserves. And I will-- Just a moment. And I will say it this way, too, because I don't know what it is like to sit at in an--

THE COURT: Mr. Marshal, I think we will be in recess for five-ten minutes.

THE MARSHAL OF THE COURT: All rise, please. This court will stand in recess for ten minutes.

[Whereupon the court recessed for ten minutes.]

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

THE COURT: You may proceed.

MR. PAFUNDA: May I approach the Bench, Your Honor?

THE COURT: Yes, sir.

MR. PAFUNDA: The weather is getting bad outside. Counsel may be divided. I thought we might re-ask the jury the question you asked earlier if they want to go home. It appears that some of them may have changed their mind.

THE COURT: Well, we will ask them if they want to go home right now. How much time is

anticipated to finish?

MR. PAFUNDA: I have only got a few questions.

MR. HARWELL: We are finished.

MR. KEHRLI: We are done.

MR. PAFUNDA: I have only got two questions. I can't speak for the other defense counsel.

MR. HARWELL: I have talked to the other defense counsel. They have made a statement that they are not going to slow down because of weather. They are going to do whatever they have to. I don't know how long.

MR. PAFUNDA: All right. If I ask a question--

THE COURT: [Interrupting] I would say we are going to be here another hour and a half. It will be four-thirty. It would be dark possibly before some of them get home.

MR. HARWELL: Why don't you ask the question to each of the jury.

THE COURT: Go back there and I will ask them the question.

MR. PAFUNDA: Thank you, Your Honor.

THE COURT: Just have a seat.

MR. PAFUNDA: Thank you, Your Honor.

THE COURT: Outside the snow is still falling, and I don't know what the conditions of the roads are going to be. I do know in talking to counsel that it is going to be at least another hour and a half before this will be concluded. I certainly don't want to endanger anyone's life. And I guess it could be dark by the time some of you get home. The Court is going to suggest that we recess in this matter. So this jury will return back Thursday morning at nine o'clock. And then we will complete this matter which is in process here. Now, if it is a consensus of the majority of the jury, and I am going to have to say a substantial majority, something a little better than just a bare minimum that you want to stay here, that you want to stay here and finish and conclude this matter, we will do it.

Now, how many, irrespective of the weather or anything else, want to stay here today and finish this? Will you please make it known by showing your hands?

Well, I'm afraid the number who put that up is not enough. Mr. Marshal, we are -- are going to be in adjournment until Thursday morning at nine o'clock.

MR. HARWELL: Your Honor, please, could

we take up a housekeeping matter with the Court very briefly after this panel is excused.

THE COURT: Yes, sir, you may.

Now, Madam Clerk, do you put on the Code-a-phone that the panel which was to report tomorrow--they will not report tomorrow, but they will report Monday.

THE CLERK OF THE COURT: They will not report tomorrow.

THE COURT: They will report Monday morning at nine o'clock.

THE CLERK OF THE COURT: Yes, Your Honor.

THE COURT: This panel which is here will report Thursday morning at nine o'clock unless otherwise instructed by your office to the contrary. The new jurors which are being presently summoned by telephone will likewise report Thursday morning at nine. But we will conclude this matter before we proceed with the new jurors. The new juror panel will wait downstairs until we finish with this panel.

MR. HARWELL: Your Honor has answered my housekeeping question. I no longer have any need to not immediately adjourn.

THE COURT: All right. Let's have the new jury-- This jury will come in at nine o'clock

Thursday morning. The new jurors will report let's say twelve o'clock, at twelve o'clock.

THE CLERK OF THE COURT: Yes, Your Honor.

THE COURT: All right, Thursday.

THE CLERK OF THE COURT: Yes, Your Honor.

THE COURT: Now, I have been advised at some places in Lee County, the roads are icy and there may be a little more accumulation. And in Wolfe and Breathitt and Knott, you should drive carefully.

Now, let's-- I don't know. I don't want to be like that-- What is it? Hill Street? The officer says let's be careful out there. But all of you do drive carefully. And we are sorry for the inconvenience.

Mr. Marshal, you may excuse them until Thursday morning at nine o'clock.

THE MARSHAL OF THE COURT: Jurors, you may leave the courtroom. Come back Thursday morning at nine o'clock.

The jurors are out of the courtroom, Your Honor.

THE COURT: Thank you, sir.

MR. PAFUNDA: May it please the Court, one matter when we come back on Thursday, will this

carry over to till Friday? The reason I asked is that--is because the Court had indicated earlier that we would be going on a four-day week.

THE COURT: Friday is still the court day. This case will be Thursday; not Friday.

