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 25, 1984

VOLUME TWELVE

Dale Soergel Moore Shaw & Associates
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I N D E X

OPENING STATEMENT

MR. SELF: Pgs. 67-

MILLERS FALLS COTTON COMPANY

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

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.

Also present:

HENRY D. STRATTON

REPORTER'S NOTE: The Court was called to order at 9:06 A.M., E.S.T.

THE COURT: Let me state this, gentlemen. When you get your seat, when the Defendants get their seat at the commencement of the trial, let's all keep those positions because the Clerk and the Marshall will note that, making sure that all Defendants and their counsel are present.

And do not change your position without first notifying the Marshall or the Clerk.

MR. SELF: Your Honor, to save a lot of time, if the Court -- at least Judge Reed and Judge Moynahan does, instead of having everybody stand up and identify themselves after every break, to make note in the record after the Marshall notifies you, to let the record reflect that the United States is here by counsel, and all Defendants are here, and counsel is present, rather than going down the line every single day and every single break.

THE COURT: That is the purpose of why I am asking you to keep those seats so I can ask the Marshall or the Clerk may the record reflect that they are all present.

If it comes to the worst I can assign numbers like we did in the Army, and everybody can count off.

All right. Madam Clerk, call the matter at this time.

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

This is a hearing, Your Honor, on motions to quash and motion for protective order to quash subpoena duces tecum on Coal-Mac Sales, etcetera.

MR. HARWELL: And I think, Madam Clerk, a motion to compel on 17C subpoenas.

THE CLERK OF THE COURT: I maybe failed to note that, Mr. Harwell.

THE COURT: What volume would that be in?

MR. HARWELL: Actually, may the Court please, maybe it's better said a response to motion

which includes request of the Court.

THE COURT: I have the entire record back in my office which I didn't bring out, and I need to know what volume that would be in so I can bring that out.

THE CLERK OF THE COURT: Five or six, I would think, Your Honor.

THE COURT: Five or six.

Gentlemen, this is the main place, and let me see if I can get it quicker.

REPORTER'S NOTE: At this time the Court left the Courtroom and upon returning the following was heard:

THE COURT: You say 305 and 311?

THE CLERK OF THE COURT: Yes, sir, Your Honor.

THE COURT: Will counsel please note their appearances.

MR. STRATTON: Your Honor, Henry D. Stratton with the lawfirm of Stratton, May and Hays, Pikeville, Kentucky, counsel for Coal-Mac Sales and the other parties subject to the subpoena.

MR. HARWELL: May the Court please, Aubrey Harwell, counsel for Mr. Edgar Jones who has responded to Mr. Stratton's motion to quash, and

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who also has before the Court a motion for production of the books and papers and documents at a time prior to trial pursuant to Rule 17C.

THE COURT: All right, Mr. Stratton, you may state your motion.

MR. STRATTON: May it please Your Honor, the subpoena issued 12-8-83 directed certain documents to be furnished for inspection by counsel for Mr. Jones at the Holiday Inn in Pikeville, Kentucky, room of Aubrey B. Harwell, Jr., on Friday, December 16, 1983 at 9:00 A.M.

That was not a subpoena for the production of documents at the trial, but only a subpoena for the production of documents for inspection by counsel, which as I understand Rule 17C, is not authorized by the rules, and I have an objection based on that.

I also have objections based on the overly broad items of subpoena which calls for such items as all documents.

The subpoena goes into two or three things, it touches on the leases on the Simpson Branch tipple, and I don't know which of these documents have been provided by the United States in connection with the pretrial on production

of documents but it calls for production of leases on the tipple, Simpson Branch, permits and application for permits on use of that tipple, and all other documents relating thereto.

All other documents relating thereto is a very generic thing, and I think it is overly broad.

Then there is documents relating to the structural soundness of the tipple, and occupationally operating efficiency; and then they want insurance policies on the tipple that was burned, and payments of the insurance, and insurance policies on the auger, and payments of insurance.

And then any documents showing all loss or damage, or documentation as a result of the violence that occurred in February of 1982. I don't know which of the - - some of these matters, I am sure, have been furnished by the United States at the pretrial.

THE COURT: Let's start in the reverse. What is the last one you stated?

MR. STRATTON: The last one is paragraph four of the subpoena, and it says any and all losses or damages and documents relating thereto sustained by Coal-Mac Sales, etcetera, as a result of the

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violence that occurred during February of 1982.

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MR. HARWELL: Would it help the Court, since I attended the meeting.

MR. SELF: Set up, to tell you where we stand on these?

THE COURT: Yes, sir. I thank you. I think it would help quite a bit.

MR. HARWELL: Judge Unthank,--

THE COURT: (Interrupting) Yes, sir.

MR. HARWELL: (Continuing) --There was an exhibit that was tendered by the Government at or immediately prior to the status conference, the hearing on December 3 and December 15 before Your Honor. And we had some objections to it unless we were allowed to see the underlying documents.

THE COURT: Yes, sir.

MR. HARWELL: As I recall, on Friday the 15th, Mr. Self and I went to Ray-Mac, Coal-Mac, whatever it is out the highway past the bowling alley, and we saw some documents at that point in time. There was no representation made that we saw all of the documents that related to those lawsuits or just saw part of them.

There was a couple of areas where there was additional documents that were not in the conference room where we were meeting, and I think

we agreed we would get together on those later, according to my recollection and my notes, Mr. Self; and if I am incorrect in what I am stating, I will ask you to advise the Court.

We believe that we are entitled to those. And it may be we have got them.

THE COURT: Well, let me state this now. Here is the Court's feelings on the matter.

Thinking this matter, the Government is going to have to prove that JRM and Ray-Mac were in competition. The Government is going to have to prove that.

I think they are going to have to prove that there was force and violence and wrongful means used.

I think the Government is going to have to prove that by reason the force and violence that damage was done, I think, to the property of Ray-Mac.

Now, of course, the Government is going to prove that, and the defendant, of course, is entitled to get evidence disproving that.

Certainly, Ray-Mac has that evidence. And, ordinarily, a defendant could go to

someone and request and get to see that. And, if they don't, then they are entitled to move for a subpoena duces tecum or see that evidence regarding that matter.

Now, I understand the objection. At the time he made the motion was a long time before trial. He wanted that presented at the Holiday Inn.

And, of course, I understand that the defendant is trying to get a little edge to get it in advance and to get some discovery. And that is understandable. That is according to the rules.

But we are up to the point now where at ten o'clock they are going to hear opening statements. And this afternoon they are going to hear evidence. And I feel like if we have some evidence on those matters which would be disputed and which would be in controversy I feel, in good faith, it ought to be shown to them.

MR. STRATTON: If Your Honor please. Our situation is that we have turned over or made available to the United States whatever documentation that we feel they have asked us.

THE COURT: Yes, sir.

MR. STRATTON: That the United States asked

us to furnish.

THE COURT: Yes, sir.

MR. STRATTON: And I don't know what else--

THE COURT: (Interrupting) Well, let's ask him.

MR. HARWELL: Judge, I am not on a fishing expedition, but I honestly don't know what documents they have got that reflect loss. We saw some.

THE COURT: Well, see, if you are putting on the--putting the burden on them of determining something--

MR. HARWELL: (Interrupting) I think I can answer your question with precision.

THE COURT: (Continuing) --then--then it is overly broad.

MR. HARWELL: I think I can answer your question with precision.

The Government or Ray-Mac, Coal-Mac officials--I don't know whom--caused, or were caused to be prepared tendered exhibits made reference to a minute ago.

I want to inspect all the underlying documents from which flow information that is plugged into that exhibit. And I have seen some of them. I want to be candid with the Court. I have

seen some of them. Mr. Self, as I said, let me see some of them, but there were some that we asked about that were not readily available. And these people were courteous, Judge. I don't want to misstate this. They just didn't have them there at the conference room at that time.

And I want to see the balance of those.

MR. SELF: May it please the Court. Tom Self, Assistant United States Attorney here and is not a party to this hearing. I am appearing here on behalf of the United States.

My remembrance of that meeting, Your Honor, was we had to comply with an evidentary rule saying a summary document can be introduced as long as the underlying documents are made available.

It was my impression and understanding at the hearing. We went up there--I was there merely to assist Mr. Harwell in getting those documents.

We--the personnel from Ray-Mac attempted to make available any documents that he wanted--requested going into that underlying document.

This they--they--he was

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told-- Excuse me, Your Honor. If he wanted to see a document that was there, they would produce it. If it was something that was not there--and I don't remember any document that he requested to see at that time that was not produced.

MR. HARWELL: To make this simple--

THE COURT: (Interrupting) May the record reflect this?

MR. SELF: This was December 16.

THE COURT: Let me say this. Does the record reflect that Ray-Mac at that time made a good faith effort to offer to him and inspect all documents, or any documents that was used in making this summary?

MR. SELF: Yes, Your Honor.

MR. HARWELL: No, sir, Your Honor. It is our position, may the Court please--

THE COURT: (Interrupting) Apparently, we have got our lines drawn, gentlemen.

MR. HARWELL: Judge, we walked in the conference room, and they had Mr. Parrish, and a gentlemen whose name I don't remember; and they had some files and file folders before them.

THE COURT: All right.

MR. HARWELL: We went through those. In the course of reviewing the proposed Government

exhibit, I said, "Where did this figure come from, and where is the underlying documentation?" "We have got it. It is not up here, Mr. Harwell."

We had been there several hours, and I said, "Gentlemen, rub and push you all today, giving the fact we have these high-powered executives here, can we have that?" Well, we will get it. We don't have it, Your Honor. And I think I can solve this problem for the Court by doing this.

We have a list back at the office of that which we didn't see, which will give the precision that the Court needs; and we will bring it to Your Honor, if we can, in the morning.

THE COURT: That is what we want.

MR. HARWELL: Judge, the second area ties into this.

THE COURT: Now, wait just a moment. Of course, you have a list of what you want to see, and we need to do this. We need to see this list, gentlemen.

I want Ray-Mac to say--if they say they didn't use that in compiling this summary, then we have got another problem.

MR. HARWELL: Yes, sir. Although if it does pertain in an evidentary fashion to the losses

or damages that were sustained by them during February of '82 up there, then we think we are entitled to them whether it is part of the compilation. But I think it is not all of the compilation.

THE COURT: I have no problem with you seeing--if the insurance company made any payment for any loss. I have no problem, because that actually proves there was a loss.

I do have a problem on you getting that into evidence.

MR. HARWELL: I understand, Your Honor. But that is our next request is insurance policies, contracts and payments.

THE COURT: Okay. I have no problem with that, because that confirms the fact there was a loss.

MR. HARWELL: Right.

THE COURT: But I do have a problem with the jury, because that gets the jury with the idea, you don't worry about this, because insurance can--compensated this; and that is something--that is a no-no for the jury.

MR. HARWELL: Without anticipating Your Honor's ruling, I will keep that in mind, sir.

MR. HARWELL: Judge, the next thing we're asking for is documents that pertain to structural soundness and the operating efficiency of the tipples that were burned on February 26th, 1982. The one that was allegedly under lease by Ray-Mac or Coal-Mac. We have been told that the tipple was in inoperable condition. We need whatever documents they've got that reflect that, because it's charged in this lawsuit that these Defendants conspired to burn the tipple to prevent it from tippling coal. We don't think based on what we've been told that the tipple was in any kind of operational condition.

Now, they may have no documents on that, and if they don't, we want them to say we have none.

THE COURT: They have no documents on it, I'm sure they'll have someone present who will testify.

MR. HARWELL: The first request we may have, Judge, and if so, I would just like Mr. Stratton and Mr. Self to tell me. We asked for documents concerning leases, permits, applications for permits or documents relating to such leases, permits, or applications in regards to that tipple --

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THE COURT: (Interrupting) Let's do this just a moment.

Mr. Stratton has spent many years practicing law, criminal and civil.

MR. HARWELL: I'm well aware of that, Judge.

THE COURT: That's why I stated in the beginning that I felt the issues were, what the proof would be, and I think Mr. Stratton will cooperate.

MR. STRATTON: Yes, Your Honor, I'll be fully cooperative. Because the United States is the prosecution I have only consulted with the United States Attorney on very few instances so I have no idea what the United States Attorney has turned over to the Defendants. And to that extent -- I mean certainly, we're not trying to hide anything.

THE COURT: No, you understand that there's going to be controversial issues. If there's evidence which they have no way of getting except through this means, they're entitled to get it through this means.

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

THE COURT: And at the appropriate

time, and it's now come to the appropriate time.

MR. STRATTON: Yes, Your Honor.

I assume that Your Honor is treating the subpoena as a continuing subpoena?

THE COURT: Yes, sir.

MR. STRATTON: And we will --

THE COURT: (Interrupting) And except to where the motion is quashed, it's contrary to the Court's stated purposes, it's overruled.

MR. STRATTON: And the production of any documents will be production in the -- in the courtroom, is that the Judge's rule?

MR. HARWELL: Judge, that does not give us the benefit of those documents to use for examination of witnesses on these very relevant and pertinent issues. I have no problem if it's in open court without the jury before the testimony of a witness, I have no problem with it being in camera if the Court wants to review it. But I do have a problem with holding it off until I start my case. I think with 17C it was designed to prevent that sort of problem.

MR. SELF: May it please the Court --

THE COURT: (Interrupting) Here's what we're coming to. Mr. Stratton, you can see

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this. I'm sure the Government is going to say the Jencks Act you're only entitled to do it after the witness has testified.

They're going to say well, let the witness testify and then you can get it after that and you get a chance to examine it before you cross examine the witnesses.

We started on the 9th day of January and today is the 25th of getting this jury. If I follow the Jencks Act it's going to be next June before I finish trying this case, and I don't want to do that. So I think they're entitled to examine this with a reasonable amount of time before this witness testifies so they can effectively cross examine the witness.

MR. STRATTON: Judge, as far as we're concerned, we'll be fully cooperative with the directions of the Court. I'm not trying to take the position other than the position to represent my client.

THE COURT: I understand -- I understand you're representing your client and Mr. Harwell is representing his.

MR. HARWELL: I've got to give you a brief aside, Judge. When I first got in this lawsuit

this friend of mine and I were talking and we said something about Pikeville and I mentioned Pikeville and he said when I was President of the Bar Association, Aubrey, I made a friend, a delightful fellow and one of the finest lawyers I've ever met. He said when you get to Pikeville, I want you to get with Henry Stratton and he will help you out in this matter.

THE COURT: Well, he's helping you out.

MR. HARWELL: It's a true story, Your Honor.

THE COURT: Okay.

MR. HARWELL: May the Court please.

THE COURT: Yes, sir.

MR. HARWELL: There are a couple of other categories, actually in this matter there was two subpoenas. I have touched on the categories of the requests as to the first subpoena, and I would like to briefly touch on the second one, because I think it may resolve itself as to some of those categories. The second thing is we asked for any and all coal or mineral leases wherein Coal-Mac, Ray-Mac, or several entities were in competition with Edgar Jones or JRM. It may be,

Judge, that there's no such document in that we have Jencks material given --

THE COURT: (Interrupting) Wait, state that over again.

MR. HARWELL: We're asking for documents that concern coal or mineral leases wherein Coal-Mac or Ray-Mac have been or are in competition with JRM.

It may be, Your Honor, that there is no such entity, because in the Jencks we got last night Mr. Linn Parrish testified that JRM and his company were not competing in January or February. So, there may be no documents that are available, I don't know.

THE COURT: Well, I don't know about the leases that Mr. Jones' company has, but I'm sure Ray-Mac has leases.

MR. HARWELL: Yes, but we're only asking where the Government contends as Your Honor said this morning in the open court that the Government alleged competition, where ever that competition lies we can't fret it out. Mr. Parrish says there is none. If there is some, we want to see the documents that reflect that competitiveness, whatever it is.

MR. SELF: Your Honor, that would require the production of every lease of Coal-Mac sales, any subsidiary had with the Eastern District or in this whole area which would entail thousands and thousands and thousands of documents. Every sales contract, every coal purchase agreement, every tippling sale, it would entitle producing to Mr. Harwell every business record that Coal-Mac, Ray-Mac or Mack Island or any of the subsidiaries had, Your Honor.

MR. HARWELL: May the Court please --

THE COURT: (Interrupting) Be the devil's advocate.

MR. HARWELL: Well, I was going to be an officer of the Court for a moment.

Judge, we can't find the competition. Mr. Parrish, President of this company, says there is none. We're not asking for all this stuff. We're asking for the documents that reflect the alleged competition. As Your Honor said in voir dire the Government has alleged competition with JRM and Coal-Mac. The Defendants deny it. I stand here and I tell this Court that I honestly don't know of the competition and I can't find the documents that I need.

THE COURT: Let's ask him this. How are you going to prove competition?

MR. SELF: Well, I think, Your Honor, if you'll look at the indictment, does it allege that they were in competition with them?

THE COURT: What?

MR. SELF: Does it allege that they were in competition with Mr. Jones? Or does it state that Mr. Jones stated that they were in competition with them?

MR. HARWELL: It's the Government's problem, Your Honor. Your Honor has said throughout, you know, they're alleging competition, we say they are alleging it --

THE COURT: (Interrupting) No, I think if in memory was it Pearl Bruce says that Mr. Jones made the statement, that they were in competition?

MR. HARWELL: Yes, sir, that's Overt Act 4, I believe.

THE COURT: So, what --

MR. HARWELL: (Interrupting) They allege it in their brief, Your Honor.

THE COURT: Well, apparently what he is saying is that they're going to prove

competition from the statement of Mr. Jones.

MR. HARWELL: Your Honor, let me read one sentence out of the Government's brief. This is the Government's brief. The evidence will demonstrate that Ray-Mac Coal Company, Coal-Mac Coal Company, Nick Cooley, Arnold Turner, were competitors of JRM and Edgar Jones. All I'm asking this Court to do is get them to give me any documents that exist as to that competitiveness or tell me there is no such documents, If there are none, that's fine.

THE COURT: That's overly broad.

MR. HARWELL: Overly broad, Your Honor? You know, we are in a different position defending this case because we don't know what this alleged area of competition is. We didn't get it in the Bill of Particulars. They say today -- we're not saying there's competition, Judge Unthank. We're saying that Pearl said that Edgar said there was. But their brief and their pleadings reflect throughout that the evidence is going to demonstrate that these companies were competitors. Yet Mr. Parrish said we were not competitors, and he was the President.

THE COURT: I'm doing this. I'm

directing the United States, if they're going to prove this competition by reason of records which were unavailable to them then -- give them the opportunity to see those records at least twenty-four hours before you put on the witness that's going to testify as to that matter.

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

THE COURT: (Interrupting) I think I've already ordered that through the Jencks Act.

MR. SELF: I think, Your Honor, to the extent that a specific -- a specific document that -- a letter that existed where Ray-Mac tried to underbid them or specific solicitation to South Carolina or they sent a specific document, if we had that we would have clearly marked that as an exhibit and provided to counsel. We provided the leases that existed on the property being mined by Ray-Mac, Your Honor.

THE COURT: Let's go back this way --

MR. SELF: (Interrupting) Let me make one statement.

THE COURT: All right.

MR. SELF: Ray-Mac and Coal-Mac were not only in the business of buying coal, they were in the business of producing coal, Your Honor.

They were in the business of buying coal also to the extent that there may be -- they were a coal company selling coal and buying coal in the same area in East McDowell where Mr. Jones' operation was going on and they were in competition with him, whether there was a specific lease involved -- we're not going to try to hide it, Your Honor.

THE COURT: Well, let's do this. I think Mrs. Booth said Mr. Jones said to her, I got a call from my coal sales agent and he said that Edgar Jones had underbid me two or three dollars a ton. Now, that was the specific statement. Has Ray-Mac got any -- I don't know -- was the coal agent's name brought out?

MR. SELF: No, Your Honor, it was not brought out in the course of the pre-trial examination.

THE COURT: Well, if we've got records -- who was -- of course they're denying that they made these statements.

MR. HARWELL: That's right, Your Honor.

THE COURT: So, if the Government is going to -- is the Government going to introduce records of the coal agent wherein there was an underbidding of two or three dollars a ton?

MR. SELF: Records, at this point we don't have any such records or file, Your Honor. They have not been produced from the Defendants.

THE COURT: Does that answer your question? That's what you were trying to find out all along, wasn't it?

MR. HARWELL: That's right, Judge. You covered one and two of the other subpoena. There's two more categories. One of them, Your Honor, is the documents that reflect knowledge on the part of Coal-Mac or Ray-Mac concerning union organizational activities during the period of February 12th, '82 through February 15th, 1982. I have a hunch there may not be any such documents, and if there's not, that's fine, but if there are, we'd like to have them.

THE COURT: Does Ray-Mac have any what?

MR. HARWELL: Any documents may the Court please that reflect the union organizational activities during this pertinent period.

THE COURT: You mean whether or not a petition was being circulated for the men to vote on for representation?

MR. HARWELL: Judge, any documents. If

there's any letters or any memos that reflect this union organizational activity, in-house or out-house, we'd like to have the opportunity to see them.

THE COURT: Well, gentlemen, the Court is curious, and it may very well be part of the instructions of law.

Was there a petition being circulated at that time among the workers that Ray-Mac knows of?

MR. STRATTON: I'm not aware of it and we're not aware of it.

THE COURT: Has Ray-Mac ever had a --

MR. STRATTON: (Interrupting) Never had a union election.

THE COURT: That's what I was wondering, have you ever had a union election?

MR. STRATTON: We never had a union election, and no petition has ever been filed. And that would be the only document that I would know of. From time to time, there are organizational activities where people get cards signed, but in those situations the employer's the last to know.

THE COURT: That's right.

MR. STRATTON: And we have no knowledge of that, Your Honor.

MR. HARWELL: The fourth category, Judge, is any and all communications or documents between Ray-Mac and Coal-Mac's officials and the United States Attorney's office or the United States Government concerning these matters.

MR. STRATTON: Your Honor, that is asking for communications between Ray-Mac, Coal-Mac with the Department of Justice concerning -- I guess organizational activities. I don't know of any unless Mr. Self has any.

MR. SELF: There is none.

MR. HARWELL: If there are none, say --

MR. SELF: Not as far as organizational activities go.

MR. HARWELL: I didn't hear what Mr. Self said.

MR. SELF: Not as far as any organizational activities.

MR. HARWELL: Well, we're not asking for organizational activities, we're asking -- union organizational activities.

MR. STRATTON: Union organizational activities?

MR. HARWELL: Mr. Self said there's not a union organizational activities, we say there is,

and I want to be sure that we're not splitting hairs on a misunderstanding. Maybe I should better say alleged union organizational activities, any documents between Ray-Mac and the Government concerning the alleged union organizational activities, we want them. If there's not, there's not.

THE COURT: You know, that reminds of the Lincoln story I read in the paper. He said if you call a cow's tail a leg, how many legs does a cow have. Of course, everyone says five. But as Mr. Harwell says, you've got four legs, but you've got a tail that you're calling a leg. Just calling it a leg -- a tail a leg does not make it a leg.

MR. STRATTON: Your Honor, please --

THE COURT: (Interrupting) Now, in so far as these alleged organizational activities and what are, the Court -- I don't know, at this time, I guess the evidence is going -- will determine what the Court's instructions will be as to a bona fide labor dispute with a legitimate labor goal. The Court will have to establish what the law is with regards to this.

MR. HARWELL: We have been led to believe under that last category, Judge, that the

officials of Ray-Mac and Coal-Mac interviewed on tape and in some instances have been transcribed statements from various Ray-Mac employees that were up there on or about February the 15th. We have been led to believe, possibly in error, but that those tapes were or transcripts thereof were provided to the Government. We believe that this subpoena covers these and if this does not cover those, then we believe that there is a Brady material in some of that, and we would be entitled to it, to say nothing of Jencks.

THE COURT: He's already made a statement on Brady. Now, are you aware of any such materials, Mr. Self?

MR. SELF: Your Honor, I've been told by some witnesses that at the time after the violence some of the witnesses were interviewed by Mr. Dan Jack Combs that was representing Ray-Mac at the time, in preparation for an injunction hearing in Prestonsburg Circuit Court. I have not been privy to those tapes or never seen transcripts of them and don't know what's on them. I consider them an attorney/client privilege and never made an inquiry.

THE COURT: Mr. Combs has them, you

don't have them?

MR. SELF: He has never advised me that they exist, Your Honor.

MR. STRATTON: This is a case -- I represent the Ray-Mac Coal and Coal-Mac, gentlemen, for many years. The reason Mr. Combs took over that case at the time was because of an illness I had and he was handling it for that reason.

He and I had not communicated about the matter, and I don't know what he has, but I assume whatever he has will be attorney/client privilege, a work product of an attorney in a civil suit.

THE COURT: The Government says they don't have it.

MR. HARWELL: Yes, sir.

THE COURT: They can't be required to produce anything they don't have.

MR. HARWELL: You're talking about Brady. I am saying that if there was not a lawyer that took those tapes; those tapes contained an alleged union organizational activity under Paragraph Four, we respectfully ask the Court for production. If they're attorney/client, I'm not going --

THE COURT: (Interrupting) The Government says they don't have them.

MR. HARWELL: Yes, sir. And my subpoena, Judge, is directed to Ray-Mac Coal and Coal-Mac, not the Government.

MR. STRATTON: Any investigation -- if it was done, it was done by an attorney, I'm sure. I can verify that. But if it was not done by an attorney, but was done in preparation for the civil litigation, that would be for the use of the attorney, and I assume that would be a work product also.

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THE COURT: Well, first ascertain if he has got any such thing.

MR. STRATTON: I will, Your Honor, I will have to require it.

THE COURT: All right. Let me ask you this, this is what I am curious about. Were the coal, the truck drivers, who were stopped up there, were the truck drivers employees of Ray-Mac, or were they independent contractors?

MR. SELF: Independent contractors, Your Honor.

MR. HARWELL: Judge, I think we had been told that some were independent contractors, and some were employees. I can't represent what the facts are.

THE COURT: Well, the evidence, I guess, will determine that.

MR. HARWELL: We are not sure.

THE COURT: As I think it will help the Court if we know anything else.

MR. SELF: The caravan that was shot into, some of them were Ray-Mac employees leading the coal trucks on the hill. The coal trucks and the drivers will be here to testify.

THE COURT: Well, is this going to be

a question of primary or secondary?

MR. SELF: We are contending non-existence, Your Honor.

THE COURT: All right. I think the evidence will show that they were independent haulers delivered so much a ton in their own trucks to haul the coal from Ray-Mac to the tipple.

Where is Pafunda?

MR. PAFUNDA: Right here, Your Honor.

THE COURT: Is it going to be primary or secondary?

MR. PAFUNDA: I think the Court is under a misunderstanding. I believe, Your Honor, speaking in terms of primary trucks - - picket, boycott, I don't think the evidence will reveal either facts in the situation, Your Honor. I think the Court in time, and I hope to prepare this weekend a memorandum on this specific point, to distinguish between the primary picket and the secondary picket, and in fact what a picket is.

