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 26, 1984

VOLUME FOURTEEN

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# A P P E A R A N C E S

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Assistant U.S. Attorney
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ALBERT F. MOORE, ESQ.
JERRY A. PATTON, ESQ.

For the Defendants Benny Caudill, Harold Moore, Hermit Newsome, Mose Mead, Jason Moore, German Stumbo, Teddy Kinney, Kenneth Rolland and Raymond Hall:

E. J. WALBOURN, III, ESQ.

For the Defendant Tim Milan:

DAN ROWLAND, ESQ.

For the Defendant Eugene Tackett:

DAVID THOMAS, ESQ.

For the Defendant Pebo Gayheart:

THOMAS K. HOLLON, ESQ.

For the Defendant Morris Ray Hall:

FRANCIS DALE BURKE, ESQ.

For the Defendant Donahue Halbert:

HERSHEL BRANSEN, JR., ESQ.

For the Defendant Linville Mosley:

LOWELL E. SPENCER, ESQ.

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

BERNARD PAFUNDA, ESQ.

For the Defendant Ranny Blankenship:

ELDRED E. ADAMS, JR., ESQ.

REPORTER'S NOTE: The Court was called to order at 9:00 A.M., E.S.T.

THE COURT: Mr. Marshall, what may the record reflect with regard to the Defendants' counsel and the Jury?

THE MARSHALL OF THE COURT: All Defendants are present, and all counsel with the exception of Mr. Kirkland are present, and all members of the Jury are also present.

THE COURT: Madam Clerk.

THE CLERK OF THE COURT: The record may so reflect, Your Honor.

THE COURT: Thank you, Ma'am. Are we ready to proceed, gentlemen?

MR. SELF: Yes, Your Honor.

MR. HARWELL: Yes, may it please the Court.

MR. SELF: The United States will call as its first witness Detective Sergeant Don Weedman.

DONALD WEEDMAN, called on behalf of the prosecution, having been first duly sworn, was examined and testified as follows:

THE COURT: Mr. Marshall.

THE MARSHALL OF THE COURT: Yes, sir.

THE COURT: Just one moment, please.

REPORTER'S NOTE: The Marshall conferred with the Court.

THE COURT: I need to get a brand new yellow pad, gentlemen. Go ahead.

MR. SELF: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. SELF:

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

A. Donald Weedman.

Q. Mr. Weedman, where do you live?

A. In Floyd County.

Q. Whereabouts in Floyd County?

A. I live on what is called

the right fork of Bow Creek, near the Watergap community.

Q. How long have you lived in Floyd County?

A. I lived in Floyd County for eight and a half years.

Q. Are you a native of Floyd County?

A. No, sir, I am not.

Q. Mr. Weedman, how are you currently employed?

A. I am a Sergeant with the Kentucky State Police.

Q. And how long have you been with the Kentucky State Police?

A. Eight and a half years.

Q. Mr. Weedman, does part of your assignment, or has it during the course of your eight years, included covering the Floyd County area?

A. Yes, sir. Been primarily Floyd County.

Q. Are you generally familiar with the areas of Floyd County and where things are located in Floyd County?

A. Yes, sir, I am.

Q. Is that by virtue of your employment and your living in the area?

A. Yes, sir.

MR. SELF: Mr. Marshall, if you would, I would ask you to hand Mr. Weedman what has been previously marked for identification as Government's Exhibit XXX.

THE CLERK OF THE COURT: Your Honor, what has been previously marked for identification by three letters of the alphabet as X for purposes of pretrial, it has now been marked for purposes of trial as Government's Exhibit No. 1.

THE MARSHALL OF THE COURT: Government's Exhibit 1 has been shown to counsel for the defense.

MR. SELF: Mr. Marshall, if you would, would you set that on the easel so that the Jury can see, and also Mr. Weedman can see the document. Back it up a little bit I think, Russell.

THE COURT: That is fine.

Q. Sergeant Weedman, do you recognize the document that has been shown to you, that has now been marked as Government's Exhibit No. 1?

A. Yes, sir, I do.

Q. And what is that?

A. It is a map of Floyd County, Kentucky.

Q. And do you know who produced or published that map as indicated on it?

A. Indicated on the map it was prepared by the Kentucky Department of Transportation, Bureau of Highways.

Q. Is there a date on there that you can read when it was prepared?

A. Yes, sir. It is the 1982 edition.

Q. And have you ever seen that map before, or one like it, Mr. Weedman?

A. Yes, sir. I have seen that map, and also seen several like it.

Q. And have you used that map or similar map of Floyd County with your employment as Kentucky State Police as both living and working in the Floyd County area?

A. Yes, sir, I have.

THE COURT: Your Honor, at this time, I move the introduction of what has previously been marked for identification now marked as Government's Exhibit No. 1.

MR. WALBOURN: No objection.

PLEASE CONTACT

MR. HARWELL: Without objection, may the Court please.

THE COURT: Let's do this, gentlemen. Approach the Bench.

REPORTER'S NOTE: At this time all counsel approached the Bench and the following was heard:

THE COURT: I think the record may reflect that if one attorney makes an objection, all other Defendants are entitled to this objection.

It is assumed that they made the same objection. This will prevent any of you from getting up and having to say in addition, I, and going through that eighteen times and saying I don't object.

MR. SELF: No problem, Your Honor.

THE COURT: But an objection that is made by one Defendant is a continuing objection for all Defendants, and it is for the benefit of all the other Defendants, okay?

MR. HARWELL: Judge, the other side of the coin, when we don't have an objection on the Exhibit, you wish that stated for the record, do you not?

THE COURT: Yes, sir. And I assume

when one stands up and says that he has no objection, all are waiving their objection.

MR. SPENCER: Unless voiced otherwise.

THE COURT: Is that all right, gentlemen?

MR. SELF: An administrative problem that we had yesterday. Realizing that this is a Bench Conference, we have a microphone up here for the purpose of supplementing the Court Reporters.

THE COURT: Yes, get that microphone off from here.

MR. SELF: The PA system.

THE COURT: This is a mike that I can't turn off, and I just don't want it.

REPORTER'S NOTE: End of Bench Conference.

THE COURT: All right. You may - - let's see, I'm sorry. There was no objection to the Exhibit on behalf of the Defendants. Let the record reflect that that which was previously marked for identification as Government's Exhibit XXX is finally admitted into evidence as Government's Exhibit No. 1.

MR. SELF: Thank you, Your Honor.

Q. Mr. Weedman, with the

Court's permission, Mr. Weedman, would you approach that map and identify for the ladies and gentlemen of the Jury where East McDowell and Floyd County is; and I would ask if you would, with the Court's permission, take a yellow grease pencil that you have and underline the designation on that map where it is recognized as East McDowell.

A. The area known as East McDowell is located in here (indicating) in Floyd County (marking document).

MR. SELF: That being in the lower center portion of the map, let the record reflect the witness is underlying with a yellow pencil the designation of East McDowell.

(Witness marking document)

THE COURT: Mr. Weedman, let me state this. You understand we have a problem, we have counsel there (indicating), and it is going to be almost impossible for you to stand without you blocking someone's view.

THE WITNESS: Yes, sir.

THE COURT: If you can, any time you stand, try to make it where all can see what you are doing.

WITNESS: Yes, sir.

THE COURT: Thank you.

THE WITNESS: Yes, sir.

Q. Mr. Weedman, while you are there, are there two county roads that intersect the area where East McDowell is?

A. Yes, sir, there are.

Q. What are those two roads, and would you indicate the approximate direction they proceed from East McDowell?

A. One is Kentucky 680. Kentucky 680 runs from the East McDowell area eastward approximately the direction to Kentucky 979, or the Mud Creek area of Floyd County.

Another road that runs into East McDowell is called Frasure Creek, and the Kentucky Highway number on it is 1929.

Q. How does the map spell Frasure's Creek, for the purposes of the Court Reporters, Mr. Weedman?

A. (Spelling) F - R - A - S - U - R - E.

Q. Now, the highway that you indicated as Kentucky 680, does it have in the area, as a lot of roads do in this area, have a name designation other than Kentucky Highway 680?

A. Yes, sir. It is commonly known there as John Hall Branch.

Q. And is that a flat road from the East McDowell area over to the Mud Creek area?

A. No, sir. It goes across the mountain there. I haven't exactly heard it called any particular name other than John Hall Branch Mountain.

Q. Is John Hall Branch one side to the other, or does it change names once it gets to the top of the mountain?

A. As most roads in the area, when you break over the watershed it has got another name. Some call the McDowell side, best of my understanding, Bill Hall Branch, and the Mud Creek side is known as John Hall Branch.

Q. The area that is going down that you identified as Frasure Creek, what is the highway designation on that?

A. Kentucky 1929.

Q. And as that proceeds down immediately out of the East McDowell area, are there branches off of that road heading to the east?

A. Yes, sir. There is a branch in this approximate area known as the Hoods Fork.

Q. And further on down the road does it again--Frasure Creek again split into two roads?

A. Yes, sir. The fork on up the road there is known as Ned's Fork.

Q. Mr. Weedman, if you would, with that yellow pencil, if it works sufficiently, or take the red pen that you have, and would you draw a large circle around the area encompassed by East McDowell, Frasure Creek, Ned's Fork and Kentucky HIghway 680? Just draw a large circle around that area with a red pen.

A. The entire Kentucky 680 area?

Q. Yes.

THE COURT: While you are doing that, it's alright blocking me out to do that, but don't get in such an uncomfortable position where you can't do it.

Go around in front and do it, and then come around back and show it.

(The witness complied.)

Q. And are those the roads that are reflected on that map, to your knowledge, that existed as of the first of January, 1982?

A. Yes, sir.

MR. SELF: Thank you, Mr. Weedman. That's all the questions I have with regard to that exhibit.

Mr. Marshal, if you would, I would like for you to hand the witness what has previously been marked for identification as 5xN, or 5 N's.

(The Marshal complied.)

Q. Mr. Weedman, do you recognize the document that has just been handed to you?

A. Yes, sir, I do.

Q. And do you know what--what is that document?

A. This--

THE CLERK OF THE COURT: Your Honor, what has been previously marked for identification as 5xN for the Government, I will have to remark it, Your Honor. This ink will not stay on the overlay.

THE COURT: One for the defendants and one for the Government.

THE CLERK OF THE COURT: It has now been marked for purposes of trial as Government's Exhibit No. 2.

(Reporter's Note: At this point, Mr. Self and Mr. Harwell approached the Bench; whereupon, the following proceedings were held:)

THE COURT: This is a foundation question, and in foundation questions, you are able to lead. So, in identification of the document, the Government is permitted to say this is so and so, is it not? And the witness can say, "Yes."

MR. HARWELL: I don't have any objection, Judge, of this witness or of this photograph, but I think it is going to be important on other things.

THE COURT: On foundation--on asking--on laying a foundation, the attorney is permitted to ask leading questions.

MR. HARWELL: I understand that.

THE COURT: So, you understand what I am saying. Instead of asking the witness was--you just say this is so and so.

MR. HARWELL: In a procedure such as you pass it to the Clerks.

THE COURT: Go to the Clerk to be marked, and then it is shown, and then handed to the witness, and he says to the witness that this is so and so. Yes. By whom was it prepared? Where was it made? And then he lays his foundation, and then you are given the opportunity to object, and then it goes in.

MR. HARWELL: Thank you, Judge.

(End of conference at the Bench.)

THE MARSHAL OF THE COURT: Your Honor, opposing counsel has viewed the exhibit.

THE COURT: Thank you. Please hand it to the witness.

(The Marshal complied.)

Q. Sgt. Weedman, is the document that you have been handed to you an aerial photograph of the East McDowell and McDowell area of Floyd County, Kentucky?

A. Yes, it is.

Q. And when was this aerial photograph taken?

A. Sometime in the latter part of November, first part of December.

Q. 1983?

A. Yes, sir, 1983. Excuse me.

Q. And is that approximately part of the area that you have indicated by a red circle on Government's Exhibit No. 1?

A. Yes, sir, it is.

Q. And does that photograph truly and accurately, without designations, represent the area as it existed when you took the photograph?

A. Yes, sir, it does.

Q. You were alone when that photograph was taken, weren't you, Mr. Weedman?

A. Yes, sir.

MR. SELF: All right.

Your Honor, at this time I move for the introduction of what has been previously been marked for identification as Government's Exhibit No. 5xN.

MR. HARWELL: Your Honor, may counsel approach the Bench?

THE COURT: Yes, sir.

(Reporter's Note: At this point, Mr. Self and Mr. Harwell approached the Bench; whereupon, the following was held:)

MR. HARWELL: May the Court please. I don't want to get picky, but, Tom, it looks to me to get this in, you have to say this essentially is the way it was in February or 1982.

My purpose coming to the Bench is not to object, but to get a clarification as to why this is coming in. You see what I am saying.

THE COURT: I don't believe he has to show it is the same now as it was then. He has to show it was the same when it was taken.

MR. SELF: As it is now.

THE COURT: No. As it was at the time the event occurred.

MR. HARWELL: That is what I am saying, Judge. That is what I am saying, Tom.

MR. SELF: Okay.

THE COURT: You know, if it is a picture of a car. Of course, in this thing it isn't that.

MR. HARWELL: I am really coming here, Your Honor, because this photograph doesn't--it doesn't make any difference, because this photograph was taken high up. There are some taken closer.

THE COURT: All right.

(End of conference at the Bench.)

Q. Mr. Weedman, the photograph in front of you of the highways and the locations of towns, have they been changed since approximately January and February of 1982?

A. No, sir.

Q. There have been no towns, no mountains moved since January and February of 1982, as they appear on that map taken in the latter part of '83, have they?

A. Not to my knowledge.

Q. Does that photograph represent the location of highways and towns and hollows and hills as they existed, to your knowledge, in January and February of '82, and as they were taken in that picture in the latter part of '83?

A. Yes, sir.

MR. SELF: Your Honor, at this time I move for the introduction of what has been previously marked for identification as Government's Exhibit 5xN.

MR. HARWELL: Without objection, may the Court please.

THE COURT: All right. There being no objection, let what has been previously marked for identification as Government's Exhibit No. 5xN be finally admitted into evidence as Government's Exhibit No. 2.

THE COURT: You may proceed, sir.

MR. SELF: Mr. Weedman, if you would, you can set that map over on the easel--of that

photograph over on the easel likewise. Maybe if it won't set up, it may have to be hooked up at the top.

May I approach the witness a minute, Your Honor?

THE COURT: Certainly.

THE CLERK OF THE COURT: If you put a clip on it, you might be able to attach it better. Down on the end. See them down on the end?

(The witness complied.)

Q. Separate and apart, Sgt. Weedman, from the photograph, are there some letters and markings that have been placed on that exhibit on the acetate overlay?

A. Yes, sir, there are.

Q. And do those markings truly and accurately indicate the location of certain towns and certain highways in the East McDowell area?

A. Yes, sir, they do.

Q. Would you, if you could, point out to the ladies and gentlemen of the jury what those designations are and how they--where they relate to each other?

A. Well, first of all, the north-east, south-west is in approximation of the direction of the rest of them.

Kentucky 122 is this way here and will be--

Q. Where does that run to and from, Kentucky 122?

A. Kentucky 122 runs from Martin, Kentucky on to Mill and Wheelwright area towards Pike County in a north-south, south-north direction.

Bearing off of Kentucky 122 is Kentucky 680, which runs through East McDowell, John Hall--Bill Hall, John Hall Branch over into Mud Creek here. (Indicating)

This area, bearing on this direction would be Frasure's Creek or Kentucky 1929. It is not far.

Q. Is it a fact that where the roads meet is 680 and 1929, is the area known as East McDowell, Kentucky?

A. Yes, sir, that is correct.

Q. And further on down the road is where McDowell, Kentucky is?

A. Yes.

Q. Both are indicated on that map?

A. Yes.

Q. The 680 that is indicated on there is what is known as the John Hall, Bill Hall Branch going over to Mud Creek, is it not?

A. Yes, sir, that is correct.

Q. Now, going down to the top--center and top right-hand portion of that map, what is the road? And where is that area where there is a large curve in the road? The top right-hand corner of that map?

A. This area here. (Indicating) It lies between Drift and Minnie, Drift being this area here which is the buildings.

Q. Would you take your pen and just write "Drift" where that is, Mr. Weedman?

A. Yes.

(The witness complied.)

MR. SELF: Let the record reflect that Mr. Weedman wrote that on in yellow grease pencil. May it please the Court.

Q. There is various hollows--or hollows or roads coming off right out of East McDowell, Sgt. Weedman; do those have specific names that you are aware of?

A. Yes, sir. Many of them are named.

Q. The hollow that is coming out of--immediately out of East McDowell is right towards the center of the point--the center of that map--the photograph; does that have a name otherwise known as Royal Hollow?

A. You are speaking of this area here. This would be known as Royal Hollow.

Q. Would you put a-- Write in "Royal Hollow" where that is, Sgt. Weedman. Just draw a line with a yellow pen indicating where that road lies.

(The witness complied.)

A. Do you want me to label it also?

Q. Yes. If you would, just write "Royal Hollow."

(The witness complied.)

Q. Now, as the Highway 680 begins its inclination up through the John Hall, Bill Hall Branch, are there other various hollows that go off of it?

A. Yes, sir.

There are a couple of small hollows just outside of the East McDowell on 680, and there is another one in this area here.

(Indicating)

MR. SELF: I have no further questions of that exhibit, Your Honor.

THE COURT: Mr. Marshal, if you would,--

MR. SELF: (Interrupting) Hand the Clerk what has been previously marked for identification as 5xM.

(The Clerk complied.)

**********

MR. SELF: Mr. Marshall, if you would, would you have the Clerk what's been previously marked as 5xM?

THE COURT: 5xM?

MR. SELF: Five times M, Your Honor.

THE COURT: Oh.

MR. SELF: Instead of writing M five times on the exhibit I just wrote 5 times M.

THE COURT: All right.

MR. SELF: According to the Court's marking procedure it should have been 5MMMMM.

THE COURT: I thought you said 5xM?

MR. SELF: But I did it algebraically, that's 5 times M instead of 5M's on it.

THE CLERK OF THE COURT: Your Honor, what's been previously marked for identification as Government Exhibit 5xM has now been marked for the purpose of the trial as Government Exhibit 3.

MR. SELF: Your Honor, to save time, can we take a break at this time. I'm prepared again to make these exhibits available for all the Defendants to examine. They've been available for several days, but rather to have them waste the

jury's time.

THE COURT: I believe we'd better follow this procedure.

MR. SELF: Yes, Your Honor.

THE COURT: The other would be more expedient, but I would suggest we follow this procedure.

THE MARSHALL OF THE COURT: Your Honor, this exhibit has been shown to opposing counsel.

THE COURT: Thank you, sir. Please hand it to the witness.

Q. Sergeant Weedman, again, do you recognize that document as an aerial photograph of the East McDowell, McDowell area taken approximately November and December of 1983?

A. Yes, sir, I do.

Q. And were you present when that photograph was taken?

A. Yes, sir, I was.

Q. And does that photograph fairly and accurately represent the physical locations of towns, highways, hollows, as they existed in January and February of 1982?

A. Yes, sir, it does.

MR. SELF: Your Honor, now at this

time I move for the introduction of what's previously been marked for identification as Government Exhibit 5xM.

MR. PAFUNDA: Your Honor, we have no objection.

THE COURT: Being no objection, let that which was previously marked as identification Government Exhibit 5xM finally admitted into evidence as Government Exhibit 3.

MR. SELF: Thank you, Your Honor.

Q. Mr. Weedman, again would you place that upon the board there so you can show some areas to the ladies and gentlemen of the jury.

Mr. Weedman, when you point out to the ladies and gentlemen of the jury the locations of various areas that have been previously indicated on that map, I'll ask you if the areas that have been previously marked on that map fairly and accurately locate or indicate the location of various highways and communities in the East McDowell area?

Do they represent where they're at?

A. Yes, sir. They represent

as noted where those locations are.

Q. Would you point those out to the ladies and gentlemen of the jury?

A. This area is noted here as McDowell. And this area here, Kentucky 122 traveling towards Wheelwright here (indicating). Kentucky 680 running here across John Hall Mountain. Kentucky 1929 Frasure Creek running off in this direction. Of course, this area here would be Loyall Hollow.

Q. Just put an RH there and circle that general area, if you would, Mr. Weedman (indicating).

Are you familiar with the first hollow that comes off of 680 as it goes and leaves East McDowell?

A. There is a hollow there, sir, but I'm not too familiar with that hollow.

Q. Do you know who lives at the head of that hollow?

A. No, sir, I don't.

Q. And that is another view of the same area that's depicted in Government Exhibit No. 2, is it not, Mr. Weedman?

A. Yes.

MR. SELF: Marshall, if you would, I'd ask you to hand the Clerk what's been marked for identification previously as Government Exhibit 5xL.

THE CLERK OF THE COURT: Your Honor, what's been previously been marked for identification as Government Exhibit 5xL has now been marked for the purpose of trial as Government Exhibit No. 4.

THE MARSHALL OF THE COURT: Your Honor, Exhibit No. 4 has been shown to opposing counsel.