MR. PAFUNDA: Thank you very much, Your Honor.

THE COURT: Now, gentlemen, let's do this: Let's do not repeat what the Court has said. Just stating it in another manner, let's don't repeat what the Court said. I think I have sufficiently expounded upon the subject matter which I said. And when I am talking on voir dire to the jury, I mention something, I think I have sufficiently covered it. If you have any questions, please discuss it with the Court before you take it up with the jury.

MR. PAFUNDA: I do have a question, Your Honor. And I didn't mean to in my last question, to inadvertently ask what the Court had earlier. The reason I phrased it that way is just to see if anyone would have trouble just remaining in a seat for a six to eight-week period.

However, my question on voir dire I would still like to be able to ask this

panel question that I propounded yesterday. And that question specifically being after all the evidence is introduced, if the Government has failed to prove its case beyond a reasonable doubt, how will the people vote; guilty or not guilty.

I believe that is a legitimate question. It goes to their understanding of the law that the Court expounded to the jurors.

MR. KEHRLI: Your Honor, the Government would have the same objection to that question to this panel that it had to the panel that Mr.--or the question which Mr. Pafunda asked yesterday. That being it objects strenuously to any straw poll.

THE COURT: I think we have gone into reasonable doubt. It is just stating it in another way. They don't find him guilty until it is proved to the exclusion of a reasonable doubt. I think I have rolled on that so much that it is about to hatch eggs.

MR. PAFUNDA: I think you are right, Your Honor. However, I think--and I think the Court would concur as well as Mr. Kehrli that sometimes, particularly with new jurors, they not only don't understand the procedures. And I wasn't attempting

to define reasonable doubt for them. But just to see how they would vote if that is the way they believed after considering the evidence.

MR. KEHRLI: Your Honor, in a straw poll of the jury asking them how they would vote is entirely improper. And the Judge in this case, Your Honor, has appropriately instructed already the jury on reasonable doubt, and will do so again when the petit jury is impaneled.

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THE COURT: Even after. They are going to get it -- they are going to get it in the final instructions.

The purpose, as you say, is not to educate nor school. The prosecution isn't supposed to be able to conduct a school in order to educate these persons to convict; nor is the defense supposed to be able to educate these persons to acquit. The purpose is to find out if they have any prejudice, etcetera, etcetera, etcetera.

MR. PAFUNDA: Just for the record, Your Honor, along that line, it is also to determine if both sides can select from a panel fair and impartial jurors who understand and are willing to accept the principles of law that have been put forth to them by the Court in the case.

Now, in this scenario, let's say a juror may have a question or may raise their hand. And if the Government has failed to prove its case beyond a reasonable doubt at the conclusion of all of the evidence, how would you vote, and eight jurors stick up their hands and say I would vote guilty.

And I think that would --

it doesn't educate the jury panel. It is not a straw poll. I think it brings forth to the Court maybe a juror's misunderstandings of the principles that the Court has propounded.

THE COURT: You have it on the record.

MR. PAFUNDA: Thank you.

THE COURT: Gentlemen, what we have is -- and I told the Marshall. He said one of the jurors told him what?

THE MARSHALL OF THE COURT: Her husband is in the hospital. He has had heart surgery, Your Honor.

THE COURT: Has one that has had heart surgery, and she knows everybody. She is not going to give a fair opinion. She wants to know if she has to come back. We haven't excused any. And I don't guess -- in a way, I don't feel comfortable me telling one juror not to come back and making the rest of them come back.

Do we want to go over right now what jurors we think it wouldn't even be necessary for them to be back? There are some obviously that shouldn't come back.

MR. HARWELL: I think that is great,

Your Honor. And I have talked to Mr. Kehrli during the last recess before the Court that we think we can put our -- the defense lawyers can put our heads together with them and give you a list of those on which we agree with valid legal cause for them not to serve.

THE COURT: Well, this -- I want to accommodate everyone I can, gentlemen. On the other hand, I have the obligation -- I guess if I can -- I think most of the jurors that wanted to stay here today, they figured they were going to get off, and that would save them a trip. And then some of them were thinking good, and some of them weren't.

MR. SELF: May it please the Court, I think there are a limited number of jurors who expressed an overbias in this case.

THE COURT: Let's have a recess, gentlemen, and you fellows get together and discuss that. And then we will see who can be excused. Then the Clerk can advise jurors number so and so, and so they don't have to report back. That might save them from having to come back.

MR. SELF: Your Honor, you know, we might agree on something; and as the Court said

yesterday, the Court doesn't have to take it. But I think there are just a limited number that have expressed an obvious bias that I don't think there would be any legal question to. There is argument among counsel.