Organizational, as that term will be used, and the evidence, and what is alleged as opposed - - I think it's going to be significant.

THE COURT: I would like to know these

issues in advance - -

MR. PAFUNDA: (Interrupting) Your Honor, you brought it up Monday, and in anticipation of that, I have done some research and hopefully will have a memorandum to the Court by this coming Monday, depending on the course of this trial.

THE COURT: Let me ask you, are there any other real apparent complex areas in this matter other than the co-conspirators' statements in the Enmons defense?

Is there any other which is going to require considerable research?

MR. SELF: One area, Your Honor might require some, and that has to do with redaction of statements.

A couple of the Defenants made statements, and we have attempted to have redacted statements and I am sure there will be some disagreement as to whether they are properly redacted, or whether they, you know, constitute statements.

That would be a small issue.

MR. KEHRLI: There is perhaps one more, Your Honor, it is included in - - at least the case Law that was cited on behalf of the Government.

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It is included in the Government's memorandum, it's the Court's Jury instructions, and that is the admissibility of state of mind evidence of the victims of the extorsion, and that hearsay is admissible under the Hobbs Act.

THE COURT: That is always a goody. That is not equivalent to entrapment, coercion - - well, no, we can deal with that, gentlemen. I think those two areas are, as a matter of common criminal practice, that comes up in not every case, but it isn't extraordinary.

MR. SELF: I think as Mr. Kehrli said, the unusual aspect of it is the Hobbs Act area itself issued it because of the state of mind and extorsion.

THE COURT: All right, I understand. The object gets into - - I don't call it a Robin Hood defense, but you get the difficulty between intent and noting, and the Court can deal with it.

All right.

MR. PAFUNDA: Your Honor.

THE COURT: Yes, sir. You have got fifteen minutes before the Jury comes in, gentlemen.

MR. PAFUNDA: Your Honor, Mr. Harwell just informed me there has been discussion concern-

ing Brady material. If that is in fact true, let me constitute a critical stage in these proceedings, and that discussion, I am sure, posing this question to the Court, if that discussion is going to continue, I think the clients would have to be present in the Courtroom.

THE COURT: Well - -

MR. PAFUNDA: (Interrupting) It's just a question, Your Honor.

THE COURT: The clients can be present, or the clients can waive their presence. I am assuming they were told yesterday they could be here or they could not be here, is that right?

MR. PAFUNDA: That was on Mr. Harwell's motion - - or on Mr. Stratton's motion of protective order of the 17C material.

THE COURT: The Court has a continuing obligation - - I mean, the Court has a continuing order that the United States will turn over any Brady material it has. The United States has agreed to do that.

Now, if you gentlemen want to argue what is Brady material and what isn't Brady material, you do that in your oral argument.

But if you are going to

use that argument for purposes of discovery, then you all are getting into games, and let's don't play games.

MR. PAFUNDA: No, I think, Your Honor, the legitimate issue, if Your Honor addresses it to this complex issue concerning what is and what is not Brady material, in this incident, it's just been mentioned in terms, I believe of Mr. Parrish's testimony.

I thought I - -

THE COURT: (Interrupting) I told him to turn over Brady material.

MR. SELF: Let me say one thing, Your Honor, the Court mentioned about the Jencks Act, and we provided last night, provided the Jencks Act material of the witnesses we expect today.

We don't intend to pursue that, Your Honor. Let's make it clear to the Court, we are not trying to wait until the witness testifies and then to provide the material for the Jencks Act.

If we do it, it is an oversight on our part, we don't intend to delay this trial, we intend to move it as fast as we can.

THE COURT: Thank you, gentlemen.

Mr. Marshall, we will be in recess until 10:00 o'clock.

THE MARSHALL OF THE COURT: All rise. The Court will stand in recess until 10:00 A.M.

*** *** ***

THE COURT: Madam Clerk, please call the matter for consideration. You may just state the United States versus the first defendant, and then we will let the defendants each note that they are here.

THE CLERK OF THE COURT: Yes, Your Honor.

Criminal Action 83-8, United States of America v. Edgar Jones and other remaining defendants. This matter is called for the purposes of trial by jury.

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

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

MR. KEHRLI: Good morning, Your Honor. Randy Kehrli representing the United States.

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

MR. HARWELL: May the Court please. I am Aubrey Harwell. And I am here on behalf of Mr. Edgar Jones. And I have with me Mr. Al Moore and Mr. Jerry Patton, Judge.

THE COURT: Mr. Jones is present?

MR. HARWELL: Yes, he is, Your Honor.

THE COURT: Thank you, sir.

MR. PAFUNDA: Your Honor, good morning. My name is Bernard Pafunda, and I represent Drexil Hall and Austin Moore, and both of them are present in the courtroom.

MR. WALBOURN: Your Honor, my name is E. J. Walbourn, and I represent Benny Caudill, Mose Mead, Hermit Newsome and Harold Moore; and they are all here today.

MR. ROWLAND: May it please the Court. Dan Rowland, and I represent Tim Milan, and he is present in the courtroom.

MR. THOMAS: Your Honor, David Thomas, and I represent Eugene Tackett, and he is here.

MR. SPENCER: Your Honor, Ed Spencer, and I represent Linville Mosley, and he is present in the courtroom, Your Honor.

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

MR. HOLLON: Good morning, Your Honor. Tom Hollon, and I represent Pebo Gayheart, and he is present in the courtroom.

MR. BRANSEN: May it please the Court. I am Hershel Bransen, and I represent Donahue Halbert, and he is present in the courtroom.

MR. KIRKLAND: May it please the Court. I

am William D. Kirkland, and I represent German Stumbo, Teddy Kinney, Jason Moore, Kenneth Rolland, and Raymond Hall; and they are all here this morning.

THE COURT: All right.

Madam Clerk-- Well, go ahead for the United States. Has the United States stated its appearance?

MR. SELF: Yes, Your Honor.

THE COURT: All right.

Now, Madam Clerk, remember that I said just call the first defendant.

THE CLERK OF THE COURT: Yes, Your Honor.

THE COURT: Let's do this. Rather than repeating, the next time we call drop down and say the United States against the next defendant.

I feel like if we just keep repeating one defendant all the time, someone might get the impression you are zeroing in against that defendant, and we don't want that impression.

THE CLERK OF THE COURT: Yes, Your Honor.

THE COURT: All right.

Now, would you please call the roll of the jury.

THE CLERK OF THE COURT: Yes, Your Honor.

Ladies and gentlemen, as I

call your name and number, please just answer "Present."

Number 170, Eddie L. Ratliff.

MR. RATLIFF: Present.

THE CLERK OF THE COURT: Number 128, Norma L. Craft.

MS. CRAFT: Present.

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

MS. MILLER: Present.

THE CLERK OF THE COURT: Number 140, James Flinchum, Jr.

MR. FLINCHUM: Present.

THE CLERK OF THE COURT: Number 163, Gary W. Damron.

MR. DAMRON: Present.

THE CLERK OF THE COURT: Number 147, Patricia C. Sparks.

MS. SPARKS: Present.

THE CLERK OF THE COURT: Number 174, William D. Slone.

MR. SLONE: Present.

THE CLERK OF THE COURT: Number 105, Anna Lykins.

MS. LYKINS: Present.

THE CLERK OF THE COURT: Number 18, Loretta G. May.

MS. MAY: Present.

THE CLERK OF THE COURT: Number 131, Lorraine Castle.

MS. CASTLE: Present.

THE CLERK OF THE COURT: Number 117, Mary Lee Curry.

MS. CURRY: Present.

THE CLERK OF THE COURT: Number 111, Jackie Adkins.

MS. ADKINS: Present.

THE CLERK OF THE COURT: First alternate, no. 192, Sharon Tackett.

MS. TACKETT: Present.

THE CLERK OF THE COURT: Second alternate, no. 226, Dennis Clark.

MR. CLARK: Present.

THE CLERK OF THE COURT: Third alternate, no. 208, Lillie Lee Scott.

MS. SCOTT: Present.

THE CLERK OF THE COURT: Fourth alternate, no. 185, Glen Slone.

MR. SLONE: Present.

THE CLERK OF THE COURT: Fifth alternate, no. 205, A. J. Snyder.

MR. SNYDER: Present.

THE CLERK OF THE COURT: Sixth alternate, no. 244, Michael Freeman.

MR. FREEMAN: Present.

THE CLERK OF THE COURT: All eighteen jurors have been answered as being present, Your Honor.

THE COURT: Now, ladies and gentlemen of the jury, let me make a statement to you.

We are kind of like the old fairy tale, the three men in the tub. And if one of the persons is out of the tub, the tub will be out of balance, and the tub may turn over.

But we have all of the defendants, as I have stated to you--all of the defendants and their counsel must be present. If one of them is absent, we can't go on.

Now, I state the same thing to the members of the jury. If one of you may be absent, then this whole thing is going to be stopped until we can--the absent juror is here.

Some persons on the jury travel as far as seventy-five or a hundred miles to

get here, whereas we have some jurors who are living, I'd say, within four or five miles of this courthouse.

It would be very unthoughtful for some juror who only lives four or five miles from the courthouse to dilly-dally around and be late, and make someone who has had to travel a hundred miles to get to the courthouse, and who got up at five o'clock in the morning to get here, to make them have to sit around and wait.

So, we are all going to have to have consideration for each other in this trial. This is for counsel. This is for jurors. It is for defendants. It is for the Court and its staff. We all must be considerate of each other's position in this matter and how everyone else is depending on our appearance to be here.

So, let's make sure that when we say nine o'clock, let's make sure we are here at nine o'clock.

Gentlemen, are we--are we ready at this time to have the opening statements by counsel?

MR. SELF: Yes, Your Honor.

If it please the Court, I think the jury needs to be sworn to try this case.

THE COURT: I guess that's right. That is my first mistake today, gentlemen.

MR. HARWELL: After you do that, Judge, there is a matter that counsel should approach the Bench and briefly mention to the Court before opening statements, I think.

THE COURT: Yes, sir. Please approach the Bench, gentlemen.

(Reporter's Note: At this point, all counsel approached the Bench where the following was held:)

MR. HARWELL: May Your Honor please. On behalf of Mr. Edgar Jones, we move that you follow up on yesterday afternoon's admonition concerning discussions and readings of newspaper articles based on my motion.

May the Court please, there is an article in the local paper today on the front page that talks about a juror being chosen in the Ray-Mac trial, and it lists the indictment and accuses Mr. Jones of having a meeting of his company of directors in striking matters, and I respectfully request these folks, if they have heard anything about it that you give them your admonition.

MR. BRANSEN: I believe there are articles in the--

THE COURT: I think the only thing the Court noticed was that they had finally gotten the jury and that it was just difficult because of the weather and a number of defendants, and that was the bottom line of it.

MR. HARWELL: There were two stories on the television stations--on six and seven about this case.

THE COURT: Okay.

MR. BRANSEN: I have also been requested by my client-- And I feel that it is appropriate. We appreciate the Court moving the chairs to how they are, but my client--

THE COURT: (Interrupting) But it isn't good enough.

MR. BRANSEN: My client wants to communicate with me, and we request that we be able to take the chairs and move them along the back line of the rope too. If that were the case, my client could be directly behind me.

THE COURT: No, sir. I am keeping the-- keeping it as it is right now. As it is right now, I am keeping it as it is.

MR. SELF: On behalf of the United States, we would like to invoke the rule for

witnesses.

THE COURT: All right. Fine. At this point that is the way I am going to keep it. You know,-- Are there any other matters-- Now, if your client has a particular matter, gentlemen, I assume that the other attorneys-- The Court did not--the Court, as to the seating at the table of counsel, gentlemen, the Court didn't put into particular order, and I am leaving that up to counsel to work this out.

Now, if you have a particular disability, you gentlemen discuss that among yourselves and see if you can work it out. If you can't, then get back with the Court, and we will see.

MR. HARWELL: Judge, contrary to Your Honor's protocol, if counsel quietly and discreetly goes down and whispers to the clients, is that a discharge--can we do that?

THE COURT: That will be fine.

MR. BRANSEN: And also, in view of--

THE COURT: (Interrupting) Let's do it this way. Let's not get up during the Government's proof and not during the defendants' proof. Let's don't have any of that.

MR. HARWELL: I understand, Judge.

THE COURT: Okay.

MR. BRANSEN: I understand that. In the same regard, I have advised my clients that if they need my attention and if they don't see me, they are free to discreetly to come up and advise me of something.

THE COURT: No. No, I don't want--I don't want the defendants moving around the court. You understand, they are defendants.

Now, this is for security reasons. I want the defendants to remain in their seats. Counsel can go back and talk to them. They-- That is what I want them to do. They are close enough now that I think-- They are, what, five or six feet, and that is going to be about the farthest any of them are going to be from where they are, gentlemen. And they can get word to you to come there.

MR. ROWLAND: Judge, you are saying we can go see them for a few seconds if we need to do that.

THE COURT: Yes. Let's do it discreetly.

MR. HARWELL: Sure.

THE COURT: Where it doesn't draw attention to it--so it doesn't divert the attention of the jury. Do it in such a manner as not to distract

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the jury.

MR. SELF: There are two other matters, Your Honor.

One, the United States would request, if it could, to have the podium moved out in front of the jury for the purposes of opening statements. I realize the Court said it would be used.

THE COURT: All right. We want the podium put in front of the jury for opening statements. That is just for opening statements?

MR. SELF: Yes.

MR. KEHRLI: Randall Kehrli on behalf of the United States. We would like to move the Court in limine, Your Honor, to admonish or prevent the defendants, in the course of their opening statement, to make them--not to make any reference to the fact that Morris Ray Hall was dismissed as a defendant, or that any--or any reason to why it was done.

Your Honor, I think it is appropriate not to make any reference why that may not have been done and state what it was.

THE COURT: That is not part of this thing. I don't think any counsel intends to do that.

MR. KEHRLI: Okay.

MR. BRANSEN: Your Honor, I request to be

heard in a motion in limine to preclude the United States from mentioning in their opening statement or offering any proof without the prior express approval of the Court any and all statements made after February 26 for the purposes of--until we have a decision on the coconspirator statement.

The United States, I believe, at the mini-hearing, argued that probably conspiracy ceased around February 26. They have shown us some documents going into March and even later, and I believe that those are inadmissible, and I would like--

THE COURT: (Interrupting) The Court hasn't ruled on that yet.

MR. BRANSEN: I understand.

THE COURT: I am going to hear the evidence and rule.

MR. BRANSEN: I am speaking for the purposes of the opening statements or introduction of evidence anything past February 26 that the United States have an order precluding them from doing that until the Court makes an order on the conspiracy.

THE COURT: All right. Let that motion be overruled.

Is there anything else, gentlemen?

MR. SELF: Nothing. Swear the jury and get on with it.

THE COURT: Okay.

(Reporter's Note: The following proceedings were conducted in open court with all parties present:)

THE COURT: It has been brought to the Court's attention that we have possibly one of the daily copy reporters that has not been sworn.

Madam Clerk, will you please administer the oath.

THE CLERK OF THE COURT: Yes, Your Honor.

(Reporter's Note: The daily copy reporter referred to was sworn by the Clerk.)

THE COURT: Mr. Marshall, there has been a motion by all parties for the rule on the witnesses.

In fact, that means that no one who is expected to testify other than those who are seated at the table will be the counsel and their parties as assistants.

I think the Government has one or two.

MR. KEHRLI: Two.

MR. SELF: Mr. McCallister who is seated immediately behind me, and Mr. Tim Farrah who will be occasionally in and out of the Courtroom.

THE COURT: All right.

MR. HARWELL: We have Mr. Hellin who is seated behind me, Your Honor, with Your Honor excepting the rule yesterday.

THE COURT: All right. Let me explain to the Jury, these are persons who are assistants who will assit in this matter, so they are permitted to stay in the Courtroom.

All other persons who expect to testify are not permitted to stay in the Courtroom.

THE MARSHALL OF THE COURT: Is there anyone

that is expected to be a witness in this case? If you are, leave now and wait outside until you are called.

Gentlemen you know your witnesses.

There appear to be none, Your Honor.

THE COURT: All right. Now, before I have you sworn again, I mean, before I have you sworn, if you remember my last admonition to you yesterday was to not read any newspapers or listen to any radio or television reports.

Did anyone listen to the radio or read any newspaper reports?

Yes, sir.

THE JUROR: I read this morning's paper.

THE COURT: Why did you do it, sir, after I told you not to?

THE JUROR: Once the trial started, I thought I could not. It was just the Jury selection I read, to be honest with you, I don't want to be - -

THE COURT: (Interrupting) Well, we appreciate that, but now which paper did you read?

THE JUROR: Pike County Paper.

THE COURT: Pike County Paper. By reason of what you read in that paper, did you form or express any opinion about this case?

THE JUROR: No, sir.

THE COURT: You understand this, the sole evidence to try this thing is the testimony of the witnesses and the exhibits, that is the sole evidence.

THE JUROR: Yes, I understand.

THE COURT: You understand what you saw in that paper isn't evidence.

THE JUROR: I know that, sir.

THE COURT: I think a part of that thing was just merely we got a Jury. Is there anything in there other than that?

THE JUROR: Nothing that would matter, sir.

THE COURT: All right. Any of the Defendants have any questions they want to ask this Juror?

REPORTER'S NOTE: (Marshall of the Court conferred with the Court.)

THE COURT: Yes, I'm going to direct

a copy of it to be filed in the record as the Court's exhibit. I think this will be number two. Court's Exhibit Number One is going to be a representation of the Courtroom, the length of the Courtroom, the width of the Courtroom, the position of all the parties, and so we can have an estimate, that would be number one.

And number two would be this newspaper report.

Does the Defendants have any questions that you want to ask?

MR. HARWELL: No, may it please the Court.

THE COURT: All right.

Does the United States have any questions?

MR. SELF: No, Your Honor.

THE COURT: All right. Madam Clerk, will you - - here you go.

(Handing document to the Clerk of the Court)

This will be Court Exhibit Number Two.

THE CLERK OF THE COURT: Yes, sir, Your Honor.

THE COURT: All right. Will you

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please administer the oath to the members of the Jury to well and truly try the case at hand.

THE CLERK OF THE COURT: Yes, Your Honor.

Ladies and gentlemen, please stand and raise your right hand. Do any of you prefer to affirm?

You and each of you do solemnly swear that you will well and truly try the issue joined by the United States of America as the Plaintiffs, and 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 and Raymond Hall as Defendants, and a true verdict rendered as you shall answer under God, do each of you so swear?

REPORTER'S NOTE: All Jurors except two took the oath.

THE CLERK OF THE COURT: Do you solemnly affirm that you will well and truly try the issues joined between the United States of America as the Plaintiff and 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, and Raymond Hall as Defendants, and a true verdict rendered under the pains and penalty of perjury, do each of you so affirm?

REPORTER'S NOTE: Two Jurors affirmed their oath.

THE CLERK OF THE COURT: Sir, your statement is an indication that you take seriously your affirmation about reading the article. Please don't. It is good that it came out so we can bring that to the attention of the other members of the Jury.

Sometimes, I guess it is painful or embarrassing to anyone, but please don't accept that as any way chastising by the Court.

THE JUROR: No, I just took it that the trial hadn't started yet, that is the reason I did.

THE COURT: The trial started and all of you are now sworn in as Jurors in this case,

and from now on - - well, it was serious before, and it's more serious now that you are into the case, so it is a continuing admonition.

I may not repeat it. Remember as I said, that was my first mistake of the day. The Court is going to make mistakes, I make mistakes sometimes about stating the admonition about the Jurors not reading the newspaper, but that is a continuing admonition so all of you keep it in mind.

What we have, we are getting ready to do at this time is what is called opening statements.

A trial will consist of what is called opening statements.

After the opening statements - - well, let me state this.

Opening statements made - - well, a Defendant is given the option to make an opening statement, and after the Government makes its opening statement, or the Defendants may reserve their opening statements until the Defendants - - until after - - upon the completion of the Government's proof, and the Defendants' proof is presented.

But the trial consists of

an opening statement, the Government will present its proof, after the Government is finished, the Defendants, if they elect to, as it's been explained to you, they have the election or option, they may present their evidence.

Then after that, we have what is called the final arguments. After we have final arguments, then the Jury is instructed as to the Law, and then the Jury goes out for deliberations.

Now, the opening statement is as what it is said, it is an opening statement. The purpose of it is to acquaint the Jury with the issues in controversy by which there is evidence, and the evidence which will be introduced.

Remember this, the opening statement isn't argumentative. The closing statement will be argumentative. The opening statement is just as it says, it is opening or introductory.

It is to acquaint the Jury with the issues and the evidence which is going to be introduced.

Now, the opening statement may not include all of the evidence which will be introduced, and there may be discrepancies between

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what the opening statements will be and what the evidence will be.

There may be some discrepancy; however, the opening statement is just what the attorney in good faith believes that his evidence will be.

So I want you to remember this, which is one thing, is the statement of the attorneys isn't evidence.

You are not to ignore it because it isn't evidence, but you are supposed to listen to it because it might - - it might call your attention to something which would otherwise escape your nose, but it's introductory to acquaint you with the matter so you will more closely follow the evidence which the witnesses themselves will present.

Now, as previously stated, an indictment is an accusation. The Defendant is presumed to be innocent.

The accuser has the burden of proving the guilt of the Defendant to the exclusion of a reasonable doubt.

If the Defendant is found guilty, it will then be my job as the Court to

decide the punishment, if any, to be imposed.

In considering the evidence and the arguments that will be given during the trial, you should not guess about the punishment, and it should not enter into your consideration or discussion at any time.

This is ordinarily only given at one time in the trial, but Kentucky is a state wherein the state procedure is different from the procedure in the Federal Court.

In a procedure in the State Court, the Jury determines from the evidence whether or not there is guilt, and also affixes the punishment.

In Federal Court, the procedure is different from that in the State Court; and therefore, you are admonished that the punishment is not to be considered by you in your deliberation, arguments, and consideration of the evidence.

Gentlemen, is there any objections or corrections to the Court's admonition?

MR. HARWELL: No objection, may it please the Court.

MR. SELF: None on behalf of the United States, Your Honor.

THE COURT: Are you ready to present the opening statement on behalf of the United States?

MR. SELF: Yes, Your Honor.

THE COURT: Then proceed.

MR. SELF: May it please the Court.

THE COURT: Mr. Self.

MR. SELF: Gentlemen for the defense.

MR. ROWLAND: Mr. Self.

MR. SELF: Your Honor, may I use this stool (indicating) if necessary?

THE COURT: Yes, sir.

MR. SELF: I hope I don't have to.

Ladies and gentlemen of the Jury. Let me introduce myself again, although it's been two or three days and you probably know me, maybe I am flattering myself.

My name is Tom Self, I am Assistant United States Attorney in the Office of the United States Attorney's Office for the Eastern District of Kentucky which handles the Federal Courts in the whole Eastern half of the United States.

I am one of the three Government representatives in this case.

DALE SOERGEL MOORE SHAW & ASSOCIATES
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The other two, one is Mr. Randy Kehrli. Mr. Kehrli is a farm boy from Iowa who now lives in Washington and has graciously come down here from the Department of Justice to help our office try this case.

The other is Mr. Charlie Dause. Mr. Dause is a boy from Russell County, who is also in our office, again lives in the Central Kentucky area where our main office is.

The other gentleman seated at the counsel table behind us is Mr. Dennis McCallister. Mr. McCallister is with the Bureau of Alcohol, Tobacco and Firearms, and will be assisting us in the trial of this case.

Before I get into this, let me pause for a moment and go into a matter of personal as to why I am using the crutches back here.

It has nothing to do with this case whatsoever, I had some minor surgery three weeks ago and the Doctor told me last week to wean myself off the crutches, so that is why I have been coming in and out with them and without them.

I am in no pain, I just

have to keep weight off of it until it heals, but it has nothing to do with this case.

Some people have asked me, so now you know.

As His Honor told you just now, what this portion of the case is about, it is called the opening statement.

His explanation took about two or three minutes out of my opening statement, so.

What it is, what it is intended to be, as the Court said, it is not an argument. It is not to persuade you, and it is not to argue the evidence, it is to give you an overview of what the evidence that we expect on behalf of the United States will be.

I would like to analogize it to something like TV Guide.

The newspaper thing that you get in the Sunday paper that tells you what is going to be on TV during the next week.

It will take a two or three hour movie, or a one hour sitcom and reduce it to two or three lines and tell you who the stars are, and what it is about, and how long it is,

and if it's on Cable, what it is rated.

That is in a sense what an opening statement is, although it is longer than six lines, and the trial of this case is going to take more than two or three hours.

It is the same type of a thing.

It doesn't tell you all, but it tries to give you an idea of whether you want to sit and listen to the program and watch it.

Unfortunately, having been picked as Jurors, or fortunately, depending upon how you perceive it, you all don't have a choice at this point.

You have been selected by the defense, and by the United States, as to be representatives of the people of the United States to sit in the trial of this case.

My opening statement is going to tell you much like a TV Guide does as to who the stars are.

The stars are not necessarily stars in the criminal process, but the witnesses are the stars in this case, be they for the defense or be they for the prosecution.

They are the people, and they are not actors ladies and gentlemen, they are coming in here to tell you what, if any, information and what knowledge they have about this case.

They are going to tell you as much as the TV Guide does what this is about. I will attempt in my opening statement to give you an overview of it.

It is their testimony and the documents that they put in that is the evidence in this case.

It is not what I say and what any of the Defendant attorneys say in this case, it is what the witnesses testify from that box (indicating), and the exhibits that go in, and the Court's instructions.

That is what you base your decision on in this case.

The TV Guide will tell you whether this is a half hour or two hour or three hour movie, or a continuing series like Centennial has been for the last two or three or four weeks.

It is expected, as the Court told you during voir dire, this case will take anywhere from four to six to eight weeks, it may

depend upon the snow, depending upon delays, depending upon everything.

It seems like we have been trying it for two weeks but because of the weather we had a break in it for one week.

If there is a movie on Cable or something, it is going to tell you how it is rated, the TV Guide will.

Well, as much as - - the same thing is true in an opening, this case is going to be a fairly complex case.

It is not going to be a case where there is going to be a lot of documents in evidence that you are going to have to examine and figure out what is meant, but it is going to be a case of a lot of testimony by a lot of witnesses who will be telling you about some incidences that occurred in Floyd County in January, February, and maybe even in March of 1982.

As the Court said, in my opening, what I would say to you ladies and gentlemen is not evidence at all, nor is what the defense counsel states to you in their opening.