THE COURT: Thank you.

Q. Sergeant Weedman, the document you've just been handed, do you recognize that as a high altitude photograph of the East McDowell area and Frasure Creek taken in approximately November and December of 1983?

A. Yes, sir, I do.

Q. And as far as the location of highways and mountains and hollows, does that photograph fairly and accurately represent the location of those highways and communities as it existed in January and February of 1982?

A. Yes, sir, it does.

Q. The same hollows and the same hills that existed, is that correct?

A. Yes, sir.

MR. SELF: Your Honor, at this time I move for the introduction of what's previously been marked for identification as Government Exhibit 5xL.

MR. THOMAS: We have no objection, Your Honor.

THE COURT: Being no objection that which was previously marked as Government Exhibit 5xS --

MR. SELF: (Interrupting) L, excuse me, Your Honor.

THE COURT: L, is finally admitted into evidence as Government Exhibit No. 4.

Q. Mr. Weedman, again, would you place that upon the easel there so you can show it to the ladies and gentlemen of the jury (indicating)?

Mr. Weedman, the Government Exhibit No. 4 has indicated on it the location of certain highways and communities. Are those accurate as far as where they represent the highways is and the number of the highway or the name of that community?

A. Yes, sir, they are.

Q. They also represent the indication and location of certain hollows out of East McDowell on Frasure Creek?

A. Yes, sir. Hoods Fork is indicated, and Frasure Creek.

Q. For the purpose -- it's hard to see down at this end. Will you show where Frasure Creek starts on that photograph and where it runs off to?

A. Okay, again, in this area here in McDowell community, this area here is what's known as East McDowell. Frasure Creek starts where Kentucky 680 runs over across from Bill Hall and John Hall Branch Mountain. Frasure Creek runs in this direction. Hoods Fork is the hollow off to the left of Frasure Creek running up in the hollow indicated here (indicating).

Q. And does Hoods Fork split at one point?

A. Yes, sir. It goes up there a piece and splits to the left and right fork.

Q. Do you know who lives right there where it splits?

A. No, sir, I don't.

Q. And is this photograph looking -- an aerial photograph looking more or less from the Mud Creek area torwards East McDowell?

A. Yes, it's taken from -- from a somewhat easterly direction towards the McDowell area from Mud Creek.

Q. Again, is Highway 680 indicated on that map accurately where it runs from East McDowell to Mud Creek?

A. Yes, sir.

MR. SELF: Mr. Marshall, if you would, I'll ask you to hand the witness what's previously been marked for identification as 5xK.

THE CLERK OF THE COURT: Your Honor, what's previously been marked for identification as Government Exhibit 5xK has now been marked for the purpose of trial as Government Exhibit No. 5.

THE MARSHALL OF THE COURT: Your Honor, defense counsel has been shown the exhibit.

THE COURT: Thank you, hand the witness the exhibit.

Q. Sergeant Weedman, do you recognize that as an aerial photograph of the McDowell, East McDowell area taken in approximately the latter part of 1982 -- '83?

A. Yes, sir.

Q. And does that photograph fairly and accurately represent the existence of various highways, hollows, and communities as they existed in January and February of 1982?

A. Yes, sir. It does.

MR. SELF: Your Honor, at this time I move for the introduction of what's previously been marked for identification as Government Exhibit 5K -- 5xK.

MR. ROWLAND: May it please the Court, we have no objection.

THE COURT: Being no objection let that which has previously been identified as Government Exhibit 5xK finally admitted into evidence as Government Trial Exhibit No. 5.

Q. Mr. Weedman, again, would you please place that upon the easel (indicating).

Mr. Weedman, it's been indicated on there the location of certain highways and communities. Are those true and accurate representations of the locations of various highways and communities?

A. Yes, sir.

Q. Would you indicate to the ladies and the gentlemen of the jury what has been represented therein, in that photograph?

A. On the -- this would be the lower right hand corner here is the East McDowell area. Kentucky 680 runs through here over to the Mud Creek area. And again, this would be Royal Hollow.

Q. Would you again, as you've done on previous maps, take the yellow pencil and just write -- draw a line where Royal Hollow is and put RH on it (indicating)?

And is that the way it existed about -- I'm not talking about any mining operation, but the way the hills and the valleys were laid out in February of 1982?

A. Yes, sir.

MR. SELF: Mr. Marshall, I would like to hand the witness a aerial photograph which has not been previously marked for identification and ask that it be marked for its introduction at this time.

State for the record, Your Honor, I advised the defense counsel of this previously prior to today and made it available for

their inspection.

THE COURT: Let me suggest that it be marked for identification purposes as NPM No. 1, that's not previously marked.

THE CLERK OF THE COURT: Your Honor, the aerial photograph not previously identified by the alphabetical letters has now been marked for the purpose of trial as NPM1.

THE COURT: No, ma'am, that's for identification, the NPM1, but it's the Government Trial Exhibit No. 6.

THE CLERK OF THE COURT: It has been so marked, Your Honor.

THE COURT: Let me explain to the members of the jury why the necessity for all of these procedures in following -- you should be very much aware that we are making a record. These gentlemen here are making what's called a daily copy. A daily copy is done each day and given to counsel -- the counsel here. She -- this young lady to the right, she is the Official Court Reporter and she is making what is called the Official Report of the Proceedings.

After this is all over, in the event there is an appeal of this matter, in

the event that later a review wants to be made of what occurred here, they don't have the benefit of what -- which we have of being present and seeing. The only thing they can see is the written record. That's why we're trying to make sure this is a written record and we're getting everything in.

You will note that these gentlemen here every so often get up and go out and come back, that's because someone else is typing that up. But don't -- the Court feels you're going to get used to them going in and out. I'm saying this so that it won't divert your attention of what the witness is saying. What is important is what these witnesses are saying. We all perceive by many different senses, sight, taste, hearing, touch. But what the witness is telling you is only the one sense, and that's the hearing. So don't let a sight, something you see in your sight divert your attention from that. Attorneys usually caution the witnesses when they get on the stand and start talking. They say don't take your hands and move it around because the jury will be watching this rather than listening to what you're saying. I'm merely making this admonition because we will be having this little change. That has

nothing to do with this trial, so don't pay attention to it.

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

MR. SELF: None, Your Honor.

MR. SPENCER: None.

THE MARSHALL OF THE COURT: Your Honor, opposing counsel has seen the exhibit.

THE COURT: Thank you.

Q. Sergeant Weedman, do you recognize that document as an aerial photograph of the Frasure Creek area of East McDowell and Floyd County, Kentucky as it existed or as was taken in November or December of 1983?

A. Yes, sir, I do.

Q. And does that photograph fairly and accurately represent the location of various highways, communities, hollows as existed in January and February of 1982?

A. Yes, sir, it does.

MR. SELF: Your Honor, at this time I move for the introduction what's previously been marked for identification as Government Exhibit No. NPM1.

MR. WALBOURN: We have no objection, Your

Honor.

THE COURT: Being no objection, let what's previously been identified as Government Exhibit NPM1 finally admitted into evidence as Government Trial Exhibit 6. You may proceed.

Q. Mr. Weedman -- Sergeant Weedman, it's been indicated on that map and there's certain letters that have been placed on there in identification of certain creeks and hollows, are those accurate as to the representation of where those are on that map or on that photograph?

A. Yes, sir.

Q. Would you outline those to the ladies and gentlemen of the jury and the record, please?

A. On the lower left hand corner of the photograph, this is Frasure Creek, Kentucky 1929. The East McDowell area would be this area, to the left would be Frasure Creek. Traveling on up Frasure Creek towards the head you have the hollow that's marked Hoods Fork. This would be your first main left hand hollow as you're traveling towards Frasure Creek. On passed Hoods Fork, continuing on up towards the head of Frasure

Frasure Creek you come to Neds Fork. Neds Fork is indicated on here on the lower right hand side of the photograph.

Q. Sergeant Weedman, the center portion of that photograph going across Frasure Creek, is there a cut swath of land -- a cut swath of trees running sort of from the top to bottom of that photograph?

A. Yes, there is in this area at the head of what's called Hoods Fork. There is an area that is growing trees.

**********

Q. And do you know anything about that area?

A. There is a mining operation going on in that area at this particular time. The entrance is made to that area from the John Hall Branch Road and Kentucky 680.

Q. Do you know who is operating that strip area at this time, Sergeant Weedman?

A. The last knowledge I had, the operation of the Mine was the Ray-Mac Coal Company.

Q. Right off of Frasure's Creek, is that a power line running across the mountain down to Frasure's Creek?

A. Yes, sir.

Q. Is that indicated on that photograph?

A. There is no mark indicating it, but you can pick it out, it is rather faint, but it lies in the lower left-hand quadrant of the photograph between the marking Frasure's Creek and the marking Hood's Fork, the lighter colored area less than what the major line indicated on the photograph towards that route.

Q. Also on that photograph,

sir, are there gas lines that have been put in that area since January and February of 1982, or are you familiar with that?

A. I am not familiar with that.

Q. And at the mouth of what is called Hood's Fork, Sergeant Weedman, is there another bare area there along Frasure's Creek, and are you familiar with that?

A. Yes, sir. There is a small circular area near the intersection of Hood's Fork and Frasure's Creek. To the best of my knowledge, there is a cemetery in that area. I am not familiar with anything other than that.

Q. Thank you, Sergeant Weedman.

Now, to your knowledge, did the mining operation that is indicated in the center part of that map, did that exist as is shown in that photograph in January and February of 1982, the large portion of it?

A. Yes, there was a mining operation going on in that area at that time.

MR. SELF: Mr. Marshall, would you hand this witness what has previously been marked for identification as Government's Exhibit 5xO.

THE CLERK OF THE COURT: Your Honor, what has been previously marked as Government's Exhibit 5xO is now marked for purposes of the trial as Government's Exhibit 7.

Q Mr. Weedman, while counsel is examining that, would you explain to the ladies and gentlemen of the Jury what the dark thing is at the top of the Government's Exhibit No. 6?

A. The wing of the airplane when it was flying.

MR. SELF: Thank you.

THE MARSHALL OF THE COURT: All opposing counsel have viewed the exhibit.

THE COURT: I beg your pardon.

THE MARSHALL OF THE COURT: All opposing counsel have viewed the exhibit.

THE COURT: Thank you, sir. Please hand it to the witness.

Q Sergeant Weedman, do you recognize the document that has just been handed to you as an aerial photograph of certain portions of East McDowell area taken in November and December of 1983?

A. Yes, sir, I do.

Q And does that photograph

fairly and accurately represent the existence of various hollows and roads and houses as they existed in January and February, 1982?

A. Yes, sir, it does.

MR. SELF: And, Your Honor, at this time I move the introduction of what has previously been marked for identification as 5xO.

MR. SPENCER: Your Honor, we have no objection.

THE COURT: Being no objection, let that which has been previously identified as Government's Exhibit 5xO is finally admitted into evidence as Government's Trial Exhibit 7.

Q. Sergeant Weedman, would you tell the ladies and gentlemen of the Jury what that photograph depicts?

A. This is the same area which we have been speaking. It is the Hood's Fork area. Hood's Fork starting on down in the - - which would be off of the page on the lower right-hand corner, running upwards, and to the left where there is a house setting in the forks, from the left to the right.

On the left fork there is an area, a light color area which would be in the

upper left quadrant of the photograph.

Q. Do you know what that is?

A. That is the mining operation which we are speaking of.

Q. Ray-Mac?

A. Yes, sir. Ray-Mac Coal.

Q. To your knowledge, did that - - as depicted in that photograph, was that the way it existed in January and February of 1982?

A. I am not - - not familiar with the operation how much had been moved and what had been done there in 1982.

Q. Sergeant Weedman, on that photograph, can you also see in the lower left-hand corner the power line that you previously mentioned?

A. Yes, sir. The power line mentioned starting here (indicating), you can pick out one of the structures.

Q. Would you just take a yellow circle and draw around that structure?

A. There is one here (marking document), and then again there is one here (marking document), indicating one at the lower portion of the photograph on the right-hand side, and indicating another one on the lower half of the

left-hand side of the photograph.

Q. Is that the same power line that runs on down to Frasure's Creek?

A. Yes, sir.

MR. SELF: Let the record reflect he drew yellow circles around those two power poles.

THE COURT: Let the record so state.

MR. SELF: Mr. Marshall, if you would, I ask you to hand to the Clerk for marking what has previously been marked for identification as 5xQ.

THE CLERK OF THE COURT: Your Honor, the aerial photograph previously marked for identification as 5xQ has now been marked for purposes of the trial as Government's Exhibit No. 8.

THE MARSHALL OF THE COURT: Your Honor, opposing counsel has viewed this exhibit.

THE COURT: Thank you, sir.

Q. Sergeant Weedman, do you recognize the document which you have just been handed and marked for identification as Government's Exhibit 5xQ as an aerial photograph taken approximately November and December of 1983?

A. Yes, sir, I do.

Q. Is that an aerial photo-

graph showing the top of the John Hall/Bill Hall Branch?

A. Yes, sir, it is.

Q. And does that photograph fairly and accurately represent the existence of major highways and off roads as they existed in January and February of 1982?

A. Yes, sir.

MR. SELF: Your Honor, at this time I move for the introduction of what has previously been marked for identification as Government's Exhibit 5xQ.

MR. ADAMS: No objection, Your Honor.

THE COURT: Being no objection, let that which has been previously marked for identification as Government's Exhibit 5xQ is finally admitted into evidence as Government's Trial Exhibit 8.

You may proceed.

MR. SELF: Thank you, Your Honor.

Q. Sergeant Weedman, would you indicate to the ladies and gentlemen of the Jury where Mud Creek and East McDowell is in reference to that photograph?

A. East McDowell area will lay in this area (indicating). The upper left-hand corner

(indicating) which is barely visible in the corner itself.

The Mud Creek area would be off of the map - - or excuse me, off of the photograph in the lower right-hand quadrant. It would be the right-hand half of the photograph being the Mud Creek side of the John Hall Branch/Bill Hall Branch area (indicating).

Q. The area designated right there in the center, where it appears to be that three roads intersect, do you know what that is, Mr. Weedman?

A. Yes, sir.

Q. Right there (indicating)?

A. In this area (indicating) here, approximately the center of the photograph, this is Kentucky 680, which as stated before, runs from 979 Mud Creek on over into East McDowell.

The road bearing to the left as you look at the photograph goes back on what I know as the Ray-Mac Coal operation.

The one here on the - - bearing to the right is an access road back to this other ridge. At one time I believe there was a mining operation over here that brought about this

road here (indicating).

Q. Is that on the road leading off to the right-hand side?

A. Yes.

Q. Is that a road, Mr. Weedman, to your knowledge or - -

A. (Interrupting) No, it is not a paved and traveled road for the public use like that. It is just a trail, you might call it.

Q. To your knowledge, did that exist in January and February of 1982, the road off to the right, do you know?

A. I don't know about that, sir.

Q. The area located right in the center of that photograph, does there appear to be a knoll right in the center portion of that photograph?

A. Yes, there is a knoll in this area, the upper left quadrant.

Q. Is that the area - - is that the area - - right down in the knoll there appears to be land disturbance, is that what you know where the Ray-Mac Mining site was at, or part of it?



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A. Yes, sir, part of it.

MR. SELF: Mr. Marshall, I ask you to hand the witness what, Your Honor, has not been previously marked for identification, but which I have marked as NPM, or not previously marked number two.

THE CLERK OF THE COURT: Your Honor, the aerial photograph now identified as NPM No. 2 has now been marked for purposes of the trial as Government's Trial Exhibit No. 9.

THE COURT: Madam Clerk.

REPORTER'S NOTE: The Clerk of the Court confers with the Court.

MR. SELF: Your Honor, to save expedience, both of these are both similar, let me ask also that what has previously been marked as Government 5xP, also be handed to the witness.

THE COURT: All right. Let it be handed to the Clerk and marked first.

THE CLERK OF THE COURT: Your Honor, the aerial photograph previously identified as 5xP has now been marked for purposes of the trial, Government's Trial Exhibit No. 10.

THE COURT: Madam Clerk, let me see you

a moment.

REPORTER'S NOTE: The Clerk of the Court conferring with the Court.

THE MARSHALL OF THE COURT: Your Honor, both exhibits have been viewed by opposing counsel.

THE COURT: Thank you, sir. Please hand them to the witness.

Q. Sergeant Weedman, calling your attention to the two aerial photographs that have just been handed to you, do you recognize those as aerial photographs taken approximately November and December of 1983 of portions of the John Hall/Bill Hall - - top of the John Hall/Bill Hall Branch in Floyd County, Kentucky?

A. Yes, sir, I do.

Q. And to your knowledge, Mr. Weedman, do these photographs fairly and accurately represent the existence of various roads as they - - roads and hills and hollows as they existed in January and February of 1982?

A. Yes, sir.

MR. SELF: Your Honor, at this time I move the introduction of what has been previously marked for identification as NPM 2 and 5xP - -

MR. PAFUNDA: (Interrupting) May it please the Court, I would like to approach the bench on this matter.

REPORTER'S NOTE: At this time all counsel approached the Bench and the following was heard:

MR. PAFUNDA: I would like, at this time, to object to the introduction of these two photographs marked Government's Exhibits 9 and 10 for the reason that Mr. Self has not laid a proper foundation with regard to whether any additions to the roads have been made with regard to the photographs.

In other words, it appears that the roads have been changed since - -

THE COURT: (Interrupting) Let me ask you this. Did the witness say they substantially reflect this area as it appeared in 1982?

MR. SELF: Roads and hills.

THE COURT: Did he say that?

MR. SELF: He said that.

THE COURT: Ask him again.

MR. PAFUNDA: Here is my point. The photographs become misleading to the extent that you have got another major highway there that

appears to be running into Ray-Mac.

THE COURT: Here is what we are saying is this. Just a moment. Here is what I am saying. If this witness says it substantially reflects the area as it appeared in 1982 during January and February, I will permit it into evidence, and then on cross examination you can show that there is a difference.

Now, if that - - if it is a difference which would be misleading, then we will note it. If you want to ask questions on voir dire - -

MR. PAFUNDA: (Interrupting) No.

THE COURT: (Continuing) I will permit it before.

MR. PAFUNDA: I want to clarify it for the Jury.

MR. SELF: Are you saying this road here didn't exist?

MR. PAFUNDA: There is a dirt road that is - -

MR. SELF: (Interrupting) There it is.

MR. PAFUNDA: That is it.

MR. SELF: That is an access road which crosses here (indicating). There is no road going up here (indicating). This is the access road

going here (indicating).

THE COURT: Gentlemen, you understand you have the voir dire right if you - - in laying the foundation of questions asked before, it is admissible.

MR. PAFUNDA: The reason this has come up in my mind is 680, I - -

MR. SELF: (Interrupting) Here is McDowell (indicating).

MR. PAFUNDA: You go over 680 to get into McDowell.

MR. HARWELL: May it please the Court, I respectfully ask to briefly voir dire the witness before Your Honor introduces the exhibits.

THE COURT: But now, let me suggest this, gentlemen. It might - -

MR. SELF: (Interrupting) Let me ask him - -

THE COURT: (Interrupting) Okay. Let's do this. What you - - when you gave them to him, you might get four or five more exhibits - -

MR. SELF: (Interrupting) I just have one more.

THE COURT: Then you can look it over, and that might speed it up.

MR. PAFUNDA: That isn't my point. I don't know whether that indiates with regard to the picture of the mining operation, it has perfunctory questions if it accurately does represent the area in 1982, according to the mining operations through November.

THE COURT: Here is what you are getting into. What is the purpose for which the aerial is permitted? You can have alterations if it doesn't detract from the purpose for which the exhibit was received.

MR. SELF: We are not indicating that some of the mining operation existed as it did at that time. We are indicating the location of the roads. This place didn't exist that way in 1982.

MR. PAFUNDA: That is my point.

THE COURT: Let me state this. I want Mr. Harwell to understand this. Now, I understand Mr. Jones's wife and someone is sitting back there.

MR. HARWELL: Yes, sir.

THE COURT: I think I'm going to - - I have asked the Marshall to - - I am going to block off part of the area back there, block it off to where - - not family members, but I am blocking off that particular area back there, it will be blocked

off, Mr. Harwell and there is nothing personal there.

MR. WALBOURN: I apologize, Your Honor, I can't hear.

THE COURT: Mr. Harwell's wife and them are sitting back there, and I am blocking that off. Family won't be sitting back there anymore.

MR. WALBOURN: In that location?

THE COURT: Yes, sir.

MR. HARWELL: Are you saying you want them over to this side (indicating)?

THE COURT: Right.

MR. HARWELL: You don't have to block it off, I will tell them myself.

THE COURT: No. I just don't want anyone back there.

MR. HARWELL: That will be fine.

THE COURT: I will explain it to you. I don't want them to think it was anything personal.

MR. HARWELL: I will explain it.

THE COURT: All right.

MR. SELF: One more exhibit for identification, and then do you want to take a break now?

THE COURT: Let's have the other exhibit, then we will take a break.

MR. PAFUNDA: Do you still want to voir dire this witness?

MR. HARWELL: The Court said we can't, I will do it on cross.