THE COURT: Okay. Let's go down through it. Come up here, Madam Clerk.

MR. SELF: As you say favoritism with one side or the other, I don't think it would be appropriate to take those up at this time. I think the ones that either have a medical or personal problem or a bias, I don't see the Court wasting the expenses of the Court to have them come back and go through it when it is obvious that they should be excused.

THE COURT: All right.

MR. HARWELL: May the Court please.

THE COURT: Yes, sir.

MR. HARWELL: I have lost my list, Judge. May the Court please, we believe that No. 110, Mr. Crum, should not have to come back. If you will recall, his wife and child were in an accident.

THE COURT: Give us a running number, and then we will go back.

MR. HARWELL: Give you the number?

THE COURT: Give us the number, and then we will go back individually with the reasons.

MR. HARWELL: Your Honor, I'm going to give you the number for my client, Edgar Jones. And there are some that the Government will wish to challenge that I believe are proper; but I don't join them in their motion.

May I give you ours first?

THE COURT: Yeah.

MR. HARWELL: Number 1 -- No. 100 and --

THE COURT: (Interrupting) Well, would it speed it up if we had a recess to see what you can agree on and what you can't agree on?

MR. SPENCER: I believe it would, Your Honor.

MR. HARWELL: I think we can agree on a bunch of them.

THE COURT: Well, I think this way where you are disagreed we won't have to make a decision. It is better to have them back and do that Thursday morning. But the ones that you definitely know don't have to be back here, we can excuse them.

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MR. HARWELL: Judge, the two that come to mind that are similar, Mr. Crum and Ms. Stumbo. They want Ms. Stumbo off. I've got to stand here and object to that. But the truth of the matter is that I think to get a fair and impartial jury, she ought to come off. And I am sure that they take that position with Mr. Crum.

We can take five minutes and report back to the Court.

THE COURT: Do that. We will have a recess of not only five minutes, but seven minutes.

THE MARSHALL OF THE COURT: All rise. The Court will be recessed for seven minutes.

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THE CLERK OF THE COURT: All right. This Court is again in session, be seated and come to order.

THE COURT: Yes, sir.

MR. HARWELL: May the Court please, I am Aubrey Harwell, and I represent Edgar Jones.

Your Honor, we are suggesting that there will be challenged for cause Juror No. 212, Mrs. Dawahare. The Government does not join, but they agree because she is predisposed, and the judgement says she can't be changed.

THE COURT: All right.

MR. HARWELL: May the Court please, we then challenge for cause, Mr. Crum, No. 110. The Government does not join, but Mr. Self agrees.

THE COURT: Let me see.

MR. HARWELL: He is the gentleman that had the children — the child and the wife in an accident, he grew up with Tom Self, he does business with Ray-Mac - -

THE COURT: (Interrupting) I remember Mr. Crum very well. Let me see what the Clerk says Ms. Dawahare specifically said she had an opinion.

MR. HARWELL: Right.

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REPORTER'S NOTE: The Clerk of the Court conferring with the Judge.

THE COURT: Now, I will do this, gentlemen, I will not consider the cause of doing business with Ray-Mac or knowing Mr. Self, I won't consider that. I will consider that his physical - - his family, the physical thing.

MR. HARWELL: He said, your Honor, that he had a wife and a child who was injured in an automobile accident.

As I recall, his wife was taking the child to have stitches out from a previous incident, and I think he is the one whose child was in a cast.

THE COURT: Right.

MR. HARWELL: For that reason, we think he should be challenged for cause and excused.

THE COURT: What is the next one?

MR. HARWELL: All right. May the Court please, next is number ninety-six. The Government agrees with the defense. Mrs. Spicer, she has - - her mother-in-law is terminally ill, and can expire at any moment.

The reason for that, Judge,

if that lady passes away we are going to have to call in an alternate or take a couple of days recess. I think we are in agreement.

THE COURT: Anybody - - all right.

MR. HARWELL: (Interrupting) I beg your pardon, Judge.

THE COURT: Let's go to the next one.

MR. HARWELL: All right. May the Court please, the next one is No. 114. This is Katherine Smith who does not have a husband living in the home, has three children in school, including a seven year old who goes to speech therapy twice a week, and there is no one to do that and she has a sister with brain cancer.

THE COURT: All right.

MR. HARWELL: All right. The next one, may the Court please, is Elizabeth Burchett No. 120. The Goverment and defense agree on that, that it would create too severe an economic impact. She has her own hair dressing studio which she is using to put her daughter through the University of Kentucky. She says if she is out of work her daughter will have to cease college.