The evidence is what you hear from the witness stand. What this case is all

about is about an indictment. Madam Clerk has it and I have a copy of it. Very simply, and believe it is very simply in a conversation much like a TV Guide synopsis, the United States expects to prove during the course of this trial these eighteen Defendants seated behind me over here, ladies and gentlemen, along with other what are called unindicted co-conspirators, people who are not charged as Defendants in this case, who most of them you will hear testify we expect, tried to drive a coal company out of business by shooting at its employees on the job site, by blowing up a coal auger with dynamite, by trying to blow up a bulldozer by dynamite and it didn't go off, by burning down a tipple that was under lease by one of these coal companies.

The purpose was driving that coal company out of business, and that is what it is all about in a nutshell, and we expect to prove that, too.

The complex - - essentially the legal terminology is that all of these eighteen Defendants, along with eight unindicted co-conspirators in the legal terminology, interfered with Interstate Commerce, and that is how the Feds

are involved.

*** *** ***

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MR. SELF: They interfered with Interstate Commerce, that's how the Feds are involved through extortion. That's another good legal term, that means they made this company give up something they had through force and violence. They did this in violation of federal law.

In essence, they interfered with his company's mining of coal, shipment of coal, sale of coal, through stress and violence, in an attempt to extort the right of that company and its agents, its employees, and its owners to do business within the Eastern District of Kentucky, to ship coal throughout the United States.

Part of the indictment is that, other parts is that during these violent activities there's certain of these Defendants that carried firearms, guns, pistols, rifles. And that while attempting to drive the company out of business through shootings, bombings, they were carrying firearms in violation of a specific federal law which makes it a federal crime to carry a firearm during the commission of a crime.

There are two other charges in the indictment. That indictment I will read to you in just a minute, ladies and gentlemen.

Charges that certain of these Defendants possessed a destructive device. That's the legal terminology. What it was was a bomb, a dynamite bomb, a dynamite fuse. And they made this bomb or destructive device without having complied with the federal laws that say you have to register and pay taxes on a "destructive device or bomb".

The indictment in this case, ladies and gentlemen, is as the Judge told you during voir dire, it's not evidence. The indictment is a charge, the legal paper that brings this matter into federal court. A charge containing ten counts that were returned by a Federal Grand Jury sitting in Pikeville, drawn from the same counties that you are.

Each count is separate and distinct and each Defendant and each count is separate and distinct. As the Court told you for a matter of legal ease, the law permits the Government to incorporate the Defendants and counts into one document to try them all together for the sake of convenience, rather than having many, many separate trials and many, many separate counts.

Count One of this indictment charges all eighteen of these Defendants

with conspiracy, forming a criminal partnership to do an illegal act in violation of the Hobbs Act, as the Judge told you. The first time I mentioned the Hobbs Act to someone they said what's the Hobbs Act got to do with anything, it's Hobbs Act, that's whoever the guy that sponsored the act in Congress got the name.

Count Two of this indictment charges thirteen of these Defendants with interference with, actually interfering with Commerce through extortion by shooting at Ray-Mac, that's the coal company they tried to drive out of business. By actually doing the shooting in February or either aiding and abetting, they helped the shooters by driving them to the site where they went into the hills or supplying them guns and ammunition or paying for the guns and ammunition they were using.

Count Three charges ten of these Defendants and one aider and abettor with doing exactly the same thing the following day.

Count Four charges four of these Defendants aided and abetted or assisted by three others with interfering with Commerce and interfering with Ray-Mac's opportunity to do business

by blowing up a coal auger they were using in mining coal.

Count Five charges one of these Defendants and two of the Defendants as helping out by again violating the Hobbs Act by attempting to interfere with Ray-Mac's doing business. By burning down a coal tipple that was under lease for the shipment of coal.

Count Six and Count Seven relate back to the two days and the two counts dealing with the shooting. Both of them charge essentially ten of the Defendants with carrying firearms, carrying rifles and pistols while committing a felony. The felony being the violation of the Hobbs Act and attempting to drive Ray-Mac out of business.

Count Eight charges four of the Defendants with destroying a coal auger by the use of dynamite.

Count Nine charges these same four Defendants with making a dynamite bomb or a destructive device without having paid the federal tax on it as required by federal law when a "destructive device or bomb is made".

Count Ten essentially charges these four Defendants with having an unregistered firearm. An unregistered firearm as defined and the Court will explain to you in its instructions can include a bomb or parts thereof, going back to the same bomb that was used to blow up the coal auger. That is it in a nutshell what I'm about to read to you.

Part of the opening statement of the prosecution in Federal Court is to read to the jury the indictment in this case or in any case. Formally set out for you what the charge is, what the matter is, that you are to consider. What you are to listen to is what is being charged in this case.

The indictment is not evidence, it's a formal charge. It's the complaint as it were in a civil case. In this case, it is the charge.

Indictments are written by lawyers for Judges to review and Appellate Courts to review and comply with technical terminology. They are written in legal ease to a certain extent and may seem confusing. That's the way the law says you write up indictments and you

put them down and this is what has to be in them and this is what doesn't. Keep that in mind.

When the trial is concluded the Court in its instructions will explain what these counts are. It will explain to you what Count One is, what's charged, and what has to be proved, and it's the same for each count in this indictment.

But as part of my opening statement I must read to you the indictment. So, bear with me if you will, please.

The indictment reads, United States District Court for the Eastern District of Kentucky at Pikeville. The United States of America versus Edgar Jones, Jason Moore, German Stumbo, Drexil Hall, Teddy Kinney, Benny Caudill, Kenneth Rolland, as known as the Postman, Ranny Blankenship, Eugene Tackett, Harold Moore, Hermit Newsome, Tim Milan, Mose Mead, Donahue Halbert, Austin "Bo" Moore, Pebo Gayheart, Linville Mosley, and Raymond Hall.

Those, ladies and gentlemen, are the Defendants that's seated behind me against the wall.

The first part says the

General Allegation. That at all times material to each and every count of this indictment one JRM Coal Company, Incorporated hereinafter referred to as JRM was a corporation of the Commonwealth of Kentucky engaged in the business of leasing and selling coal in Floyd County, Kentucky and elsewhere.

Two; Edgar Jones was the President and principal officer of JRM with the other officers being Greg Jones and Carson Akers.

Three; JRM was under contract -- under a contract dated September the 29th, 1980 to supply three hundred and sixty thousand tons of coal per year for five years to South Carolina Electric & Gas Company, a South Carolina corporation to be shipped from McDowell, Floyd County, Kentucky via "Unit Train Lots" of approximately seven thousand five hundred tons per week.

Four; JRM contracted with various coal companies to mine the coal JRM had under lease in order to fulfill its contract to South Carolina Electric & Gas Company including Bryan Coal Company, Calamity Coal Company, A & A Coal Company, and Dye Coal Company.

Five; Bryan Coal Company

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and Calamity Coal Company were owned and operated by Phillip and Pearl Booth. A & A Coal Company was owned and operated by Earl Adkins and Phillip Adkins. Dye Coal Company was owned and operated by Ricky Dye, Litten Dye, and Tilden Dye.

Six; Bryan Coal Company, Calamity Coal Company, A & A Coal Company and Dye Coal Company employed coal miners who were represented for the purpose of collective bargaining by the United Mine Workers of America, after U.M.W.A. And U.M.W.A. Local 5967 of the East McDowell Kentucky.

Seven; the officers of U.M.W.A. Local 5967 were Teddy Kinney, President; Drexil Hall, Vice-President; Denny Hinkle, Treasurer; and Walter Blackburn, Recording Secretary.

Eight; Ray-Mac Coal Company hereinafter referred to as Ray-Mac and in the indictment you will hear it referred to as just that and during the course of the trial you'll hear it referred to as Ray-Mac, was a Kentucky partnership engaged in the mining of coal on John Hall and Hamilton Branch near McDowell in Floyd County, Kentucky, for shipment of Interstate and Foreign Commerce and purchase and transported and

thereafter up to and including the day of the return of this indictment in Floyd County, Kentucky and elsewhere in the Eastern District of Kentucky and elsewhere that Edgar Jones, Jason Moore, German Stumbo, Drexil Hall, Teddy Kinney, Benny Caudill, Kenneth Rolland, also known as the Postman, Ranny Blankenship, Eugene Tackett, Harold Moore, Hermit Newsome, Tim Milan, Mose Mead, Donahue Halbert, Austin "Bo" Moore, Pebo Gayheart, Linville Mosley, and Raymond Hall, Defendants herein, did unlawfully and knowingly combine, confederate and agree together and with each other and with Ed "Panhandle" Moore, Phillip Booth, Pearl Booth, Van B. Patton, Phillip Darrell Moore, Jake Moore, Philman Caudill, and Basil Ray Moore, named as co-conspirators but not as Defendants herein. And with diverse other persons to the Grand Jury unknown to obstruct, delay, and effect commerce as that term is defined in Section 1951 of Title Eighteen of the United States Code, and the movement of Articles and Commodities in Commerce by extortion, as that term is defined in Section 1951 of Title Eighteen, United States Code.

It was part of said conspiracy that said Defendants and unindicted

caused to be moved, goods, materials, supplies and commodities in Interstate Commerce.

Nine; Ray-Mac employees were not represented for the purpose of collective bargaining by the U.M.W.A.

Those are general allegations, they in a sense the indictment lays out who some of the people are and who some of the corporations are.

Count One of the indictment reads as follows: The Grand Jury charges One, that the general allegations of this indictment are realleged in this Count and incorporated herein by reference. In essense, it just speaks what's set out above that and then it's put back in the next part of One.

Count One is the first charge. The general allegations as set forth in the indictment as written are not part of any Count unless they're put back in and realleged in there. This first part of Count One in essense makes those a part of Count One.

Count One further reads that from on or about the 4th day of January, 1982, the exact date being unknown, and continuously

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co-conspirators would obtain and agree to obtain certain property of Ray-Mac. The operators, officers and agents of said corporation to-wit: The right to pursue a lawful business including income, profits, sales, contracts. The right to make decisions free from outside pressures. The right to compete with JRM and/or any other coal company engaged in the business of mining, transportation, selling and distributing coal in the Eastern District of Kentucky and elsewhere. Said property being obtained and agreed to be obtained with the consent of Ray-Mac, its owners, operators and agents. Such consent being induced by the wrongful use of threatened and actual force, violence, fear, and including the fear of financial economic and physical injury to Ray-Mac, its officers, agents, representatives and to the employees of Ray-Mac.

And that during the times that the places referred to herein said Defendants and undicted co-conspirators did directly and indirectly threaten to and did delay and disrupt the mining, shipment, transportation and delivery and sale of coal of Ray-Mac and general business operations of Ray-Mac.

And that the Defendants and co-conspirators through the use of actual and threatened force of violence and fear agreed to and did force Ray-Mac to cease the mining of coal on John Hall Branch in Floyd County, Kentucky. All in violation of Title Eighteen, United States Code, Section 1951.

The next section of the indictment is Titled Over Acts and it reads as follows: In furtherance of the conspiracy and to effect the objects thereof the Defendants and co-conspirators performed the following over acts among others.

One, that on or about January 4th, 1982 Edgar Jones met with Ernie Justice, President of the U.M.W.A., Local District 30 and attempted to get District 30 to organize Ray-Mac.

Two, on or about February 1st, 1982, the exact date being unknown, Pearl Booth borrowed three rifles from Wendall Ray Newman, her brother.

Three, on or about February 10th, 1982, the exact date being unknown, Pebo Gayheart borrowed a rifle from Ballard Mosley.

Four, on or about February

15th, 1982, Edgar Jones met with Phillip and Pearl Booth wherein Mr. Edgar Jones stated that Ray-Mac had underbid him on a contract for the sale of coal and that because JRM would not be able to ship the coal required to fill its weekly unit train, the coal miners that worked for JRM contract miners would have to engage in a strike to shutdown Ray-Mac's coal mining operations.

Five, on or about February 15th, 1982 Edgar Jones had a meeting with Drexil Hall, Jason Moore, and Teddy Kinney.

Six, on or about February 15th, 1982, a picket line was formed at the entrance to Ray-Mac near McDowell in Floyd County, Kentucky, by Drexil Hall, Jason Moore, and others.

Seven, on or about February 15th, 1982, Edgar Jones had a meeting with Ricky Dye, Phillip Adkins, Earl Adkins, Phillip Booth, Carson Akers, German Stumbo, and Greg Jones wherein Edgar Jones told his contract miners that a picket line was to be set up at Ray-Mac and directed that his contract miners to allow their men to walk off their jobs to join the picket line at Ray-Mac.

Eight, on or about

Booth -- excuse me, Jason Moore met with Pearl Booth and Jason Moore gave Pearl Booth a list of guns and ammunition which would be needed to arm themen in order to shutdown Ray-Mac's operations.

Next, on or about February the 16th, 1982, Pearl Booth called Donahue Halbert of Halbert's Gunsmith and told Halbert what guns and ammunition was needed.

Fifteen, on or about February the 16th, 1982, Pearl Booth gave a list of guns and ammunition and a check drawn up on Calamity Coal Company to Phillip Dale Moore and told him to go to Donahue Halbert's to purchase the ammunition.

Sixteen, on or about February 16th, 1982, Phillip Dale Moore purchased five hundred and fifty dollars of ammunition from Donahue Halbert using the check referred to in Overt Act Fifteen.

Next, Seventeen, on or about February the 16th, 1982, Donahue Halbert failed to record the sale of the ammunition referred to in Overt Act Sixteen in the Federal Firearms and Ammunition Records of Halbert's Gunsmith.

Eighteen, on or about February 16th, 1982, Phillip Dale Moore brought the

Tuesday, February the 16th, 1982, Edgar Jones gave Phillip Booth a case of Jack Daniels Whiskey to give to the men on the picket line.

Nine; on or about Tuesday, February the 16th, 1982, Drexil Hall fired a pistol at a coal truck operated by Danny Blanton. The coal truck carrying coal from Ray-Mac as Blanton's truck crossed a picket line which was set up at the entrance to Ray-Mac.

Ten; on or about February the 16th, 1982, Jason Moore fired a rifle at coal trucks carrying coal from Ray-Mac.

Eleven; on or about February the 16th, 1982, Edgar Jones, German Stumbo, Phillip Dale Moore, Jason Moore, Phillip Booth, Teddy Kinney, and Pearl Booth met where at Edgar Jones stated that he would see that the striking miners could get the guns and ammunition needed to stop Ray-Mac from operating.

Twelve; on or about February the 16th, 1982, German Stumbo and Ed "Panhandle" Moore went into the hills around Ray-Mac to "scout things out."

Next, on or about February the 16th, 1982, Jason Moore met with Pearl

ammunition back to Pearl Booth.

Nineteen, on or about February the 16th, 1982, Donahue Halbert sold Teddy Kinney thirty-one cases of -- thirty-one boxes of ammunition and one pistol.

Next, on or about February the 17th, 1982, Phillip Booth delivered guns including those referred to in Overt Act Two and the ammunition referred to in Overt Act Sixteen to Jason Moore, Drexil Hall, and others at Stiffy Stumbo's barn.

Twenty-one, on or about February the 17th, 1982, German Stumbo, Jake Moore, Hermit Newsome, Austin "Bo" Moore, Teddy Kinney, Ed "Panhandle" Moore, Eugene Tackett, Pebo Gayheart, Harold Moore, Phillip Dale Moore, and Philman Caudill, and others were driven up Hoods Fork on Frazer Creek by Linville Mosley and Benny Caudill.

On or about February 17th, 1982, German Stumbo and Ed "Panhandle" Moore led Jake Moore, Hermit Newsome, Austin "Bo" Moore, Teddy Kinney, Eugene Tackett, Pebo Gayheart, and Harold Moore into the hills overlooking the Ray-Mac Coal Mine where German Stumbo and Ed "Panhandle" Moore directed them to shoot at the equipment and

personnel located at the Ray-Mac Mining site.

Twenty-three, on or about February 17th,1982, Edgar Jones met with Pearl Booth and Jones advised her that he would reimburse her for the money she had paid and was paid for the guns and ammunition.

Twenty-four, on or about February 17th, 1982, Teddy Kinney cashed check No. 1390 in the amount of three thousand dollars drawn on U.M.W.A. Local 5967, o the First Guaranty Bank of Martin, Kentucky.

Next, on or about February the 17th,1982, Teddy Kinney purchased twelve boxes of ammunition from Donahue Halbert.

Next, on or about February 17th, 1982, Jason Moore gave Pearl Booth a list of additional ammunition needed.

Next, on or about February 17th, 1982, Pearl Booth gave Phillip Dale Moore a list and a check on Calamity Coal Company and instructed him to purchase additional guns and ammunition.

Next, on or about February 17th, 1982, Donahue Halbert sold Phillip Dale Moore a 9 mm. pistol and ammunition paid for

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by the check referred to in the previous Overt Act Twenty-seven.

Next, on or about Thursday, February the 18th, 1982, Phillip Booth delivered the ammunition referred to in Overt Act Number Thirty to Stiffy Stumbo's barn.

Thirty-two, on or about February the 18th, 1982, Ed "Panhandle" Moore, Van B. Patton, Eugene Tackett, Benny Caudill, Ranny Blankenship, Tim Milan, German Stumbo, Pebo Gayheart, Teddy Kinney, Harold Moore, Jason Moore, and others unknown had a meeting at Stiffy Stumbo's barn on Frazer's Creek and discussed the shutting down Ray-Mac.

Thirty-three, on or about February 18th, 1982, the individuals set forth in the Overt Act Number Thirty-two and others were driven to near Philman Caudill's house by Jason Moore and Raymond Hall. From there, Ed "Panhandle" Moore led one group and German Stumbo led another of men into the hills overlooking Ray-Mac Coal Mining site where they all fired rifles and pistols at Ray-Mac's personnel and equipment and Officers of the Kentucky State Police.

MR. SELF: Number 34, on or about February 18th, 1982, Edgar Jones met Phillip Booth and Pearl Booth and told them to be out of town the upcoming weekend, and that things would happen for which they might be blamed.

Thirty-five. On or about February 18, 1892, Teddy Kinney gave Van B. Patton fifteen dollars.

Thirty-six. On or about February 21, 1982, German Stumbo, Ed Panhandle Moore, Jake Moore, Teddy Kinney, Mose Mead, Kenneth Rolland--also known as the Postman--Raymond Hall, Benny Caudill and Van B. Patton met at German Stumbo's and constructed explosive devices consisting of dynamite, non-electric blasting caps and fuse.

Next. On or about Sunday, February 21, 1982, German Stumbo, Ed Panhandle Moore, Jake Moore, Teddy Kinney, Mose Mead, Kenneth Rolland--also known as the Postman--and Philman Caudill, by the use of dynamite and blasting caps, blew up a coal auger owned or leased by Ray-Mac, and placed another dynamite-type explosive device on a bulldozer at the Ray-Mac mine with the intent of blowing it up.

Thirty-nine. On or about February 24, 1982, Teddy Kinney purchased guns and

ammunition from Donahue Halbert.

Forty. On or about February 26, 1982, Ed Panhandle Moore, Mose Mead, Philman Caudill and Basil Ray Moore, at the direction of Ed Panhandle Moore, burned down a coal tipple at Stumbo Hollow which had been leased by Ray-Mac for the purpose of shipping coal.

Forty-one. On or about February 27, 1982, Ed Panhandle Moore gave--

THE COURT: (Interrupting) Mr. Self, let me interrupt you just a moment.

We are going to permit this to continue until about ten minutes to eleven. I realize we have been here since ten o'clock.

Now, this would be two hours, but if any of you-- And, Mr. Marshal, one of you be somewhere in the proximity of the jury so that in the event it becomes necessary that we--you know, we immediately need a recess, let the Marshal know, and he can bring that to the attention of the Court.

But we will proceed until about ten till twelve and then we will recess for lunch and then come back. I apologize for that.

MR. SELF: No problem, Your Honor. That gave me a chance to rest.

Forty-two. This is the last of the overt acts that's set forth in the indictment.

On or about February 27, 1982, Philman Caudill gave Mose Mead a hundred and fifty dollars, and Mose Mead gave Basil Ray Moore fifty dollars, all in violation of Title 18 of the United States Code, Section 1951.

That is Count 1 of the indictment, charges of conspiracy.

I will explain to you a little bit later, as the Court has done a little bit, what a conspiracy is.

Again, this is written by lawyers for lawyers.

Count 2. The grand jury further charges that the general allegations of this indictment are re-alleged in this count and incorporated herein by reference.

I am not going to read them back to you. I read the general allegations once.

Two. That on or about--this is Count 2--that on or about the seventeenth day of February, 1982, in Floyd County, Kentucky, in the Eastern District of Kentucky, German Stumbo,

Hermit Newsome, Austin Bo Moore, Teddy Kinney, Raymond Hall, Kenneth Rolland--also known as the Postman--Jason Moore, Eugene Tackett, Pebo Gayheart, and Harold Moore, aided and abetted by Linville Mosley, Benny Caudill and Edgar Jones, named herein as defendants, and others unknown to the grand jury, and Phillip Dale Moore, Philman Caudill, Ed Panhandle Moore and Jake Moore, did unlawfully and knowingly obstruct, delay and affect commerce, and did attempt to obstruct, delay and affect commerce, as that term is defined in Section 1951, Title 18, United States Code, in the movement of articles and commodities in such commerce by extortion, as that term is defined in Section 1951, Title 18, United States Code, in that the defendants and Phillip Dale Moore, Philman Caudill, Ed Panhandle Moore, Jake Moore, and others unknown to the grand jury, would obtain and attempt to obtain certain property of Ray-Mac, the officers, operators and agents of said corporation, to-wit, the right to pursue a lawful business, including sales, income, profit, and contracts, the right to make decisions free from outside pressure, the right to compete with JRM and/or any other coal company engaged in the business of mining or transporting or selling or distributing coal in the Eastern District of Kentucky

and elsewhere, said property being obtained and attempted to be obtained with the consent of Ray-Mac, its owners, operators and agents, such consent being induced by the wrongful use of threatened and actual force, violence, fear, and including the fear of financial, economic and physical injury to Ray-Mac, its officers, agents, representatives and employees;

And that on or about February 17, 1982, the said defendants, as alleged in Count 2, and Phillip Dale Moore, Philman Caudill and Jake Moore and Ed Panhandle Moore and others unknown to the grand jury did fire rifles and pistols from the hills surrounding Ray-Mac's coal mining operation in Floyd County, Kentucky, at and towards the property, equipment and personnel of Ray-Mac in an attempt to stop Ray-Mac from engaging in the business of mining and the shipment of coal, all in violation of Title 18, United States Code, Section 1951, Section 2.

The Section 1951 is what is known as the Hobbs Act.

Count 3. The grand jury further alleges. The general allegations of this indictment are re-alleged in this count and incorporated herein by reference.

That on or about the

eighteenth day of February, 1982, in Floyd County, Kentucky, in the Eastern District of Kentucky, Jason Moore, German Stumbo, Benny Caudill, Teddy Kinney, Eugene Tackett, Ranny Blankenship, Harold Moore, Kenneth Rolland--also known as the Postman--Pebo Gayheart and Tim Milan, aided and abetted by Edgar Jones, named herein as defendants, and others unknown to the grand jury, and Van Patton, Jake Moore, Philman Caudill and Ed Panhandle Moore, did unlawfully and knowingly obstruct, delay and affect commerce, and did attempt to obstruct, delay and affect commerce, as that term is defined in Section 1951, Title 18, United States Code, in the movement of articles and commodities in commerce by extortion, as that term is defined in Section 1951, Title 18 of the United States Code, in that the defendants and Van B. Patton, Philman Caudill, Jake Moore, Ed Panhandle Moore, and others unknown to the grand jury, would obtain and attempt to obtain certain property of Ray-Mac, the officers, agents of said corporation, to-wit,-- And it essentially sets out, ladies and gentlemen--and I am not going to read that part--exactly what was set out in Count 2 as far as what they were attempting to obtain-- The right to pursue business, the right to make decisions, the right to engage in business,

competition with other coal companies.

They attempted to do this through extortion, consent, and consent being obtained through wrongful force, in that on or about February 18, 1982, the said defendants and Van B. Patton, Philman Caudill, Jake Moore, Ed Panhandle Moore, and others unknown to the grand jury, did fire rifles and pistols from the hills surrounding Ray-Mac's coal mining operation in Floyd County, Kentucky, at and toward the property, equipment and personnel of Ray-Mac in an attempt to stop Ray-Mac from engaging in the business of mining and shipment of coal; again, in violation of Title 18, United States Code, Section 1951, and Section 2.

Count 4. The grand jury further charges:

One. That the general allegations of this indictment are re-alleged in this count and incorporated by reference.

Two. That on or about the twenty-first day of February, 1982, in Floyd County, Kentucky, in the Eastern District of Kentucky, German Stumbo, Teddy Kinney, Mose Mead, and Kenneth Rolland--also known as the Postman--aided and abetted by Edgar Jones, Raymond Hall and Benny Caudill, who are named

herein as defendants--those are the defendants in Count 4--and Ed Panhandle Moore, Jake Moore, Philman Caudill, and others unknown to the grand jury, did unlawfully and knowingly obstruct, delay and affect commerce, in an attempt to obstruct, delay and affect commerce as that term is defined in Section 1951, Title 18, United States Code, in the movement of articles and commodities in such commerce by extortion as that term is defined in Section 1951, Title 18, in that the defendants, and Ed Panhandle Moore, Jake Moore and Philman Caudill, and others unknown to the grand jury, would obtain and attempt to obtain certain property of Ray-Mac, the operators, officers and agents of said corporation, to-wit,--essentially, it states the right to pursue a lawful business, including profits, and the right to make decisions free from outside pressure, and the right to compete with JRM or any other coal company engaged in the business of mining and shipment and transporting of coal, and the distributing and selling coal in the Eastern District of Kentucky and elsewhere.

Said property being obtained and attempted to be obtained with the consent of Ray-Mac, its owners, operators and agents; such consent being induced by the wrongful use of threatened

and actual force, violence and fear, including the fear of financial, economic and physical injury to RAy-Mac, its officers, agents, representatives and employees, in that on or about the twenty-first day of February, 1982, said defendants, and Philman Caudill, Jake Moore and Ed Panhandle Moore, and others unknown to the grand jury, with the use of explosive devices, to-wit, dynamite, non-electric blasting caps and fuses, did dynamite a coal auger in an attempt to damage--excuse me--did damage a coal auger and attempted to damage a bulldozer belonging to Ray-Mac, in an attempt to stop Ray-Mac from engaging in the business of mining and shipment of coal, in violation of Title 18, United States Code, Sections 1951 and Section 2.

Count 5. The grand jury further alleges that:

One. The general allegations of this indictment are re-alleged in this count and incorporated by reference.