Judge, I respectfully ask the Court to reserve a ruling on the admissibility as to the last two photographs, nine and ten, or let me voir dire them.

THE COURT: I will let you voir dire them.

MR. HARWELL: Okay.

THE COURT: The proper procedure would be to voir dire.

MR. HARWELL: The Court could reserve the ruling, and wait for the witness on cross, but I would rather you not.

THE COURT: Okay.

REPORTER'S NOTE: End of Bench Conference.

*** *** ***

MR. SELF: Your Honor, may I approach the witness?

THE COURT: Yes, sir.

MR. SELF: I am putting this on the board for the purposes of asking the witness questions, even though it has not been introduced at this time, Your Honor.

THE COURT: Yes, sir.

Are there any objections to that?

(Defense counsel shaking heads negatively.)

MR. SELF: Mr. Weedman-- May I ask the witness questions from here, Your Honor?

THE COURT: Certainly.

Q. Sgt. Weedman, the road which is depicted in these two photographs which are marked, and nine is unmarked, leading right to the center of the right-hand portion, is that Kentucky Route 680 as otherwise known as Mud Creek?

A. Yes, sir, it is.

Q. Is that the same road that is depicted in what is marked as Government's Exhibit No. 10 leading down to Mud Creek?

A. Yes, sir, it is.

Q. And there is a sign that

says "To Mud Creek"; did that road exist in January and February of 1982?

A. Yes, sir, it did.

Q. Did it exist in substantially the same condition, not counting potholes that may have been in it, as in this photograph?

A. Yes, sir.

Q. In the center of both of these two photographs there appears another--appears to be a road in the same condition as 680 that is in Government's Exhibit No. 10, and it is coming off immediately the center portion of that highway?

MR. HARWELL: Excuse me, Mr. Self. If the Court please. I don't want to obstruct anybody's view, but Mr. Self may be solving what we discussed at the Bench. May I kneel up there beside the court reporter?

MR. SELF: I will get out of the way, Your Honor. That way everybody can see.

THE COURT: All right. Now, we are just making this exception for this exhibit. Other than that, gentlemen, I want counsel to stay back at the podium.

MR. SELF: Yes, sir.

Q. Sgt. Weedman, on what is

marked as Government's Exhibit No. 10, there is a road that comes immediately off of the center of that photograph directly down to the bottom of that photograph; is that an access road, or what-- Did that road exist in January and February of 1982?

A. Yes, sir, it did.

Q. The same road--is this the same road that appears in No. 9 coming off the center right-hand portion down to the center and bottom portion of the same?

A. Yes, sir.

Q. Is that road--was it, at the time you took that photograph, the same or substantially the same condition as it was in January, February of '82 as it was when the photograph was taken?

A. Yes, sir.

Q. Now, there appears to be land disturbances on both sides of the photograph. Did those land disturbances exist in January and February of 1982 as they are depicted in these photographs?

A. The land surfaces, sir, I would not be able to verify that. I don't know.

Q. The roads--both the access

roads and the major highways that existed in January and February are substantially as they appear in these photographs?

A. Yes, sir.

MR. SELF: Your Honor, at this time I again renew my motion for the introduction of these two documents.

MR. HARWELL: At this time, may the Court please, I respectfully request the Court to briefly voir dire prior to responding to that motion.

THE COURT: Go ahead, sir.

MR. HARWELL: Judge, may I approach the witness and get the pointer just this time?

THE COURT: Yes, just for this exhibit only.

MR. HARWELL: Yes, sir.

I will start from here and then move forward when I need to. May I, if that is consistent with Your Honor's wish?

THE COURT: Yes, sir.

MR. HARWELL: Mr. Weedman, my name is Aubrey Harwell, and I represent Edgar Jones. And consistent with the rules of procedure, I need some clarification as to these photographs.

With the Court's permission,

let me show you what I am requesting.

THE COURT: All right.

MR. HARWELL: Have you got the pointer, sir?

THE WITNESS: Right here, sir.

VOIR DIRE EXAMINATION

BY MR. HARWELL:

Q. Mr. Weedman, I understood--You are going to have to help me with my highway numbers. But I understood you to say that this is 680 here--Kentucky Highway 680? (Indicating)

A. Yes, sir.

Q. Is that right, sir?

A. Yes, sir.

Q. This one right here? (Indicating)

A. Yes, sir.

Q. All right, sir. And I understood you to say this is an access road, not a state or county highway, this road leading down through here?

A. Yes, sir. That is correct, sir. You can't tell it from here but this is somewhat upgrade off of this 680.

Q. All right, sir.

Now, in January and February of 1982, were you in this area on 680 where this now access road was?

A. In some part of January, I--I probably was, sir, because-- Of course, I travel frequently to that area.

Q. All right, sir. But let me get you, Mr. Weedman, to look at this area of Exhibit No. 9, and you will see, sir, what I suggest respectfully appears to be a cut. Do you see that?

A. Yes, sir.

Q. Have you seen that in person, so to speak, and not just from the photograph?

A. Yes, sir.

Q. That cut?

A. Yes, sir.

Q. And isn't it-- Am I correct in saying that that is an access road right here? (Indicating)

A. That may very well could have been at one point in time an access road, yes, sir.

Q. Now, the point of my question, Mr. Weedman, is--for clarification sake, I understand that in January and February of 1982 that this

access road--the one I just showed to you, sir, was the one that was in existence; and that this bigger access road, the serpentine, was not as it is depicted on this photograph.

Do you have knowledge whether I am right or wrong on that?

A. Sir, as I said, substantially the same road. They--

Q. (Interrupting) This serpentine road?

A. Yes. If the access road gets bad, or have a better grade or something, they vary it a little bit; but the entrance road is in this area.

Q. Yes, sir. I am not making myself clear, Mr. Weedman.

Assume for a minute, sir, that this area here is an access road, right here. (Indicating)

A. Okay.

Q. And assume this is an access road. (Indicating)

A. Yes, sir.

Q. My point is, sir, isn't it true that in January and February of 1982 that this



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not so easy to distinguish road was the prime access road off of 680 to this mine site, this one up here? (Indicating)

A. It could have been, sir.

Q. All right, sir.

And am I also correct in saying that this road was not so well improved and not so easily distinguishable in January, February of 1982 as it was when this picture was taken?

A. Yes, sir, that may very well be possible.

Q. All right, sir.

And do you have knowledge, sir, whether or not this more difficult to see access road was or was not the main and most frequently used access road to this mine site instead of the one that is so pretty and well laid out on the photograph? And I am referring to January and February of 1982.

A. I would not have knowledge of that, sir.

MR. HARWELL: May the Court please. May counsel approach the Bench briefly? I have completed my voir dire, Your Honor, on this witness.

THE COURT: Let me ask you this. It appears that the primary thrust of your questioning

as to whether or not a particular road was a primary road or secondary road; is that the basis of it?

MR. HARWELL: Judge, that is part of the basis of it.

The second basis of it is that what I am saying is that the serpentine road did not exist in January and February of '82 as it now exists.

If the picture had been taken then, it would look more like that short road instead of being, obviously, more main road.

THE COURT: All right. Let me do this. What is the purpose for which the exhibit will be offered to aid the jury?

MR. SELF: To show the location of the access road where the shooting occurred on the picket line, Your Honor, where Highway 680 is, and show where the shooting--the men were shot at later on by other witnesses, not by this witness, and to prove-- I will show you the photograph showing that is the access road.

THE COURT: Let's don't get into specifics. The general purpose of any exhibit is to aid the jury. That's all.

Now, if this is to aid the

jury in roads being there, now, other witnesses can say whether it is--if the roads are there.

If the skeleton is there, the other witnesses can say that the primary or secondary road. This is just a-- Does the jury understand the purpose of an exhibit?

(Jurors nodding in the affirmative.)

MR. HARWELL: Your Honor, I may be able to help the Court.

THE COURT: But I want the jury to understand the purpose for which it is admitted, and it is permitted for that purpose only.

MR. HARWELL: Yes, sir. May the Court please. I would not object to this photograph if the Court would give an admonition to the jury as to the purpose of it and as to the fact that there very well may be testimony indicative of the fact that in January and February of '82 that scene where those three roads come together may prove to be significantly different than depicted in the photograph. With that admonition, I don't object. I can't speak for these other lawyers.

THE COURT: That is my admonition. Does the jury understand that?

(Jurors nodding in the affirmative.)

MR. HARWELL: Thank you, Your Honor.

THE COURT: So-- Now, of which photographs were we speaking, gentlemen?

MR. HARWELL: Exhibits 9 and 10 for the Government, Judge.

THE COURT: Yes, sir. Are we speaking to both?

MR. SELF: Your Honor, they both would essentially depict the same road and the same area, just at different angles.

THE COURT: All right.

Does the jury understand the purpose for which Exhibits 9 and 10 are being admitted?

(Jurors nodding in the affirmative.)

THE COURT: If there is anyone that doesn't understand that purpose, would you please raise your hand?

Let the record reflect no hands were raised.

And for the purpose for which it has been stated, that which was previously marked for identification as Government's Exhibits NPM2 and 5xP are finally admitted into evidence as Government's Exhibits 9 and 10, respectively.

You may proceed.

MR. SELF: Thank you, Your Honor.

DIRECT EXAMINATION (Resumed)

BY MR. SELF:

Q. Mr. Weedman, again repeating myself. Kentucky Route 680, as depicted in that photograph, existed in January and February, 1982, did it not?

A. Yes, sir, it did.

Q. In January and February of 1982, did there exist an access road leading off Kentucky 680 ahead of John Hall and Bill Hall Branch in the same area as the access road that is depicted in that photograph?

A. Yes, sir. The same area was access road.

Q. There was an access road?

A. Yes.

Q. And it is your testimony that you don't know, but there may have been another access road; is that what you are saying?

A. The same exit there, if you want to call it that. There is a fork on up the ways. There could have been more than one, yes, sir.

Q. Okay. In that photograph

there is, across 680 from the Ray-Mac site, there is a couple of roads; do you know what those are? And did they exist in January and February, 1982?

A. I can't say for sure when those roads were put in, whether it was January and February of '82 or not, sir.

MR. SELF: Mr. Marshal, if you would, hand the witness what has previously been marked for identification as Government's Exhibit 5xR.

(The Clerk marked the exhibit.)

THE CLERK OF THE COURT: Your Honor, the exhibit previously marked for identification as Government's Exhibit 5xR has now been marked for the purposes of trial as Government's Trial Exhibit No. 11.

(Defense counsel examining the above-referred to exhibit.)

THE MARSHALL OF THE COURT: Your Honor, opposing counsel has examined the exhibit.

THE COURT: Please hand it to the witness.

(The Marshall complies)

Q. Sergeant Weedman, have you ever seen that exhibit before?

A. Yes, sir.

Q. Isn't it a fact that it is not one of the photographs that you all took back in February or March - - or November and December of '83? It is not one of those, is it?

A. No, sir.

Q. You didn't take that photograph, did you?

A. No, sir.

Q. Are you familiar with the

area that is depicted in that photograph, Mr. Weedman?

A. Yes, sir, I am.

Q. And how are you familiar with it?

A. This is the John Hall, Bill Hall Branch area of Kentucky 680. It shows the top of the mountain and that general area.

Q. And does that photograph accurately and truly represent the existence of Kentucky Highway 680 as it existed in January and February, 1982?

A. Yes, sir.

Q. And does it fairly and accurately represent where a haul road existed leading to Ray-Mac's Mining operation in January and February, 1982?

A. Yes, sir.

MR. SELF: Your Honor, at this time I would move for the introduction of what has been previously marked for identification as Government's Exhibit 5xR.

MR. HOLLON: Your Honor, we would like the same admonition you gave to the Jury as to this exhibit as to the two previous exhibits.

THE COURT: Does the Jury understand the purposes for which this exhibit is admitted into evidence?

Let me explain it this way. A picture such as this may reflect the existence of roads. Whether or not those roads were primary roads or secondary roads may not be reflected on this.

This is what you consider as evidence which will be developed by other witnesses. But this is to portray either the existence or non-existence of roads which were in the months of January and February of 1982.

I think it has been stated that perhaps these roads may - - may have been somewhat altered in this time.

However, this is a substantial representation of the - - this is merely to aid the Jury in understanding the area as it existed at one time.

There may be some discrepancy. But this witness is submitting those discrepancies will not be substantial.

But the evidence will develop that. Do all of you understand that?

(Jurors nod affirmatively)

THE COURT: This is merely to aid the Jury.

Are there any objections or corections to the Court's admonition, gentlemen?

MR. HOLLON: No, Your Honor.

MR. SELF: None, Your Honor.

THE COURT: Subject to those exceptions, what says the Defendants with regard to the introduction of this exhibit?

MR. HOLLON: No objection.

THE COURT: All right. There being no further objection, that which has been previously marked for identification as Government's Exhibit 5xR is finally admitted into evidence as Government's Trial Exhibit, what, Madam Clerk?

THE CLERK OF THE COURT: No. 11, Your Honor.

THE COURT: No. 11.

Q. Sergeant Weedman, would you show that photograph to the Jury and explain to them which direction is which on it?

A. Can the Jury see that without any glare?

MR. SELF: Just place it up on the

board, Mr. - -

THE COURT: (Interrupting) I don't know if the witness - - if the witness may, I will permit the witness to stand down in the central part and demonstrate that.

MR. SELF: Please.

(The Witness complies)

THE COURT: Can you do it from there, Sergeant Weedman? If you can't, do it from there.

(The Witness complies)

THE COURT: I believe, Mr. Slone, you are the one on the far end; is that correct, sir?

MR. SLONE: Yes, sir.

THE COURT: Can you see it?

MR. SLONE: It is tough, but I can see it.

THE COURT: All right.

Let the record reflect that Mr. Slone is the Juror who is seated the farthest away from the exhibit.

MR. SELF: It is close between he and Mr. Ratliff, I think, Your Honor.

Q. Proceed, Mr. Weedman - - or Sergeant Weedman, if you would.

A. Do you want me to point out

the different areas on this photograph?

Q. If you would, please, to your knowledge.

A. All right. The area to the right of the photograph will be the Mud Creek area, Kentucky 979 area, which is off the photograph.

The road running across the center of the photograph of - -

Q. (Interrupting) Right to left?

A. Right to left is Kentucky 680.

At the - - I am trying to give you a reference point off of Kentucky 680 in the lower left quadrant of this photograph which is in color, and you will see a green dot - - green dot. That is on top of the point on John Hall Mountain in the area peak where the hill crests.

This running, of course, to the left from this reference point in the green circles, which is a pond just towards East McDowell.

Q. To your knowledge, Mr. Weedman, did that pond exist in January and February, 1982, or do you know ?

A. I have no knowledge of that,

sir.

Q. Is the access road that is depicted in that photograph the same location or same access road as depicted in Government's Exhibits 9 and 10?

A. Yes, sir, it is the same - - same area. It is not quite as much detail. Of course, it is covered. But it is in the same area.

Q. And that is a straight down aerial photograph of the area as opposed to some of the side angles that you have taken in 9 and 10 in the other photographs, is it not?

A. Yes, sir, it appears to be.

Q. Does that photograph bear the designation of when it was taken, Mr. Weedman?

A. Yes, sir, in the upper left-hand corner. It has "13 Mar""(March)'83". It has also "Mud Creek one and two, twelve thousand", I guess or the ratio one to five, and a zero on it.

MR. SELF: All right. One moment, Your Honor.

Your Honor, I have no further questions of Mr. Weedman - - Sergeant Weedman at this time.

THE COURT: Thank you.

Did any of you - - let me ask you this. Is there anyone on the Jury that doesn't understand my "not now" admonition? Remember, my not now admonition means not to make up your mind on the issues of this trial until you hear all the evidence and instructions, and not to discuss this case.

Why I call it "not now" is when we get to the deliberations, I will say that now you can discuss the case among yourselves.

But until that time, I have to say "not now". I don't want to repeat that. The Jury will consider itself still under the not now admonition. Do all of you understand that? Please nod your head if you do.

(Jurors nod affirmatively)

THE COURT: Is there any objections to the Court doing this in this manner?

MR. SELF: No, Your Honor.

MR. PAFUNDA: No, Your Honor.

THE COURT: Marshall, be in recess for fifteen minutes.

Everyone remain seated until the Jury has left the Courtroom.

(All comply)

THE MARSHALL OF THE COURT: Your Honor, all Jurors are outside the Courtroom.

THE COURT: Mr. Marshall, you may excuse the remaining members.

Court will stay in recess for fifteen minutes.

THE MARSHALL OF THE COURT: All rise. This Court will stand recessed for fifteen minutes.

REPORTER'S NOTE: At this time a fifteen minute recess was held.

*** *** ***

MILLERS FALLS
EZERASE
COTTON CONTENT

(Reporter's Note: At this time the Court was called to order by the Marshall at 11:07 A.M.)

THE MARSHALL OF THE COURT: This Court is now in session, please.

THE COURT: Madam Clerk.

(Reporter's Note: At this time there was a discussion between the Clerk and the Court at the Bench.)

THE COURT: Are we ready to proceed, gentlemen?

MR. SELF: Yes, Your Honor.

MR. HARWELL: May I?

THE COURT: Yes, sir.

CROSS EXAMINATION

BY MR. HARWELL:

Q. Mr. Weedman, if you'll be kind enough to answer some questions I pose for a minute or two, and I only have one or two, to follow up.

I have been to this area, let me see if you and I are in agreement as to what's depicted in Government's Exhibits 9 and 10.

MR. HARWELL: Judge, I think it would

helpful to the jury if I could get the pointer and approach those two exhibits. It's virtually impossible to stand here and point at what I need the witness to look at in responding to my questions. I know Your Honor's rule about the podium, but it makes it awful difficult to communicate.

THE COURT: Well, let's try from the podium first.

MR. HARWELL: Could I get the witness to stand up with the pointer next to the photograph?

THE COURT: Yes, that would be fine.

Q. Have you got a pointer there, Mr. Weedman?

Look at -- what exhibit, sir, is it closest to you? Is that 9?

A. This is Exhibit 9.

Q. And the one next to it, what is that exhibit number?

A. This exhibit is 10.

Q. All right, sir. And they depict basically the same area of Floyd County, do they not?

A. Yes.

Q. All right, sir. For the purpose of my questions, let me get you to look at

9, because I can see that one better. It does not have a glossy finish like Exhibit 10 does.

Point, if you would, sir, to 680 for the purpose of the jury's understanding and the access road to the mining site off 680. You see where that little T is, right there?

A. Right.

Q. Now, you indicated earlier, Mr. Weedman, that you're familiar with that area and you occasionally travel 680 and go by that access road. Am I right?

A. Yes, sir.

Q. All right, sir. It's difficult for one who has not been there to look at an aerial photograph and determine topography, that is hills and valleys and high and low places.

A. Yes, sir.

Q. Would I be accurate in saying, Mr. Weedman, that 680, where you've got your pointer, there, in running on by the access road, that is a fairly level stretch of road, is it not, sir?

That little stretch right in there (indicating).

A. It is fairly level, there's

somewhat of a --

Q. (Interrupting) A slightly upward incline?

A. That would incline, yes.

Q. But slight?

A. Yes.

Q. All right, sir. Now, let me get you, Mr. Weedman, to focus your attention where your pointer is on that access road. Would you agree with me, sir, that that access road is a upward incline as you leave 680?

A. Slightly upward incline, not much, but what you can see there is a slight incline.

Q. And more so than the slight incline that you and I talked about on 680, would you agree with that?

A. Something similar, sir.

Q. All right, sir.

Now, can you tell --

THE COURT: (Interrupting) Have we a copy of this? If you have, it would be helpful for Mr. Harwell if he had a copy there at the podium--

MR. HARWELL: (Interrupting) Thank you,

Judge.

THE COURT: I think it would be helpful when he's asking the questions.

MR. HARWELL: Thank you, sir.

MR. SELF: I have here some views of the area.

MR. HARWELL: Thank you.

Judge, I appreciate Mr. Self giving me this, Your Honor, but my sight is not what it used to be. I found it, Judge.

THE COURT: All right.

Q. Let me ask you this, Mr. Weedman. Can you -- I'll tell you what I'd like for you to do. If you put your pointer up there where the access road comes off 680, okay.

Now, from that point, sir, down that access road take your pointer to where you can see the last point which you can see, the furthest reach of the access road if you're standing right there where you've got your pointer. Show that to the ladies and gentlemen of the jury. Am I making myself clear?

A. Yes, you're making yourself clear, but it would be rather difficult,

I would say something in this area.

Q. Now, is that by virtue of the road curving or by virtue of the ups and downs, the hills?

A. You have a curve starting here, and your elevation also in here.

Q. The upward incline that you mentioned a moment ago?

A. Yes.

Q. All right, sir.

And so, right where your pointer is now is about a greatest distance that you can see if you're standing right there at the intersection of 680 on the access road. Is that correct?

A. It's a rough approximation, sir. Somewhere in this area.

Q. All right, sir.

MR. HARWELL: May the Court please, may I hand the witness a felt tip pen and just get him to mark that?

THE COURT: Mr. Marshall will hand him the pen.