The next one, may the Court please, is No. 249. 249 is Mrs. Ruby Collier

who has a son who has got both chicken pox and measles. Having lived through that in November of this year with extremely high fever and a hospital situation, I emphasize with her, and I think the Government's position - - the Government does not agree as to her.

May the Court please - -

THE COURT: (Interrupting) You don't?

MR. SELF: No, your Honor. I will let Mr. Kehrli - -

MR. KEHRLI: (Interrupting) We just don't take a position on that. We are not certain how serious her hardship would be in that regard and how long it would last.

THE COURT: How long has Ruby been on the panel?

THE CLERK OF THE COURT: I would say, your Honor, she has been with us close to two years.

MR. HARWELL: Have I covered those for the defense as to cause for challenge?

THE COURT: Is that all of them?

MR. HARWELL: That is all of the defense.

THE COURT: 212, 110, 96, 114, 120, 249, anybody got any - - I will start backwards. 249, 120, 114, 96, 110, and 212.

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MR. KEHRLI: The Government has its say.

THE COURT: What does the Government have?

MR. KEHRLI: All right, your Honor. First of all, I would like to make it clear we have additional challenges for cause we would like to discuss Monday after the Jurors are brought back on other grounds that are not related to - - medical grounds that are not related to clear-cut bias -- --

MR. HARWELL: (Interrupting) May I interrupt a second, your Honor. I have just done a very rude thing to Mr. Rowland. He stood up to make a comment when I asked if these folks agreed with me, and I don't want to mislead the Court, I apologize to you.

THE COURT: All right.

MR. HARWELL: That is what my note says, I didn't see it.

MR. ROWLAND: I did not stand up.

MR. HARWELL: I'm sorry.

THE COURT: Now, you remember this, gentlemen, I have a sight problem on my left, and if I don't see something on the left, maybe you better come around to the other side where I can see it.

I don't have the peripheral vision I should have, gentlemen, and I will make you aware of that.

MR. KEHRLI: Your Honor, there are several challenges as I stated, that we would like to wait on until Monday until defense counsel is given the opportunity - - until Thursday, rather, until the defense counsel is given the opportunity to finish his questioning.

These are challenges that are not related to medical or personal hardship reasons, or are not related to clear-cut bias where the Juror said that they could not be a fair and impartial Juror in this case.

Those challenges that we do have today on those two grounds are, first of all, Juror No. 241, Ms. Stumbo on the grounds that she specifically stated that she could not set aside her relationship with the Defendants and their families and she would not be a fair and impartial Juror.

Juror No. 245, Ms. Bradley, for the same ground.

Juror No. 234, who name - - Laura Moore, identical grounds.

And I believe that the

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other Jurors that we have challenged have already been mentioned by Mr. Harwell - - excuse me, Juror 155, Mr. Ritchie, his wife is totally disabled.

REPORTER'S NOTE: The Clerk of the Court conferring with the Judge.

THE COURT: Gentlemen, our records reflect Mrs. Stumbo is the one that made the statement you were concerned about?

MR. KEHRLI: Yes.

THE COURT: Okay. And Ms. Bradley, 245, Ms. Bradley is the one who is closely married to - -

MR. SELF: (Interrupting) Edgar Jones.

THE COURT: (Continuing) Edgar Jones, something like that.

MR. HARWELL: Married to a second cousin.

THE COURT: Yes. I think she also has known several of the Defendants, but she, she said she just couldn't try the case.

MR. KEHRLI: That is correct.

THE COURT: All right. Ms. Moore,

I remember Ms. Moore. In fact I remember her, we've got Moores on both sides of this case, haven't we? We are going to have some Moores that are going to be testifying for the Government, and we are going to have some Moores on the defense side.

She said Austin was her husband's nephew, and she made the statement she couldn't - -

MR. KEHRLI: (Interrupting) That is correct, your Honor.

THE COURT: What is 155.

REPORTER'S NOTE: The Clerk of the Court conferring with the Judge.

THE COURT: All right, gentlemen. The Court will excuse 212, 110, 96, 114, 120, and Ms. Collier, 249.

Let me state this. Ms. Collier has been with the Court, I think the Clerk tells me, approximately two years, and I don't - - now, she served some, and I think most of the time she - - the service has been interfered with some matter, or something of that order.

I think if anyone has

any objection, does anyone have any objection to Ms. Collier being excused?

REPORTER'S NOTE: (No response)

THE COURT: All right. We will excuse Ms. Collier. Now, she does have children who is going to have the measles or something, she certainly deserves to be off, I'll say that.