Two. That on or about the twenty-sixth day of February, 1982, in Floyd County, Kentucky, the Eastern District Of Kentucky, Mose Mead, aided and abetted by Edgar Jones and German Stumbo, herein named as defendants, and Ed Panhandle Moore,

Philman Caudill, and Basil Ray Moore-- And, ladies and gentlemen, if necessary, I will read it to you; but, essentially, it alleges that they did unlawfully and knowingly obstruct and delay and affect commerce, and did attempt to obstruct, delay and affect commerce, as that term is defined in Section 1951, Title 18, in the movement of articles in commerce by extortion, in that these defendants, Mose Mead, aided and abetted by Edgar Jones and German Stumbo, and Ed Panhandle Moore, Philman Caudill and Basil Ray Moore, and others unknown to the grand jury, in an attempt to obtain certain property of Ray-Mac and its officers, including the right to pursue a lawful business--and I am paraphrasing--the right to make a decision free from outside pressure, the right to compete with JRM or any other coal company; said property being obtained and attempted to be obtained with the consent of Ray-Mac, its owners and its operators, such consent being induced by the wrongful use of threatened and actual force, violence and fear, including the fear financial, economic and physical injury;

In that on or about February 26, 1982, said defendants in this indictment charged in this count, and Philman Caudill, Ed Panhandle Moore and Basil Ray Moore, and others

unknown to the grand jury, did, with the use of gasoline, diesel fuel and tires, set fire to and destroy the coal tipple located at Simpson's Branch near Drift in Floyd County, Kentucky, which was being leased by Ray-Mac for the purpose of tippling coal, in an attempt to stop Ray-Mac from engaging the business of mining and the shipment of coal, all in violation of Title 18, United States Code, Section 1951 and 2.

Those five counts are charged violations of what is known as the Hobbs Act.

Counts 6 through 10 deal with other violations of essentially the federal firearm laws.

Count 6 charges that on or about the seventeenth day of February, 1982, in Floyd County, Kentucky, in the Eastern District of Kentucky, German Stumbo, Hermit Newsome, Austin Bo Moore, Teddy Kinney, Raymond Hall, Kenneth Rolland, Jason Moore, Eugene Tackett, Pebo Gayheart and Harold Moore did unlawfully carry firearms as that term is defined in Section 921, Title 18, United States Code, during the commission of an offense in violation of Section 1951, Title 18, United States Code, as set forth in Count 2 herein, a felony prosecutable in a

court of the United States.

This count charges in violation of Title 18, United States Code, Section 924-C.

In essence, it charges the violation of carrying a firearm during the commission of a federal crime.

Count 7. The grand jury further charges that on or about the eighteenth day of February, 1982, in Floyd County, Kentucky, in the Eastern District of Kentucky, Jason Moore, German Stumbo, Pebo Gayheart, Tim Milan, Benny Caudill, Teddy Kinney, Eugene Tackett, Ranny Blankenship, Harold Moore and Kenneth Rolland did carry--did unlawfully carry firearms, as that--as defined by Section 921, Title 18, United States Code, during the commission of an offense in violation of Section 1951 of Title 18, United States Code, as set forth in Count 3 herein, a felony prosecutable in a court of the United States, in violation of Title 18, United States Code, Section 924-C.

We are getting there.

Count 8. The grand jury further charges that on or about the twenty-first day of February, 1982, in Floyd County, Kentucky, in the Eastern District of Kentucky, German Stumbo,

Teddy Kinney, Mose Mead, Kenneth Rolland, did maliciously destroy, in an attempt to damage and destroy, by means and use of explosives; that is, Eureka dynamite, non-electric blasting caps, Salem coal auger and a bulldozer, then being used by Ray-Mac Coal Company for the purpose of mining coal for shipment in interstate commerce in violation of Title 18, United States Code, Section 844-I.

Count 9. The grand jury further charges that on or about the twenty-first day of February, 1982, in Floyd County, Kentucky, in the Eastern District of Kentucky, German Stumbo, Teddy Kinney, Mose Mead and Kenneth Rolland did knowingly make a firearm, that is a destructive device in the form of a bomb made up of dynamite, non-electric blasting caps and fuse without having paid the making tax as required by Section 5821 of Title 26, United States Code, in violation of Section 5861-F and 5871, Title 26, United States Code in Section 2, Title 18, United States Code.

Count 10. The last count. The grand jury further charges that on or about the twenty-first day of February, 1982, in Floyd County, Kentucky, in the Eastern District of Kentucky, German Stumbo, Teddy

Kinney, Mose Mead and Kenneth Rolland knowingly possessed a firearm, that is a destructive device in the form of a bomb made up of dynamite, non-electric blasting caps and fuse, which had not been registered to any of them in National Firearms Registration and Transfer Records as required by Chapter 53, Title 26, United States Code, in violation of Section 5861-D and 5871, Title 26, United States Code.

A true bill signed by the foreman of the grand jury.

That's a lot of words. It says a lot of legalese.

Ladies and gentlemen, in all sincerity, a lot of elements and a lot of legal terms and a lot of legal charges are in there.

And I submit to you that the United States expects to prove each and every element of each and every charge in that indictment beyond a reasonable doubt. That is our intentions.

How are we going to do it? I have read to you the charge. I am going to do it through witnesses. I am going to do it through exhibits, through the testimony of those witnesses and what you can see in the exhibits.

Some of the witnesses are

going to be the victims--the victims of these crimes, the officers of Ray-Mac Corporation--or Coal-Mac Corporation which is-- Ray-Mac is a mining entity, or mining part of Coal-Mac; and through the truck-drivers that were shot at, through the employees of Ray-Mac that were shot at, through state police officers that had bullets whooshing over their heads when they were there--people like Lynn Parrish, Frank Justice, Pete Barker, Trooper Willimason and Stephens.

There are others--other witnesses who you heard their names in the indictment, who are set forth in the indictment as unindicted coconspirators, and those are going to be Phillip and Pearl Booth, Phillip Dale Moore, Jake Moore, Philman Caudill, Basil Ray Moore, Van B. Patton. I think I said Philman Caudill.

Those are set forth in the indictment that I have just read to you as unindicted coconspirators.

Ladies and gentlemen, they are going to come in here and tell you what they did, who was with them and what they were doing, and why they were doing it.

There is one name that you won't hear--one person that you won't hear testify.

You heard his name throughout the indictment.

I expect the evidence to show that Ed Panhandle Moore--and "Panhandle" was his nickname--who is named as an unindicted coconspirator, will not be testifying, because Mr. Moore is dead. He died in an unrelated incident not in any way related to these defendants or this case.

****

MR. SELF: What are they going to tell you? You are also going to hear, ladies and gentlemen, certain officials of the United Mine Workers of America, you are going to hear from the recording secretary of the Local that is involved, Mr. Walter Blanton.

You are going to hear from the President of District Thirty down here, Mr. Ernie Justice.

You are going to hear from representatives of the International out of Charleston, West Virginia.

They are going to tell you, ladies and gentlemen, in essence, that there was no organization activity going on at Ray-Mac, that there was no authorized picket going on at Ray-Mac, but the Union was not trying to organize Ray-Mac. It was never approved, never authorized, never voted on, that this was not the Local 5967 attempting to organize a non-union coal operation.

We expect these witnesses, along with the other witnesses that I listed, essentially to tell you, ladies and gentlemen, that this was an attempt, and in some part a successful attempt, on behalf of Edgar Jones and these other Defendants

to drive a non-union coal company, Ray-Mac, and its parent companies, out of the McDowell area, out of the area that JRM and Edgar Jones, that he was Papa in.

You will hear that name, Papa. We expect the evidence to show that that is Mr. Jones's nickname.

But there wasn't an attempt, that the violence and shooting and blowing up was not to try to force a non-union company to go union, but was to force them out of business.

As I told you, a lot of the analogy of the opening statement is like a TV Guide, that you are looking at a program.

The big difference ladies and gentlemen are the witnesses are going to be live on this witness stand, they are going to tell you what they saw, and they are going to be telling you in some respects what they did.

They are going to go through the Overt Acts. The Overt Acts are a summary of some of the meetings that occurred during this time.

I submit to you the evidence will show you this is not a mystery, there

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is no mystery involved in this case whatsoever. This is not a circumstantial evidence case where you have got to put two and two together and figure out that two and two makes four.

We expect, ladies and gentlemen, to have witnesses who are involved in each and every act of violence telling you what they did, why they did it, and who did it along with them.

We expect the evidence to show, ladies and gentlemen, the same individuals who are testifying entered into what is called plea agreements with the United States where they have pled to various Federal charges, and have either been sentenced or are awaiting sentencing in this Court.

These will be the direct evidence.

You also hear indirect evidence, copies of contracts, see copies of leases and maps and aerial photos to orient you. Some of the first witnesses are going to be putting in some aerial photographs to orient those of you who are not familiar with this area, the area of Mud Creek, McDowell and Eastern McDowell to where all

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these took place.

So aerial photographs so you can see, see on a map, or you can see in a photograph where these things took place as opposed to thinking about it.

What these witnesses we expect, ladies and gentlemen, are going to do, is going to tell you about a series of events that began some time probably in January of 1982.

This was some six to eight months after the UMWA Coal Strike, that the coal companies were stockpiling and getting back up, that Ed Jones otherwise known as Papa, had a company, one of many, named JRM Coal Company.

This was owned by he and his son and his son-in-law, Carson Akers and Greg Jones; that they had leases on various seams of coal over in the East McDowell and Frazer's Creek area of Floyd County, which is on the other side of the mountain, Mud Creek, if any of you are familiar with that area.

It runs from Harold up to Wheelwright; that Mr. Jones had various seams of coal under lease at that time; and that he had contract miners mining the coal for him.

Some of those being A & A Coal Company, and Calamity Coal Company, and Bryan Coal Company, and he paid them so much to put coal out on the ground and then he had it trucked back to his tipple for shipment by rail; and that the mines - - the miners that were working for JRM subcontractors were representatives for the purpose of collective bargaining by UMWA, or they were unionized; that at this time, we are talking about January, February, March of 1982, Mr. Jones had a long-term contract with South Carolina Power Company, Electric and Gas, to ship them some seven thousand five hundred tons of coal a week.

He was doing it with union operation. Along comes Ray-Mac, Ray-Mac opens up, and I think the evidence will show you some time in October or November of 1981, opens up a strip and auger operation at the top of the mountain, right above where Edgar Jones's office is, and right above where his tipple is, and they are operating non-union.

I expect the evidence to show you that Mr. - - the coal that Ray-Mac was mining was leased by Coal-Mac from a company called Joseph Mining Company, which is owned by Arnold

Turner, Sr. and his five children; and also that there is another disputed lease up there which Mr. Nick Cooley had an interest in.

The coal was owned by Elkhorn Coal Company that owns most of the coal over in the Floyd County area, but Joseph had it leased from Elkhorn and then Ray-Mac-Coal-Mac leased it from Joseph.

We expect the evidence is going to show you that Mr. Jones presented the fact that Ray-Mac or Coal-Mac got that lease off of Joseph Mining instead of him, and he needed that coal, he wanted that coal, that and other coal over there to fill his contract with South Carolina Electric and Gas, that he wasn't being able to produce enough coal in his mines to fulfill his contract, and he was having to buy a lot of coal on the market instead of producing it.

Because of the incidence over at Topmost which had happened right before this, and because of the increased amount of Federal inspection, and because of some bad top and some bad rock that he run into in his mines, he wasn't able to produce the coal during this period of time, especially right before the middle part of February,

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that he needed to supply his contract.

At the same time, ladies and gentlemen, back in early - - latter part of '81, UMWA did come in, sent some organizers in to see if Ray-Mac were a company that they would like to organize.

The Local Union over there was disgruntled because Ray-Mac was operating right in their face in a heavy Union area, non-union.

That at some point during this period of time Mr. Jones is told that Ray-Mac and Nick Cooley and Arnold Turner were trying to underbid him on his long-term contract with South Carolina Electric and Gas, he was told this.

Long and behold a picket line appears at Ray-Mac, three or four men on it, it was on Monday, February 15th, 1982.

There was a few of the Local Union officers from 5967, three, four, or five men on it at first.

That morning, Mr. Edgar Jones, Mr. Booth is going to tell you about this, meets with Phillip Booth, and he tells Mr. Booth that he has been told that Ray-Mac is trying to underbid him three dollars a ton on his contract with

South Carolina Electric and Gas, that he is having trouble meeting his unit train, but if he can get the union to pull a lawful strike up there, he won't have to meet his unit train because of a clause in his contract.

So what does he do? He sends Phillip Booth up to get the union officers to come back and meet with him. They go back in a meeting with Mr. Jones, and I don't know what was said there.

The next thing we know is these union men are going out just to Edgar Jones's mines and pulling the men out of his mines. Not all over the East McDowell area, just Edgar Jones's mines.

They tell them that Edgar said it is okay to come out on strike against him, not against him, they are not coming out on strike against Edgar, they are coming out on strike against Ray-Mac.

They are not Ray-Mac's employees.

The picket line grows on Monday. The coal truck drivers that were hauling the coal from Ray-Mac down to one of their tipples

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down in Coal Run outside of Pikeville are stopped by these pickets and said, "Don't come back tomorrow, boys, don't haul any coal off of there."

And then on Monday, I expect the evidence to show you, that the first day, that the union officers asked to meet with Ray-Mac's employees, the ones that are working up there, Ray-Mac says okay and brings their employees off the hill, they come down and they meet with the picketers, the picketers asked them, "Do you want to join the union." They are not trying to solicit cards, or solicit signatures for union interest, they are not trying to get signatures on the petition to get an election, they said, "Do you want to join the union."

And they say, "No, no." They meet with employees, the management is not working, so they say, "Okay."

The employees go up on the hill, the pickets continue, the trucks are stopped, don't come back tomorrow. They tell them that.

The pickets are told to be armed tomorrow, and you will hear some of them tell you that, "Yeah, we were told to be ready tomorrow."

No violence occurs on

Monday.

Tuesday, I expect the evidence is going to tell you, that early that morning Mr. Jones, Edgar Jones, met Phillip Booth down at what is called the Em Pack Restaurant, and you will hear that, Emmy Pack, and it's not like a concussion, it's Em Pack where I think the evidence will show you, that Mr. Jones regularly had coffee, along with other ones, like Jerry's is out here where the coal operators meet.

Mr. Jones met Mr. Booth down there early that morning and said, "Come on out to the car." I expect the evidence is going to show you that Mr. Jones gave Mr. Phillip Booth a case of Jack Daniels, said, "Here, take this up to the boys on the picket line, this will make sure Ray-Mac doesn't work today."

And he did. Phillip Booth took it up there, passed it out to the men, and where did they meet? They met at Ray-Mac's tipple - - excuse me, they met at JRM's tipple, Edgar Jones's tipple.

Passed the whiskey out, this is 6:00 or 7:00 o'clock in the morning. All of them load up, head up to the picket line, and

this picket line, the operation is right on top of the hill with Mud Creek on one side and McDowell on the other.

He gets up there, and it's a picket line of forty, fifty, sixty - - different numbers.

They turn some trucks back that morning, and said, "Boys, don't go up on the hill."

And they say, "Okay." Back they go.

Some trucks are already up there, some of them tell them that listen I have got family and kids to feed, I have got to haul coal, and they say, "If you go up you are not going to come off."

You are going to hear truckers tell you that. It is a powder keg, powder keg.

Who was the leader? The evidence will show you Mr. Drexil Hall was. Mr. Hall was one of the officers of the Local over there at that time.

I am going to tell you that there are not all union men up there, there

are a lot of them have families or have been involved - - there was operators up there on the picket line too.

Mr. Phillip Booth is going to tell you he was up there. He was up there because Mr. Edgar Jones told him to go up there and see what was happening.

They have got a foreman from Mr. Booth's mine up there, Dale Moore on the picket line, if that is what it was.

The evidence is going to show you that this was not a cross section of the miners from the Local, this is not a cross section of the retired miners from East McDowell, these were Edgar Jones's people, his miners out on a "strike" so he couldn't make his unit train or didn't have to meet his unit train, but also so he could shut down his competition.

The truck comes off the hill, first truck is driven, they form a convoy up on the hill, the first truck, coal truck, comes off driven by a gentleman by the name of Danny Blanton.

As he crosses the picket line, the fire starts, and we expect the evidence

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and we expect the witnesses to tell you that Mr. Drexil Hall, standing right in front of him, opened fire right on Danny Blanton's truck, and you will see some of the photographs of Mr. Blanton's truck sitting smack dab right in the middle of the road and tell you about the bullet holes in his radiator, and you can see the bullet holes in the back of his truck, and the shooting begins.

The evidence is going to show you they are shooting from both sides at that time, Ray-Mac - - the truck drivers themselves have been told the day before don't come back, came back, and they started firing back at the pickets.

And the pickets started firing back at them.

I expect some of the witnesses are going to tell you about Mr. Jason Moore over here who is lying in a ditch right across the road with a ski mask on with a .30 caliber rifle shooting just as hard as he can back at the Ray-Mac people.

I think you may pay attention to the fact that he had what is known as one of these ski masks on and it wasn't snowing up there.

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After the shooting quieted down, it lasted just a few minutes, everybody scatters, the picket line, whatever it was, disbands and runs back down to JRM's picket, and they start talking and keep drinking.

That is the last of any picket line, we expect the evidence to show you that ever occurred at Ray-Mac.

No more attempts to organize and to solicit union support, to talk to Ray-Mac employees, to encourage them to join the union when the fire started, the picket line disrupted.

*** *** ***

MR. SELF: What happened after that? Ladies and gentlemen, that's where you've really got to start paying attention. At that point there was a meeting, a meeting down in Mr. Edgar Jones' office. A meeting with Papa. Who was at this meeting? I expect the evidence to show that Mr. German Stumbo, Mr. Stumbo was an operator for Edgar Jones and we'll expect the evidence to show that he was trying to open up a mine and mine some of Edgar Jones' coal and operate it.

Jason Moore, union official.

Teddy Kinney, union official.

Phillip Booth, Pearl Booth and Phillip Dale Moore. They go back to Mr. Jones to tell him what happened. They told him what happened and essentially they told him they got busted. Ray-Mac was ready for them, they were waiting for them and that they did not surprise Ray-Mac. What happened then? Mr. Jones then tells Pearl and they tell Mr. Jones we can't shut them down. Why'd they tell Mr. Jones they can't shut them down. They said we can't shut them down, we

don't have the guns and ammunition to do it. Mr. Jones, we expect the evidence to say, said well, I'll take care of that. Pearl Booth's going to tell you that he said Pearl, go get whatever guns and ammunition you have to and I'll take care of it, I'll pay you back. Just one thing, make sure you can't trace them back to me. She does. She's going to tell you how later on that same afternoon Jason Moore brought her a list of guns and ammunition that was needed by the men. She calls Donahue Halbert and says Donahue, we need this guns and ammunition to shut Ray-Mac down, can you help us. Yeah, send your men down. She then gets Phillip Dale Moore, a foreman for her, gives him a check on her coal company to go down to Donahue's and buy guns and ammunition.

Mr. Moore is going to tell you that he went down and bought about five hundred and fifty dollars worth of guns and ammunition and brought it back. And you look and see if those are in Donahue Halbert's records. Those records we expect to be part of the evidence in this case. See if there's any records in those things. See if there's any records of the pistol that was sold to Mr. Moore at that time. See if the federal

form which has to be filled out is in his records. You'll see that it's not in his records.

Also, ladies and gentlemen, expect some of the night watchmen of Ray-Mac are going to tell you that on Tuesday evening, the same evening while they were back up at the coal site somebody started shooting at them from the hills, late that night, just a few shots here and there.

Wednesday: The next day, no picket line. Booth, Mr. Phillip Booth takes the guns and ammunition that was bought at Donahue's down to Edgar Jones' tipple and passes them out. At that point in time, Mr. Phillip Dale Moore, we would expect to hear testify, is going to tell you that at one point Jason Moore walked up to him and listened to what he said. We expect the evidence to be that Jason walks up to him andsays, Phillip, here's you a rifle and he gives him a .243 rifle and says Papa says to make sure you have a good gun. Papa being Edgar Jones.

What do the men do, they sit around, they sit around and drink a while and then they take to the hills. Not the picket line, not to the entrance of Ray-Mac, but to the hills on

both side of Ray-Mac where they can't be seen. Who leads them? It's not Teddy Kinney, it's not Jason Moore, it's "Panhandle" Moore and German Stumbo.

Who goes up? We expect the evidence is going to show you that Hermit Newsome, Austin "Bo" Moore, Teddy Kinney, Raymond Hall, Kenneth Rolland, Mr. Rolland's got the nickname of the Postman. We'll expect the evidence to show you that is because of some past employment that he has. That's what everybody knew him as. Jason Moore, Eugene Tackett, Pebo Gayheart, and Harold Moore. They were driven up into the hills by Linville Mosley and Benny Caudill.

Mr. Caudill and Mr. Mosley, it's not alleged that they actually went into the hills and fired, but they aided and abetted them by driving them up into the foot of the mountain where they could go up into the hills overlooking Ray-Mac. Once they got there after Edgar -- after "Panhandle" and German showed them where to go they started shooting at Ray-Mac. They shot down at the equipment and Ray-Mac people are going to tell you about how they hid behind the trucks and bulldozers while the bullets are zinging all around them. They fired back. Fortunately, nobody

was injured on either side.

The fire fight continued, they fired back because they were being shot at themselves, the Ray-Mac people.

This went on for several minutes, depending on who you talked to whether it was five minutes or a half hour. They were not shooting over their head, they were shooting to try to stop the people from Ray-Mac from engaging in the business and running coal that day. It goes on in the morning, they come back out of the hills and they meet again and you'll hear testimony about meeting. Also that afternoon, Pearl Booth's going to tell you about another meeting she had with Edgar Jones.

Some of the men are going to tell you about the meeting they had with Edgar Jones.

Mr. Jones told -- this is the coal operator, he told them that there was enough coal to retire there, for all of them to retire, all they had to do was shut down Ray-Mac. Put them out of business and they would all have jobs forever.

That same day, again,

Pearl Booth sends Phillip Dale Moore back to Donahue Halbert's and he buys another two or three hundred dollars worth of guns and ammunition and brings it back to Pearl. You'll see the checks of these, ladies and gentlemen. You'll see the actual checks made out to Donahue Halbert. You'll also see not an original, but a photocopy we expect of a check that was written the same day, this is Wednesday, out of this local union's treasury, 5967 of East McDowell. A lot of you are familiar with U.M.W.A. and they have a lot of small locals everywhere. It was for three thousand dollars.

Mr. Teddy Kinney, we expect the evidence will show, when you look at the check, cashed the check and what's it say on the receipt for it, strike fund. That check was cashed and the money was taken out of the bank, out of this local union's treasury.

We're also going to show you that same day or the day before, Mr. Teddy Kinney had purchased at least on that day twelve boxes of ammunition from Donahue Halbert.

I think the day before he bought also guns and ammunition from Donahue Halbert. Also, this day, we expect Pearl Booth to

tell you that she called Donahue Halbert and ordered some additional guns and ammunition. Two oozi's, a good foreign word, and other guns from Donahue Halbert.

We expect, ladies and gentlemen, that you're going to see those oozi's. An oozi is an Israeli submachine gun. Those were ordered and they got them about a week later. She's going to tell you why she ordered them, it wasn't for target practice.

Thursday, the next day, you had two days of shooting from the hills. Excuse me, this is the second day of shooting from the hills. Keep in mind that you got a picket line on Monday, shooting on the picket line on Tuesday, Wednesday is the first day of shooting from the hills and the next day is Thursday.

Again Phillip Dale Moore brought the ammunition back to Pearl Booth's the night before. Phillip Booth takes it back to Stiffy Stumbo's barn. They moved away from Edgar Jones' tipple because the activities was just too much. Edgar told them to move away from his tipple, go somewhere else --

THE COURT: (Interrupting) Let me

interrupt you just a moment.

MR. SELF: Yes, Your Honor.

THE COURT: What would be -- the best, gentlemen, would it be better for the jury to be permitted to go at this time so they can get something to eat?

MR. SELF: I'll go with the Court's discretion, Your Honor, I still have a bit of material to go through.

THE COURT: All right, then we will have a recess at this time, gentlemen.

MR. SELF: Thank you, Your Honor.

THE COURT: You remember my admonition not to discuss the case among yourselves or permit anyone to discuss the case with you nor discuss it in your presence. You understand you're not trying to make up your mind upon the issues of this trial until you've heard all the evidence together with the Court's instructions.

Remember what I said for the sake of appearances. If you should see an old friend or something during the course of this recess, if it's at all possible, refrain from talking to them. Just tell them you're on the jury. We must maintain the appearances and if you do

engage in conversation with someone it might be interpreted as being a discussion about this case. Bear that in mind.

Is there any objection or corrections to the Court's admonition?

MR. HARWELL: No objection.

MR. SELF: No objection, Your Honor.

THE COURT: Mr. Marshall, everyone else will remain seated. Please excuse the jury at this time until one o'clock.

THE MARSHALL OF THE COURT: Yes, Your Honor.

The jurors are excused until one o'clock. When you return from lunch, remain in the jury room, not in the hallway.

The jurors are out of the courtroom, Your Honor.

THE COURT: Excuse the remainder of the Court until one o'clock.

THE MARSHALL OF THE COURT: All rise, please. This Court is in recess until one P.M. this afternoon.

(Reporter's Note: At this time Court recessed at 11:50 P.M.)

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 25, 1984

VOLUME THIRTEEN

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OPENING STATEMENTS

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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

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.

Also present:

HENRY D. STRATTON, ESQ.

REPORTER'S NOTE: The Court was called to order at 1:04 P.M.

THE COURT: Mr. Marshall, Madam Clerk, may the record reflect that all Defendants, together with their counsel, are present?

THE MARSHALL OF THE COURT: Yes, Your Honor, they are all, and also all Jurors are here.

THE COURT: Thank you, sir.

THE CLERK OF THE COURT: Yes, Your Honor. And for the record, we might put on the record that Mr. David Thomas, and E. J. Walbourn have notified both myself and the Marshall that they desire to change places, and have done so, Your Honor.

THE COURT: Are we ready to continue with the opening statement?

MR. SELF: Yes, sir, Your Honor.

THE COURT: You may proceed.

MR. SELF: May it please the Court.

THE COURT: Mr. Self.

MR. SELF: And gentlemen for the defense.

MR. KIRKLAND: Mr. Self.

MR. ROWLAND: Mr. Self.

MR. SELF: Again, ladies and gentlemen

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of the Jury. I hope all of you had at least a half decent lunch. In Pikeville we don't have a lot of restaurant facilities, and I am sure that by the end of this trial everybody is going to get sick of hot dogs at Hogg's or the Dawg House, or fall in love with the first line at the bank.

Fortunately when you split up an opening argument like this, you don't have to go back and read the indictment is about the only good thing about it.

When I left you, we were discussing, or I guess I was attempting to state to you what we expect that the evidence was going to incur during the course of the United States's case.