MR. SELF: The yellow -- the witness has a couple of yellow and red grease pencils if you

want to use that.

MR. HARWELL: That would probably be more clear, Judge, if we could do that.

THE COURT: Fine.

Q. If you would mark, sir, so when the jury looks at it later they will see again what you're talking about --

THE COURT: (Interrupting) So the record will reflect what color you're using.

MR. HARWELL: Yes, sir.

Q. And you're using, Mr. Weedman, a yellow pen. What I would like for you to do is put a straight line across that access road at the point where you think it's -- it's the last point on the road where you can see from that intersection.

A. Now, this is, as I said before, will be an approximation.

Q. I understand.

Now, so the record will reflect what that is, if you would, why don't you put your last initial W at either side of the line that you've drawn in yellow grease pencil.

Now, can you approximate in feet the distance between that yellow line and

where the access road goes off Highway 680.

A. No, sir. I would not want to venture a guess as far as the yardage or feet thereto.

Q. You just can't -- you just don't know?

A. No.

Q. All right, Mr. Weedman. With the Court's permission you may assume the witness stand.

THE COURT: Please be seated in the witness stand.

Q. You said you live in Floyd County, sir?

A. Yes, sir, I do.

Q. What's the name of that community?

A. The Water Gap area.

Q. All right, sir.

And about how far is the Water Gap area from the area depicted in Government Exhibits 9 and 10?

Not as the crow flies.

A. I would say an estimate of fifteen miles, something on that order.

Q. Fifteen miles?

A. Yes, sir.

Q. One other question.

What part of the county is that in?

A. The area I live in, sir?

Q. Yes, sir.

A. That would be the Prestonsburg area. The -- just north of the center of the county.

Q. I'm sorry, sir. North of what county?

THE COURT: North of the center.

Q. North of the center of the county?

A. Yes, sir.

MR. HARWELL: Thank you, Mr. Weedman. Thank you, Mr. Self.

THE COURT: Are there any additional witnesses by the counsel for the Defendants?

MR. WALBOURN: Witnesses, Your Honor?

THE COURT: I mean questions.

MR. PAFUNDA: Your Honor, I have just a few questions.

THE COURT: All right, Mr. Pafunda.

CROSS EXAMINATION

BY MR. PAFUNDA:

Q. Sir, this area that's depicted on Government Exhibits 9 and 10, how far is that from what's known as East McDowell?

A. How far is it from East McDowell, sir?

Q. Yes, sir.

A. A rough approximation of three miles.

Q. And in order to travel from East McDowell you have to travel over John Hall's Branch, as you come from East McDowell into the area portrayed on Goverment Exhibit 9 and 10?

A. By the road, yes, sir.

Q. And as you come to the top of the hill which is where that T is on Government Exhibit 9 -- No. 10, that is the peak of the mountain, the paved road now?

A. In that area, sir. You're speaking of the T as the --

Q. (Interrupting) Yes, you can point --

A. (Continuing) -- intersection of the roadway, sir?

MR. PAFUNDA: If it pleases the Court, may he also use the pointer at this time?

THE COURT: Yes.

Q. Use the pointer, sir, so the jury can follow you.

A. You're speaking of Exhibit 10, this T here is what you're speaking of?

Q. Yes, sir.

A. Yes, this is the break of the mountaintop.

Q. And that's known as John Hall's Branch?

A. Yes, the roadway.

Q. And it travels over toward Mud Creek, right?

A. Yes, sir.

Q. And as it leaves out of East McDowell up what -- a steep mountain?

A. It used to be a steep mountain, as you go up. Of course, it runs through the flat of the watershed there, the creek area. As you get close to the mountain you start a steep incline.

Q. Would it be fair to say that that paved highway has no berm on either side.

One side is right up against the mountain and the other side drops off drastically?

A. Almost there, there are some wide spots along there.

Q. And those wide spots along there are located towards East McDowell, is that correct, sir?

A. They're located on both sides of the ridge, sir.

Q. But in the area of East McDowell, in that direction, sir?

A. There's some wide areas as you go up around the mountain also.

Q. And with regards to Government's Exhibit No. 9, again in the T area, as Mr. Harwell was indicating earlier, where you've marked it appears on the photograph, all those roads are gray and it may be obvious but someone on the jury may be unfamiliar with this. This road that we call the access road, that is a dirt road, is that correct, sir?

A. Yes, sir.

Q. You can take the witness stand again.

In response to Mr.

Harwell's questions as well as on direct examination, you said you're familiar with the McDowell area?

A. Yes, sir.

Q. Would it be fair to describe the McDowell area as a small mining community in Floyd County?

A. Yes, sir.

Q. And do you know the approach there by the Gulf gas station where you go into East McDowell, off the main highway that leads to Wheelwright?

A. Okay, that would be passed the Appalachian Regional Hospital on the right hand -- the left hand turn which is Kentucky 680 at Larry Stumbo's Gulf Station.

Q. And would it be fair to say that most of the homes located along that area would be what we would call mining camp homes?

A. In the curve area before youreach it, there are some camp homes, so to speak. However, back in the East McDowell area there are some brick homes and ranch types.

Q. And coal mining is the major business for the McDowell area, is that



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correct, sir?

A. Yes, sir.

MR. PAFUNDA: Thank you very much.

THE COURT: All right, sir. I won't go Defendant by Defendant. But is there any additional questions?

MR. WALBOURN: I have just a few, Your Honor.

THE COURT: Yes, sir. And when you do, for the purposes of the record, identify yourself.

CROSS EXAMINATION

BY MR. WALBOURN:

Q. Mr. Weedman, my name is E. J. Walbourn. I represent several of the Defendants in this matter.

I have just a few questions, more of a technical nature.

Government Exhibits 2 through 10, were those pictures all taken at the same time on the same day?

A. Yes, sir.

Q. And you were present when those pictures were taken?

A. Yes, sir. I directed to take those pictures.

Q. Do you recall who took those photographs, please?

A. Agent Snabel of the Bureau of Alcohol, Tobacco and Firearms.

Q. Okay. And you were in a KSP plane?

A. ATF plane I was told.

Q. All right.

Mr. Weedman, if you would, look at Exhibit No. 2, photograph number two.

THE COURT: Mr. Marshall, will you please hand to the witness Government Exhibit No. 2?

Q. Looking at that picture, sir, going from right to left, can you tell the jury about how many miles is depicted in that photograph?

THE WITNESS: You want me to put this up, sir?

THE COURT: Yes.

A. You're speaking from this town here on over to here?

Q. Going across the photograph, about how many miles of terrain is depicted there?

A. I can give you an approximation on the road mileage, sir, which probably would be more than a straight line.

Q. If you would do that, please.

A. All right. About five or six miles.

Q. All right, sir. Now, Government's Exhibits 9 and 10 which are under that one, approximately how many miles are depicted across the face of that photograph?

A. On the road traveled here it would probably be no more than three-quarters of a mile.

Q. And what time were the pictures taken, if you recall?

A. The best I recall, sir, it was slightly after noon.

Q. Thank you.

Mr. Weedman, you have testified that you have been with the Kentucky State Police approximately eight and one-half years. Is

that correct?

A. Yes, sir.

Q. And you spent your entire eight and a half years in Floyd County?

A. With the exception of three months which I spent at Ashland. The rest of the remainder has been in the Floyd County area.

Q. When were those three months, sir?

A. Starting February 16th through May 15, 1982.

MR. WALBOURN: Thank you.

MR. BRANSEN: May it please the Court.

THE COURT: Yes.

CROSS EXAMINATION

BY MR. BRANSEN:

Q. Sergeant Weedman, I am Hershell Bransen, and I represent Donahue Halbert.

I'd like to talk to you about Government Exhibit No. 1, the map of Floyd County there.

Could you tell me what the scale on that map is, please?

A. The scale is one to

sixty-two thousand five hundred.

Q. Okay. Would it be possible for you to find Langley, Kentucky on there and mark it?

A. Yes, sir.

Langley is --

Q. (Interrupting) Langley or Maytown.

A. Maytown Station is the way it's marked, Langley or Maytown Station. That's the way it's marked on the map. Using a yellow grease pencil, I'll mark it; it's about the center of the lower half of the map.

Q. Could you tell us approximately how far it is from East McDowell to Langley from that map?

A. There would be two routes of travel that you could take. One you could go through back north towards Martin and down Kentucky 122 to the East McDowell area. Or you could go to Wayland and cross Kentucky 1086 to Minnie and then on down to East McDowell.

Let me get my bearings just a moment. On the Martin route probably twelve to fourteen miles from Langley through Martin to

East McDowell.

MR. BRANSEN: Thank you, I have no further questions.

MR. SELF: Your Honor, I have two --

MR. ADAMS: (Interrupting) I have one or two questions, Your Honor.

THE COURT: All right, gentlemen, let's do this. When we go down the line, let's stay in order, we're not going to do this and then back up.

MR. ADAMS: Yes, Your Honor. May I speak to Mr. Harwell just a moment, please?

THE COURT: Yes.

CROSS EXAMINATION

BY MR. ADAMS:

Q. Sergeant Weedman, my name is Eldred Adams and I'm from Louisa. I'm going to ask you some questions. If you don't understand me, just tell me.

Now, with respect to Government Exhibit 7, 9 and 10, as you will recall, there was some bare areas that appear to be mining sites. Do you remember those?

A. Yes, sir.

Q. Would you need to look at those?

A. Yes, I remember the areas you're talking about.

Q. All right. Isn't it a fact that you have no idea whether or not those apparent mining sites were in those locations in February of 1982?

A. No, sir. I don't know where the mining sites in that area would have been exactly.

Q. In fact, the Ray-Mac Mining sites could have been a substantial distance from those areas that appear to be mining sites on the map?

A. I don't know the substantial distance relative -- the distance relative to what, sir. It would be in the same general area.

Q. It would be some distance?

A. It would be a distance -- it would be some distance, yes.

Q. And you have no idea what it would be?

A. No, sir.

Q. Now, Sergeant Weedman, were you out of Floyd County on April the 16th, 1982 -- I'm sorry, strike that.

February 16th, 1982 through April of '82?

A. I was in and out of the county during that period of time, sir.

Q. And why were you in and out of the county?

A. I had been promoted and transferred to Ashland.

Q. You were what, sir?

A. I had been promoted and transferred from Pikeville to Ashland, Kentucky.

Q. All right. When the trouble started were you reassigned?

A. I had been given a reassignment effective February the 16th.

Q. And why were you reassigned, sir?

A. I was reassigned because I was promoted to the rank of Sergeant.

Q. I don't understand. You say you went to Ashland because you were promoted and then you came back from Ashland because you were

promoted again?

A. No, sir. I was promoted and sent to Ashland starting February the 16th. I stayed three months and then I believe it was May the 15th I was able to transfer back to the Pikeville Post.

MR. ADAMS: Thank you, Sergeant Weedman.

THE COURT: Is there any rebuttal?

MR. SELF: Yes, Your Honor.

THE COURT: I mean redirect, I'm sorry.

MR. SELF: Yes.

REDIRECT EXAMINATION

BY MR. SELF:

Q. Sergeant Weedman, in regards to Government Exhibit No. 9 -- Mr. Marshall, would you put that back on the board, please.

Is that the photograph you marked the yellow line on and indicated by your initial, Sergeant Weedman?

A. Yes, sir, it is.

Q. Now, was your testimony that standing in the middle of the intersection that's

as far as you can see under your impression?

A. Yes, under my impression that's as far as one can see in that area.

Q. If you were standing farther down on Route 680 toward Mud Creek, would you be able to see farther up that road?

A. You would probably be able to see farther around the ridge line, sir, yes.

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MILLERS FALLS
EZERASE
COTTON CONTENT

Q. Can you, from standing on that intersection, or down Mud Creek, see up to where they call the switchback in that access road?

MR. ADAMS: May it please the Court, can we approach the Bench?

THE COURT: Yes, sir.

(Reporter's Note: At this point, Mr. Adams and Mr. Self approached the Bench; whereupon the following was held:)

MR. ADAMS: Your HOnor, I don't think there is any foundation for it. He is saying when you sit here can you see or when you are standing there can you see this, it is speculation.

THE COURT: Well, of course, redirect, gentlemen, is for something which was brought up on cross-examination.

MR. SELF: This was brought up by Mr. Harwell's cross where he specified on the map can you see the road from standing at the intersection, it's redirect, based on the location where you are standing.

THE COURT: Redirect is in going into new matter, you understand what I am saying, new matter, but it's merely to-- In other words, the cross-examination does something--

MR. ADAMS: (interrupting) I understand that.

THE COURT: Okay.

MR. SELF: Thank you, Your Honor.

(End of conference at the Bench.)

MR. SELF: You remember my question? You want me to repeat it?

THE WITNESS: As I understood the question you asked, if you can see standing on the road towards the Mud Creek side, could you see the area of the switchback?

MR. SELF: Yes.

THE WITNESS: I'm not for sure, sir.

MR. SELF: Thank you. I have no further questions, Your Honor.

THE COURT: All right. Thank you, Mr. Weedman. You may stand down.

MR. SELF: May Sgt. Weedman be excused, Your Honor?

MR. PAFUNDA: We have no objection, Your Honor.

THE COURT: All right. Being no objection, Sgt. Weedman, you are permanently excused.

(The witness was excused.)

THE COURT: Call your next witness.

MR. SELF: At this time we ask that Exhibits 1 through 11 be passed to the ladies and gentlemen of the jury.

THE COURT: At this time you will permit the jury to examine those exhibits.

MR. SELF: Might I suggest rather than having the large map passed along, that it be placed in front of the jury's stand so they can view it if they wish. It is quite bulky, Your Honor.

THE COURT: Is there any objection?

MR. HARWELL: No, sir.

THE COURT: Move the easel there in front of them, Mr. Marshal, and let them observe it.

MR. SELF: Let the record reflect also just for the sake of the Clerk, we have those exhibits in a box, so she can use those to handle them rather than some other way, if the defense has no objection. There is nothing in it.

THE COURT: All right. Once the jurors examine a specific exhibit, pass it on to someone else, that way we can have a continuous process of examining going on. Keep it in line.

THE MARSHAL OF THE COURT: Can everyone see that?

MR. SELF: Your Honor, if any of the

jurors want to approach the large map closer, they may be permitted to.

THE COURT: If they want to move a little closer, Mr. Marshal, you may let them.

MR. HARWELL: We have a couple of housekeeping matters now, it may be a time for counsel to discuss it at the Bench while the jurors are looking at them, Your Honor, if you want to.

THE COURT: That will be fine.

MR. HARWELL: May the Court please, my understanding of Your Honor's wishes in terms of sequence of cross-examination was, up to this morning, that given the fact taht some Government witnesses might testify more as to one defendant than another, that counsel could work that out.

THE COURT: Right.

MR. HARWELL: I respectfully ask the Court if we could do it, not necessarily in sequence.

THE COURT: Well, I am not particularly worried about sequence. Here is what I want, gentlemen, is this. You must have some order to finally get this thing going. The purpose--the direct-- You have your direct, you have your cross-examination. Now, I don't mean merely keep it in line, what I am going to do-- I don't want it to be like a bunch of

ducks and everyone saying that we don't have any questions. I would like to go down and ask have you got any questions down through here, and I would like to feel like when I get to the end it is over with.

MR. HARWELL: There is a couple of witnesses, Judge, I would hope other counsel would cross on because they would have it, but after they finish, I might or might not. I want to be sure I--

THE COURT: (Interrupting) All right.

MR. ADAMS: If it please the Court, we can more or less advise the Court we defer cross-examination if its needed.

THE COURT: Yes.

MR. HARWELL: Purely a housekeeping matter.

THE COURT: Maybe you could say you defer cross-examination.

MR. HARWELL: Okay. I will.

THE COURT: All right. You are passing at this time, which means the Court has somebody coming back. Gentlemen, here is what I understand is this. Like I say, when Mr. Adams came up here, you have got your cross-examination--I mean, you have got your direct, your cross-examination, then they have got your redirect examination. Now, I don't want to

get into direct, cross, redirect, recross, re, re, re. I don't want to get into that.

MR. HARWELL: You want us to take a bite of the apple and swallow it.

MR. SELF: Let me say one thing, Your Honor. It is to remind counsel that something that was raised on cross-examination, it is not something that is raised on direct, and does not give them the right to go on to it on cross.

THE COURT: Say that again, Mr. Self.

MR. SELF: If I were to ask-- Well, Mr. Harwell raised a matter on cross that had not been raised on direct, or if he were to raise a matter in questioning that was raised on direct that raised--

THE COURT: (Interrupting) I don't think cross-examination is supposed to bring up new matter. That is improper cross-examination, is that correct?

MR. HARWELL: I think, Your HOnor--

THE COURT: (Interrupting) I think that you all have my description on that.

MR. HARWELL: But the majority is, on the cases on the road say while it is discretionary, that the better rule is for the Court to keep the cross or things offered on direct.

THE COURT: Well, if it going outside, I want to - -

MR. SELF: (Interrupting) Except as to credibility.

MR. HARWELL: Well, I - -

MR. PAFUNDA: (Interrupting) I think what Mr. Self is saying, if I am not mistaken, is that say I get up on the witness and bring out something that is on cross examination, that is improper, but Mr. Harwell is allowed - - he has already crossed, and when we approach it, then - -

MR. SELF: (Interrupting) That shouldn't be allowed on him.

MR. PAFUNDA: I am saying it might happen.

THE COURT: Well, we will take it up as it comes, gentlemen. You all have got my feelings. I like just one bite of the apple and get it over with and out of the way.

MR. SPENCER: Do I understand you correctly on direct examination - - cross-examination if you go a little bit outside of the direct, you don't want that?

THE COURT: I don't think that is what cross examination is. Only cross-examining upon

what the direct examination is about, that is what it is.

MR. SPENCER: Then we are going to have to keep quite a few of these witnesses here.

THE COURT: Let's keep them here.

MR. SPENCER: Okay.

MR. WALBOURN: You are not saying we can't impeach a witness on cross-examination?

THE COURT: Yes, sir, you can impeach, that is right.

I think the proper thing is if you want to get into new and direct matters, you can do that when you present your own evidence.

I don't want you to do it by way of cross, gentlemen.

MR. HARWELL: Judge, we would also respectfully request that Your Honor provide a brief statement to the Jury about Bench conferences, and how they are to handle procedural matters, and that it is customary during the trial.

THE COURT: I thought I already did it.

MR. PAFUNDA: I don't recall it.

MR. HARWELL: We keep running up and whispering to the Judge, if you could make a passing statement, we would be grateful.

MR. SELF: You might want to tell them why we do it up here.

THE COURT: All right.

REPORTER'S NOTE: End of Bench Conference.

*** *** ***



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THE COURT: Will you move the easel back so I can see them. Is the next witness going to be using these exhibits?

MR. KEHRLI: No, Your Honor.

THE COURT: Will you please take the exhibits down and give them to the Clerk.

MR. SELF: Your Honor, it is customary procedure that Madam Clerk takes the exhibits in and out of the Courtroom during the proceeding. Due to the size of one of the maps, on behalf of the United States, I would have no objection for that map being left in the Courtroom, Your Honor.

MR. HARWELL: We have no objection, if the Court please.

THE COURT: We are going to go to lunch, but I have something I want to say before we go. You notice we have Bench conferences. Attorneys come up here. Our discussion, when we are at the Bench, is concerning procedures and is concerning movement, It is similar to a baseball game when the pitcher has the manager come out and talk.

If you were to listen into the conversation, part of the time they are saying what kind of tobacco are you chewing, or they are discussing stuff that is irrelevant. And we have

irrelevant discussions here.

But you shouldn't concern yourself about what we are discussing here, because that isn't evidence. The evidence is what we hear from the witnesses.

What we are saying here isn't evidence, and you shouldn't speculate about it and say we are talking about this. That isn't evidence and not a part of the matter which you are considering.

Do each of you understand? Say so, please, indicating by nodding your head. Do you understand it?

REPORTER'S NOTE: All Jurors nodded affirmatively.

THE COURT: Now, from time to time I make a comment, like I said gentlemen, let's keep this thing orderly and follow some procedure. I will make a comment to the Government's counsel about how to introduce an exhibit or something, but in doing this I am merely just trying to guide procedure. I am not in any way indicating that I have a feeling on either side of this.

I am not wanting the Jury to understand from what I am doing that - - that

you should consider either side of this. Your consideration would be solely upon the evidence and the Court's instructions as to the Law at the conclusion of this case.

Do you all understand?

REPORTER'S NOTE: All Jurors nodded affirmatively.

THE COURT: Is there any objection or correction to the Court's admonition?

MR. HARWELL: No, if the Court please.

MR. SELF: None, Your Honor.

THE COURT: Mr. Marshall - - do you remember now my admonition? Mr. Marshall, you may excuse the Jury until 1:00 o'clock for lunch. Everyone else remain seated.

THE MARSHALL OF THE COURT: The Jury is out of the Courtroom.

THE COURT: Gentlemen, the selection of the Jury has been completed when you select the Jury.

Please return your Jury questionnaires to the Clerk.

MR. HARWELL: May the Court please, may we bring those to her in the morning?