All right. We will excuse 241, 245, 234, and 155. That is ten, I believe, isn't it? Ten.

So we have forty-seven returning, gentlemen, and it is anticipated that we will take up the further matter with that forty-seven at 9:00 o'clock, hopefully we will be concluded with them by 12:00, and 12:00 o'clock we will take up any new Jurors coming in, and then hopefully we will have a panel whereby Monday we can proceed with the preemptory challenges at that time.

MR. KEHRLI: Your Honor, one more thing as a point of information.

For the Court and defense counsel, as the Court and defense counsel know, the indictment is based on the theory of two recent Appellant Court decisions, one, the United States versus Russo found at 708F 2nd 209.

THE COURT: Just a moment 708F 2nd?

MR. KEHRLI: F 2nd, 209. That is the United States versus Russo.

THE COURT: Right.

MR. KEHRLI: The other is a case called the United States versus Wilford (spelling) W - I - L - F - O - R - D. That is found in 710F 2nd 439. I have been informed today that the Supreme Court denied cert in the United States versus Russo approximately two weeks ago. I do not know the precise date or the citation, I will get that for you.

And yesterday the Supreme Court denied cert in the United States versus Wilford.

THE COURT: Now, Wilford was - - 70 - -

MR. KEHRLI: (Interrupting) 710.

THE COURT: 710.

MR. KEHRLI: F 2nd 439.

THE COURT: Okay. Now gentlemen, let me get back on the record with regard to Ms. Collier. I said Mrs. Collier's service was spotty because she had family problems, or something

going on, but when she did serve, the Jury which she was on, there was no hung Jury, they made decisions and decisions were both ways in the things.

She made a good Juror when she served, but she did seem to have problems which interfered with the Jury service, and that is what I wanted to say in this matter, the children, those illnesses I think would interfere.

MR. WALBOURN: Your Honor, you said there were forty-seven coming back, and I show forty-two.

We started with fifty-seven and we got rid of five this morning and ten more.

THE CLERK OF THE COURT: That is correct.

THE COURT: That is my second mistake.

THE CLERK OF THE COURT: It was the Clerk's mistake, Mr. Walbourn.

MR. SELF: If it please the Court, may I make a couple, - - there are a couple of other Jurors that the Court may wish to consider.

THE COURT: Let me ask you this. I am sure some of these Defendants - - do you fellows want to waive this and go home?

The Defendants, or do

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you want to stay here?

MR. SELF: I just have a few short remarks.

THE COURT: Okay.

MR. SELF: There are other Jurors that the Court might want to consult with the Clerk on excuses.

These are ones that the both of us will agree that may be significant, but there are others but the Jurors offer that we just have them taken into consideration and the Court may wish, and may be renewed on Monday.

THE COURT: We can do that Thursday.

MR. SELF: The other thing is, the Court may wish to consider the new panel that is coming in at 12:00, if this one starts a 9:00, we may be through earlier than that and the Court may wish to bring them in earlier, for another reason, and that is to fill out the long lengthy Jury questionnaire in this case.

They can come in at 10:30, or something like that.

THE COURT: Some have already been told to come in at 10:00. I assume those that have been told already to come in at 10:00 can come in

and be filling those out.

MR. SELF: Rather than taking a delay or considering them over the Friday and over the weekend before they come back on Monday, I don't think we will be that much longer in going through the rest of this panel on Thursday morning.

THE COURT: We will see.

MR. HARWELL: May the Court please, does Ms. England need more blank copies of the questionnaire?

We have got more back at the motel.

THE CLERK OF THE COURT: If you could supply some tomorrow, we would appreciate it.

MR. WALBOURN: Are the new lists of the Jurors that are being beckoned in on Thursday being prepared?

THE CLERK OF THE COURT: We are in the process of preparing it, your Honor. This has been done strictly from Lexington by telephone. We are having to prepare the list ourself.

THE COURT: Anything else gentlemen?

REPORTER'S NOTE: No response.

THE COURT: I want to say the same

thing to all you gentlemen, drive carefully. Mr. Marshall, there will be an adjournment in this matter until Thursday morning.

THE MARSHALL OF THE COURT: All rise. This Court is adjourned until 9:00 A.M. Thursday.

*** *** ***

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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 me 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.

We further certify that we are neither of counsel nor of kin to either of the parties to this action, and are in no wise interested in the outcome of said action.

WITNESS OUR SIGNATURES THIS 10th day of January, 1984

Bruce D Handy
Notary Public

James E Edmondson
Notary Public

William J. Kalbfleisch
Notary Public

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