The last incident or discussion was the shooting that occurred on Wednesday, February 17, 1982.

We expect the evidence will show you in the next day, on Thursday, February 18th, 1982, that Mr. Phillip Booth took the guns and ammunition of the ammunition that had been purchased the previous evening from Donahue Halbert up to Stiffy Stumbo's barn.

From there he handed it out

to another group of men who were waiting there in the early dawn or early morning hours of Thursday, February the 18th, that this group of men split into two factions, two groups, one being led by Panhandle Moore, the other being led by German Stumbo.

That each took his own group and headed to the hills and was driven up there by Jason Moore and other of these Defendants who went into the hills with them.

One group went up to where Philman Caudill lives, went into the hills overlooking Ray-Mac from one side. The other group went into the hills behind Ray-Mac on the other side.

That these included Ed Panhandle Moore, Eugene Tackett, Benny Caudill, Ranny Blankenship, Tim Milan, German Stumbo, Pebo Gayheart, Teddy Kinney, Harold Moore, and Kenneth Rolland, known as the Postman.

Jason Moore drove one of the groups up into the hills. Along with these Defendants was Van B. Patton, an undicted co-conspirator, James Moore, an unindicted co-conspirator, and Mr. Philman Caudill.

I expect Mr. Patton and Mr. Caudill and Mr. Jake Moore, Philman Caudill, to testify and tell you how they went into the hills, the route they took, and once they got up into the hills overlooking where Ray-Mac was doing its mining, they opened fire on Ray-Mack's personnel who were there on their equipment and attempted to keep them from running coal, to shut them down.

That one group, we expect the evidence to show you, was firing across the road at Ray-Mac; the other group was in behind them shooting back out this way (indicating), and they were in a cross fire.

One group from one side would shoot a while, and somebody hollered now it is your turn, and the other group would start shooting a while.

The Ray-Mac personnel fired back in self-defense. Although it was foggy that morning, they could tell where it was coming from, and the bullets were ricocheting everywhere, including two State Troopers who came up on the scene and were there in the cross fire, although under the hill.

We expect the evidence

to show you that this same day, the Kentucky State Police brought in what they call a SRT team, Special Response Team, to go into the hills to try to find the people who were shooting at Ray-Mac.

During the course of this exposition into the hills, one of the Defendants in this case, Mr. Jason Moore was spotted back not far from where the shooting took place, stopped, questioned by the State Police, and Mr. Moore, Jason Moore, told them he was out looking for his coon dogs that were out hunting in the hills.

I expect the evidence to show you, and some of the people to tell you where they went back to, the men went back to Stiffy Stumbo's barn, and again discussed what they had done and why they were trying to shut Ray-Mac down.

Also, ladies and gentlemen, I expect you hearing testimony from Phillip and Pearl Booth of a conversation they had with Edgar Jones on Thursday while the shooting was taking place, or immediately after it had taken place.

We expect Mr. Booth and Mrs. Booth to tell you that Defendant, Edgar Jones, told them that some things were going to

happen this coming weekend, timber-rats were going to be in the hills, for Phillip Booth to take a vacation, be out of town the upcoming weekend, and to make sure he had an alibi for where he was at, that some things were going to happen that he might be blamed for.

Mr. Booth is going to tell you that is exactly what he did. He went to Lexington and Winchester, and his wife did the same.

We expect the evidence to show you that that weekend, on Sunday afternoon, that a group of these Defendants, including German Stumbo, Teddy Kinney, Mose Mead, the Postman, Raymond Hall, Benny Caudill, Jake Moore, Philman Caudill, and Panhandle Moore met down at Stiffy Stumbo's barn, and at that time they gathered up dynamite blasting caps and headed to the hills where Ray-Mac were; that during this period of time they took at least nine sticks of dynamite in one case, and we don't know how many other in the other case, and made two bombs, two explosive devices.

We expect the evidence to show you that one of them at some point in their

journey up the hillside, they found an old basketball, slit it open, put the dynamite in it, and the other was put in an old inner tube and carried up the hill where Ray-Mac Equipment was.

*** *** ***

When they got there, led by Panhandle Moore and German Stumbo that Panhandle Moore took the dynamite in the inner tube and set it on a coal auger that was on the strip site where Ray-Mac was operating; and that German Stumbo took the dynamite in the basketball and placed it on a bull-dozer there at the same site, and lit the fuse and ran.

Fortunately, or unfortunately, only one of the bombs went off. They are the type of explosive devices, we expect the evidence to show, that were lit by a fuse that you see in the old cowboy movies, and get away from it.

One of them went off blowing up the auger as it sat there on the site, and the other one didn't.

We expect the evidence to show you the reason that it didn't is because the fuse was crimped too tight. That while this was going on, I think the evidence will show you that Raymond Hall and Benny Caudill were lookouts. They were making sure that the men that were there at Ray-Mac's site didn't come around and find them.

These went off extensively damaging the coal auger.

We expect to show you too

there were at least four men from Ray-Mac who were just around the point from where this went off.

The evidence we expect to show you at that point in time, the Bureau of Alcohol, Tobacco and Firearms began their investigation because of the existence of bomb.

They didn't find the basketball bomb that night when they went in, because it was dark. The next morning one of the men started the equipment, and we expect the evidence to show you that there was the basketball bomb.

It was recovered, and we expect to show you, ladies and gentlemen, the basketball, the wrappers from the dynamite, the fuse that was there--was left there by Mr. German Stumbo.

Right after this we expect the evidence to show you that there were proceedings in state court where the miners were ordered back to work, and they went back to work the following week. But that doesn't end the activities of these defendants.

We expect the evidence to show you that on Friday, the twenty-sixth of February, 1982, that Ed Panhandle Moore, along with Mose Mead, Philman Caudill, Panhandle's son, Basil Ray Moore,

were picked up by Panhandle and taken down to a tipple at Simpson Branch near Drift in Floyd County, a few miles down the road from McDowell--East McDowell, where there was a tipple that had just been leased by Coal-Mac, the upper division company of Ray-Mac. It was leased on the fifteenth of February. And that while there the men discussed that this must be Ray-Mac's, and that is why we are here.

They tied automobile and truck tires all over this tipple, used diesel oil and gasoline, lit the tires, and burned the tipple to the ground, destroying the tipple; destroying the tipple, destroying the siding, part of the rails that were there. And this was done with the intent to extort Ray-Mac the right to do business, the right to sell, produce and ship coal.

There may be some evidence that the tipple wasn't in the greatest shape in the world, and we don't contend that it was. You will see photographs of it before and after. You will see the tire bead wire from the tires that were used to hang upon the rafters; and you will Mr. Basil Ray Moore and Mr. Philman Caudill tell you how they did it, and who told them to do it.

You will also hear them

tell you that they got paid. We expect the evidence to show you who financed it. Someone was paid two hundred dollars, and he paid Mose Mead and Basil Ray.

That ends the violent activities. And you will also hear testimony about Mr. Benny Caudill coming to Phillip and Pearl Booth before this tipple was burned and said that he needed money to have this tipple burned.

He then came back the day afterwards and said, "Don't need your money. It's already been taken care of."

Those are the violent activities that were involved in the charges that you all are to consider during the course of this trial.

As I stated before, we expect the evidence to show you ladies and gentlemen beyond a reasonable doubt that this was not a lawful or legitimate union organization activity that was going on there in the McDowell area.

We expect the evidence to show with the union officials, recording secretary of this local union that there was no vote to organize Ray-Mac; that there was no agreement among the union to go try to attempt to organize Ray-Mac, nor does its books and records reflect any such organizational

vote by the union.

We expect the union officers of local and district levels to show you that this activity was not authorized, not approved.

We expect to show you also, through documents, ladies and gentlemen, through the constitution of the United Mine Workers of America, thorugh the bylaws for the local unions, specifically state, such activity, without approval from International was prohibited, and no strike can occur without the International approval.

We expect to have witnesses here from the UMWA International at Charleston to show you that there was no authorized organizational activity going on at the Ray-Mac site when this violence occurred.

All in all, we expect the witnesses to tell you that the purpose was not to attempt to organize Ray-Mac. We expect the evidence to show you that the purpose was to try to shut Ray-Mac down, because, at least, Edgar Jones thought they were trying to steal his contract; because they were competing with Edgar Jones as a coal company; because they were operating nonunion in a heavily dominated union area.

We expect the evidence to show you this was not the idea--the purpose was not to organize it. The purpose was to help Papa, to help Edgar Jones.

We expect the evidence and the witnesses to tell you that this was Edgar Jones' way of driving the competition out of this area.

Besides the witnesses, you are going to be subjected to, or have the opportunity to review several hundred exhibits in this case, exhibits running from aerial photographs to help orient you to the area to maps showing you where things occur, to photographs of various augers, tipple, the site, coal trucks. And you will have the opportunity, we expect, to review the contracts of United Mine Workers, the leases that Ray-Mac had for this property from Joseph Mining Company and Arnold Turner, Jr. and Arnold Turner, Sr., and his brothers and sisters.

You will have the opportunity, we expect, to review some of the weapons and the rifles that were actually used in the shooting. These were recovered later by agents of the Bureau of Alcohol, Tobacco and Firearms.

We expect the witnesses--some of them that were there when these rifles were

used--will tell you, yeah, that is what it was, and this is who had it. This is who was shooting.

You are going to see, we expect, a number of bullets, shells, rifles, shells, and pistol shells that were purchased during this period of time but not used, that were left over.

You are going to see photographs of blasting caps. The actual blasting caps will not be introduced because of the safety factor.

You will see photographs of those, we expect.

We expect you will have the opportunity to examine these, either at the time or when you return for your deliberations.

We expect to prove to you, ladies and gentlemen, the lengthy indictment I read to you beyond a reasonable doubt.

We expect to prove to you that these eighteen defendants, each and every one of them, and each and every count they are charged. And keep in mind they are not all charged in every count, that each is charged in a separate count or in multiple counts.

We expect to prove to you, as to each and every defendant beyond a reasonable

doubt that they either conspired with each other, with Edgar Jones and his operators and his foremen and his subcontractors to drive Ray-Mac out of business, to extort from them the right to do business. And that is what it essentially means. Now, we submit to you to extort from them the right to freely engage in competition.

That this was intended, the evidence we expect to show, to assist Edgar Jones in, one, giving him a legal excuse not to make his contract that week; and two, to drive the competition out of the area.

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MR. SELF: Keep in mind that these Defendants in this case had no lawful claim to that right, to that property of Ray-Mac's. They had no lawful claim to their auger that they blew up, the tipple they burned down, the equipment that was damaged in the shooting.

We expect to prove to you a violation of the Hobbs Act. We expect to prove this to you beyond a reasonable doubt. Keep in mind, ladies and gentlemen, as the Judge has said and it's been said again and again what I have just said to you is not evidence in this case, not one scintilla. I am merely -- anyone in an opening statement merely attempts to tell you where we're going and again as said, it's a long T.V. Guide or a long synopsis. The picture and the program is going to be live, it's going to be from the witness stand, that's what you have to listen to and pay attention to and observe, because you are the judge of the facts.

Now, you all have been very kind to me and reading this indictment took a long time. It was written by lawyers for lawyers. Keep in mind and distinguish the Defendants in this case. It's an oath that you took. Judge each one

individually. Consider when things occurred, what was going on at that time. Listen to the evidence as you've done to me, you've listened to me very attentively. Now, it's the opportunity for the defense counsel to choose to do it at this time or they can choose to give their opening statements. As the Judge mentioned earlier, to some of you it's like a hand. You know, I've shown you one side of the hand and it's their opportunity if they wish to show you the other side of the hand. Keep in mind, ladies and gentlemen, it's just one hand. You see both sides of it. It's still the same hand. Give the Defendants the same attention that you've given me. I thank you for it. It's been a long time and I'm getting dry. I get long-winded sometimes. I can stand up and sometimes I need to sit down with my knee up. But give them the opportunity and the attention you've given me and I thank you for paying attention to me as you have during the course of this two hours or so that I've been standing up here gabbing. Thank you, ladies and gentlemen.

THE COURT: Mr. Marshall, will you remove I guess the chair?

MR. SELF: I will get it.

MR. HARWELL: May it please the Court.

THE COURT: Mr. Harwell.

MR. HARWELL: Gentlemen, at the prosecutor's table.

MR. SELF: Mr. Harwell.

MR. HARWELL: Ladies and gentlemen, you know our system of justice in the United States is such that various people are thrown together in various ways of life and various environments. Sometimes that going together is such that over a period of time we become close and I predict in this case that you all will come to know all of us very well and we will come to know a little bit more about you as this case proceeds.

I'm not going to introduce myself each and every time I stand up, but being how this is the first time I've spoken to you all since you were sworn, I again tell you my name is Aubrey Harwell. I live in a suburb of Nashville, known as Brentwood, Tennessee. I practice law in Nashville in a law firm known as Neal and Harwell.

With me is Mr. Al Moore, who is a member of my firm. Mr. Moore, would you stand up. These folks can't see over the table.

Besides Mr. Moore is Mr.

Jerry Patton. Mr. Patton is a lawyer in Prestonsburg.

You all saw Mr. McCallister, the Government's agent sitting behind these gentlemen. And I guess what you would call the counterpart to Mr. McCallister is Mr. Frank Hellin. Mr. Hellin is working with us in this matter as part of our staff. There is an old saying that I heard in law school, first I think I heard it in college and it's a person hears something three times that person has got it. Some of what I say may be such that you have heard it before. And if so, I apologize to you, but I'll try not to do that very much. I want to reiterate what Judge Unthank has said to you and I want to reiterate what Mr. Self has said to you.

Keep in mind what Mr. Self said in his opening statement is not evidence, it's not proof. And likewise, what I am saying to you and will continue to say to you is not evidence and not proof.

As you've been told, the evidence will come from the testimony of witnesses on the witness stand and from exhibits that His Honor sees fit to introduce and allow you all to review.

The Government has the right and has exercised their right to make an opening statement outlining what they intend or what they hope to prove. We likewise as defense counsel have a right to make an opening statement and to tell you our position in regards to the allegations that you've heard about, the allegations in the indictment.

Opening statement, as has been told you previously is really nothing more than an effort to give a jury an overview of the case. To tell the members of the jury what's coming in regards to the evidence and help them understand the evidence and help them understand the party's contention as to the evidence that they'll hear.

The opening statement is like a lot of things in the course of a criminal lawsuit and trial. The Government has the burden, and responsibility of proving certain facts, as His Honor has said they must prove beyond a reasonable doubt or the exclusion of reasonable doubt certain things. Because of that, they always get the first bite of the apple. They make the first opening statement and then we, the defense lawyers, talk. They put on their proof and when that's finished then

we put on our proof.

Keep in mind that it is only after their witnesses have testified that we can call witnesses. We can cross examine their witnesses, but as far as calling those folks that we want to give testimony, we only do that after they finish with calling the witnesses they want to have testify.

Mr. Self referred to a hand and said it's the same hand and there's two sides of it, I guess that I fail to understand that. As I've heard all my life, as I suspect you have heard all of your life, there are two sides to every story. You won't be given the opportunity to hear all of our side of this story, that of my client and the other Defendants until the Government has told their side first.

Mr. Self has given you an overview of what he thinks and hopes the Government's case will consist of. We have a totally different overview that we want to give. Our story is not in T.V. Guide. It's far more serious than that. We ask you all that you please don't make up your minds about this lawsuit, don't allow yourselves to make judgements about these men and their lives until

it comes time to do so, until the Court sends you back to deliberate, after you've heard all the proof from both sides.

His Honor has been very patient and because of bad weather and travel conditions has gone to a great deal of trouble in voir diring a jury panel and members of panels and in getting you folks here today and on this jury. I get confused on what he said to some panels as compared to what he said to other panels. But I ask you to understand if the Court didn't state to you earlier that the Defendants begin this trial cloaked with the presumption of evidence. A presumption that His Honor said is one of the strongest known to law. And that in and of itself, by itself is sufficient to cause you to acquit the Defendants unless, unless the Government proves every element of the crimes charged in the indictment beyond a reasonable doubt.

Of course, the Court always says to an exclusion of reasonable doubt.

If hypothetically, and this is being kind of silly, but hypothetically if you all were sent out now and asked to deliberate this case you would be honor bound to return a verdict of

not guilty, because you've heard no proof. All you've heard is my statement, the Court's opening comments and Mr. Self's statements.

It kind of bothers me when the Government gets up, as they have the right to do, and reads an indictment, especially a long indictment. I have a feeling within me when that happens that I want to get up and I want to read something and say we disagree with this. This is not right. We don't believe that's right.

Under our procedure, that's not the way it's done. Under our procedure in a case such as this, the Defendants enter pleas and in this case, ladies and gentlemen, my client has entered a plea to the indictment and charges of not guilty.

As I think I mentioned a moment ago, we strongly disagree with many of those things that Mr. Self said in his opening statement. I may bore you all, but I'm not going to bore you by going over the comments he made point by point and telling you why we disagree with each of those points. Why we believe that what he said as to some of those facts or events is just simply not correct and not going to be what the proof will show.

Rather, what I've decided to do is tell you our position in this case and what we think the evidence will show. In an opening statement a lawyer properly should start out by saying I'm going to show you what the proof will entail, what I submit to you the proof will show.

So everything I say to you is what I submit the proof will show and I may not start every sentence that way, but understand that's what I'm attempting to communicate with you.

I guess the best place to start disagreeing with Mr. Self is with his initial statement. He said that this was going to be a complicated case. We believe that this case is not going to be a terribly complicated case. You are going to see, and you're going to hear a lot of witnesses. We believe the essential facts that you must judge are going to be relatively simple and clear-cut and not highly complicated.

The basic issue in this lawsuit, ladies and gentlemen, boils down to whether or not my client, Edgar Jones, and these other Defendants back here, conspired to commit extortion, that is to extort from Ray-Mac their right to pursue a lawful business.

The Government has charged that conspiracy in the indictment. They've alleged that Edgar Jones and the other Defendants conspired to obstruct commerce, Interstate Commerce by extortion. Basically the Government is taking a series of events that occurred in February of 1982 and lumped them together and charged these Defendants with racketeering, violation of the Hobbs Act as the Court said.

One basic issue, one basic issue that you'll be asked to decide is whether Edgar Jones did as a matter of fact involve himself in rackete ring and caused these things to happen as the Government wants you to believe.

Or whether as we want you to believe he was sympathetic to a group of miners and their friends, and individuals who attempted to try to unionize Ray-Mac with the U.M.W.A. and in the course of such efforts show at folks and were shot back at, shot at by those folks.

Ladies and gentlemen, television in my opinion does a tremendous unfairness in justice; to the courts, to lawyers, and to the system of justice in America because these T.V. shows dealing with trials are not very realistic

in their portrayals most of the time.

I think it may be that some of you feel like a lawyer's job is to try to trick or confuse a jury into finding his client not guilty in a criminal case. I want to be as honest with you as I'm capable of being. And I want to tell you as bluntly as I can communicate to you that neither my client, Edgar Jones, nor I intend to do that in this case. We will be candid and we will not intentionally mislead you.

In trying to be candid, I want to tell you here and now that my client did some of those specific acts that the Government charges he did. For example, the Government has charged that Edgar Jones had a meeting with a number of contract miners at JRM and he told those men he would allow their miners to walk off their jobs to join the unionizing activities at Ray-Mac. We admit it. It happened. It's fact, but I assure you there's nothing illegal as to that happening in and of itself.

There are other similar facts that the Government's charged. When the Government indicts people for conspiracy, they make certain allegations of overt acts. Mr. Self read a

list of overt acts from the indictment; those are acts that allegedly the Defendants committed during the course of and in furtherance of the conspiracy. Now, these acts in and of themselves oftentimes are innocent. It will be your job once the Judge gives you this case to determine if there was criminality involved and that caused these people to commit these and the acts by themselves were innocent.

We'll tell you something else in being candid. Mr. Self mentioned in reading the overt acts that my client, Edgar Jones, gave another man a case of Jack Daniels Whiskey. That act in and of itself is not criminal. I want you to know here and now that you'll hear proof that my client did give away a case of whiskey. I want to tell you here and now that Edgar Jones has given whiskey to various people, railroad workers and others off and on for a period of years. And in and of itself there's nothing wrong with that.

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MR. HARWELL: As I say, some of the specific things that my client is alleged in the indictment to have done, he did. You will hear proof of that throughout this case.

However, we submit that the proof will show that he did not commit any criminal act, he did not involve himself in racketeering, he did not violate the Hobbs Act, he didn't conspire with anybody.

He did exercise his right of freedom of speech as guaranteed by the First and and Fourteenth Amendments of the United States Constitution.

He expressed his opinions, he expressed his views, and you will hear about that.

Ladies and gentlemen, the Government wants you to believe that my client, Edgar Jones, is guilty for racketeering, conspiracy, and that the activities concerning Ray-Mac Mining Company during mid-February of 1982 didn't have anything to do with the United Mine Workers matters in the McDowell area. We submit to you as you hear the proof, you will come to understand that the Government is incorrect as to that theory.

We suggest respectively

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that when you have heard all the evidence, and during deliberations when reviewing that evidence, you will recognize that most of these Defendants over here behind me were motivated to do what they did because of their belief in the UMWA.

You are going to hear proof in this case, ladies and gentlemen, that life is not easy, was not pleasant, for the working man who made his living mining coal in Eastern Kentucky before the days of the United Mine Workers of America.

Those days, the working man put in long hours, often in life threatening situations, and he received very little pay and virtually no benefits.

However, the UMWA organized throughout the area and because of that, the working man came to be treated more fairly. We believe, we believe, that the proof in this case will show that the McDowell, Kentucky area is a strong UMWA area, and that there is a strong UMWA Local there, No. 5967.

You will hear a lot of proof about that.

That part of Floyd County around McDowell has a number of mining operations,

and historically the people there by and large have been loyal supporters of the United Mine Workers Union.

Maybe individuals who resented any mining operation in the area that was non-union, they are people, they are people, ladies and gentlemen, who appreciate the better life provided them and their forebearers by the United Mine Workers of America.

We also submit to you that the proof will indicate that some time in 1981 Ray-Mac moved into UMWA Local 5967 territory. I understand the Government has got some maps to show you all where all these places are located on the maps, some aerial photographs.

You are going to hear proof that when Ray-Mac being non-union moved into that area that there were a lot of folks in the area, including some of the Defendants, who were upset that a large non-union operation was there.

Those folks, you will hear, feared the existence of such a large non-union mining operation might provide, might provide a toehold for the entire area to become non-union.

You will hear that some of

these upset individuals, including some of the Defendants, talked about it and expressed their concern to one another about Ray-Mac being there, and being non-union, and they wanted Ray-Mac unionized.

Ladies and gentlemen, you are going to have presented to you proof that the United Mine Workers during the fall of 1981 had a mine organizing survey done concerning Ray-Mac, and that survey report showed that Mr. Frank Justice of the Ray-Mac Coal Company was the biggest independent operator, and buyer, and had the most orders of any coal operator in Pike, Floyd, and Knott Counties; and that report which I am talking about will be shown to you during the course of this trial.

It recommended that there be a UMWA organizational effort that all of the mines, tipples and loading facilities at one time, and the report also indicated that while Ray-Mac employees made decent money, they did not have the benefits provided UMWA members.

Ladies and gentlemen, over a period of weeks in late 1981, many of the UMWA members and friends of members in Floyd County

expressed irritation that the International, and that District Thirty of the United Mine Workers failed to do anything to organize Ray-Mac.

Edgar Jones is aware of the discontent, he knew of the upset of the men, and you all are going to hear testimony on that.

As a matter of fact, Mr. Ernie Justice, the President of District Thirty, is going to testify, and we believe that his testimony will be that he set up a meeting with Edgar Jones in early January of 1982.

He, Mr. Justice, called for that meeting. He was concerned that a number of truck drivers who worked for contract miners for JRM were not Union. We believe the proof will show Mr. Justice set up a meeting to discuss those drivers and to unionize them.

We also believe the proof will show that during the course of that meeting Mr. Jones told Mr. Justice that there were a lot of local miners who were upset about Ray-Mac not being organized, and he himself, Mr. Jones, didn't think it was right to have United Mine Workers' District to try to get some of the truck drivers to be Union and sign up with the Union, and the District wasn't doing

anything about organizing Ray-Mac.

You also are going to hear that two days, two days before any of these acts occurred up at Ray-Mac, that is on Saturday, the 13th day of February, 1982, there was a meeting of UMWA Local 5967 in McDowell and it was at that time that there was a decision made to attempt to ask the Ray-Mac people to join the Union commencing the following Monday morning, Monday morning, February 15th, the Monday morning that Mr. Self talked to you about.

My client wasn't at that meeting, and he didn't know what occurred at that meeting until that next Monday, the 15th, when things were already cranking up at Ray-Mac.

The effort to contact those Ray-Mac folks to unionize them began on February 15th, and you are going to hear these dates, because these are important dates where who did what on certain dates are going to be very relevant to this lawsuit.

My client heard that morning about what had happened on Saturday, and initially he was opposed to any effort to organize Ray-Mac.

He was upset and that there

was coal at his company, JRM, needed to produce, and the coal operators who worked for his company could not do it, but the miners were involved in unionizing Ray-Mac.

However, back in 1939 and 1940, Edgar Jones and one of the founders of the McDowell Local served as recording secretary for a period of years, and in spite of his having achieved significant success, and in spite very frankly of his having had some run-ins with some of the union people, he understood the concern of many of the local people that a large non-union operation was in the Local's territory, and was such that folks felt the need to be unionized.

Mr. Jones also knew that an effort to unionize would be disruptive at various locations from which coal was mined from his company, but he also understood that many of the miners who were working for his contract miners would be unhappy if they weren't let off work to help the unionization effort.

He also knew that part of the miners who produced coal for his company would go up the picket line, regardless of whether he approved it being done or not.

He feared if that occurred he couldn't meet production schedules.

Let me tell you, ladies and gentlemen, here and now for those reasons that I have just mentioned to you, Edgar Jones did give some moral support to some of these other Defendants in their effort to unionize Ray-Mac by UMWA Local 5967, members and supporters.

He did not, he did not set this up, create these acts about which you will hear testimony, or cause these events to happen.

We will put on proof as to that.

Ladies and gentlemen, the Government has alleged that Edgar Jones said on the morning of February 15th that Ray-Mac had underbid him on a contract for sale of coal.

This is not true, and I challenge the Government to put on believable proof that Ray-Mac underbid Edgar Jones on anything.

As a matter of fact, you will hear testimony, I suspect, in spite of the Government's comments that JRM, Mr. Jones's company, was not in competition with Ray-Mac.

The bottom line, the

theory the Government wants you to believe, is Edgar Jones caused a number of acts of violence to occur - -

THE COURT: (Interrupting) Mr. Harwell?

MR. HARWELL: Yes, sir.