THE COURT: Yes, sir.

MR. HARWELL: Thank you, sir.

THE COURT: If you have got objections, let's state it. This is for the Government or the defense, either one. I want all the Jury questionnaires which the Jurors have answered returned to the Clerk, and not to keep - - not to make copies of them, but return them to the Clerk.

If you have objections, state it now, get it on the record that you do.

MR. SELF: Your Honor, we made two copies of the ones that the Court gave us, one for the Defendants and one for ourself.

The Defendants never picked theirs up. We maybe destroyed some of ours. If we have, I will make that statement to the Clerk. The rest of them we will bring, copies we will bring them back to the Clerk this afternoon.

MR. HARWELL: Judge, we hand copied information, and some of that has been destroyed and some hasn't.

We have no photostatic or machine copies of those questionnaires.

We did have remaining items, I am sure, from capsules of information that was pulled from the questionnaires that is relative

to details.

THE COURT: That was done for purposes of selecting the Jury?

MR. HARWELL: Uh-huh.

THE COURT: The Jury has been selected.

MR. HARWELL: Do you want those back? Do you want us to give the Clerk those summaries?

THE COURT: Yes.

MR. HARWELL: Judge, can I report to her tomorrow what I have and tell her what has been destroyed, because I don't have all of it?

THE COURT: Yes, sir. I will accept your good faith for that.

MR. HARWELL: All right, sir.

MR. SPENCER: Your Honor, did the Clerk pick up some from the desk here the other day? Because there was a file here, and I put some in and I will go through the file and get the rest of them.

MR. WALBOURN: I turned those in, Your Honor as to what happened to those.

THE CLERK OF THE COURT: The ones I received are the ones Mr. Walbourn has given me. You also need to return your initial information sheets that were given to you that had on top of it please return to

Clerk, because these we use again in other trials. They are the informational sheets from the Jurors.

MR. PAFUNDA: I object, Your Honor. I would like to be able to keep them. Voir dire is, in the matter of course, is a part of the public trial. Counsel could sit here during the course of the voir dire, absent those things, write down the answers to the questions propounded to the Jurors, put that material in his pocket, walk back to his house and use it on a later day.

I would like to be able to do that, Your Honor.

THE COURT: Your objection is noted, sir, and overruled.

MR. ROWLAND: If I may belabor the point. What you want is anything that the Jurors filled out, is that correct?

THE COURT: That is correct, sir.

MR. ROWLAND: Thank you, sir.

THE COURT: All right, gentlemen. Mr. Marshall, we will be in recess until 1:00 o'clock.

THE MARSHALL OF THE COURT: All rise. This Honorable Court will now be in recess until 1:00 P.M. this afternoon.

REPORTER'S NOTE: Court recessed for lunch at 11:55 A.M., E.S.T.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

UNITED STATES OF AMERICA

-vs- CASE NO. 83-8

EDGAR JONES, JASON MOORE, GERMAN STUMBO, DREXIL HALL, TEDDY KINNEY, BENNY CAUDILL, KENNETH ROLLAND, a/k/a POSTMAN, RANNY BLANKENSHIP, EUGENE TACKETT, HAROLD MOORE, HERMIT NEWSOME, TIM MILAN, MOSE MEAD, DONAHUE HALBERT, AUSTIN "BO" MOORE, PEBO GAYHEART, LINVILLE MOSLEY, RAYMOND HALL, 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 26, 1984

VOLUME FIFTEEN

Dale Soergel Moore Shaw & Associates
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For the Defendant Linville Mosley:

LOWELL E. SPENCER, ESQ.

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

BERNARD PAFUNDA, ESQ.

For the Defendant Ranny Blankenship:

ELDRED E. ADAMS, JR., ESQ.

UNOFFICIAL DOCUMENT

(Reporter's Note: At this time Court was called to order at 1:00 P.M.)

THE MARSHALL OF THE COURT: All rise, this Court is now in session.

THE COURT: Mr. Marshall, what may the record reflect?

THE MARSHALL OF THE COURT: Your Honor, all parties and counsel are present along with the entire panel of the jury.

THE COURT: Madam Clerk.

THE CLERK OF THE COURT: The record may so reflect, Your Honor.

THE COURT: Are we ready to proceed?

MR. KEHRLI: Yes, Your Honor.

THE COURT: Call your next witness.

MR. KEHRLI: Your Honor, we call as our next witness for the United States, Mr. Ernie Justice.

ERNIE JUSTICE, after being first duly sworn, was examined and deposed as follows:

THE COURT: Please proceed.

DIRECT EXAMINATION

BY MR. KEHRLI:

Q. Thank you, Your Honor.

Ladies and gentlemen of the jury, Mr. Justice, my name is Randy Kehrli and I'm representing the United States in this matter. I know you had to wait quite a while this morning and I appreciate your patience.

Mr. Justice, will you please state your full name for the record?

A. Ernie Justice.

Q. Mr. Justice, what is your current occupation, sir?

A. President of the U.M.W.A. District 30, Pikeville.

Q. And the U.M.W.A. is the United Mine Workers of America?

A. That's true.

Q. How long have you been President of this District 30, sir?

A. Approximately two and a half years.

Q. What did you do prior to that time?

A. I was Vice-president for approximately two and a half years.

Q. Of District 30?

A. That's right.

Q. And did you have any connection with the United Mine Workers prior to that time?

A. Yes, I did. I was -- served as the District Field Rep for approximately seven years. Prior to that, I was Local Union President and also mining committee and safety committee.

Q. So, in total, how many years have you been associated with the United Mine Workers one way or the other?

A. I've been a member for approximately eighteen years. I've served as a local union officer or officer of the present district for approximately thirteen or fourteen years.

Q. All right, sir. When you say the United Mine Workers, would you tell the members of the jury what that is? It may be an obvious question, but would you explain what the United Mine Workers of America is?

A. It's a labor union organization organized together to represent members of the union.

Q. All right. And does it

represent any particular type of employees?

A. We represent members of the United Mine Workers.

Q. All right. Do they do any particular kinds of work?

A. They, who?

Q. The mine workers.

A. Yes, they work for signatory coal companies.

Q. Do you represent employees that do work other than coal mining?

A. We represented some construction workers.

Q. All right, sir.

You've mentioned District 30, would you tell the members of the jury, please, how United Mine Workers is structured organizationally. I mean, as far as the district and the international union goes.

A. Okay. The International is located in Washington, D.C., that's their main office.

You have various districts throughout the United States and Canada. In each district you have various local unions. In this

particular district, you have thirty-six locals. And when the local union has a problem the chain of command goes from the local to the district to the international.

Q. I see.

What county -- what counties does this District 30 cover, sir?

A. It covers several counties starting from Lexington and coming east, but we only have signatory companies in Pike, Letcher, Floyd, Martin and Magoffin.

Q. When you say United Mine Workers represents employees or represents its members, what do you mean by that term represent?

A. To represent to me means if the members of the mine workers have problems then we assist them in the problems in relation to contract violations, and things of that nature.

Q. When you say contract, are you talking about collective bargaining agreements?

A. That's true.

Q. What is collective bargaining agreements, sir?

A. That is an agreement



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between company and employee to set out what the company will provide for their employees and what the employees are obligated to perform or do for the signatory company.

Q. When you say set out, it establishes things like wages?

A. That is true.

Q. Other terms or conditions of employment, like hours of work?

A. Right.

Q. And who negotiates those collective bargaining agreements?

A. The representative or representatives of the U.M.W.A.

Q. And they're negotiated with the employers?

A. That's true.

Q. Now, during the years that you were associated with the United Mine Workers, Mr. Justice, have you become familiar with the term organizing drives?

A. To an extent.

Q. Would you explain to the jury how the United Mine Workers of America organizes a non-union company?

A. If it's an organizing drive being performed by the International Union, which they are solely in charge of organizing.

Q. The International is solely in charge of organizing?

A. That's true --

MR. PAFUNDA: (Interrupting) Your Honor, something just came to my attention in regards to a probable prospective witness in the courtroom.

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MILLERS FALLS
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COTTON CONTENT

THE MARSHAL OF THE COURT: Do you anticipate calling this person as a witness?

MR. PAFUNDA: Yes, sir. Excuse me, Your Honor, but I had my back to the courtroom.

THE COURT: All right.

(The prospective witness left the courtroom.)

MR. KEHRLI: For the record, Your Honor, I think the record should reflect that that representative of District 30 asked me prior to this testimony if the Government intended on calling Mr. Owens, and I responded that we had no intentions. I had forgotten Mr. Pafunda.

THE COURT: All right.

You may proceed, sir.

Q. You were describing, sir--you had just told us that the International was in charge of organizing, and you were describing to the jury what an organizing drive of nonunion company is.

A. Right. When the International determines that they want to try to organize a particular nonunion company, then they in turn assign either two or four organizers to make a survey of that particular company to determine how many employees works at that particular mine.

They also make a determination if they have--or feel they can get enough support from the employees to pay them to start the drive to begin with and things of that nature.

And after the survey is made, if they determine they have a sufficient amount of support to carry on with the drive, then they direct the organizers to go through a card-signing procedure which they ask individual employees of that particular operation to sign a card to become a potential UMWA member.

Then after they get the sufficient number of cards signed, they petition with the NLRB for an election.

Then the NLRB comes in and holds an election, and then if we get fifty-one percent, then we are the representatives of those particular employees at that particular operation.

If we get less than that, then, naturally, we lose.

Q. All right, sir. There are some attorneys in this room who are familiar with the practice of labor law, and I'm sure Your Honor is as well.

The members of the jury may

not know what you mean by the term "NLRB"--

A. The National Labor Relations Board.

Q. What is the National Labor Relations Board, sir?

A. That is a branch of the federal government that is in charge of labor and labor disputes for labor problems and questions or whatever.

Q. Is the procedure which you described the way in which the United Mine Workers of America formally organize a nonunion company?

MR. PAFUNDA: Your Honor, I would object and ask counsel to clarify it.

It is the International Organization of the United Mine Workers of America to which Mr. Justice was answering a question.

Q. Sir, let me ask you this.

THE COURT: You object to the form of the question?

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

THE COURT: All right.

MR. KEHRLI: I will rephrase the question.

THE COURT: Rephrase the question.

Q. I believe you testified earlier that the International is in charge--

THE COURT: (interrupting) Just a moment, sir.

Remember what I said about what attorneys say isn't evidence. What attorneys make an objection, that is not evidence. The evidence is what this witness--this gentleman right here says.

Okay, any objections?

MR. PAFUNDA: No, Judge.

THE COURT: Go ahead.

Q. It is my recollection, Mr. Justice, you testified earlier that the International of the United Mine Workers is in charge of organizing nonunion companies. Is the-- Whenever--

MR. PAFUNDA: (Interrupting) I object. That is a statement by counsel, and I object.

THE COURT: (Interrupting) Just a moment. Approach the Bench.

(Reporter's Note: Counsel approached the Bench; whereupon the following was held:)

THE COURT: Mr. Pafunda, be polite, now, and let him finish his question when he starts. Don't interrupt him and then make a counterstatement.

MR. PAFUNDA: Your Honor, the question

was misleading in this regard. He said, "I believe"--

THE COURT: (Interrupting) Well, let him--

MR. PAFUNDA: (Interrupting) That is not what the witness testified to.

THE COURT: He hasn't finished his question. He didn't-- He said that the International was in charge of organizing, and I didn't want--I didn't want it to be misleading in terms of who--

MR. KEHRLI: (Interrupting) Your Honor, I didn't miss--

MR. PAFUNDA: (Interrupting) That is the most important point in the case.

THE COURT: Well, let him ask his questions, and then you may object to the form of the question, and this may--then it will be shown--this may be shown on cross-examination as an error of his.

MR. PAFUNDA: As long as he doesn't lead the witness in this area.

THE COURT: Object to the leading, but don't get up and make a statement. That is what you are guilty of, Mr. Pafunda.

MR. PAFUNDA: All right. Object to the leading.

THE COURT: All right. The objection

is sustained, the objection to the leading. But he has got to state a basis for his question, but go ahead.

(End of conference at the Bench.)

THE COURT: Restate your question.

Q. Mr. Justice, what entities of the United Mine Workers of America, if any, are responsible and in charge of organizing nonunion companies?

A. The International Union Organizing Department.

Q. Thank you. Mr. Justice, do you know Edgar Jones?

A. By appearance only.

Q. I would like to ask you to look out over the courtroom. Do you see Mr. Jones present here in the courtroom today?

A. I believe Mr. Jones is the gentleman sitting on the extreme end in the blue light suit.

Q. And with the blue tie; is that the gentleman you are referring to?

A. Yes, sir.

MR. KEHRLI: Let the record reflect that the witness has identified the defendant,

Edgar Jones.

MR. HARWELL: (Nodding in the affirmative.)

THE COURT: All right, there being no objection, let the record so reflect.

Q. Do you know when you first met Mr. Jones, Mr. Justice?

A. I believe I first met Mr. Jones some years ago, approximately maybe six or seven years ago.

I have only met Mr. Jones twice as far as I can remember in my life.

Q. When was the second time you met Mr. Jones?

A. January 4, 1982.

Q. Where was that, sir?

A. That was at his office in Floyd County.

Q. Could you tell the members of the jury how you came to meet Mr. Jones on January 4, 1982?

A. Yes.

We had some problems with the truckers in that area. And the--some of the members of the local union had been calling the district

concerning--concerned that the truckers--some of them was not members of the Mine Workers.

I, myself, very seldom go out to the operations, so I contacted the field rep in that area, which is Franklin Scott. And it is my understanding of him he made a couple, three trips to the area concerning the nonunion trucks--truckdrivers.

But he was unsuccessful in solving the problem. So, Cornelius Owens, which is the vice-president of District 30, and myself, went over to the area to try to solve the problem. When we got to the operation, the truckers was not hauling that day.

Q. Sir, do you recall what time of day you first arrived at Mr. Jones' office?

A. At approximately ten o'clock in the morning.

Q. This was January 4, 1982?

A. Yes, it was.

Q. It went to the office with you, sir?

A. Cornelius Owens and I left the district office together and went to Mr. Jones' office.

Q. Who did you see when you



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arrived at Mr. Jones' office?

A. We talked with Mr. Jones and some other gentlemen that was in his office.

Q. Do you recall the other gentlemen's name?

A. No, sir, I do not.

Q. What did Mr. Jones say to you, sir? And I would like for you to be as precise as possible.

A. I'll tell you the best I remember. We discussed with Mr. Jones as to why we were there, and we were there concerning the truckers that they were not members of the Mine Workers.

And Mr. Jones was very concerned about Ray-Mac and why the district was not making any effort to organize Ray-Mac.

And I explained to him that the district was not in charge of organizing. And I agreed with him that I would like to have Ray-Mac under contract, but that was up to the Internationals, since they are the people in charge of organizing.

So, we discussed Ray-Mac, and we discussed the truckers that were hauling in his complex--or I refer to it as his complex--that

were nonunion. And I told him that that was my only purpose there was to try to get the five or six or seven nonunion truckdrivers under contract and get them as members of the Mine Workers.

Q. When you explained to Mr. Jones that the International was in charge of organizing and the district was not, and that is why Ray-Mac had not been organized, what did he say to you?

A. Well, like I say, I can't remember the exact words that Mr. Jones said; but he was upset because that we wasn't doing anything to organize Ray-Mac.

Q. When you say he was upset, what type of language did he use, sir?

A. Well, as best as I can remember, he used some pretty strong language--profane this and that, the best I can remember.

Q. Was he angry?

A. He seemed to be.

Q. What was your impression at the time as to what Mr. Jones was angry about?

A. Well, my impression would be that he was angry because we wasn't doing anything to organize Ray-Mac, or there wasn't--you know, they

hadn't already been organized.

Q. Did anything else occur during that initial contact on the morning of January 4, 1982?

A. Yes.

After we got through discussing Ray-Mac, Mr. Jones started cooperating with us, and he agreed to have the truckers present at one o'clock that same day.

Q. Now, when you say "truckers" sir, were these employees of Mr. Jones?

A. No, sir, not directly. They were independent truckers hauling from some of the signatory companies in that area to the prep plant.

Q. When you say "independent truckers" what do you mean?

A. Well, that's truckers that own their own trucks and trucks coal for coal companies.

Q. And where were they hauling again, please?

A. I believe they were hauling to Mr. Jones' prep plant.

Q. What did you do after that

initial meeting with Mr. Jones on the morning of January 4, 1982?

A. Prior to us leaving MR. Jones' office, Drexil Hall and Frank Scott,--I don't remember if they--I'm sure they was not there when we got there, but before we left, they did arrive at Mr. Jones' office.

So, after we scheduled a meeting with the truckers by the help of Mr. Jones at one o'clock, the four of us left and went down the road to a restaurant. And we had some time to spend, so we went down and ate lunch and came back at one o'clock.

Q. Do you recall where you went to eat lunch?

A. I don't remember the name of the restaurant.

Q. Okay. Who was present at lunch, Mr. Justice?

A. Myself, Cornelius Owens, Drexil Hall and Frank Scott.

Q. Did you tell-- First of all, who is Frank Scott?

A. He is a district field rep.

Q. Who is Drexil Hall?

A. At that time he was vice-president of 5967 local, I believe, is the number.

Q. Let me again ask you to look out to the people in the courtroom. Do you see Drexil Hall here in the courtroom today?

A. I may have to stand up.

MR. PAFUNDA: Drexil, you can stand up.

(Mr. Hall complied.)

THE WITNESS: Yes, that is Drexil Hall.

MR. KEHRLI: May the record reflect Mr. Justice identified the defendant, Drexil Hall.

THE COURT: Let the record so reflect.

Q. Mr. Justice, did you tell Mr. Frank Scott and Drexil Hall at that lunch what Edgar Jones had told you that morning?

A. I'm sure that I did.

Q. After you had lunch, what did you do, sir?

A. After we had lunch, we went back up to Edgar Jones' office.

Q. And what did you see when you arrived at Mr. Jones' office after lunch?

A. The truckers was at Mr. Jones' office.

Q. The independent truckers

you talked about earlier?

A. Yes, sir.

Q. By the way, where is this office? Do you recall the address?

A. It is in Floyd County. I am not real familiar with that part of the district. I believe it would be around McDowell.

Q. Where did you see these truckers when you arrived at the office? Where were they physically in the office?

A. Yes, they were in Mr. Jones' office.

Q. And is that a room separate from the rest of the building?

A. As best as I can remember, it was a trailer. And you walk in, and it had a-- what I would call a small-like waiting room that would seat probably two or three people. And then to the right was the office that the truckers was in.

Q. Who else was there besides the truckers?

A. When we arrived?

Q. Yes, sir.

A. Mr. Jones was there. And I believe one other individual, and the truckers.

Q. Was this at one 'oclock in the afternoon?

A. That is correct.

Q. Now, did all four of you that had lunch together, yourself, Mr. Owens, Mr. Scott and Mr. Hall go to that meeting at one o'clock.

A. We all went to Mr. Jones' office at one o'clock.

Q. You all did go and attend the meeting with the truckers at one o'clock?

A. Three of us did. Drexil Hall did not sit in on the meeting.

Q. Why did Drexil Hall not sit in on the meeting, sir?

A. Mr. Jones--for some reason, he didn't want Drexil to sit in. And as best I remember, his opinion of Drexil was somewhat of a troublemaker.

Q. Did he say that?

A. Yes, he did.

Q. Okay.

A. Yes, he did.

Q. Could you recall his exact words, please?

A. It is impossible for me to recall his exact words. But he said something to this line. He said, "What is Drexil Hall doing here." And I believe it may have been me who spoke up and said, "He is here concerning the trucks with us, to meet and try to get it worked out."

Well, he said, "I don't want to meet with Drexil Hall - - " And the words he used, I believe, "He is a troublemaker - -" or something which amounts to the same thing.

Q. So Drexil Hall did not attend the meeting?

A. No, sir. He did not sit in on the meeting.

Q. When the meeting started, would you tell the Jury what you recall took place?

A. When the meeting started again, which it started out similar how it started at 10:00 o'clock.

Q. Why do you say that?

A. Sir?

Q. Why did you say it started out similar. How was it similar?

A. They were discussing the same thing, which is Ray-Mac and why we wasn't doing anything to try to organize them, and why they hadn't been organized.

Q. Who was discussing it?

A. Edgar Jones, again, discussed it, and some of the truckers.

Q. What did you respond to at that time?

A. Same thing that happened prior, that we was not in charge of organizing, that was up to the International, and we was there that day for the purpose of trying to get the truckers to sign a checkoff authorization and become members of the Mine Workers.

MR. KEHRLI: Thank you, Mr. Justice, I hope that is not an omen, Your Honor. Should I proceed?

THE COURT: Yes, sir. Just one thing, I think I want to state this to the Jury. Now, the Court has permitted this statement with regard to

Mr. Hall being a troublemaker in this matter. This is just to reflect the state of mind or the - - with regard to the - - I guess the intend or feelings which Mr. Jones had at the time he made this statement.

Now, whether or not Mr. Hall is or was a troublemaker is not in issue here at this - - in this conversation. This is just merely to reflect his feeling.

So the truth or verity of whether he was a troublemaker is not in issue. So all of you understand that?

The purpose of that is being admitted is for a limited purpose, do you all understand?

I take it by your heads, nodding your heads, you do. Is there any objection or corrections to the Court's admonition?

MR. PAFUNDA: None, Your Honor.

THE COURT: You may continue, Mr. Kehrli.

Q. Mr. Justice, did all of the truckers that were at that meeting hear your explanation as to why you have not attempted to organize Ray-Mac?



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A. I would say that they did.

Q. Do you know how long those truckers have been non-union, sir?

A. No, sir, I do not.

Q. Why was Edgar Jones at this second meeting, sir, do you know?

A. Why?

Q. Yes.

A. Well, for one reason we had to hold the meeting at his office, and with the exception of that, you know, as I stated earlier, we did ask him to assist us in getting those truckers under contract and members, and he did agree to get them together at 1:00 o'clock.

Q. Do you recall - - strike that.

What happened after you explained to the truckers about why Ray-Mac was not organized?

A. We then started discussing with them that we would like for them to sign check-off authorizations and contracts and become members of the Mine Workers.

And we discussed it thoroughly and several of them had quite a few questions

concerning them becoming members and what they would gain by becoming members, and questions to that nature.

But in the end, I believe, all six of them did sign checkoff authorizations and signed a contract.

Q. All right. Do you know the names of those individuals who signed checkoff authorizations that day adjoining you?

A. No, sir, I do not.

Q. Have you prepared or did you bring with you any documents that would refresh your recollection in that regard?

A. I don't have a document with me that would.

Q. Have you prepared a document that would refresh your recollection in that regard?

A. I have the secretary to.

MR. KEHRLI: Your Honor, at this time for the purpose of refreshing the witness's recollection, I would like the Marshall to hand to the Clerk, and several of the defense attorneys, this document,

REPORTER'S NOTE: The Clerk of the Court conferring with the Court.

THE CLERK OF THE COURT: The exhibit

offered, Your Honor, or the document offered, has been marked for purposes of identification as NPM No. 3.

THE COURT: All right. It is my understanding, gentlemen, it is merely marked for identification; it is not going to be in evidence, but it will be made a part of the record.

MR. KEHRLI: That is correct.

MR. PAFUNDA: The short is right here in the floor (indicating). Someone stepped on this metal thing.

MR. SELF: Your Honor, they are working on the power all over the building.

MR. PAFUNDA: It happened today at the lunch recess, the lights went out and then they came back on.

THE COURT: Is that right?

MR. SELF: Do it again.

MR. HARWELL: Judge, I have been told the power company is aware of it and I have been told that they are in the process of fixing it, is that correct, Jim?

MR. EDMONDSON: Yes, sir.

THE COURT: Let me do this. This might not be psychic. Mr. Justice will have no problem.



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Sometimes I project pretty well, sometimes I don't. Mr. Justice projects pretty well, but subsequent witnesses may not project too well.

Mr. Slone, you are sitting back there, do you have any problem hearing? If you have a problem hearing, just cup your ear with your hands, and gentlemen when you see that, you know he has a problem, and you speak louder and we will get the witnesses to speak louder.

Mr. Justice, if you notice if one of them cup their hands, you will have to speak a little louder.

Proceed.

THE MARSHALL OF THE COURT: Your Honor, counsel for the defense have viewed the document.

THE COURT: Thank you, sir.

MR. KEHRLI: Mr. Justice, would you please examine that document?

REPORTER'S NOTE: (Witness examining document)

Q. Does that refresh your recollection as to the names of the individuals who signed checkoff authorizations for the United Mine Workers on January 4th, 1982 at Mr. Jones's office?

A. Yes, sir. According to the



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official district records, these are the individuals that signed contracts and checkoff authorizations on January the 4th, 1982 at the meeting at Mr. Jones's office.

MR. PAFUNDA: Your Honor, if I may interpose an objection - -

THE COURT: (Interrupting) I think that is an objection.

Mr. Justice, what it is, you can read the document to refresh your recollection, but the document isn't going to be in evidence. You must - - you can read it and then testify from your memory, but you cannot put that in the record.

MR. KEHRLI: Take your time, Mr. Justice.

THE COURT: Let me explain this. If we said the UMW official record, then the best evidence itself would be the records. We are not attempting to put the records into evidence, it is merely remembering, but you can read the record to refresh your memory.

A. I had never met these gentlemen before, and there is no way that I can at this time, can evern remember their names even by reviewing the records.

Q. All right. That document does not refresh your recollection to the extent that you can remember the names of those individuals?

A. No, sir, it does not.

Q. I would like for you to look out in this Courtroom, look out in the Courtroom, and take your time, do you see any individual in the Courtroom that you recall that signed a checkoff authorization that day, one of those independent truckers.

Take your time. If you see anyone in the Courtroom, would you please describe what he is wearing.

THE COURT: Shall we have the back row stand, and then the front row stand?

MR. KEHRLI: Yes, if that is permissible, Your Honor.

THE COURT: Let the back row stand, just the back row.

A. At this date, I cannot.

MR. KEHRLI: All right. The second row, please stand.

A. No, sir. There very well may be, but I cannot answer.

Q. All right, thank you.

When did the problems that you described of these independent truckers first come to your attention, Mr. Justice?

A. I would say in December, probably in the first part of December of '81.

Q. Do you recall how that came to your attention?

A. Some of the individuals in the Local Union expressed concern that the truckers were trucking coal, and they were not members of the Mine Workers.

Q. When you went to Mr. Jones's office to sign these independent truckers up, were you in fact organizing the non-union company?

A. In my definition, no, sir.

Q. What were you doing if you were not organizing the non-union company?

A. The coal companies that the truckers was picking the coal up at, and where they were taking it to, to the prep plants, both the company that mined the coal and the prep plant at that time that processed the coal were both signatory companies.

So therefore, I feel that

there is a difference, because these people were working on Union jurisdiction work, and for that reason, and I explained to them on January the 4th, that it was causing us problems and that certainly we would appreciate it if at that time that they could become members.

Q. Is it a fair statement then to say that what you were doing was asking them to join the Union?

A. That is true.

Q. And they joined that Union voluntarily?

A. Yes, they did.

Q. Did you coerce or threaten them in any way?

A. Well, I put up a very persuasive argument or interpretation as to, you know, some of the benefits that it would be for them. And not only that, all the problems that it would solve for the Local and the District.

But as far as, you know, threatening or anything to that nature, no, I did not.

Q. Were you making a persuasive argument?

A. Yes.

Q. To join the organization, is that correct?

A. That is true.

Q. To your knowledge, Mr. Justice, at the time of the meeting on January the 4th, 1982 at Edgar Jones's office, had United Mine Workers of America International authorized or sanctioned any organizing drive at the Ray-Mac Coal Company?

A. No, sir.

Q. To your knowledge, Mr. Justice, has the United Mine Workers of America International ever sanctioned or authorized a formal organizing drive at the Ray-Mac Coal Company?

A. Some time after January the 4th, it is my understand the International did assign approximately two organizers, maybe three, but I believe two, to run a survey or make a survey on the Ray-Mac operation.

Q. Correct. And that is the first step that you told us about originally.

What was the survey intended to do?

A. My interpretation on the

survey would be that the organizers, they check probably with the State Department of Mines and Minerals to determine the names and how many employees worked at that operation.

They in turn, after that, they talked with individuals that worked at the operation to see how much support, and when I refer to support, I mean support to be, you know, wanting to be represented by the United Mine Workers.

Just general information to make it so they can make a recommendation to the organizing department as to whether or not they feel that we have at least a chance to get the majority votes.

Q. Do you know as a result of the survey that was conducted by the International organizers at Ray-Mac, was there ever an organizing drive by the International at the Ray-Mac Coal Company?

A. It is my understanding that the survey was as far as it went.

Q. There was no further activity by the United Mine Workers of America?

A. No, sir.

Q. In your capacity as President

of District Thirty, subsequent to the meeting of January, 1982, did you ever become aware of a work stoppage or a strike conducted at the Ray-Mac Coal Company?

A. Before January the 4th?

Q. No, sir, after.

A. Yes. I was told after, some time after January the 4th, that there was some picket intersecting going on at Ray-Mac. I have no first-hand knowledge.

Q. Did you do anything in your official capacity as District Thirty's president in response to being told that there was picketing out there?

A. When I became aware that some of the employees of the signatory companies - -

Q. (Interrupting) Now, you don't mean Ray-Mac employees, do you?

A. No, sir.

Q. What employees are you talking about?

A. Employees of some of the signatory companies in the 5967 Local that were out of work, I requested Frank Scott, who is a representative that attended the meeting in that area, that

is his subdistrict or is the district that he takes care of.

So I directed him to attend one of their meetings that he was aware of that they were having, and he did so.

Q. Do you recall when that was, sir?

A. As far as the date, no, sir.

Q. Why did you send, or for what purpose did you send Mr. Scott to go to that meeting?

A. More or less to obtain information as to what was going on, and to request the men if they were idle from work, if work was available for them, to return back to work.

Q. Why did you request the men to return to work, sir?

A. Well, I feel under the contract that we are obligated to provide a company with a work force if work is available.

Q. Was the activity that you were told about, picketing at the Ray-Mac Coal Company, authorized or sanctioned by the United Mine Workers of America?

A. No, sir, it was not.

Q. Did Mr. Scott report back to you when he returned from that meeting?

A. Yes, he did.

Q. Did you have a conversation with Mr. Scott at the time that he reported back to you from the meeting concerning the picketing at Ray-Mac?

A. Yes, I did.

Q. What did you tell Mr. Scott?

A. After he informed me of - -

MR. PAFUNDA: (Interrupting) Your Honor, may we pose an objection concerning what Mr. Scott told Mr. Justice, it is hearsay, and I think the thrust of the question is improper.

Q. Mr. Justice, because of the legal rules of evidence, we are not interested in what Mr. Scott told you.

Would you tell the Jury what you said to Mr. Scott when he returned after or during the time he talked to you, what things did you say to him?

A. Due to the circumstances of the meeting, and after he informed me as to what he did and said, then I agreed that he did the right thing by leaving the meeting.

Q. Do you know why he left the meeting?

A. I know why he told me, you know, the reason he gave me, that's all I can testify to.

Q. All right.

Did you agree with the reason he gave you?

A. Yes, I did.

Q. Thank you, sir.

Mr. Justice, was one of the individuals that signed the check-off authorization in that meeting with Edgar Jones on January 4th, 1982 a man by the name of Phillip Booth?

A. Yes.

Q. What, if anything, did you do after Phillip Booth signed the check-off authorization with the United Mine Workers of America?

A. At the time Mr. Booth signed we, when I say we I'm referring to Cornelius Owens, he and I went over together and coming back we got to discussing the people that had signed the contract as the independent truckers and we came to Booth, Mr. Booth. And we was under the

impression --

MR. PAFUNDA: (Interrupting) Your Honor, again I'm going to interpose an objection. This is hearsay.

THE COURT: Your objection is to hearsay, is that your objection?

MR. PAFUNDA: That is correct.

THE COURT: Any response?

MR. KEHRLI: It's my understanding that the witness is not testifying concerning statements that were said to him. He's just testifying about his impressions at the time as a result of Mr. Booth's signing the check-off authorization and what he did about it.

MR. PAFUNDA: If it pleases the Court, that may be true, but he's using the phrase we.

THE COURT: All right. I'll sustain the objection.

MR. KEHRLI: All right. Let me rephrase the question. If you can, Mr. Justice, we're not interested in what other people told you. What did you do, if anything, after you did -- discovered that Phillip Booth had signed the check-off authorization?

A. When I got back to the

office, I asked the secretary to check the signatory coal company records to see if he had a contract at that time, a deep mine contract that was signed by Mr. Booth.

Q. Why did you do that, sir?

A. Because I was under the impression that he had signed a contract for a deep mine.

Q. What different would that make with regards to Mr. Booth joining or not joining the union?

A. Well, he is a coal company operator under our guidelines and our constitution, he can't be a member of the United Mine Workers.

Q. Did you in fact discover that Mr. Booth was a coal company operator?

A. Yes, I did.

Q. What did you do about that, sir?

A. He had written a check on that particular day, which was January the 4th for his initiation fee and one month's dues which amounted to two hundred thirty-two dollars and ten

cents. After checking -- after I got back to the office and after checking the file, I found that he was an operator, a coal company operator; so I immediately wrote him a letter and explained to him why we had to cancel his trucking contract and refund his initiation fee and one month's dues. And I immediately sent the check back to Mr. Booth.

Q. Sir, based upon your perception, the things you saw, and what you heard at that meeting in Mr. Jones' office in January of 1982, do you have an opinion as to why Phillip Booth attempted to join the union?

MR. HARWELL: If the Court please, I find that to be objectionable. It calls for speculation and conjecture.

MR. KEHRLI: Your Honor, I submit that that's admissable under Rule 701, it's based on his opinion and opinion testimony is admissable.

THE COURT: Let him answer, objection overruled.

A. I just have an opinion.

Q. What is that opinion?

A. Well, I feel that after the other five or six people did become members and probably Mr. Booth felt that if he did then certainly

he would have some problems with him driving, since all the other truckers had become signatories. I guess he felt that he was the only one that we would be back trying to persuade him to sign. And by him signing that certainly would permit him to drive his truck.

Q. Did you -- now, during your association with the United Mine Workers, have you attended union meetings?

A. Yes, I have.

Q. Have you ever seen the United Mine Workers' picket lines?

A. Yes, sir.

Q. Have you ever seen United Mine Workers' strikes?

A. Yes, sir.

Q. Let me ask you this. Based upon your experience as a member and officer of the United Mine Workers of America is it customary practice to have coal operators at United Mine Workers' meetings?

A. It is not a practice.

Q. Is it a custom or practice of the United Mine Workers of America to have coal operators or foremen on the picket lines

of the United Mine Workers of America?

A. Normally, no.

MR. KEHRLI: Your Honor, if I could have the assistance of the United States Marshall, please, I would like to hand to the Clerk and show to counsel for the defense what has been previously marked for identification as Defendants' Exhibit C. I believe that is Mr. Pafunda's exhibit for Mr. Hall and Mr. Moore. I would like to have it marked as a Government Trial Exhibit.

MR. PAFUNDA: Your Honor, I would not mind if we marked it as a joint exhibit, that is my exhibit.

THE COURT: Well, let it be marked as -- and the record will reflect that.

(Reporter's Note: At this time a discussion was held between the Clerk and the Court.)

THE COURT: The Clerk says she has joint stickers, so we'll use that.

MR. PAFUNDA: Thank you, Your Honor.

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

THE COURT: Yes.

(Reporter's Note: At this

time a Bench conference was held between all attorneys.)

MR. SELF: Because we do have eighteen Defendants in this, Your Honor, I think the exhibit should be marked as United States Exhibit and then maybe submitted again by Mr. Pafunda, in case any of the other Defendants want to object. Or we would be willing to stipulate it as a Government exhibit and let Mr. Pafunda introduce it.

THE COURT: Well, maybe you're right.

MR. SPENCER: I would want to object to it.

THE COURT: Well, we'll make it the United States exhibit and we'll move it to be directed as the same.

Let me tell you gentlemen one other thing. On the basis for this we're opening up a can of worms, because on a cross examination you're going to so open a lot of doors. I'm just advising you in advance.

MR. SPENCER: They have already opened the doors, it's too late to close it.

THE COURT: I have not said anything yet, Mr. Spencer. I'm just advising them to look

out in the future.

MR. HARWELL: I think maybe you're right, Your Honor. I think maybe it's a little premature.

MR. SPENCER: Well, I would like to make my objection on the record.

THE COURT: Well, you're not going to do it yet. After you get the document and look at it, you can object to specific parts.

Okay, gentlemen, that's all.

(Reporter's Note: At this time the Bench conference was concluded.)

THE CLERK OF THE COURT: The U.M.W.A. Constitution not previously marked for identification will be NPM for identification No. 4 now marked for trial as Government's Exhibit No. 11.

MR. SELF: Madam Clerk, shouldn't that be No. 12?

THE COURT: It will be twelve.

THE CLERK OF THE COURT: Twelve, yes.

THE COURT: Mr. Marshall.

THE MARSHALL OF THE COURT: The defense counsel has seen the documents, Your Honor.

THE COURT: Please hand it to the

witness.

Q. Mr. Justice, do you recognize Government Exhibit No. 12?

A. Yes, I do.

Q. What is it?

A. It is a United Mine Workers of America Constitution.

Q. And this Constitution contains the terms and the conditions and provisions of the governing duties and responsibilities of members of the United Mine Workers of America, does it not?

A. Members and officers.

Q. These conditions are binding on members and officers, are they not?

A. We, as officers, feel that they certainly should be.

Q. And what's the effective date of this particular exhibit, United Mine Workers Constitution?

A. December 19th, 1979, and I might add that we do have one in printing now that supercedes this one with very few changes.

Q. Is the one that you have in front of you, was that Constitution in effect

during the months of January and February of 1982?

A. Yes, it was.

MR. KEHRLI: Your Honor, at this time the United States moves into evidence Government Exhibit No. 12.

MR. HARWELL: No objection, may the Court please, so far as my client.

MR. PAFUNDA: No objection.

MR. THOMAS: No objection.

THE COURT: Is there any objection?

MR. SPENCER: Yes, I think I'll have one, Your Honor.

THE COURT: State the basis of your objection.

MR. SPENCER: Well, I feel to introduce the book point blank would be hearsay and another thing it would be under the Fifth Amendment of the United States Constitution. You can't cross examine a book.

THE COURT: Let the objection be noted and be overruled. That was previously marked for identification as NPM4 finally admitted into evidence as Government Trial Exhibit No. 12.

MR. KEHRLI: Thank you, Your Honor.

Q. Mr. Justice, would you

turn to page ninety-five of the Government Trial Exhibit No. 12 of the United Mine Workers Constitution?

A. I have so turned.

Q. On the bottom of page ninety-five in Article Nineteen, Section Eight, can you locate that, sir?

A. Yes.

Q. Would you read that section to the jury, please?

A. Section Eight concerns strikes. It says only the International Union can call or authorize a strike when a contract expires the rule of no contract, no work shall prevail unless otherwise ordered by the International Executive Board.

The International Executive Board may by majority vote assess the membership in such amounts as necessary to support a selective strike if called.

Q. Sir, the next page is Article Nineteen, Section Nine. It's on page ninety-six.

A. Section Nine, no district or local union can call an unauthorized

strike without the approval of the International Union. Nothing herein shall permit members from refusing to work because of the excess of abnormally dangerous condition at their place of work.

Q. And would you read the next section, Section Ten, please.

A. Section Ten, strikes shall not be called in any unorganized field without the sanction of the International President or the International Executive Board --

MR. SPENCER: (Interrupting) Your Honor, I believe a witness that might becalled just came into the courtroom, Mr. Bobby Justice.

THE COURT: Mr. Marshall, did you inquire of him if he was going to be a witness?

THE MARSHALL OF THE COURT: I have, and he does not know if he's going to be called or not.

THE COURT: All right, gentlemen. Is anyone going to -- is that Mr. Justice, Bobby Justice?

MR. JUSTICE: Yes.

THE COURT: Is anyone anticipating calling Mr. Justice?

MR. ROWLAND: These men say his name is on the list, Your Honor.

UNKNOWN DEFENDANT: I think Your Honor his name is on that list.

THE COURT: You're on the witness list, so you can't --

MR. JUSTICE: (Interrupting) Nobody has notified me, Judge. I didn't know.

MR. KEHRLI: Your Honor, the Government does not intend to call him.

THE COURT: All right. Are there any Defendants that intend to call Mr. Justice -- just a moment, Mr. Justice.

MR. PAFUNDA: Your Honor, it's been pointed out, I don't intend to call him as a witness in the true sense of the word, but now that we're into books and things like that, he is a custodian of the records of District 30 and he may be called as a witness.

THE COURT: Okay, Mr. Justice.

(Reporter's Note: Whereupon Mr. Bobby Justice leaves the courtroom.)

THE COURT: Well, this is for your own good and benefit. You all understand if someone stays in here and hears a substantial amount of the testimony, he will be barred from testifying.

You may proceed.

MR. KEHRLI: Thank you, Your Honor.

Q. Mr. Justice, would you please turn to page seventy-one of that same document, Government Exhibit 12, United States Miner Workers Constitution?

A. Yes, sir, I'm on page seventy-one.

Q. Would you find Article Thirteen, Section Seven at the top of that page, please?

A. All right, sir.

Q. Would you read that to the jury, please?

A. Section Seven, every member shall have the obligation to support all strikes authorized by the International Union and thereto observe all picket lines endorsed by the International Union and not to engage in any strikes other than those authorized by the International Union.

Q. Thank you, sir.

Would you please turn to page sixty-five of that same document?

A. I'm on page sixty-five.

Q. Would you locate Article

Eleven, Section One, please, and read that to the jury.

A. Membership Section One. Any person who is employed within the jurisdiction of the International Union, who supports the purposes of the union and who accepts the obligation of the membership as provided by this Constitution shall be eligible for admission to membership in the International Union provided however that no owner or operators of business -- persons employing persons within the jurisdiction of the union or supervisor of such employers shall be eligible to become or remain a member of the union.