THE COURT: Just a moment.

MR. HARWELL: Yes, sir.

THE COURT: I guess we are going to have a recess.

MR. HARWELL: Yes, sir, Your Honor. That is fine with me, Judge.

THE COURT: All right. Mr. Marshall - - ladies and gentlemen of the Jury, do you remember my prior admonition not to discuss the case among yourselves? Would you please indicate your remembrance - - do you waive the admonition, gentlemen?

MR. SELF: Yes,

MR. HARWELL: Yes.

THE COURT: Mr. Marshall, please excuse the Jury for twelve minutes.

THE MARSHALL OF THE COURT: Yes, sir, Your Honor. Please go to the Jury Room.

Your Honor, the

Jurors are out of the Courtroom.

THE COURT: All right. Mr. Marshall, we will be in recess until 2:05, is that correct?

THE MARSHALL OF THE COURT: Yes, sir. All rise. The Court is in recess until 2:05.

*** *** ***

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

THE COURT: Mr. Marshal, what might the record reflect.

THE MARSHAL OF THE COURT: Your Honor, all the defendants, and all counsel are present.

THE COURT: Madam Clerk.

THE CLERK OF THE COURT: It may so reflect, Your Honor.

THE COURT: Thank you, ma'am.

MR. HARWELL: Your Honor, may I approach the podium.

THE COURT: Yes, sir, you may preach--you may--you may approach the podium. I started to say you may preach.

MR. HARWELL: Ladies and gentlemen, will you bow your heads for a moment?

THE COURT: That is my third mistake today.

MR. HARWELL: I guess I shouldn't tell my story, take the jury's time; but sometime I will tell you about my experience about that a long time ago, Your Honor.

May the Court please.

THE COURT: Yes, sir.

MR. HARWELL: Gentlemen of the prosecution, gentlemen of the defense, defendants.

Ladies and gentlemen, when we broke, I was beginning to tell you all about what I believe to be the bottom line theory of the Government in this case. And I may repeat a sentence or two of my thoughts, but let me proceed.

It appears to us, and I suspect, having heard Mr. Self's opening statement, it may very well probably appear to all that the bottom line theory of the Government, what they want you to believe in this case, is Edgar Jones caused a number of acts of violence to occur.

In an effort, as I said earlier, to be candid with you, I want you to know here and now that there was a great deal of violence. There was shooting. There was dynamiting. There was equipment burned. Thank goodness nobody was killed. And nobody on the Ray-Mac side of that violence was injured. There was some slight injury to one of the UMWA's supporters.

I also want you to know, ladies and gentlemen, that violence was two-way violence; and the proof will so show. That is while the

local union folks committed some acts of violence, the Ray-Mac people, likewise, committed acts of violence.

The proof is going to show that the Ray-Mac people had guns, ammunitions, and they used it. The proof is going to show that the people at Ray-Mac were heavily armed.

Mr. Self said, in talking about exhibits, he was going to bring some exhibits in, some weapons, and show you those weapons that were taken from or allegedly used by some of these defendants.

I want you to know that if we can get some of those weapons Ray-Mac had and used, we intend to bring those in and let you see them as well.

Members of the jury, you are going to hear testimony from a number of witnesses in this case. We suspect that there will be four or five witnesses who will give testimony which will appear at first blush to be incriminating as to Edgar Jones. And I suggest to you that if the testimony from those four or five individuals is believed, you would probably think that Edgar Jones might well have been the leader of these series of events concerning Ray-Mac.

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But when you hear the testimony, listen very carefully to what these people have to say. I think you will hear--I submit that you will hear that almost every act of violence charged against these defendants in the indictment was triggered or initiated by Pearl Booth or by one of her friends, or by her husband at the time, her ex-husband, Mr. Phillip Booth.

And you will likely hear a couple of these people say that they did what they did because Edgar Jones wanted them to do it.

Of course, these people have their reasons, so we submit, for wanting to blame Edgar Jones for their problems. And during our part of the case, we will show you what some of those reasons are.

Pay close attention to why it is--why we deem that Pearl Booth testifies as she does. Consider her motives. She and several other Government witnesses who you will be asked to believe are convicted felons. And we submit that after you have heard the whole case that you won't believe their testimony believable.

As a matter of fact, it is our position, ladies and gentlemen,-- Let me stop

for a minute.

There are certain words in our society that are profane, and you are taught as a child not to use them. There are certain other words as a child that are not profane, but generally speaking you are told that they carry such an impact that you shouldn't use them.

One of the latter words that come to mind that my parents used to frown on my using is the word "liar." You didn't call somebody a liar. That was almost like calling them--cussing them.

And I hesitate to say what I am going to say to you now, but I say it because I believe it; and that is that I believe that when this is over you will be convinced that you have heard from some of the most monumental liars that ever graced a witness stand.

As to a couple of witnesses, ladies and gentlemen, I say that, because you will hear proof that they had made numerous statements--numerous statements, and some under oath, totally contrary to their statements regarding my client's involvement and alleged leadership in all of these various acts of violence.

I mentioned Pearl Booth. Mr. Self mentioned Pearl Booth. I want to tell you now that we intend to put on proof in regard to the kind of person she really is. We submit to you that she is a charmer. She may well be as good as any of the actresses that are listed in the TV Guide that Mr. Self talked about.

She will try to charm you, so we submit, just as she has charmed the prosecutors in this case, and as she has charmed the other people in the past.

The proof will show, when it is all in, that the real Pearl Booth is significantly different than the charmer Pearl Booth, the Pearl Booth that you will see and that you will hear. We contend that she is not what she appears to be, and you will have proof provided you on that fact.

The fact of the matter is that Mrs. Booth threatened to get Edgar Jones. He and these other defendants, very frankly, it is our position, are largely on trial because she is attempting to carry out the threat that she made to get him.

She is a woman who is as vengeful and as vindictive as she is charming and convincing.

Don't allow her to charm you when she testifies. Wait until you hear all the proof before you make your judgment about her.

Ladies and gentlemen, a number of Governement witnesses you will hear testify from that witness box were very much involved in these events of February of 1982, the events that led to the charges against these defendants. But you will hear that a number of them were not charged with crimes, and have been promised by the prosecutors that they will not be charged.

I tell you that, because I suspect the Court is going to charge you that you should consider the credibility of the witnesses and the motives of the witnesses who give the kind of testimony that you will hear.

There may be some other witnesses that say things from which you might infer or conclude that my client was criminally involved in these events; but I urge you to listen carefully--listen carefully to what those witnesses say.

Almost every such statement that indicates that Edgar Jones did anything wrong will come through that charming, actress-type lady, Mrs. Booth, or will come through one of those liars

that I mentioned to you a moment ago.

That is the Government witnesses, in large part, when pressed, will have to say that they understood or that they believed certain things because Mrs. Booth or one of those other people told them something my client allegedly did, something my client allegedly said, and not because of something they, themselves, heard come from the mouth of Edgar Jones.

I would also ask you, ladies and gentlemen of the jury, please pay attention to where all these defendants and others involved in these violent activities at Ray-Mac, where they take place. I think you will hear that most of these meetings were at Pearl Booth's home, not over at Edgar JOnes' home; but rather at Mr. and Mrs. Booth's.

It was there, the testimony will show, that the folks drank, and they planned, and they talked.

I believe, ladies and gentlemen, and I submit to you that the proof will show this whole thing started out as an effort by certain members and friends of Local 5967 of the United Mine Workers to unionize Ray-Mac.

And I believe that the

proof will show that the activities commenced on Monday, February 15, and that in the course of those activities there was violence. As I said, there was violence by the Ray-Mac people, violence by some other people too; including, very frankly, some of these defendants and other UMWA supporters.

I think the proof will show that on both sides the violence escalated and the hostility by Ray-Mac and the United Mine Workers folks became increasingly severe over the passage of the next several days.

However,--however, in spite of whatever sympathy that Edgar Jones felt for some of these other defendants, who are members, supporters of the UMW or the UMW local in McDowell, he did not spearhead. He did not lead in this effort.

The truth is, even though he is charged with conspiracy, he didn't even get along with some of these defendants with whom he allegedly conspired.

This whole thing was started by union supporters and friends, and then Phillip and Pearl Booth climbed on the bandwagon, and the situation went downhill from there. It escalated, and violence became apparent. And then after it became apparent,

it became more severe.

Mr. Jones-- Can you all see the defendants behind the lawyers over there?

(Jurors nodded in the affirmative.)

MR. HARWELL: Mr. Jones, stand up just a minute.

(Mr. Jones complied.)

MR. HARWELL: The Court is having all of us sit in the same place. Mr. Jones, you can sit down.

(Mr. Jones complied.)

MR. HARWELL: He will be there unless we notify the Court to the contrary and get the Judge's permission.

He is a sixty-three-year-old man. And throughout his sixty-three years on this earth, he has never had a law violation anymore serious than a traffic ticket.

On the other hand, as I have mentioned to you earlier, his accusers are people of questionable integrity, and what we call bad character.

As you hear these accusers testify, ask yourself: "Is this the kind of person that I can believe beyond a reasonable doubt?"

You are going to hear proof, ladies and gentlemen, that it was the accusers, not Edgar Jones, who bought the guns, fired the shots, and who was involved in these acts of violence.

Pearl, Phillip Booth, and their friends, Phillip Dale Moore, the proof will show, did these things.

You will not hear, I will submit, one shred of evidence that Edgar Jones bought a gun. You will not hear one shred of evidence that Edgar Jones fired a shot.

I urge you to--I urge you that as you hear the proof, compare--compare what it is that Edgar Jones did with the acts that Phillip and Pearl Booth.

You have heard during the course of voir dire, or from Mr. Self, about JRM Coal Company. You are going to hear proof, ladies and gentlemen, that Edgar Jones was involved with the coal company known as JRM. He owned one-third interest in that company. The other two-thirds interest, as Mr. Self said, was owned by his son, Greg Jones, and his son-in-law, Carson Akers.

You are going to hear proof that JRM had an excellent--an excellent long-term

contract with a large South Carolina utility company; and Edgar Jones didn't have anything to gain. He had nothing to gain in a business sense by what happened with Ray-Mac or by what Ray-Mac did.

We submit that you will hear proof. And one of the Ray-Mac people will testify that JRM and Ray-Mac are not competitors.

As you hear the proof, ladies and gentlemen, I ask you to listen and see if the Government shows you any real solid proof of a motive of Edgar Jones concerning these acts which he allegedly committed.

I suggest to you that there is no proof, and will be no solid, believable proof on that.

The primary issue, as I said earlier, ladies and gentlemen, once you have been given this case--once the Court charges you, the primary issue will be for you to decide whether or not those things done by friends and supporters, members of the UMW local in East McDowell, including the acts of violence, were done for union purposes in an effort to get the Ray-Mac people unionized, or whether my client, Edgar Jones, and these other men conspired to commit acts in violation of the racketeering statute,

the Hobbs Act, as it is called.

And if, as a matter of fact, these members and supporters and friends of the UMW did what they did to secure union objectives, we believe the Court will instruct you that they are not guilty.

Whether you like or don't like what you hear about what happened to Ray-Mac and the violent acts, if as a matter of fact you conclude the motives were union oriented to secure union objectives, then we believe the Court will instruct you as to many of the defendants to return a verdict of not guilty.

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Ladies and gentlemen, as long as I'm speaking of motives, let me say something that I customarily say to jurors because it's a personal concern that I have and it may extend to you all. To determine a man's motives, the motives of me or any of you or Mr. Self or any of these Defendants you've got to look inside his head at the time that the acts were committed, the time these events occurred. And you've got to determine what was his thought, what was his state of mind. I suspect the Court will instruction on that. We're going to ask the Judge to do so.

Let me interrupt myself just a minute. Please understand that I will not mislead you, but His Honor is the only human being in this courtroom, in this building, who can tell you, so that you can rely on what the law is. I'll tell you what I think the Court is going to tell you so and so about the law. I think the Court is going to instruct you and Mr. Self will probably say similar things. Listen to me but you're not bound by it. What Your Honor says when he gives you the charge, he gives that you that admonition that you're -- you're bound by that.

Let me get back to state of

mind, please understand that I'm telling you my thoughts about the law and the Judge is going to charge what I just mentioned. Suppose a man went up on the hill at Ray-Mac and he shot and his motive was to get Ray-Mac's -- to get Ray-Mac's attention to unionize. We submit he would not be guilty of violating the Hobbs Act or racketeering act.

Suppose on the other hand to be fair to Mr. Self and these other gentlemen, that he went up on the hill and he shot down and his state of mind was that he was conspiring in a criminal agreement or partnership with Edgar Jones to extort something from Ray-Mac, then he might be guilty. But to come to a judgement on that issue you ladies and gentlemen have got to hear the proof and try to decide what was in the minds of these people when these events took place.

I tell you that because it's expressly important that you listen carefully to the testimony and that you try to determine what was in the heads of each of these people at the time of these acts. It's that determination that will be crucial for you all to make once His Honor gives you this case and you begin your deliberations.

Members of the jury, I have

some degree of pride in being a realistic person and I know that there is no way that you all or anybody else can remember everything I've said to you. The truth of the matter is perhaps some of those things that I've said to you are not important enough to remember. But there are a couple of points that I would like to make, a couple of things I'd like to say, even if you can't remember all of the things that I said to you in the course of this opening statement.

First of all, why in the world would Edgar Jones do or even want to do those things that the Government charges him with. Listen carefully to the proof. See if you can come up with a believable and convincing answer to that question. I respectfully submit you can't.

Secondly, understand, recognize that you're going to hear as you have from me and as you have from Mr. Self, you're going to hear about violence. I have no doubt that there were acts of violence in February of 1982 up there in and around Ray-Mac. But don't let those acts of violence in and of themselves convince you that our client or these other Defendants are guilty of conspiracy to commit racketeering. Proof of violence in and

of itself, by itself is not the same, it's proof of conspiracy to commit racketeering.

Thirdly, ladies and gentlemen, Mr. Self touched on this and I likewise will do so. Thirdly, please remember it is the Government's duty to prove every element of crimes they charge these Defendants of committing beyond a reasonable doubt. I ask you again, it must be the third or fourth time, but I'm so anxious to convince you of this, I ask you to please hear all of the proof before you allow yourself to come to any conclusions, to make any judgements concerning this case, the innocence or the guilt of my client and these other men and their lives and their futures.

I am very grateful to you all for paying attention to me and I appreciate you hearing what I have to say. This case is terribly important and the only way that the Government -- the Defendants are going to get a fair trial is for you all to pay attention even though some of us and I'm probably the most guilty of this tend to try you on a little longer than we should sometimes.

There's one other thing I want to say to you, and I want to do it up front.

The Court touched on this during the course of voir dire in some of the panels. Some of you may have heard it and some of you may not have heard it. As I said when I introduced myself a moment ago, I'm not from Kentucky. I'm not going to sit up here and tell you all that my great-granddaddy was from Kentucky or my Aunt Maude lived over in Paintsville, because that's not a fact. I'm from Tennessee. My folks came out of Virginia, one, two, three generations ago. And I'm always a little uncomfortable when I leave home to try a case out of town. My lack of comfort is exaggerated when I represent a client whose future lies and so totally hinges upon the outcome of the lawsuit. The point I want to make here is it's my hope, just as Judge Unthank suggested to some of you all during the course of voir dire, that for whatever reason if any of you have anything against folks that are not from here or Tennesseans for whatever reason that you not take that into consideration in regards to this matter. It would not be fair to my client. What I'm ultimately asking for is fairness to my client, Edgar Jones.

I'm going to sit down and let some other lawyer stand up here now, but I really want to thank you. Judge, thank you, sir.

THE COURT: Mr. Pafunda.

MR. SELF: May we approach the Bench?

THE COURT: Yes.

(Reporter's Note: At this time a Bench conference was held with all attorneys present.)

MR. SELF: If it please the Court, in compliance with the procedures in dealing with opening statements I did not object to a specific statement made by Mr. Harwell, I would like to object for the record to that statement. It has to do with Mr. Harwell's statement of the ability as to believable and unbelievable witnesses. And that statement was to Phillip or Pearl Booth as being not believable. I'm asking the Court -- my objection is that that was his personal opinion or feeling as to their credibility has nothing to do with matters in this Court.

MR. HARWELL: He's right, Your Honor. I submit, I'm sorry I did not do it at the time.

THE COURT: The only thing I'll say to the jury is that I'm going to say this. That attorneys make statements and characterizations and that those statements are personal opinions and feelings and they are not evidence. And you are to

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make your decision based upon the evidence. Is that all right?

MR. HARWELL: Yes, I should have done it myself.

THE COURT: Let me ask you gentlemen something. I thought of this I guess like Mr. Stumbo, you know, there's eighteen Defendants and they're going to have to be going to the bathroom. I think if one needs to go we shouldn't stand and wait, but maybe they should go to their attorney and then the attorney can make a head movement to the Marshall letting him know that they waive that appearance.

MR. SELF: Well, I would suggest, Your Honor, that if the matter is being put on the record at this point in time we would agree that the clients should be allowed to go attend to a necessary function.

THE COURT: This is not to go out and take a smoke break or anything like that. I guess we should be doing this outside of the jury's hearing. But I think they should be advised that if someone gets out of their seat to go to the bathroom or something that that's okay.

Thank you, gentlemen, that's all.

THE COURT: Ladies and gentlemen of the Jury, in the course of the statements, perhaps maybe one of the attorneys may characterize something. He may characterize a person as having a certain state, or characterize a person as a drunk. That is a characterization.

You remember I made the admonition that what the attorneys state isn't evidence, that characterization by an attorney is a personal opinion.

Of course, counsel isn't supposed to state personal opinions, and sometimes in the zeal of this matter they do state certain opinions, but just always remember my statement that what they say isn't evidence. What they say shouldn't be considered in your deliberations.

What you use in your deliberations is the testimony of the witnesses, and the exhibits, and the Court's instructions as to the Law.

Is there anyone that doesn't understand that?

REPORTER'S NOTE: (No response)

THE COURT: Is there any objections or corrections to the Court's admonition?

MR. SELF: No corrections, thank you.

THE COURT: Thank you.

MR. HARWELL: We agree.

THE COURT: Mr. Pafunda, you may proceed now.

MR. PAFUNDA: Thank you, Your Honor. Ladies and gentlemen of the Jury, as the Court and Mr. Self and Mr. Harwell have indicated already, this is the first opportunity that I have had to present what our evidence and what we think our evidence will be for our side of the story.

I know it is growing late in the afternoon, and in one sense I am hesitant to impose on you, but I ask as Mr. Harwell did, and I will try to be brief, that you give attention to what I hope to outline as our evidence that we will present in this case.

First of all, I will reintroduce myself. My name is Bernard Pafunda. I practice law here in Pikeville, Kentucky in the firm of Deskins and Pafunda. I represent Mr. Drexil Hall.

Drexil, would you stand up a minute?

REPORTER'S NOTE: Mr. Hall standing.

MR. PAFUNDA: I also represent Mr. Austin Moore. Austin.

REPORTER'S NOTE: Mr. Moore standing.

MR. PAFUNDA: Thank you gentlemen.

I believe by now from the comments of Mr. Self, as well as Mr. Harwell, you know the purpose of an opening statement. Mr. Self, for the prosecution, has given you his hand analogy.

Mr. Harwell has given you his analogy.

I think what you can see at this point in time is that as we begin to move around this Courtroom different facts and different pieces of evidence will come out.

In other words, the whole story will unveil itself, and in that regard, our evidence will show that Drexil Hall and Austin "Bo" Moore will both take the witness stand, they will testify in this trial, and the evidence will reveal that Drexil Hall, a coal miner throughout his entire adult life, age thirty-two years old, born and raised in the McDowell area, a small mining community in Floyd County, population approximately

a thousand people, the only industry up in that area is coal mining. He has been, ever since he started working, a member of the United Mine Workers of America.

The same is true of Austin Moore who is known by the nickname of "Bo" Moore, and will be referred to throughout this trial as Bo. He lived in an area called Minnie, right down below McDowell towards Prestonsburg area.

He has since moved to McDowell. Again, Bo has been employed throughout most of his adult life as an underground coal miner, or as a truck driver hauling coal.

Both of these gentlemen are married. Drexil has been married for approximately thirteen years. He has one child and she is approximately twelve years ago.

Austin Moore has been married about two years.

Here we are, it is January, 1984. Our evidence will take us back to the month of February, 1982. It will take us back to February 16, 1982.

Drexil Hall will testify as to what occurred on Tuesday, February 16th, 1982

at the site of the Ray-Mac Strip Mine operation.

That morning, Drexil Hall, with a number of other men, went up to the mining site of Ray-Mac. They were assembled along the public road early that morning, several coal truck drivers who were either independent coal truck drivers or employed by Ray-Mac started up the hill to go to the mine site.

Some of those coal truck drivers upon request turned their coal trucks around and went home. Several of the coal truck drivers went up on the hill.

Approximately an hour later, one coal truck led by a Chevy carryall van, driven by a man that Drexil was introduced to as Raymond Pete Barker, proceeded to come off the dirt road that led to the strip mining operation.

Behind those two vehicles stationery were two coal trucks in a switchback area where you turn on to the strip mining job.

The Chevy carryall van, as Raymond Pete Barker will testify himself, passed by the men and they were friendly. They waved.

The coal truck, a '75 Ford diesel fully loaded with coal operated by Danny

Blanton came off the hill.

As it approached the men, within approximately ten to fifteen feet, Danny Blanton shot the fuel to that coal truck and drove that coal truck through those men.

As he did so, Drexil Hall, and the evidence will reveal this, noticed out of the corner of his eye that the Chevy carryall van had parked, the driver had gotten out, gone around to the passenger's side, and where there was a man, and one of those two men grabbed a rifle.

At that point in time, bullets started to punch through the air. Drexil, who had a .32 caliber pistol with him, started to fire in the general region of where the fire was coming from, from the Ray-Mac people.

He went down and ran and hid behind Benny Caudill's Jeep, a Jeep which the evidence will reveal was left by the members of the UMW there on the side of the road, completely disabled and shot up with bullets.

I think to understand what occurred in the month of February, 1982, more particularly the week of January 15th, you would have to go back further step by step.

The evidence will reveal that on February 15th, which was a Monday, Drexil Hall, Jason Moore, and Teddy Kinney in the early morning hours had gone to the Ray-Mac Strip Mining site.

There they encountered Raymond Pete Barker and Mr. Frank Justice, one of the operators and owner of Ray-Mac.

Drexil Hall asked Raymond Pete Barker if he could speak with the employees for the purpose of asking the employees to join the United Mine Workers of America.

Drexil Hall also spoke to Frank Justice, and Frank Justice gave Drexil Hall a response, and that response will come out in evidence.

Raymond Pete Barker, and the evidence will reveal this, then went up on the hill and brought the employees down on this Monday morning to talk to Drexil Hall who was at that time vice president of Local 5967, United Mine Workers of America.

Drexil, as were the other Local Union officers who were there that morning, asked if they could speak to the employees of

Ray-Mac without their supervisors being present.

They were denied this request.

The evidence will reveal that the only reason they wanted to speak to them was to ask them if they would join the United Mine Workers of America.

What were they doing up there? Was Drexil Hall, as has been charged, a man who entered into a criminal partnership to put Ray-Mac out of business?

To understand, and I think February 16, 1982, when the shooting occurred, is a critical day in this entire matter. But before you can understand what occurred at that time, you have to go back even further than the week of February 15th.

The evidence will reveal that the first regular scheduled Union meeting of Local 5967 in February, 1982, and by the way, this was a Local Union composed not only of active workers, miners, but also retired coal miners.

A vote was taken, a vote by the Local Union to go up and have representatives go up and ask the men, the employees at Ray-Mac, to

join in the United Mine Workers.

The evidence will further reveal that Drexil Hall, pursuant to the vote taken in this Local Union, did that on Monday morning.

We will present witnesses, the very man, who initiated that vote. We will show through the evidence that that was a unanimous vote of that Local Union.

We will even go back further, because to develop an understanding of this particular case and what occurred on February 16th, 1982, it will be important to go back, as the Government will do, we will go back to January 4th, 1982.

A meeting was had with Edgar Jones who was present in that meeting. We will call the people who were present in that meeting.

Ernie Justice, the President of District Thirty, United Mine Workers of America.

Cornelius Owens, Vice President, District Thirty, United Mine Workers of America.

Drexil Hall was there.

An exchange was entered into between Edgar Jones and Mr. Ernie Justice. The evidence will reveal that Edgar Jones demanded that Drexil Hall not be in this meeting.

The evidence will reveal the purpose of this meeting was, as has been stated by both Mr. Self and I believe Mr. Harwell, to get some of the coal truck drivers for the sub-contractors of Edgar Jones to join the United Mine Workers of America.

Mr. Ernie Justice will testify as to his present impression from the remarks of Edgar Jones about Drexil Hall, what his feelings were.

Again, I ask this question. Was Drexil Hall a man that would enter into some type of a conspiracy to violate a racketeering act with Edgar Jones?

Ernie Justice will testify from that witness stand that Edgar Jones on that January 4th meeting expressed an intense dislike of Drexil Hall, a coal miner for Adkins and Adkins Coal Company. He wouldn't even let Drexil Hall into the office to be present at that meeting.

And it was Drexil Hall,

who at that time as Vice President of Local 5967, had requested District officials to come to the mine office of Edgar Jones to iron out some problems of some coal truck drivers.

Let's go back even a little bit further. There has been some mention that there was no survey conducted by the International organization of the United Mine Workers.

I shall, on behalf of Drexil Hall, bring into this Courtroom and put on at least one, if not two, International organizers.

Two men who participated in conducting the survey which has been mentioned here today.

Those gentlemen will explain to you the reasons why they felt, as well as the members in the community of McDowell, that it was extremely important to bring Ray-Mac and have its employees join the United Mine Workers of America.

We will describe to you the strip mining operation of Ray-Mac, not only in Floyd County, but in Pike County as well.

We will describe to you the growth of Ray-Mac to the present day.

But more importantly,

the evidence will reveal how the International Union went about conducting this survey, and this will be a key point.

Our evidence will reveal that there were four men working on this survey, that certain proposals were made on how to organize Ray-Mac.

Some of the Union organizers felt that only the mine - - that a strip mine operation in Floyd County should be organized, that Ray-Mac was too big for the efforts of the United Mine Workers, given the financial resources and the personnel available to organize the entire operation, and they made that suggestion.

Our evidence will reveal, however, that possibly due to one man that suggestion was overlooked, the survey was submitted to the Charleston office with a recommendation that Ray-Mac's entire operation be organized, that the Charleston office given those alternatives or no alternatives at all in this case, decided to put off further organizing activities at Ray-Mac.

What happened next? The evidence will reveal that these men, members of Local 5967, as well as the other active coal miners

were members of that Local and retired coal miners, and given the size of Ray-Mac and its growth in the Floyd County McDowell area, were disgruntled with not only their International Union, but also District Thirty here in Pikeville.

They asked people in the District office, as well as the International office, to reconsider and put on an organizing drive at Ray-Mac.

The evidence will reveal that they met with a negative response.

The next step, a Local Union meeting, and this is the meeting back in February.

The vote was taken, let's go out ourselves and ask those men to join our Union.

The evidence will reveal in doing so they sent out three to four men, again Drexil Hall, Teddy Kinney, Jason Moore, and possibly one or two other people, in this effort.

I think mention has been made that this was not an authorized work stoppage, or effort by either the International and the District.

We will not deny that. However, Union officials, more particularly, the President of District Thirty, United Mine Workers of America here in Pikeville, Ernie Justice, will testify from the witness chair that a Local Union on its own, or even an individual in the United Mine Workers of America, can go out to a mine and ask men to join the Union, and that was in that week of February, 1982 Drexil Hall's only purpose for being on that road that led to Ray-Mac's Strip Mining operation.

And I think that the evidence that we will produce as to what happened to Drexil Hall after that Tuesday morning will further establish that point.

We will have witnesses testify, including Officer Forsythe of the Kentucky State Police that Drexil Hall, on Wednesday, February 17th, was arrested in the early morning hours on a State charge, taken to Prestonsburg, released on bond, and came back to the McDowell area.

But what did he do after that? Was this Drexil Hall that entered into a criminal partnership to violate a racketeering act?

No, the evidence will show

that Trooper Forsythe, that Drexil Hall, even though he couldn't be identified, voluntarily gave over to the Kentucky State Police that small .32 caliber pistol that he had on that Tuesday morning.

He not only did that, he voluntarily spoke with the Kentucky State Police and told them what he did that Tuesday morning.

Not only that, but some time after this week of February 15th he drove down here to Pikeville to the Kentucky State Police Headquarters and spoke with them again.

Trooper Forsythe will testify to this.

Drexil Hall, a man who has violated a racketeering act?

Let's look at Bo Moore. He was hauling coal for JKM Coal Company during this period of time. How long had he been there before February 15th, 1982? Approximately ten to fifteen days.

Where did he haul coal before that, right before that? To one of Ray-Mac's places.

Bo had just gotten married in the middle of January. He needed a job. The

evidence will show that a Mr. Willie Moore came up to Bo Moore and said do you want to haul coal, and Bo being out of a job said yes.

More importantly, the evidence will reveal that when Edgar Jones found out that Willie Moore had hired Bo Moore, he jumped all over Willie. The reason? And it will come out from this witness chair, that Edgar didn't know Bo Moore, didn't know him at all.

Was this a man that anybody - - would you conspire with a man that you didn't know to violate a racketeering act?

Let's look at the week of February 15th and what the evidence will reveal in that regard as to Bo Moore.

One day, February 16th, that is a Tuesday, the day of the shooting. Bo Moore went up on John Hall's Branch leading to the Ray-Mac site.

As he was approaching to where the men were assembled at the foot of the hill, leading up to the Ray-Mac job, shooting broke out. The evidence will clearly show that Bo Moore at that time used his common sense and he ran.

He didn't go back up there

again.

On the following day, Bo Moore went back in the small community where there were a number of men gathered to see what was going on. This was Wednesday, February 17th.

The evidence will show that either at Stiffy Stumbo's barn, or at the tipple that was mentioned earlier, some men had come up there and asked if there were men that wanted to go into the hills.

The evidence will reveal from several witnesses, including a witness who was in those hills, and he is not over here (indicating), and I will bring him in, that the purpose for this was to simply see where the Ray-Mac employees were.

But what did Bo Moore do? Bo Moore started up into those hills. Bo Moore will take the stand and he will tell you he carried a rifle.

But how far did he go? He got up a little way with a group of men, the evidence will show, the rest of the group continued on and again Bo Moore used his common sense and he refused to go any further.

Not only will Austin Bo

Moore testify to this, we will have the man that was with him, Raymond Hall, testify to the same thing.

But more importantly than that, our evidence will reveal that at no time on February 17, 1982, did Bo Moore fire that rifle.

When he heard the shooting, he and Raymond Hall came off the hill.

The evidence will show on February 16th Austin Bo Moore was at the Ray-Mac site for a short period of time.

The witnesses will state that Austin Bo Moore on February 17th went a little ways up the hill, was there a short period of time.

After February 17th, the evidence will show, and witnesses will testify, including Drexil and Bo, that neither one of them became involved in any of the activities that occurred after that time.

Bo used his common sense. He didn't go around. Drexil went to Stiffy Stumbo's barn for a few minutes, Thursday morning, and he didn't do anything.

I am going to take this case one step further. I am going to try and show

you through witnesses why these men may have on two or three short occasions during that week engaged in the conduct that they did.

I have witnesses who will come in and explain to you the setup of the United Mine Workers of America.

Mr. Ernie Justice will testify that there is an International organization of the International Mine Workers of America under that District Thirty itself which is divided into many subdivisions.

Within District Thirty are many Locals covering approximately seven hundred coal companies within the District.

However, the key point that he will testify to is that the United Mine Workers of America is a democratic Union, that men can take votes and act on those votes, and in certain circumstances Local Unions can take votes and act upon those votes.

With regard to those votes, it's been mentioned here bringing witnesses to say that the custom and the practice of the United Mine Workers of America if a vote is taken to have a work stoppage, that that work stoppage

is not recorded in the minutes of the Local Union vote.

Witnesses will testify that work stoppages under certain circumstances where there is no dispute at your employer's mine, which can be arbitrated, are fully justified.

The only risk that a man runs, and Mr. Justice will tell you this, Mr. Cornelius Owens will tell you this, as well as the Presidents of other Locals in District Thirty, that he can be discharged if he misses two days of work.

However, the same people will also tell you that that hasn't happened within District Thirty at mines where there has been many more such work stoppages.

Our evidence will further point out, and again we agree with the Government on some of these points, that there was whiskey passed out to some of the men at this tipple on John Hall's Branch in this week of February 15th.

However, our evidence will reveal and Drexil and Bo will tell you themselves that they didn't take any of this whiskey. They will explain to you their motives for being up there

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at that time.

One single purpose, to ask the employees of Ray-Mac to join the United Mine Workers of America.

Let's look at that coal truck that came off of that hill on February 16th. There has been some mention that there will be evidence that the coal truck was shot up.

Well, I am going to bring in here the man who had that coal truck in his possession for quite some time, Mr. Danny Blanton's coal truck, and his testimony will show you that Mr. Blanton's coal truck was far from being shot up.

Why is that important? It centers around February 16th, 1982, certain motives of witnesses.

There will be testimony that there was a bullet hole or a bullet had entered the engine of that coal truck.

The evidence will further reveal that Mr. Blanton drove that coal truck from McDowell all the way to Pikeville, dumped his coal, and drove all the way back to Floyd County.

We will bring in the people who examined Mr. Danny Blanton's engine on

his '75 Ford Diesel truck and tell you how that bullet hole in the engine appeared to be.

We are also going to bring in a witness in an attempt to unravel who may have, on the morning of February 16th, initiated the shooting.

We will clearly establish through this witness, who took statements from Ray-Mac employees, that it wasn't Drexil Hall who first fired, but someone who had a rifle.

And our evidence, not only Drexil Hall, Trooper Forsythe and other people, will show that Drexil Hall never had a rifle that morning.

That was all 1982. This is 1984. I think at the conclusion of this case, and after you listen to Drexil and Bo and the witnesses who will testify on their behalf, that you will begin to see that there is something more sinister that is going to raise its head at some time in February of 1984.

I am fully confident, and that is why I have taken this opportunity to try to outline to you what our evidence will prove, that you look through this mountain of charges, and at

the end, Drexil Hall and Bo Moore who have maintained their innocence all along, that you shall find the answer.

Thank you.

*** *** ***

THE COURT: All that want a recess before you hear another one?

(Jurors indicated by raising their hands.)

THE COURT: Who is next?

MR. THOMAS: Take that vote again, Your Honor?

THE COURT: We didn't have enough. We will have Mr. Thomas and then take another one.

MR. ROWLAND: Your Honor, while she changes the paper, can I inquire if there is anything that can be done at all about the heat?

THE COURT: Yes. Mr. Marshal.

THE MARSHAL OF THE COURT: I have contacted GSA, and the heat is off.

THE COURT: The heat is off.

MR. PAFUNDA: I can tell you the heat is on.

MR. THOMAS: May it please the Court.

THE COURT: Mr. Thomas.

MR. THOMAS: Members of the prosecution, defense counsel, ladies and gentlemen of the jury.

I hope the four of you who raised your hands and want a break will listen to me. This is my TV Guide, so I don't think it will take too long to go through it.

Mr. Rowland wanted to know what to do about the heat in here, and I can tell you what I am doing about it. I am sweating. And I guess I will have to get this suit dry-cleaned every day.

But this is our opportunity-- my opportunity to talk to you about Eugene Tackett, who is also known as Blue. I have no idea where he got that nickname, nor does he. But I would like for you to look-- Blue, would you stand up, please?

(Mr. Tackett complied.)

MR. THOMAS: Thank you.

That is the man I represent. I have to admit that part of this sweat is nervous. I feel a little uncomfortable being in here, even though maybe I am leaning on this podium like I am used to it, but it is more of a crutch, sort of like Mr. Self's crutch; I need something to get around with.

But I want to tell you a few things that my client wants to see done and I want to see done.

I woke up this morning, the first time in at least a month, and I heard the birds outside. And I thought it-- You know, spring has finally arrived, even though it is a false spring.

I know the cattle back home are at least going to be able to eat. I am not going to have to worry my wife going out there and feeding them.

I think maybe spring ought to last forever. And then I thought about us being cooped up here in this courtroom for four to six weeks; and I thought we might as well have two or three feet of snow outside, because it is kind of a shame that we can't enjoy it.

The fact of the matter is something else came into my mind that makes me want to be here no matter what kind of weather we have outside, and that is that you people, we lawyers, these defendants, this whole court are part of a family the Judge described to you.

And what we are interested in is pursuing and finding the truth of what went on between these people in February of 1982. And I believe that if the truth is relentlessly and fearlessly pursued, it will triumph over evil. And I hope that all of us believe that. And I hope that you all will search for the truth in this case and attempt to sort out the things that are said by both sides that take away from that truth; because it is your duty to. It is their duty. It is everybody's duty.

And I want to just tell you right now that my man, Eugene Tackett, my client, went into the hills one day, and that was Thursday, February 18. The Government has charged him with going in two days. He told them already that he went in one day.

And he talked to them about it, and didn't have any reason not to. The evidence is going to show he went in one day, and that was Thursday, early Thursday morning.

And I think the evidence will also show that when he went in there, he went up there, and they had to show him how to use the gun. And he will tell you, and the witnesses for the prosecution, the man that he talked to, will tell you that it was so foggy up there that he shot into the air. And the reason was, he didn't want to hurt nobody.

And you are going to get a chance to see this man and listen to him. And you are going to get a chance to listen to everybody else that knows of him. And there is not going to be much evidence presented concerning him as to what he did.

And I want you to listen and see if this is the kind of man that anybody would conspire with, or if he would conspire with anybody

else, and see if he had the ability--the mental ability to conspire with anybody.

He is going to tell you he went up there because he thought he was going to lose his job if he didn't go up. He didn't want to lose his job. But that is what Phillip Booth told him. "You are going to lose your job, man, if you don't go up."

Phillip Booth also told him he was going up there on a picket line.

This man will tell you--Eugene Tackett will tell you that he didn't know that what he was doing was wrong. He thought he was there to protect their people, themselves, from the other people.

And that is his involvement. His involvement is that he went to a union meeting Wednesday night, went to the barn Thursday morning, and was given a gun and driven up to the hill, shot into the air because it was too foggy, and came back down and stayed in the barn; and that is it.

And I want the Government to show, because I would really like to know, what else his involvement was. And I want you to ask them that as they bring in their witnesses, and see if it

isn't exactly as I put forth here.

There is Mr. Self and Mr. Harwell has given you the analogy of the hands, one side here, and the other side here; that's two sides, but the same hand. I remember I was talking to a farmer friend of mine a couple of days ago, and he told me--was talking about lawyers, and he said, "You know, in lawsuits there's three sides to every story. There is the plaintiff's side, the defendant's side, and then there is the truth."

And I guess you will kind of feel that way when we start arguing and everything, but I hope you will just search out and try to find the truth.

Thank you.

THE COURT: All those that want a recess--all those that want a recess, raise your hand.

(Jurors indicated by raising their hands.)

THE COURT: Okay. We will have a recess.

Waive the admonition, gentlemen?

COUNSEL: Yes, Your Honor.

THE COURT: Marshal, we will be in recess until three-thirty. That's the jury. The

rest of you remain seated.

(Reporter's Note: At this point, the jury left the courtroom.)

THE MARSHAL OF THE COURT: The jury is out of the courtroom, Your Honor.

THE COURT: Please excuse the remainder of the court until three-thirty.

THE MARSHAL OF THE COURT: The remainder of the court will be in recess until three-thirty.

(Reporter's Note: At this point, a recess was taken.)

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MILLERS FALLS
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COTTON CONTENT

(Reporter's Note: At this time the Court was called back into order at 3:33P.M.)

THE MARSHALL OF THE COURT: All Defendants, all counsel and all members of the jury are present, Your Honor.

THE COURT: Madam Clerk.

THE CLERK OF THE COURT: The record may so reflect, Your Honor.

THE COURT: Thank you, ma'am.

Now, who is next?

MR. SPENCER: I believe I will be, Your Honor.

THE COURT: No, we better let Mr. Rowland, he's next.

MR. SPENCER: He's going to reserve, Your Honor.

MR. ROWLAND: May it please the Court, on behalf of Tim Milan, Dan Rowland. We would like to reserve opening statements until the conclusion of the Government's proof.

THE COURT: Fine.

Mr. Walbourn.

MR. WALBOURN: Your Honor, on behalf of my clients who are Mose Mead, Benny Caudill, Harold Moore and Hermit Newsome, I'likewise wish to reserve

my opening statement.

THE COURT: Now, Mr. Spencer.

MR. SPENCER: Just jump in ahead of the Court. May it please the Court, Your Honor, the prosecutors and defense counsel, and ladies and gentlemen.

My name is Ed Spencer and I'm from Paintsville, Kentucky. I practice law there in Paintsville. I was born and reared there or raised whichever term you wish to prefer. And which I've had the question popped so many times I want to answer right now; it's where are you from, Ed, where were you born and raised. Well, we've been there in Johnson County for over a hundred years. Just because maybe I look a little different than some, I might as well get it out, because they may wonder, people wonder.

And when I look at these Defendants or I prefer citizens accused, I always think about the coal here in Eastern Kentucky. I think about the Vanlear Coal, being worked out, I think about the Ochsner's Coal in Floyd County, I think about the White -- the White House in Johnson County. I look around and I think, because-- all of my people on my father's side were coal miners,

either in Kentucky or West Virginia. And when you look at it, I look at all these, not only my client, Linville Mosley, I look at the rest of them over here. The way they're dressed, the way their appearance is, and I think of the word racketeering. How many over there can spell it? How many of them over there knows what it means? The evidence will show exactly they don't.

Another thing I look at and I wonder about, I look at them and I wonder which the evidence will show that these are working men. Working men, by that I mean they had nothing to gain in my opinion except a job, that's all they had. A job and a right to work and support their family and raise their family. That's all they had and that's all they'll get out of this. The evidence will show that they had no intent to interfere with Interstate Commerce. As a matter of fact, I bet you -- I'll rephrase that, the evidence will come out and once they're on the witness stand, if we ask them to define the term Interstate Commerce I'd be very much surprised if they could, I would.

Also when you look at it, the victim. The evidence will show in my opinion

that the only victims in this whole -- the whole thing, not as the Government said, the victim, they used the word victim, right there's the victims (indicating).

Frank Justice or Mr. Parrish are victims, no. I don't -- the evidence will not show that, not in my opinion. The evidence will show in my opinion that Mr. Justice --

MR. SELF: (Interrupting) Your Honor, I'm going to object. This is a personal opinion of counsel.

MR. SPENCER: I'll rephrase it, Your Honor.

THE COURT: Please do.

MR. SPENCER: The evidence will show that they were not victims, the evidence will show that they are receiving exactly what they want.

Now, let's look at that tipple that the Government referred to. When you look at all of this, all of the forty-two acts, the Overt Acts that they said they had the evidence will reveal and I'm relying on what the Government said, when they read you the indictment, the forty-two acts, Linville Mosley, where was his name at in those acts. I heard his name mentioned one time,

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and if I recall correctly it was in Overt Act No. 21. Linville -- The Government, and I'm relying on what they said. They stated during their opening statement, they, when they named the individuals, I didn't hear any evidence that he conspired with anyone, I didn't hear it.

Further, I would like for you to consider what the evidence revealed from the Government -- I'm going to use the word prime witness or major witness, Miss Booth and Mr. Booth, Pearl and Phillip. When they take the witness stand here and testify they will not testify to any -- any act that Linville Mosley committed. So, definitely these stars should be able to tell us something.

There'll be no evidence and the evidence will reveal that Linville Mosley carried no gun, had no gun in his possession. That's a fact.

The evidence will further reveal that Linville Mosley did not have any explosives in his possession.

The evidence will further reveal that Linville Mosley did not go on any hill with any firearm.

The evidence will further reveal that Linville, as most of the people up here around McDowell, that stop at Stiffy Stumbo's barn, I'll state that right up here. The reason being Stiffy's barn, I heard that in this opening statement at least two or three times, the fact is very simple. The evidence will establish that Stiffy Stumbo's barn is a place where they stop and the men in that area have a beer. It'll be there.

Further, the evidence will reveal after they're on the witness stand, even by the Government asking them questions or I'll ask them some of these questions if some attorney does not ask it before me. The motive -- the motive for them to testify will come out. The motive that these people are testifying, the Government witnesses. Right now, I want to make one point point blank. I do not intend during this trial to ask or cover something that's been covered by some other attorney. Just like in this opening statement, what I'm saying is if it's already been covered I see no need to stand here and take up your time, my time, and the Court's time in going over it. I mean all during the trial I'm not going to.

Further, when we look at

it, not actors, the evidence is going to show that we have several either actors or professional witnesses in this case. I don't like the word actor because that puts forth the impression that you are putting -- trying to bring across something that's not there. To me a professional police officer testifies and the evidence will establish that we have some here. They testify day in and day out in court and they are as close to being -- they are professionals. They are as much a professional as these attorneys are in this room. And they know, the evidence will show what to say and what not to say a lot of times.

When you look at the word, I heard the word story. This is no story. This is not a comic strip, this is not a T.V. Guide, this is a place where we've come to obtain facts, facts. If anyone wants to tell you a story they can tell it outside the courtroom. The evidence will reveal nothing -- will reveal the facts on this witness stand. I mean it's not -- we did not come here to play games. Any evidence or any question I have to ask, I want the facts, the truthful facts to the best of their knowledge. If they're going to tell a story there I don't want to listen to it. Let's

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look at what the evidence will support about a conspiracy. The evidence will show that Linville Mosley was not present during any of these conversations or any of the alleged conferences at Pearl Booth and Phillip Booth's house. The evidence will show about the destruction of the tipple, the coal tipple by Jason Moore. The best I recall Jason Moore is the son of Ed "Panhandle" Moore. He will testify that if he did not go along and help with that tipple that his own father would have shot him if he turned back. On this witness stand the man will testify to that.

Ed "Panhandle" Moore, he's deceased. The evidence will show that and there's no need for me saying it everytime, he's not going to testify to anything. But his name has been thrown around, and it's going to be thrown around during this trial. And Phillip Dale Moore will testify that my client, or Linville, got practically run off when he stopped at "Panhandle" Moore's home and -- when you look at conspiring and conspiracy, the man runs you off and you say he conspired with you, the word conspiracy, we use it quite a bit, but let's think of a partnership, not only a partnership that's been achieved or organized for

purposes. When you do that, it's easier for me to say the evidence will not establish any meeting of the minds.

The evidence will not establish where Linville Mosley discussed any conspiracy or knew of any common goal with these men. So, when you take it that he's charged only in two counts out of the ten, that's Count One and Count Two. The evidence of the Government does not and the evidence offered from this witness stand will not support that he entered any conspiracy.

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MR. SPENCER: In Count No. 2, I have talked to numerous people, and I believe that Jake Moore--Jake Moore will testify for the Government. The only evidence in this whole case, according to Jake Moore and others, is that Linville--or Phillip Booth too, the Government's star witness, will establish and prove that Linville run up and down the road.

Of course, running up and down the road, or driving up and down the road is not a crime. And not only Linville, the way it comes to me, has a serious drinking problem--or did have. And LInville-- That might as well come out here as later.

But when we are referring to Stiffy Stumbo's barn and other places, we have to look at what the evidence will show. And the evidence is going to show that if you're up there now, somebody will be there most likely drinking.

And when you look at Pearl Booth, what is her motive? The evidence will show her motive. But her motive here to testify for the Government, as the evidence will support and show, is to help Pearl Booth.

Phillip Booth, the same for him.

Phillip Dale Moore, the

same for him.

But once the question is asked of these witnesses for the Government, who has a built-in bias-- The evidence will show that, and these unindicted coconspirators--those men and women will not testify on that witness stand about Linville participating in a conspiracy. They will not testify that he was in any conference, any--carrying on any conversations with these defendants--or I prefer "citizens" accused. I never did like the word "defendant" but we are stuck with it.

That is-- When you look at all--we'll say all eighteen of them, the evidence will be contrary or conflict to what the Government has stated.

And witnesses at the present time-- I will be straightforward. I don't intend to produce any witnesses, except cross-examining the other witnesses, and putting my client on the witness stand and let him tell you. But like all plans, they can be changed.

And the evidence will establish that these eighteen men--or we will say the majority of them, do not even know what the word "extortion" means.

And to force anyone out of business, the evidence will establish that they did not have that intent.

And at this time I would like to ask Linville to stand up.

(Mr. Mosley complied.)

MR. SPENCER: Sit down, Linville.

Linville is married. He has lived at McDowell all of his life--up around McDowell. He has children. And I believe--and I would ask at this time for you all to strike out any comparison or any reference to "TV Guide" or "brief synopsis of this trial"; because I don't think those terminologies are suitable.

And I don't-- And I will state this. We are here seeking the truth, and that is all. Sometimes the truth-- Or this is not exactly what we want. Like the facts, some of the evidence I will ask, I will know the answer; but some of those questions, I would rather not know the answers.

And when you look at it, the evidence, as the Court has instructed you, will come from that witness stand. The proof. The facts. And it is like all attorneys, I generally do not tell the jury or anyone that the comments or statements

that I make are not proof, are not evidence, because during the trial the opening statement is not proof; but I would like for a lot of jurors in most cases to look favorable on what I say.

Do you know, that is just human nature. But there is one fact. On anything that I would say, I can establish with the proof. By that the evidence will support, because we have to be straightforward, honest. If we are not, then we have got problems. The truth is not going to come out in this courtroom. And that is all we are here for is the truth.

And when you look at it, the truth in this case, and the evidence will support, that the only crime, if any, that these--that these citizens accused are guilty of would be the desire to want to work and support their families and raise their families. That is the only--that is the only point here in this whole trial that I think the evidence will support.

And I would ask each and every one of you to look, as the evidence supports, at the motives of these witnesses who are testifying as he or she does.

I would ask you also to

watch the demeanor, the character of these witnesses as they testify.

Sometimes it is not what is said that counts, it is what is not said.

Thank you.

THE COURT: Mr. Adams.

MR. ADAMS: May it please the Court, gentlemen representing the Government.

MR. SELF: Mr. Adams.

MR. ADAMS: Ladies and gentlemen, my name is Eldred Adams, and I am from Louisa, and I represent Mr. Ranny Blankenship.

Stand up.

(Mr. Blankenship complied.)

MR. ADAMS: Mr. Blankenship lives in LIgon, and he is married and has three children.

Now, I know that Mr. Harwell and Mr. Pafunda talked to you briefly about union activity, and I am not going to go into any depth about that.

The only thing that I would ask you to do--and I know you will do this--is keep your ears open about the union activity.

Now, I cannot speak for Judge Unthank, only Judge Unthank can.

But I think that when we get to the conclusion of this case, he will give you an instruction that will guide you. And I think when you see that instruction, the importance of that union activity or organizing activity will become very readily apparent.

Now, the thing I would point out about Ranny Blankenship. As you go through this evidence, he is a coal miner, and I think you will find the only reason he would have to do anything would be for the union and for his job. That is the only reason.

Now, the Government has charged in the indictment that Mr. Blankenship was involved in a conspiracy.

The conspiracy, according to the Government, started about January 4, 1982, and continued on through that week of February 15.

I think,--in fact, I challenged the Government to produce a shred of evidence that Mr. Blankenship was involved with anything prior to the week of the fifteenth.

On Monday morning, February 15, Mr. Blankenship was in his work clothes. He was on his way to a mine where he worked that belonged to

Phillip and Pearl Booth.

On his way there, he was told to stop. Said go up on the picket line. So, since he was concerned about his job, that is what he did.

There is no evidence that in January he met with anybody, he planned with anybody. And, as a matter of fact, I think he doesn't even know Mr. Jones. He didn't even meet Edgar Jones until this case came along.

Now, what about the week of February 15? When the strike started on the week of February 15, quite frankly, ladies and gentlemen, there was free whiskey, and he stayed drunk about half the time.

Now, you may say that that is terrible that a man stay drunk for--half-drunk for a week. Again, I cannot speak for Judge Unthank, only Judge Unthank can. But I think there is a reasonable chance Judge Unthank will give you an instruction that you are to be guided by at the end of this case. He will deal with intent, look at the form of intent.

And I think once you see that, whether or not he was intoxicated or not becomes very important.

He is charged with being a member of a conspiracy. In the first place, he didn't know about a conspiracy, if there was one, and there wasn't qne.

Secondly, he would have been too drunk to have gotten into it if he wanted to.

Now, Mr. Blankenship is also charged with a violation of the HObbs Act. That's racketering.

Now, again, Judge Unthank--again, I can't speak for the Court, but I think it is likely that Judge Unthank will give you an instruction at the end of this case as to what you would have to believe for there to be a violation of racketeering with a Hobbs Act.

But I think the Government talked about -- in reading the indictment to you, about them forcing or taking property away from Ray-Mac through fear and violence.

Now, during the week of February 15th, you heard about some incidents where some men went up on the hill. Mr. Blankenship is charged in one of those incidents by the Government.

Now, this was supposed to have been done to extort money or property from Ray-Mac. But let's go to Mr. Self's T.V. Guide and look at what we find.