Q. Thank you, sir.

MR. KEHRLI: At this time, Mr. Marshall, would you please hand to the Clerk, and show the defense counsel what has not been previously marked as an exhibit. It's entitled The Constitution District 30, United Mine Workers of America.

THE CLERK OF THE COURT: Your Honor, it's been identified as NPM5 and it has now been marked for purposes of trial as Government Exhibit 13.

THE COURT: Ladies and gentlemen, we're going to be in recess for fifteen minutes.

And remember my admonition, I take it by the nodding of your heads that you do.

All right, Mr. Marshall, will you excuse the jury for fifteen minutes?

(Reporter's Note: At this time the jury was excused.)

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

THE MARSHALL OF THE COURT: Your Honor, the jury is out of the courtroom.

MR. PAFUNDA: Your Honor, may I approach the Bench -- well, may we have the witness placed in the -- with the U. S. Marshall so no one on either side, either the Government attorney or ourselves can talk with this witness since he's still under oath?

THE COURT: I know of no requirement.

MR. PAFUNDA: Well, if you don't, it would be the same as if he was on the stand. And if Mr. Kehrli said excuse me for a moment, I want to take Mr. Justice out in the hall I have a few questions I want to ask him and then he comes back and puts him back on.

MR. KEHRLI: Mr. Pafunda, we'll agree not to talk to him if you do.

MR. HARWELL: Well, we'll strike the chord with Government.

THE COURT: Let me make this quite clear. I don't appreciate colloquy between counsel in my courtroom. What I'm saying is, colloquy, statements between counsel may be interpreted by a jury as testimony, and I've instructed the jury only to consider the testimony coming from this box. The motion is noted that -- Mr. Pafunda, the motion is noted and overruled. In the event that the Government does anything unethical, I'll authorize -- I would hope it would be brought to the attention of the Court by anyone else.

MR. PAFUNDA: Does that mean I can talk to him?

THE COURT: I'm not giving you permission to talk to him or I'm not denying you that right to talk to him.

MR. PAFUNDA: Okay, I just wanted to clarify that matter.

THE COURT: I'm not doing that to the Government. I'm saying if something unethical or unauthorized is done it is to be brought to the attention of the Court.

MR. PAFUNDA: Thank you, Your Honor.

THE COURT: Mr. Marshall, will you please excuse the remainder of the Court?

THE MARSHALL OF THE COURT: This Court is in recess till 2:30.

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

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

THE COURT: Madam Clerk.

THE CLERK OF THE COURT: The record may so reflect.

THE COURT: All right. Are we ready to proceed?

MR. KEHRLI: Ready to proceed, Your Honor.

THE COURT: Please proceed.

MR. KEHRLI: Your Honor, I'm not sure whether the exhibit has made it all the way around the Defendants' table or not.

MR.HOLLON: It is right there.

THE MARSHALL OF THE COURT: Your Honor, this exhibit has been shown to Defendants' counsel.

THE COURT: All right, sir.

CONTINUING DIRECT EXAMINATION

BY MR. KEHRLI:

Q. Mr. Justice, do you recognize that document?

A. Yes, sir, I do.

MR. KEHRLI: And for my benefit, again, what is it labeled Government Exhibit?

THE COURT: Thirteen.

THE WITNESS: It looks like NPM513.

MR. KEHRLI: I think it has now been marked Government's Trial Exhibit No. 13.

What is the title of this document, Mr. Justice?

A. It is a Constitutions, District No. 30, United Mine Workers of America, Pikeville, Kentucky.

Q. Do you have a copy of this document on file in District 30 here in Pikeville?

A. Yes, sir, I do.

Q. And do the provisions and terms of the conditions of this Constitution apply to District 30 here in Pikeville?

A. Yes, sir.

Q. And is this a true and accurate copy of the Constitution of District 30, United Mine Workers of America Constitution?

A. Yes, sir.

Q. Now, are the terms and

provisions of this document, this constitution binding on District 30, United Mine Workers of America and its member locals?

A. Yes, sir.

MR. KEHRLI: Your Honor, at this time the Government would move into evidence Government's Trial Exhibit No. 13.

MR. PAFUNDA: No objection, Your Honor.

MR. HARWELL: No objection, Your Honor.

THE COURT: Does anyone have any objections?

(SILENCE)

THE COURT: Being no objection, that which was previously marked as Government's Exhibit NPM5 is finally admitted into evidence as Government's Trial Exhibit No. 13.

Q. Mr. Justice, would you please turn to page 50 of the District 30 Constitution.

A. I have so turned.

Q. Do you locate Section 4 of Article 12?

A. Yes, sir.

Q. Would you read that section to the jury, please.

A. "Section 4. Every member

shall have the obligation to faithfully obey the provisions of the International Constitution, District Constitution and the bylaws of his or her local union, and to obey all laws, regulations and orders properly and actively issued under those Constitutions."

Q. Would you next go to Section 6 on page 51 and read that to the jury, please.

A. "Section 6. Every member shall have obligation to support all strikes called by the International Union or any of its subordinate bodies, provided that the strike called by the subordinate bodies are approved by the International;

To observe all picket lines called or endorsed by the International Union or any of its subordinate bodies, and not to engage in any strikes other than those called or endorsed by the International Union."

Q. Thank you, sir. By the way, when is the effective date of this document, the Constitutional District 30 of the United Mine Workers of America?

A. The effective date is September 11, 1981.

Q. Mr. Justice, was this Constitution in effect on--during the months of

January and February and March of 1982?

A. Yes, it was.

Q. And was United Mine Workers Local 5967 part of District 30 at that time?

A. Yes, sir.

MR. KEHRLI: Thank you. I have one last exhibit. Mr. Marshal, would you hand this to the Clerk? This has not been previously marked, Your Honor.

Your Honor, for the record, defense counsel has been on notice since last week that the Government did intend to introduce this as an exhibit. This is the miner bylaws.

(The Clerk labeled the exhibit.)

THE CLERK OF THE COURT: Your Honor, the booklet, Model Bylaws, identified as NPM6 has now been marked for purposes of trial as Government's Exhibit No. 14.

(Defense counsel examined said exhibits.)

THE COURT: Let me ask you this, gentlemen. Is an in limine hearing going to be necessary on this?

MR. PAFUNDA: Your Honor, I believe so.

THE COURT: All right.

Members of the jury, you

are going--the Marshal is going to take you to the jury room. While you are there, remember my not now admonition. I am not going to repeat it. By "not now," while you are in the jury room talk about the ballgame last night or anything else. Just don't talk about the case. Don't speculate what we are doing here while you are in the jury room, because what we are doing isn't evidence, all right.

Are there any objections to the Court's admonition?

MR. KEHRLI: No, Your Honor.

MR. HARWELL: No, Your Honor.

THE COURT: Marshal, please take the jury to the jury room.

THE MARSHAL OF THE COURT: Yes, Your Honor.

(Reporter's Note: At this point, the jury left the courtroom.)

THE MARSHAL OF THE COURT: Your Honor, the jury is out of the courtroom.

(Reporter's Note: At this point, the following proceedings were held outside the presence of the jury.)

THE COURT: Let me state this before any of you start anything.

Gentlemen, I am kindly of the opinion that the national--the Constitution of

the International--I am kindly of the opinion that the Constitution of the International District 30 are self-authenticated. I might be wrong. But this matter what you have got here, I don't know about that.

MR. SELF: That is why I stood up. I was just going to--I was going to say that I have no objection if Mr. Slone has to call home, because the message--

THE COURT: (Interrupting) Oh, did Mr. Slone get a message?

MR. SELF: I understood that the Marshal said he had a message to call home. I was just going to say that on behalf of the United States, I have no objection, and I'm sure the defendants, likewise, have no objection as he can leave the jury room and make a call home.

THE MARSHAL OF THE COURT: Your Honor, he received that earlier, and I was just checking to make sure the other deputy had passed that on to him, which he did.

THE COURT: Well, if there is no objection, gentlemen, it is all right for him to call.

THE MARSHAL OF THE COURT: I think he has already made the call.

THE COURT: I have been advised that

he already has.

MR. PAFUNDA: Your Honor, in addition to the Court's remark with respect to this last Government exhibit, the model bylaws, I would add that the bylaws are irrelevant and immaterial.

THE COURT: Well, let me ask you this.

I believe, if I am not mistaken, the United Mine Workers Constitution is on file with the Government, is it not,--

MR. JUSTICE: Yes, sir, it is.

THE COURT: (Continuing) --with the National Labor Board?

MR. JUSTICE: Yes, sir.

MR. KEHRLI: Your Honor, so are the model bylaws on the local files.

THE COURT: All right, let's go through this and see what we are doing.

Let's go through all three, the National Constitution, the District Constitution and then get down to the model bylaws.

EXAMINATION

BY MR. KEHRLI:

Q. Mr. Justice, the International Constitution is adopted in a convention with the United Mine Workers of America, is it not?

A. Yes, sir, it is.

Q. And it is on file at District 30 where you have a copy of this on file at District 30?

A. We do have a copy.

Q. Sir, this document is also on file with the Department of Labor, with the United Mine Workers, is a labor organization with files, certain documents or reports that are known as LM1's or LM2's with the Department of Labor?

A. I believe so, sir.

Q. All right.

Do you have any reason to believe that the document you have in front of you is not the authentic or official copy of the United Mine Workers Constitution?

A. It is the official.

Q. All right. Government's Exhibit 13, the Constitution of District 30, United Mine Workers of America, Pikeville, Kentucky. This document as well is on file with the Department of Labor, is it not, sir?

A. Yes, sir.

Q. Do you have any reason to believe that this is not the official, true and

accurate copy of the actual Constitution of District 30 of the United Mine Workers of America?

A. No, sir, I don't.

MR. KEHRLI: Now, could the witness have a copy of the model bylaws, please.

THE COURT: Have they all examined it?

MR. PAFUNDA: No, sir.

THE COURT: I think we stopped to let them examine it, and then let's go through.

MR. KEHRLI: Fine, Your Honor.

THE COURT: Let the record reflect that because when the jury comes back, if it is admissible, it won't be necessary for them to see them examine it. At least we will get that out of the way.

MR. PAFUNDA: Your Honor, for the record with regard to Mr. Kehrli's last question, I believe the proper question would be whether it is a true and accurate copy of that particular Constitution, not whether he has any reason to believe that it is not, if I understand Mr. Kehrli's question.

THE COURT: Well,--

MR. PAFUNDA: (Interrupting) Well, different law schools, Your Honor.

THE COURT: This is off the record while we are doing this.

(Off the record remarks.)

THE COURT: Let's go with the in limine proceeding.

And I also want to bring up the fact that the other is self-authenticated.

MR. KEHRLI: Because the document was just recently received by the Government and obtained by the Government and was not part of the pretrial hearing concerning authenticity, I would request at this time that to establish authenticity that I be allowed to call Agt. McCallister preliminarily before examining this witness on the admissibility of the document.

THE COURT: All right. Step down. All you have to do is step over there to the side. Or do you want to go get a drink of water or something?

MR. JUSTICE: This is fine.

THE COURT: Let's see if this is necessary.

MR. KEHRLI: If it is necessary.

THE COURT: I don't want you gentlemen engaged in a colloquy and get to arguing between yourselves. You know, I don't like that. If we have got a difference in opinions, fine, but let's get this here.

Now, you are proposing to introduce this model thing. What is it, a model of what?

MR. KEHRLI: A model of the bylaws, Your Honor, governing all--

THE COURT: (Interrupting) Well, let's get it marked and get it into the record.

Counsel has-- Mr. Marshal, make your statement.

THE MARSHAL OF THE COURT: Your Honor, opposing counsel has viewed this exhibit.

THE CLERK OF THE COURT: And it has been marked, Your Honor, as Government's Trial Exhibit No. 14.

THE COURT: All right.

Now, what is this so I might write it down? What is it, Madam?

THE CLERK OF THE COURT: It is the United Mine Workers model bylaws, Your Honor.

THE COURT: The record may reflect that this was not--not previously marked as an exhibit. It is under objection, one, on the grounds that it was not previously marked.

MR. PAFUNDA: Your Honor, I am going to object on that grounds. I mean, in all fairness to

Mr. Kehrli--

THE COURT: (interrupting) All right. If you are going to object on that basis, then you are requesting Mr. McCallister be able to testify upon that.

MR. KEHRLI: Yes, sir.

MR. HARWELL: Your Honor, you said no colloquy. Can I have a word with Mr. Self just a second?

THE COURT: Yes, if it is just between you two gentlemen.

(Mr. Harwell conferred with Mr. Self.)

MR. PAFUNDA: Your Honor, I withdraw that objection in that regard.

THE COURT: Then there is no necessity of the agent coming up here.

MR. KEHRLI: Your Honor, since the authenticity is not objected to--

THE COURT: (Interrupting) It isn't the authenticity. That was on the basis that it was not previously marked as an exhibit.

Now, you have to lay your authenticity for your foundation.

MR. KEHRLI: All right. Then I still request that Agt. McCallister be called to the witness

stand to establish authenticity.

THE COURT: Please step down. The witness may be excused.

Mr. McCallister, you may take the stand.

DENNIS L. MCCALLISTER, having been called as a witness on behalf of the Government, after having been first duly sworn, was examined and testified as follows:

MR. SELF: Could the witness be given a copy of the exhibit, please.

THE COURT: Yes, sir.

(The Marshal complied.)

EXAMINATION

BY MR. KEHRLI:

Q. Agt. McCallister, do you recognize that document?

A. Yes, sir.

Q. What is it?

A. This is a United Mine Workers model bylaws that I obtained from the UMW National Headquarters in Washington, D.C. last Thursday.

Q. And this was obtained from the United Mine Workers of America International Union?

A. Yes, sir.

Q. Who from the International Union gave you that document?

A. Mr. Brown with the Union General Council Staff.

MR. KEHRLI: Thank you.

Your Honor, at this time that is all the questions I have of Agt. McCallister.

THE COURT: Any questions?

MR. PAFUNDA: Yes, sir. Over at the podium or here, Judge?

THE COURT: The podium.

CROSS-EXAMINATION

BY MR. PAFUNDA:

Q. It is fairly obvious, Mr. McCallister, you are not a member of the United Mine Workers of America at the present time, nor have you ever been; is that correct, sir?

A. That is correct, yes, sir.

Q. And you are not the custodian of any documents that are kept in the United Mine Workers office in Washington, D.C.; is that correct, sir?

A. That is correct, sir.

Q. And you are not employed by

the United Mine Workers in any manner, shape or form?

A. No, sir.

Q. And you don't know if that document has been--was recently altered, amended or changed in any way, say, one day before it was handed to you, do you, sir?

A. Mr. Brown, when he furnished me the document, told me that this was the document in effect that--during January and February--

MR. SPENCER: (Interrupting) Objection.

THE COURT: There is no jury here.

THE WITNESS: That's all I know.

Q. But as far as you know, you don't have any knowledge, nor is there any way you could acquire that knowledge as to whether that document had been amended or altered or modified two days before it was handed to you, correct, sir; because you didn't work then?

A. That is correct.

Q. All right. You didn't participate in the drafting of that document in any way, did you, sir?

A. No, sir.

Q. And you have never seen that document before you went to Washington and received it

from Mr. Earl Brown; is that correct, sir?

A. That is correct.

MR. PAFUNDA: That's all.

THE COURT: Thank you.

Is there anything further?

(SILENCE)

THE COURT: Thank you. You may step down.

Mr. Justice, will you please return to the stand.

(Mr. Justice complied.)

MR. KEHRLI: Your Honor, to further establish the authenticity and the admissibility of this document, I would like for Mr. Justice to refer to Government--what has been admitted into evidence as Government's Exhibit No. 12, the United Mine Workers International Constitution.

And would you turn to page 56 of that document, Mr. Justice, please.

(The witness complied.)

MR. JUSTICE: I so have.

Q. Would you read Article 10, Section 1, to the Court and the members of the defense counsel and the prosecution in the courtroom.

A. "Section 1. Local unions



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are self-governing bodies of the International Union charged with carrying on the work of the union in their jurisdiction.

"Local unions may adopt such laws for their government as do not conflict with the laws or rulings of the International or the district in which they are located or joint agreements; but no newly adopted local bylaws shall be effective or amended until approved by the International Executive Board.

"Local unions which do not adopt bylaws shall be governed by the model bylaws issued by the International Executive Board."

Q. All right, two questions, Mr. Justice.

To your knowledge, does Local 5967--have they adopted their own separate bylaws other than the model bylaws?

A. I have no knowledge as to whether or not they have.

Q. Do you have any such bylaws on file in your office in District 30?

A. If they have, they would be filed at the International Union.

Q. Do you have any on file in

your office?

A. No, sir.

Q. All right. The copy of the Model By-Laws, what has been marked for identification as Government Exhibit 14, do you recognize that document, Mr. Justice?

A. Yes, sir, I do.

Q. What is it?

A. That is the Model By-Laws that the local unions are supposed to use to conduct their local union affairs and business.

Q. And is that document -- the terms and conditions of that document binding upon any local union that does not adopt its own separate by-laws?

A. Yes. This would be the by-laws that they operate under.

Q. Is that a true and authentic copy of such model by-laws? And I will give you a chance to review it, if you wish, Mr. Justice?

A. I have reviewed it, and I would testify that it is.

Q. Thank you. And is there an effective date on that document, sir?

A. December the 3rd, 1980.

Q. Was that -- were the terms and conditions of that document in effect on January and February of 1982, sir?

A. Yes.

MR. PAFUNDA: Your Honor, I'm going to object for the record. This witness is not competent to express an opinion in that regard.

THE COURT: All right. That is your objection. Let it be noted that it is overruled.

MR. KEHRLI: You can answer the question, sir.

THE COURT: I think he answered it.

THE WITNESS: Yes. I said that in my -- it was the official by-laws in January of 1982.

MR. KEHRLI: All right. I'm sorry, Your Honor. I didn't hear him.

At this time, Your Honor, -- excuse me. One last thing. Strike that.

At this time, Your Honor, the Government would move Government Exhibit 14 into evidence.

THE COURT: Who wants to state the objections, gentlemen?

MR. PAFUNDA: Your Honor, I am going to object. I have just one question on cross examination.

THE COURT: Do you want to ask him a question?

MR. PAFUNDA: Yes, Your Honor.

THE COURT: Fine.

MR. PAFUNDA: I don't want to look at Mr. Kehrli's notes.

THE COURT: Did he leave his notes there?

MR. PAFUNDA: Mr. Kehrli, you left your notes up here.

MR. KEHRLI: There is nothing I am concerned about, Your Honor.

MR. PAFUNDA: Okay.

CROSS EXAMINATION

BY MR. PAFUNDA:

Q. Mr. Justice, if you would, please, would you look at the effective date of the United Mine Workers Constitution?

A. Yes, sir.

Q. And what is that effective date?

A. December the 19th, 1979.

Q. And I believe it was your testimony during the trial proceedings that this Constitution has since been amended; is that correct?

A. Yes, sir, it has.

Q. All right. And there has been several changes in it, sir.

A. There have been some changes.

Q. All right. Do you recall all the specific changes that were made in it?

A. I could be ninety-nine percent accurate.

Q. All right. But you would still have some doubt as to some of the changes; is that correct, sir?

A. Without a true copy of the changes, I would have some doubt.

Q. Would it be fair, just in ordinary talk, that it is not off the press yet?

A. That is true.

MR. KEHRLI: Your Honor, I object to this line of questioning. The document that counsel is inquiring about has already been admitted into

evidence.

MR. PAFUNDA: But in regards to this document and --

THE COURT: (Interrupting) I will permit you -- let him ask his questions, and then you can come back and rehabilitate him if necessary.

Q. Mr. Justice, you are familiar with the International Constitution of the United Mine Workers of America; is that correct, sir?

A. To an extent.

Q. Well, to that extent, is there a specific provision in there -- a specific article and specific section as to who shall interpret that Constitution and its application?

A. Yes, sir, there is.

Q. And who is that, sir?

A. The President of the International Union, Rich Crumpka.

Q. And he is responsible for that document's interpretation as well as its application or the extent of it; is that correct, sir?

A. That is true.

Q. You didn't -- one final



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question.

You didn't participate in -- you didn't participate in the drafting of those model By-Laws, did you?

A. No, sir, I did not.

Q. And you weren't in Washington when they were handed to Mr. McCallister, were you?

A. No, sir.

MR. PAFUNDA: Thank you, sir.

THE COURT: Mr. Kehrli, do you have any further questions?

MR. KEHRLI: I have no further questions.

THE COURT: Let me get this, Mr. Justice.

I believe the International Constitution provides that if the local has not passed anything to the contrary, the Model Rules that you have in Fourteen would apply; is that correct?

THE WITNESS: That is true, sir.

THE COURT: Speaking of Model Fourteen having any changes or amendments in it, is it different from what is contained in Fourteen?

THE WITNESS: Not by the International

Union, no.

THE COURT: Who has the authority to change them?

THE WITNESS: Individual local unions may change or add to the Model By-laws.