Mr. Self is talking about the T.V. Guide. I want to go a little bit farther, flip over a few pages, and I want to tell you the two programs that you're going to be watching in that T.V. Guide in this case as far as that hill goes.

One of the programs -- and I am going to tell you why you will be watching those two T.V. programs from Mr. Self's guide.

The first program you're going to be watching is one they had on a few years ago, F Troop. You may remember that is a comedy where they fired the canon, and the wheel falls off,

and they blow down their own guardhouse.

The other program you are going to be watching, a little bit more current -- I don't know if Mr. Self and I watch the same programs or not. You are going to be watching Hogan's Heroes. You are going to be seeing Colonel Klink and Sergeant Schultz.

Now, let me tell you about what happened on the hill, and see if this is not fair. I guess Sergeant Schultz and Colonel Klink led F Troop up the hill.

Now, their plan was brief, as only Sergeant Schultz and Colonel Klink can devise. The hill that this is supposed to have happened from is about, oh, a half mile away from the Ray-Mac site. The only thing that is even visible from that point are a few buildings. But the battle plan gets even more brief.

They're supposed to have gone up sometime in the morning. The only trouble with that is when you go up in the morning, it is fogged in, and it has a perfect camouflage; but they can't see Ray-Mac either. You will find that to be the case.

But the brilliance goes

on in the battle plan. With F Troop being led by Colonel Klink and Sergeant Schultz, follow this. The only thing they didn't anticipate is they are fully visible from Ray-Mac.

Now, they fired off some weapons -- some of the strikers were supposed to have fired off some weapons on the hill. But I think you will find that they were too far away to do anything but make noise. And it was never their intention to do anything but make noise.

As a matter of fact, they were gentlemen about the little battle they had going on with the Indians or whatever. They would yell down to the people at Ray-Mac, "now it is your turn to fire." So, they stopped, and the people from, you know, Ray-Mac would fire back.

So, this kept on. And, as a matter of fact, the evidence will be -- and I think some of the other counsel alluded to it earlier -- Ray-Mac had far more firepower than the strikers had.

As a matter of fact, the strikers were so overwhelmed by the firepower from Ray-Mac that they were kind of like my little beagle pup. Whenever he gets in a situation that he

discovers is kind of a little over his head, he goes with his tail between his legs, arf-arf-arf. That is the way they came off the hill. They had so much more firepower. They couldn't intimidate anybody.

But the Government says, after they have gone with their tails tucked between their legs, that they had extorted the right to do business through fear from Ray-Mac.

What else about up on the hill -- did F Troop do up on the hill? Some tried to put camouflage on their face, but the trouble is that got washed off in the rain. One of them didn't even know how to load a rifle. One -- another one of them got lost. One of them -- the only person that was wounded up on the action -- nobody from Ray-Mac was hurt at all. The only person that got wounded at all was a man who was, when Ray-Mac returned their fire, I think a piece of bark flew off and hit him in the face. That was the only -- the only striker that ever got injured.

Now, I think you will also, as this case progresses, find out that the only other casualties were strikers. One of them got shot in the rear end. Another one, I think, got drunk and lost control of his car when he was

supposed to go to one of these meetings.

Ladies and gentlemen, when you see -- finish the evidence in this case, I think it will become very apparent to you that these men were incapable of committing a racketeering violation even if they wanted to.

Thank you.

THE COURT: Mr. Hollon.

MR. HOLLON: May it please the Court.

THE COURT: Mr. Hollon.

MR. HOLLON: Gentlemen.

MR. SELF: Mr. Hollon.

MR. HOLLON: Ladies and gentlemen of the jury.

I am going to be pretty brief here this afternoon. I guess you all are glad to hear that. I know none of us are as fresh as we were at ten o'clock this morning.

Now, at ten o'clock this morning I think Mr. Self alluded to the fact that -- or made the statement that you all were fortunate or unfortunate to serve, depending on how you look at it.

I feel that you are all somewhat fortunate to be serving on this, because it

gives you an opportunity to observe the system here firsthand.

And, in fact, ladies and gentlemen, for my client, Pebo Gayheart, and the other Defendants here, you are the system.

So, I want you to pay close attention, even though it is getting late in the day. There are still a few of us that are left to go, and just abide with us, and we will be finished shortly.

Ladies and gentlemen, my client, Pebo Gayheart, is accused of violating five counts of the indictment that Mr. Self read to you this morning.

Three of the counts have to do with the Hobbs Act, if you want to count the conspiracy to violate the Hobbs Act. And the other two counts, the actually going up on the hill and shooting down at the Ray-Mac operation.

Now, ladies and gentlemen, I am not going to stand here and tell you that Pebo Gayheart did not go up on that hill on those two occasions.

I think the evidence that is going to be presented, it is going to be pretty

clear that he did do that; that he did go up with the men and was involved on those two occasions.

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However, ladies and gentlemen, that mere fact alone is not sufficient proof for a Hobbs Act violation. The proof that the Government must put on must demonstrate that he intended to interfere with Interstate Commerce through extortion or other means.

I don't think there is going to be any proof presented by anyone that indicates that Mr. Gayheart intended to interfere with Interstate Commerce. That is the conspiracy charge, the first charge that was read to you from the indictment this morning.

Mr. Gayheart, first, I would like to lay a little background for that. Mr. Gayheart is originally from the Floyd County area, from around McDowell.

However, some time ago he moved up around Ohio where he had been working. He lost his job up there and had come back to the McDowell area in order to find work.

He did find work at Phil Booth's mines, however, I think it is very important for you to remember when he did find work, but the evidence will show that he did find work there, he started his job nine days prior to the violence

beginning at the Ray-Mac operation.

Now, as the Government puts on its proof of this alleged conspiracy, I want you to consider the complexity of the scheme that they are trying to show happened up here. If you feel that Pebo Gayheart can become involved in such a complexed scheme in a period of nine days, then so be it.

But I just don't feel that the proof can sustain it, that he can become so deeply involved as to be charged under the indictment in such a short period of time, ladies and gentlemen.

The indictment alleges Pebo Gayheart conspired with Edgar Jones and with others. I think that the proof will show that Mr. Edgar Jones, and several of the other Defendants and the unindicted co-conspirators never knew who Pebo Gayheart was.

They had no idea who he was. And once again, as some of the other counsel have asked, how can you conspire with someone when you don't even know who they are or even know that they exist?

Ladies and gentlemen, I

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promised you I would be brief. That is all I have to say. I just ask that you consider all the evidence, consider the evidence that pertains to Pebo Gayheart, consider it closely, pay attention, it is going to be a long time that we are going to be here probably, listen to it, keep the evidence separate as to each Defendant.

Thank you ladies and gentlemen.

THE COURT: Mr. Bransen.

MR. BRANSEN: May it please the Court.

THE COURT: Mr. Bransen.

MR. BRANSEN: Gentlemen of the prosecution.

MR. SELF: Mr. Bransen.

MR. BRANSEN: And Defendants.

MR. HARWELL: Mr. Bransen.

MR. BRANSEN: Ladies and gentlemen, I am Hershel Bransen. I am a sole practitioner in Jackson, which is in Breathitt County, Kentucky.

I represent Mr. Donahue Halbert. Send up Donahue.

REPORTER'S NOTE: Mr. Donahue stood.

MR. BRANSEN: Mr. Halbert runs a gun shop in Langley, Kentucky, that is in Floyd County.

He is a licensed dealer. He sells only legal weapons and ammunition.

I would also like to point out to you and have you keep in mind that he is named in the first count of the indictment only, the conspiracy count.

He is named in this, and the evidence will show that he never went up on the hill on either occasion, he never went to any of the meetings, none of them.

The only thing he did was carry on his normal business practice selling weapons and ammunition.

Mr. Self told you earlier today that there will be checks shown to you that were written to Donahue Halbert, gunsmith, and that there are those checks and they will be shown to you and they are to Donahue Halbert and I am sure Mr. Halbert cashed those checks and used the money, because that was his business, to sell guns, sell ammunition.

It is nothing unusual to him. Mr. Self also said that he would show you two Uzi's and he said it was an Israeli submachine gun. That is not quite true.

To be a machine gun, it would mean that you put your finger on the trigger, pull it back, and that weapon keeps firing until you take your finger off the trigger or it runs out of ammunition.

What Mr. Halbert sold were two semi-automatic Uzi's, which means you put your finger on the trigger, you pull it, it shoots one time, you have to release your finger from the trigger and pull it back again to get it to shoot again.

So they are semi-automatic nine millimeter carbines. They are not sub-machine guns.

Also, Mr. Self told you, and I would like to point out to you again that these weapons weren't used in any of this violence that went on in the shooting.

They weren't received until it was all over with. He ordered them, they came later.

Mr. Self also alluded to Mr. Halbert's records. He said that you will find some entities missing. That is probably true. It is in fact true.

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And the Government's own witness, the prosecution's own witness, Pearl Booth, will tell you that Phillip Dale Moore stole some records.

We know at least one, maybe more, from Donahue Halbert Gun Shop. Stole them, that is what she says, she will tell you.

When you have a conspiracy, you have to look to intent. What would be Donahue Halbert's intent to be in a conspiracy? Why would he want to conspire with these men in doing anything?

He wasn't a member of the Union, the Union meant nothing to him, and he really didn't have any reason to shut down Ray-Mac, it wouldn't benefit him in any way.

I guess the Government will probably tell you that he benefited from these gun sales. Well, yes he did, he was in business to sell weapons.

But it is not a great deal of money he made off of this. One check was for five hundred and some dollars, I think, and the other one was for two hundred and some.

That is not a whole lot of money. I mean, he wouldn't undertake a criminal act

for such a small amount. He wouldn't have no reason to. And it wasn't a criminal act what he did, he just sold weapons, that is his business, that is what he did, it is all legal.

And furthermore, why would he conspire with Edgar Jones?

Again, the Government's witness, Pearl Booth, will tell you that Donahue Halbert told her he couldn't stand Edgar and he would never do anything to help him.

It just doesn't follow. It can't follow from that evidence.

When you look at the entire situation, you have to look at the whole thing, look at all the evidence after it comes to you, and think in your own mind was there any reason - - was there any benefit for Donahue Halbert in this.

And the evidence will show you that there wasn't, that he could not benefit from Ray-Mac being out of business or in business, it couldn't matter to him one way or the other.

What happened to Edgar Jones couldn't matter to him. What happened to the Union didn't matter to him.

He is like any other

person in business selling gasoline, food, or anything else. He provides a service, and he is paid for that service.

His service happens to be selling of guns, ammunition, and repairing guns. That is all he did.

And for that, and for reasons he didn't know about, he has been charged for something that he not only didn't do and didn't intend to do, for something that he had no reason to do, and wouldn't have done if he had known the ramifications of the entire matter.

Thank you very much.

THE COURT: Mr. Kirkland.

MR. KIRKLAND: Your Honor, on behalf of my client, we would like to reserve our opening statement until the conclusion of the Government's proof.

THE COURT: All right. Ladies and gentlemen, the Jury will be in adjournment until tomorrow morning at 9:00 o'clock.

During this adjournment, do you remember my continual admonition not to discuss the case among yourselves, nor to permit anyone to discuss the case with you or in your

presence, do not make up your mind on the issues of the trial, until all the evidence, together with the Court's instructions.

I want to renew my admonition of the press. All newspapers, television, you remember, remember you are not to say that - - I am sure if you want to read it later, just have them reserve it until after the trial is over, and you may read it.

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

THE COURT: Yes, sir.

REPORTER'S NOTE: At this time Mr. Self and Mr. Harwell approached the Bench out of the hearing of the daily reporter. After the Bench Conference the following was heard:

THE COURT: Let me put this admonition to you by way of analogy.

One time we were trying a tort case in another Court, and I think it involved a fellow on a bicycle and an automobile. And the Jury went home that night and came back and tried the case. I think one of the Jurors in the Jury Room said they knew a bicycle couldn't do

that because they went home during the recess and they tried it themselves.

You understand when you leave here and go home, you can't conduct any experiments or do anything outside the Court. That would be evidence outside the Court. We have to try it solely upon the evidence here as presented by the witnesses and the exhibits.

Gentlemen, is there any objection, further objection?

MR. SELF: None, Your Honor.

MR. HARWELL: No objection, if the Court please.

THE COURT: Correction to the Court's admonition.

Mr. Marshall, you may excuse the Jury until 9:00 o'clock tomorrow morning.

THE MARSHALL OF THE COURT: You are in recess until tomorrow morning at 9:00 o'clock. Don't wait until 9:00 o'clock to come into the building, five till or ten till would be better.

MR. KIRKLAND: Do you want to take up my thing out of the presence of the Jury, Your Honor?

THE COURT: (Nodding head affirmative)

THE MARSHALL OF THE COURT: The Jurors are out of the Courtroom, Your Honor.

THE COURT: All right. Mr. Stumbo, Mr. Jason Moore, Teddy Kinney, Raymond Hall and Kenneth Rolland, please stand.

Gentlemen, it is my understanding that I think it is tomorrow that Mr. Kirkland, your attorney, isn't going to be able to be here. I think Mr. Walbourn has perhaps been designated to serve as your counsel in Mr. Kirkland's absence.

Have you any objection to that, gentlemen?

REPORTER'S NOTE: All individuals said, "No, Your Honor."

THE COURT: Let me ask you this, gentlemen, let it appear on the record there is no conflict between Mr. Walbourn and Mr. Walbourn's clients' interest and these gentlemen's interest.

MR. WALBOURN: To my knowledge, Your Honor, there are no - - there is no conflict. Furthermore, it has been represented to us by counsel for the United States as to the witnesses that are anticipated being called tomorrow, and

certainly in those witnesses there, it would appear to be no conflict in the position of my clients and the position of Mr. Kirkland's clients.

THE COURT: Has the United States any objection?

MR. SELF: No, Your Honor.

THE COURT: All right.

MR. SELF: I would like the record to reflect that Mr. Kirkland has other associates who are available, and if you wish to have them, he could do that rather than get into the conflict of interest.

THE COURT: Well, of course, Mr. Walbourn has represented there is no conflict. I will accept that.

Mr. Kirkland, you may be excused.

Madam Clerk, let this be filed and be made a part of the record.

Now, gentlemen, let me ask you all this. You are in much better shape than the Jury is. Of course, there is eighteen of you and there is eighteen on the Jury. I realize that every now and then a person has to go to the bathroom, that is nature.

What we would like to do is set up a plan. Here is what I would suggest.

I don't mean you have to get up here and go out of here outside the Courtroom to take a smoke any time you want to, I am speaking of when you have to go to the bathroom.

Then you can go to your counsel, walk to your counsel and your counsel will say he thinks it is all right, and then he turns around and nods at the Marshall at the door, which would signify your going, and in a short time, ten minutes or so, you are expected to be back here.

But in doing this, you are waiving your presence of being in Court. Do you gentlemen want to do that ? Or do you want us to stop trial?

MR. STUMBO: Let the trial go on.

THE COURT: May the record reflect that all Defendants, gentlemen, agree to this?

MR. HARWELL: If the Court please, speaking for Mr. Jones, we have no objection to it, but I can assure you he will be in the Courtroom throughout this entire trial.

THE COURT: But I'm - - no, because

of the breaks, it is anticipated that someone will go and this is just in case they do have to go.

Gentlemen, is there anyone - - may the record reflect this is the agreement?

MR. ROLLAND: Yes.

THE COURT: I guess you better call each one of them and put it on the record, Ma'am Clerk. Call each one and see if they agree to waive their presence in such a circumstance.

THE CLERK OF THE COURT: Yes, Your Honor. Mr. Edgar Jones, do you agree to waive your presence, sir, if such a situation would arise that you would be absent from the Courtroom?

MR. JONES: I do.

THE CLERK OF THE COURT: Jason Moore, do you agree, sir, to waive your presence if the circumstance arises that you would need to be absent from the Courtroom?

MR. MOORE: I do.

THE CLERK OF THE COURT: German Stumbo - -

MR. STUMBO: (Interrupting) I do, Madam.

THE COURT: Just call their names.

THE CLERK OF THE COURT: Drexil Hall.

MR. HALL: I do.

THE CLERK OF THE COURT: Teddy Kinney?

MR. KINNEY: Yes, Ma'am.

THE CLERK OF THE COURT: Benny Caudill?

MR. CAUDILL: I do.

THE CLERK OF THE COURT: Kenneth Rolland?

MR. ROLLAND: I do.

THE CLERK OF THE COURT: Ranny Blankenship?

MR. BLANKENSHIP: Yes.

THE CLERK OF THE COURT: Eugene Tackett?

MR. TACKETT: I do.

THE CLERK OF THE COURT: Harold Moore?

MR. MOORE: I do.

THE CLERK OF THE COURT: Hermit Newsome?

MR. NEWSOME: Yes.

THE CLERK OF THE COURT: Tim Milan?

MR. MILAN: Yes.

THE CLERK OF THE COURT: Mose Mead?

MR. MEAD: I do.

THE CLERK OF THE COURT: Donahue Halbert?

MR. HALBERT: I do.

THE CLERK OF THE COURT: Austin Bo Moore?

MR. MOORE: I do.

THE CLERK OF THE COURT: Pebo Gayheart?

MR. GAYHEART: I do.

THE CLERK OF THE COURT: Linville Mosley?

MR. MOSLEY: Your Honor, will we be sitting in the same situation we are right now?

THE COURT: You return back, yes.

MR. MOSLEY: I will agree to it, I do.

THE CLERK OF THE COURT: Raymond Hall?

MR. HALL: Yes, Ma'am.

THE CLERK OF THE COURT: Thank you.

THE COURT: Now, gentlemen, let me ask you this.

We are going to put it around the other way.

Your counsel, they are humans, and there may be a time when they might have to go.

Now, gentlemen, if one of you goes, do you, during that time, do you waive your right to counsel just for the short period that he is gone?

MR. HARWELL: (Nodding head affirmative) Mr. Jones does, if the Court please. Do you want

him to acknowledge it himself?

THE COURT: Well, what I am trying to figure, I guess this. It might be better if we need to designate someone if some counsel leaves - -

MR. HARWELL: (Interrupting) We have a little bit different position, Your Honor, than the other defense attorneys, we are in a position akin to the Government, we have got several lawyers on the Government's side, and we have several lawyers.

THE COURT: Mr. Jones has three attorneys.

MR. HARWELL: That is right.

THE COURT: I don't think three attorneys' bladders is going to catch at the same time.

*** *** ***

MR. PAFUNDA: Your Honor, I saw Drexil Hall nodding his head and I would not do that, but if mother nature's calling, I'll ask for a recess at that time.

MR. WALBOURN: Your Honor, with all due respect I would respectfully request the right to ask for a recess. I think my clients have employed me to represent their interest in this case and I'm in a better position to do that than perhaps someone else.

THE COURT: Okay, they will waive their presence, but they don't waive their counsel's presence. The record will so reflect, gentlemen. We'll be ready to start with the evidence first thing in the morning.

MR. KEHRLI: Your Honor, the United States has two brief matters.

In light of the opening statements given today by defense counsel I expect -- it's possible that the United States may propound an additional jury instruction, however, we have not made that decision yet. But in order to put the defense counsel on notice and also provide guidance to the Court. The United States would like to cite the Court's attention to the United States

versus Culbert Supreme Court Decision and the citation of that suit is 435 U.S. at 371. It's a case decided on March 28th, 1978.

THE COURT: That's C-U-L-B-E-R-T?

MR. KEHRLI: Yes, sir.

THE COURT: That's 435 U.S. 371?

MR. KEHRLI: 371, Your Honor.

THE COURT: Thank you.

MR. KEHRLI: The second thing, Your Honor, Mr. Dause and I at least noticed that the court reporters who are working on this side of the courtroom have been leaving approximately every fifteen minutes. At least it's my opinion that that's somewhat distracting. We were wondering if those intervals could be lengthened as far as the amount of time when these people come in.

THE COURT: Mr. Harwell, could you see perhaps what we could do?

MR. HARWELL: Yes, I'll ask them, Your Honor. And Judge -- I notice they come in this door and they come in this door.

THE COURT: When the attention is there, if you'll notice we've taken one of the cloths down. We'll put the podium there so the focus of the courtroom is the witness stand and the

podium.

MR. HARWELL: All right. So they'll go out this door.

THE COURT: Right, but the podium -- they'll go in and out this door, but the podium will stay there throughout the trial and when they examine from the podium and there's cross examination they;ll go to the podium, the same way for the defense.

MR. HARWELL: Mr. Edmondson, could we get together after this is over and talk about this?

(Reporter's Note: At this time the Daily Copy Reporter nodded in agreement.)

THE COURT: I'm not moving the podium back here. I want to keep the focus here so the jury won't be distracted by this other matter.

MR. HARWELL: Judge, are you going to put it back over here by Mr. Dause?

THE COURT: We could be back by Mr. Dause, yes, sir.

MR. HARWELL: All right.

THE COURT: It can be moved back a little further behind Mr. Dause. Mr. Dause has got plenty of hair, he doesn't have to worry.

MR. HARWELL: Judge, that hurts.

THE COURT: I used to hate to have somebody looking down on my bald head, but he doesn't have to worry about that.

MR. HARWELL: That's my problem, Your Honor.

THE COURT: What else, gentlemen?

MR. SELF: Your Honor, do you have any suggestions you could give me that I can give Mr. Dause and Mr. Kehrli to quit writing in Chinese writing so somebody can't read what he's writing down. If you've got a suggestion, I'd like to hear it.

MR. DAUSE: Your Honor, I'd like to move this table over just a little.

THE COURT: Well, you can move it over just a little bit.

MR. WALBOURN: May we move ours just a tad that way. Some of these guys can't stand up when the Court is adjourned.

THE COURT: I don't think Mr. Harwell and Mr. Self want to be together.

MR. HARWELL: No, we haven't been together all through this.

THE COURT: Are any of you gentlemen familiar with a spike fence?

MR. ROWLAND: That's what I would like right there, and I'd like the podium there for that purpose.

THE COURT: No, no. The podium can't be there because, gentlemen, I'm wanting to restrict the attorney, the witness here. I want to kdep the focus of attention right next to the jury. If we go to diverting and getting it out, we're getting -- I don't believe it would be helpful.

MR. WALBOURN: Your Honor, if I may. Mr. Kehrli has put us on notice that he's going to request an instruction. May I inquire as to the nature of the instruction?

MR. KEHRLI: Your Honor, I said we may request additional instructions, not sure that we will.

MR. WALBOURN: Well, I understand that, but if I'd been put on notice that they may request it I would like to know the nature --

MR. KEHRLI: (Interrupting) Well, Your Honor, I'll suggest that Mr. Walbourn is to read that case.

MR. WALBOURN: Your Honor, the Cricket Inn law library is not quite -- what I had hoped it would be.

MR. KEHRLI: Your Honor, I'll be glad to furnish a copy to Mr. Walbourn right now.

MR. WALBOURN: Thank you.

MR. HARWELL: I'd like to look at that.

THE COURT: All right. You're getting picky-picky, gentlemen.

MR. HARWELL: Your Honor, I'd like to put the Government on notice that I'm not being a smart aleck, Your Honor, but they -- I know what that case says, and if they're going to have a jury instruction on that I assure you that we will have a response and a counterinstruction to give the Court.

THE COURT: All right.

MR. PAFUNDA: Your Honor, may it please the Court. Mr. Kehrli spoke this morning when we were having the hearing on the motion by Mr. Stratton and Mr. Harwell with regards to the comments on primary and secondary picketing. I think we're in agreement that we can save the Court a tremendous amount of work as well as everybody making a lot of memorandums that the Court requested. I don't think that is and I think Mr. Kehrli agrees with me, primary picketing and secondary boycotts or picketing will not be involved in the factual

situation as they are involved here.

MR. KEHRLI: Your Honor, I think the Court had a good suggestion. I would agree with what Mr. Pafunda says. However, if one of the Defendants intended to insert that as a defense then it would become an issue. I think you had a good suggestion the other day when you asked the Defendants to come up with any legitimate labor goals they intended to insert as a defense and at that point both sides could read the issue. As far as I understand it right now the only defense I believe they're going to insert in that regard is that it was a legitimate union organizer.

THE COURT: That sounds like it is --

MR. PAFUNDA: (Interrupting) That's the reason for the suggestion at this time, Your Honor.

THE COURT: If you have something else, bring it up.

MR. PAFUNDA: I don't have anything else.

MR. KEHRLI: It's up to you.

THE COURT: Well, I'm assuming this is going to be like the old State Court self-defense instruction which the Court got reversed on when he was practicing. The person did not claim self-

defense so the Court did not instruct on self-defense but they reversed it and said even though they don't claim that defense if the facts justify it they're nevertheless entitled to that instruction.

MR. KEHRLI: That's right, Your Honor. That's why the Government opposed instructions or general instructions to meet all defenses.

THE COURT: All right. Now, we have to find to whom -- I have to rule as a matter of law to whom the facts apply, so as to nominate the instruction that the different Defendants would be entitled to.

MR. HARWELL: May I make an observation on that point, Your Honor.

THE COURT: Yes.

MR. HARWELL: Because the Court said that I have committed to the Court --

THE COURT: (Interrupting) Yes, make the decision, if there's a controversy as to whether they are or not substantiate -- that's what I have to decide, whether or not -- I've got to in the first instance decide whether or not they're entitled to the instruction.

MR. HARWELL: Merely an observation that we will make reference to on Monday, hopefully,

Your Honor, and that is if as a matter of fact the number of these Defendants were motivated by certain union or labor objections then obviously why that would be applicable to them in so far as the other Defendants are concerned. It would also be applicable to them although you'd have to change your chart in that they could not conspire -- see what I'm saying?

THE COURT: Well, you're speaking of the Defendants on the conspiracy and the other is the defense on the other count, on the Hobbs Act itself. Those are different charges and different violations and we'll have to have different instructions as to each one. I mean let's assume that you end up with only one person, he can't conspire with himself. But that has nothing to do with the Hobbs Act.

MR. SELF: Well, if they are co-conspirators, Your Honor, they conspire between them, you can have one.

THE COURT: Well, we'll get to that. I'm just saying assuming you have one person and no one else, he's the only one that had the intent. You would have no conspiracy.

Mr. Marshall, let's be in

adjournment until nine o'clock tomorrow morning.

THE MARSHALL OF THE COURT: All rise.

This Court is now adjourned.

(Reporter's Note: At this time the Court was adjourned, 4:36 P.M.)

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STATE OF KENTUCKY)
)
) SS.
COUNTY OF JEFFERSON)

We, BRUCE D. HANDY, JAMES D. EDMONDSON, & GEORGE CAMERON, Notary Publics, within and for the State at Large, do hereby certify that the foregoing proceedings were taken before us at the time and place and for the purpose in the caption stated; that the proceedings were reduced to shorthand 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 25th day of January, 1984.

James E. Edmondson
Notary Public

George D. Cameron
Notary Public

Bruce D. Handy
Notary Public