THE COURT: But in the absence of their having done something, that is applicable?

THE WITNESS: That is true, sir.

MR. KEHRLI: Your Honor, for the record, I would also state this. The Government, in its reciprocal discovery request, asks the Defendants to produce -- and I renewed that request -- any additional by-laws of Local 5967 they have adopted. And to this time the Defendants have produced no such by-laws. And we submit that should have been part of the reciprocal discovery production.

MR. PAFUNDA: Your Honor, that is only if we're going to introduce them into evidence, number one.

Number two, Mr. Kehrli is right. He made that request to me. I didn't mark it in the pre-trial hearing as an exhibit in this particular case. If I had, I certainly would have given it to the Government then, as I did with these other documents.

THE COURT: All right.

All right, the Court will grant -- well, we will consider the objection -- we will overrule them.

Now, I am going to let that which has been previously marked as Government's Exhibit NPM6 for identification, and permit that finally be introduced into evidence as Government's Trial Exhibit.

MR. PAFUNDA: Your Honor, at this particular point in time, I take it the Court is ruling that that particular document would be relevant; is that correct?

THE COURT: What about the relevancy? I am saying the authenticity has been established. What is relevant?

MR. KEHRLI: Well, Your Honor, I believe I asked the witness whether or not the terms and conditions of this document were binding on locals during the time of January and February of 1982.

THE COURT: Well, let's suppose this thing here contained something that says they will pay five dollars a month; that wouldn't be relevant to this trial.

MR. KEHRLI: That is correct.

THE COURT: What in there is --

MR. KEHRLI: (Interrupting) I will ask the witness to read the relevant portions, and that is Article Eleven, Section One through Three on page forty.

FURTHER EXAMINATION

BY MR. KEHRLI:

Q. Would you turn to page forty, Mr. Justice?

A. I so have.

Q. Would you read Article Eleven, Section One?

A. Article Eleven, Section One deals with strikes.

"Section One. No officer or member of the local union shall call or authorize a strike, nor shall any officer or member engage, support, or participate in any strike or picketing which has not been approved by the International Union.

"Section Two. No member of the local union shall participate in any strike or picketing unless they have been informed

directly by the president or a member of mine committee that the strike or picketing has been approved by the International Union.

"Upon being informed by any local, district or International officer or member of the mining committee that the strike or picketing has not been authorized, the member shall immediately return to work.

"Section three. When an unauthorized strike occurs, the president of the local union shall immediately notify the district office so as a member of the district executive board can investigate.

"The president of the local union shall also call a meeting of the local union for the earliest possible time in order to help obtain immediate resumption of work.

"If the president is not immediately available, these actions shall be taken by the vice-president. And if the vice-president is not immediately available, by the chairman of the mine committee.

"Work shall be resumed pending the investigation and the holding of the called meeting."

MR. KEHRLI: Thank you, Mr. Justice. Those are the relevant portions, Your Honor, that we ask to be read to the jury.

THE COURT: What do you have to say with regard to the-- First, let's hear your objections based upon relevance for the purposes of the record.

MR. PAFUNDA: Well, I have got a lot of things, Your Honor.

We still haven't shown-- or the Government hasn't shown that the local does not, in fact, have any bylaws.

Mr. Justice answered the question, "I don't know."

Number two. On this point with regard to strikes, I see how Mr. Justice's comments or reading from that particular model bylaws can be relevant. There is no evidence of a strike here in this particular case whatsoever.

THE COURT: Is there anything further?

MR. PAFUNDA: I simply renew my objections. I don't see how model bylaws-- And this is my point.

My model bylaws from the

International--these are a model. If you don't have bylaws, these are your bylaws to go by. All right.

I think there has to be evidence that Local 5967 did not, in fact, have bylaws. That local was in existence a lot longer than that little book.

They can have bylaws, and they can act, insist they are separate entities, meet with their union officials, have their local members vote on it and active bylaws in that regard.

It is not-- There is another point too, Your Honor.

THE COURT: Let's let Mr. Pafunda get through, then you start.

MR. PAFUNDA: And I hesitate at this particular point in time to raise it, but it appears to be there is a fatal variance with the indictment here.

THE COURT: Pardon?

MR. PAFUNDA: A fatal variance with the indictment.

The Government has gone along, on one theory, as the indictment reads, although it is lengthy indictment. The basic thrust of their Hobbs Act violation is that certain individuals

conspired with Edgar Jones to put Ray-Mac out of business.

Now they are coming back in that regard and saying they are amending their indictment by putting these model bylaws in, saying these individuals participated in something that was unauthorized by the International, the district, and shouldn't have been authorized by the local, thus they couldn't do it; therefore, it was an illegitimate labor objective and thus a violation of the Hobbs Act.

THE COURT: Well, let's do it this way. I think the opening statements-- The Enmons defense doesn't come up until the defendants--

MR. PAFUNDA: (Interrupting) Put on their proof.

THE COURT: (Continuing) --put on their proof. So, you might say that this may be rebuttal.

On the other hand, I think the opening statement very well brings out that the Enmons defense is certainly going to be a part of this matter.

MR. PAFUNDA: That is correct, Your Honor.

THE COURT: And I think the Enmons

defense is based upon a bonified labor dispute with a legitimate labor goal.

MR. PAFUNDA: That is correct.

THE COURT: Don't you think this model thing is going to be relevant to that issue?

MR. PAFUNDA: No, I don't, Your Honor.

MR. KEHRLI: Your Honor, may I be heard on that?

MR. PAFUNDA: I think that is what the confusion and the complexity of this trial--

MR. KEHRLI: (Interrupting) May I be heard on that point, Your Honor?

THE COURT: No. He doesn't make it-- He is making an objection based on that, and that is noted in the record.

Thank you, sir. Have your seats. If you have something else you want to get in the record, get it there.

MR. PAFUNDA: Your Honor's comment with regard to rebuttal, if that comes in, and if we get to that point, that is the point it should arrive.

THE COURT: Well, I--I think there is-- It's enough in evidence at this point.

MR. KEHRLI: The other point, Your Honor, is the Government--



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THE COURT: (Interrupting) I am not making a ruling, but let's get his objection in.

I don't like this objection-- We have got to get this thing over.

So, you have got your objections in the record, fine. Now, you make your response.

MR. KEHRLI: Your Honor, to establish an offense under the Hobbs Act, the Government must prove the defendants have no lawful claim to the property that they attempting to obtain from their victims.

In order to do that, in this case particularly, it is the--the indictment alleges there are union defendants.

And as the opening statements make clear, it is contested point whether or not the defendants in this case have lawful claim to the property they are attempting to obtain, and that property being the right of Ray-Mac to do business and to compete with JRM.

They are saying they did so under an attempt--a bonified attempt to organize the union employees of Ray-Mac, a nonunion employer.

That directly puts into

issue--I would say that the indictment puts into issue the possibility--the fact that the Government must prove that the union defendants' activities were illegitimate and unlawful, and not legitimate activities.

We submit that the model bylaws of the very local to which these officers were members, which states they may not participate in any picket without the approval of the International, is directly and extremely relevant to the facts and proof required in this case.

THE COURT: All right. The Court has considered the objection noted in the record, and the Court finds it relevant.

Are we ready, gentlemen?

MR. PAFUNDA: It's not an objection, Your Honor.

MR. SELF: Can the Court advise the Jury that the document has been introduced?

THE COURT: No, sir. Well - - I think - - MR. SELF: (Interrupting) Renew his motion again?

THE COURT: Just let him make his motion, let it be introduced and let the objection - - I will say that the Defendant's motion - - let's do that. We won't repeat the argument in front of the Jury.

MR. PAFUNDA: Your Honor, this is a request. That document was shown to me by Mr. Kehrli, and I haven't had an opportunity to get one, model bylaws.

MR. SELF: We will get you a copy at the end of the day.

MR. PAFUNDA: I don't want to use the Court's document, I thought maybe there was an extra one floating around someplace.

THE COURT: Mr. Justice, is there another one?

MR. KEHRLI: Your Honor, to my knowledge that is the only copy.

THE COURT: Mr. Justice has got one right there.

MR. PAFUNDA: Thank you, Mr. Justice.

MR. KEHRLI: Is that the one that was marked as an exhibit?

THE COURT: No, sir.

MR. KEHRLI: I'm sorry.

MR. PAFUNDA: Is it all right?

MR. KEHRLI: If it is all right with Mr. Justice.

THE COURT: Are we ready, gentlemen, to have the Jury brought back in ?

MR. HARWELL: Judge, I think I know the answer, but every couple of days I may address the Court on this issue.

Objections as to one Defendant goes to all, unless we stand up and tell you to the contrary, is that right?

THE COURT: Yes. You don't have to, it goes in favor of all.

Bring the Jury back in.



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THE MARSHALL OF THE COURT: The Jury is back in the Jury box.

MR. KEHRLI: May I proceed, Your Honor?

THE COURT: Yes, sir, please proceed.

MR. KEHRLI: Thank you.

At this time, the United States moves into evidence what has been marked as Government's Trial Exhibit 14.

THE COURT: The Court notes the objections of the Defendants, and they are overruled, and let's that which has been previously marked for identification as NPM 6, is finally admitted into evidence as Government's Trial Exhibit 14.

You may proceed, sir.

Q. Mr. Justice, would you turn to page forty of Government's Trial Exhibit 14, model bylaws?

A. I so have.

Q. Would you read article eleven section one?

A. Section one, "No officer or member of the Local Union shall call or authorize a strike, nor any officer or member engaged for or participate in any strike or picket which has not been



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approved by the International Union."

I believe I did leave out the word shall, nor shall any officer.

Q. Yes, sir. I also believe there was another mistake.

Would you please read that section again?

A. Section one, "No officer or member of the Local Union shall call or authorize a strike, nor shall any officer or member engage, support or participate in any strike or picketing which has not been approved by the International Union."

Q. Would you read section two, please?

A. Section two, "No member of the Local Union shall participate in any strike or picketing unless they have been informed and directed by the president, or a member of the Mine Committee, that the strike or picketing has been approved by the International Union. Upon being informed by any Local District or International officer or member of the Mine Committee that the strike or picketing has not been authorized, the member shall immediately return to work."

Q. Would you read section three to the Jury, please?

A. Section three, "When an authorized strike occurs, the president of the Local Union shall immediately notify the District office so a member of the District Executive Board can investigate."

"The president of the Local Union shall also call a meeting of the Local Union both for the earliest possible time in order to help obtain an immediate resumption of work."

"If the president is not immediately available, these actions shall be taken by the vice president."

"And if the vice president is not immediately available, by the Chairman of the Mine Committee."

"Work shall be resumed pending investigation and holding of the called meeting".

Q. All right, Mr. Justice. Would you turn to the inside cover of that document entitled United Mine Workers Model Bylaws, and would you read to the Jury the section on Roman numeral three - - no, it would be - - excuse me, it would be page three I's.

It would be the page immediately inside the front cover.

A. Read everything on small I?

Q. Yes, sir.

THE COURT: Three small I's.

Q. Three small I's, sir.

MR. KEHRLI: May I approach the Bench, Your Honor?

THE COURT: No, I think Mr. Justice - - I think you - -

THE WITNESS: (Interrupting) Okay.

THE COURT: He has got it.

Read the head notes so you can see.

A. Says article ten, section one?

Q. (Nodding head affirmative)

A. Reads as follows:

"Local Unions are self-governing bodies of the International Union charged with carrying on the work of the Union in their jurisdiction."

"Local Unions may adopt such laws for their government as do not conflict

with the Laws and rules of the International or the District in which they are located, or joint agreements. But no newly adopted Local Bylaws shall be effected or be admitted until approved by the International Executive Board."

"Local Unions which do not adopt bylaws shall be governed by the model bylaws issued by the International Executive Board."

"Immediately following - -"

Q. (Interrupting) That is fine, that is sufficient.

What is the effective date of the document entitled United Mine Workers Model Bylaws that you are reading from, sir?

A. December 3rd, 1980.

Q. And were these model bylaws pending and effective on Local Unions who have not adopted their own separate bylaws during the months of January and February, 1982, sir?

A. Yes, sir.

Q. Mr. Justice, to your knowledge, did the International of the United Mine Workers of America ever authorize or sanction a work stoppage or a picket at Ray-Mac Coal Company during February of 1982?

A. To my knowledge, they did not.

Q. Returning to the subject we discussed briefly earlier, you said you refunded Phil Booth's check?

A. Yes, sir.

Q. His dues check. Did you refund that check prior to February 15th, 1982, Mr. Justice?

A. I believe I put that check in the mail the same day it was written back to him, which would have been January the 4th.

Q. 1982?

A. Yes, sir.

Q. Thank you. You indicated that the truckers that you signed up on January 4th, 1982 were hauling to some UMW Coal Operators, is that correct?

A. Were hauling from.

Q. From. Some UMW Coal Operators, is that correct?

A. That is true.

Q. To your knowledge, are those same operators to this day operating as United Mine Workers Union Operations?

A. To my knowledge, the majority are not.

Q. They are not.

When did they become non-union?

A. I can give you an approximate date.

Q. When was that, sir?

A. I would say March or April of '82, somewhere in that area.

Q. What relationship, if any, did those coal operators that changed from union to non-union have with Edgar Jones?

A. I don't understand the question.

Q. Let me repeat it, perhaps you will.

What relationship, if any, did those operators that changed from UMW union operations to non-union, what relationship did they have with Edgar Jones?

A. I believe that Edgar Jones bought their coal and processed it and sold it on the open market.

Q. Were they subcontractors

of Edgar Jones, or do you know?

A. I am sure that some of them was.

MR. KEHRLI: Thank you, Your Honor, I have no further questions of this witness.

MR. HARWELL: May the Court please, with Your Honor's permission, I will defer to Mr. Pafunda.

THE COURT: Let me ask you this, gentlemen. Do you want to start at the other end?

MR. PAFUNDA: No, Your Honor.

THE COURT: Okay. Let me explain that to the Jury, Mr. Pafunda. I have given counsel for the defense the option - - member, I told them I wanted them to keep this in order, but I am sure counsel for the Defendant is tired of following this all the time, so I gave them the option of saying Judge, let's start at the other end first, so that is what I was speaking of.

CROSS-EXAMINATION

BY MR. PAFUNDA:

Q. Mr. Justice, let's just go back a moment to January 4th meeting with Edgar Jones that you went to his office.

A. Yes, sir.

Q. And I take it from your remarks as concerns Drexil Hall, Edgar Jones and Drexil Hall did not get along, is that correct?

A. It was certainly apparent that they had some differences.

Q. All right. Strong differences?

A. I would describe them as such, (Nodding head affirmative).

Q. In other words, Edgar wouldn't even let him in the office, is that correct?

A. Well, the way he stated it, if I remember correctly, that he didn't want to meet with Drexil nor did he want him involved in the meeting.

Q. And he was adamant about that, correct?

A. Yes, sir.

Q. As a matter of fact, if you brought Drexil into the room, he would probably call the meeting off, is that true?

MR. KEHRLI: Objection.

MR. PAFUNDA: I will withdraw the question, Your Honor.

Q. But it is for certain on January 4th, 1982, Drexil Hall and Edgar Jones didn't get along?

A. That was certainly my impression.

Q. And Mr. Justice, I take it, that you were up there at that time in your capacity as District Thirty president of the United Mine Workers of America, correct?

A. Yes, sir.

Q. And you went up there at that time to ask certain coal truck drivers to join the United Mine Workers of America, is that correct?

A. That is true.

Q. And at that time the people you had with you were Cornelius Owens, vice president of District Thirty?

A. That is true.

Q. You also had with you, I believe you met him outside later, Drexil Hall, you went to lunch with him?

A. Right.

Q. And he was vice president of Local 5967 at McDowell?

A. That is true.

Q. You had at no time an International officer? By International officer, I mean an International United Mine Worker officer there, is that correct?

A. No, sir.

Q. There were no cards there for anyone to sign to join the Union?

A. No, sir.

Q. There was no survey conducted by the International Union?

A. Of the truck drivers?

Q. Yes, sir.

A. No, sir.

Q. So in other words, you went up there and asked them to join the Union, correct?

A. That is true.

Q. All right. The International didn't have an organizing drive going on with those truck drivers, did it ?

A. No, sir.

Q. Let's get to this word organizing.

When you use the word organizing, you use it in the sense that a survey is being conducted by the International United Mine

Workers, correct?

A. That is true.

Q. Now, explain to the Jury, and correct me if I am wrong, that there are basically three levels to the United Mine Workers of America.

I will take the International would be the level number one, correct?

A. Correct.

Q. And all those people are located in Washington, D.C.?

A. The majority.

Q. With International collective board members located in the various districts that comprise the International?

A. That is true.

Q. For example, District Thirty has an International Executive Board member here in Pikeville?

A. True.

Q. Full-time?

A. Yes, sir.

Q. He did not attend that meeting on January 4th, did he?

A. No, sir.

Q. The second level, if you

are following me, is the District level, correct?

A. Correct.

Q. That is composed of officers such as the president, the vice president, the secretary treasurer, and the field representatives, correct?

A. Correct.

Q. Within District Thirty there are how many field representatives?

A. Four.

Q. All right. And they cover what are known as subdistricts, is that not so?

A. That is true.

Q. And how many subdistricts is in District Thirty?

A. Four.

Q. And McDowell or Floyd County is in what subdistrict, sir?

A. Subdistrict four.

Q. All right. And the field representative for that subdistrict from your direct testimony would be Franklin Scott, correct, sir?

A. That is correct.

Q. And then once we go from the

subdistrict level, we go to the Local Union level, correct?

A. Correct.

Q. And there are within District Thirty approximately how many Local Unions?

A. Thirty-six.

Q. And they cover the counties that you mentioned earlier, Floyd County, Martin County, Letcher County, and Pike County, correct, sir?

A. Magoffin.

Q. And Magoffin County, is that correct?

A. That is correct.

Q. Approximately how many coal companies are union coal companies?

A. I can give you a rough estimate. Approximately two hundred and sixty.

Q. All right. Spread throughout those various counties?

A. That is true.

Q. With the main concentration being in Floyd and Pike County?

A. I would say so.

Q. Then we go to the base

level which would be the rank and file member, correct?

A. True.

Q. He is the United Mine Workers of America?

A. I would describe it as such.

Q. Now, your union is a democratic union, is that true?

A. That is true.

Q. In other words, each rank and file member has an equal voice?

A. Definitely should have, yes.

Q. And can vote on matters of business that are either in his local, over his district, or his International, correct?

A. Depending on where the issue or the problems would be that they were voting on.

Q. If it is a local problem and they have a local meeting, they each have one vote per one man per one member.

A. That is true.

Q. And those locals are not only comprised of active coal miners, they are

comprised of retired coal miners, is that not so?

A. That is true.

Q. And those coal miners who are working, does are cut from their paycheck and they are sent into the district?

A. That is true.

Q. As well as the International, correct?

A. The signatory companies mails the dues to the District, and then the district distributes them where ever they go.

Q. To support the United Mine Workers of America?

A. That is right.

Q. The more active coal miners in the United Mine Workers of America, the stronger the United Mine Workers of America are, correct?

A. Yes. I would say certainly so.

Q. In 1982, was the membership District Thirty of United Mine Workers coal miners active coal miners off?

A. Less than we had prior?

Q. Yes, sir.

A. Yes, sir.

Q. Due to economic conditions in the coal fields?

A. That would be my definition as to why.

Q. Lack of jobs?

A. Yes.

Q. And that brings us back to the organizing. The International, when it does sanction organizing in District Thirty, it usually has two International organizers assigned to whatever mine it may be, correct?

A. That is the normal procedure.

It may vary, but that would be the mrmal procedure.

Q. More specifically, at this strip mine operation, Ray-Mac, there were at least two International organizers to do a surwey at that mine, correct, sir?

A. That is my understanding.

Q. They would be Doug Tackett, Lois Burke, and Doris Osburn.

A. I can't testify directly as to who they assigned to that.

Q. To the best of your recol-

lection.

MR. KEHRLI: Objection.

A. I believe so.

MR. KEHRLI: Withdraw the objection.

Q. Now, the survey that Mr. Kehrli asked you about, what is that, explain that to the Jury, please?

A. International has an organizing department. The organizing department established or adopts the guidelines which they go about organizing non-union operations.

And the first step of organizing would be to assign two organizers, or maybe more sometimes, to a particular non-union operation.

And a survey consists of determining how many employees worked at that particular operation, the financial condition of that particular company.

In turn, the organizers talk to the employees sometimes in groups, sometimes they go to their homes and talk with them individually, and they try to determine if there is enough support, if there is enough to those employees interested in being represented by the UMWA.

After they complete their

survey, then they report back to the organizing department.

If their report is that they feel there is enough support to start an organizing drive at that operation, then one is started.

The next step would be if the organizing department gives their approval to the organizers to attempt to organize that mine, then they give them the Union cards, they go through the procedure of asking the employees to sign them.

Once they get a sufficient amount of cards signed to petition the NLRB for an election, then the NLRB eventually comes in and holds an election at the mine site, and if we get fifty-one percent of the eligible voters at that particular operation, the vote to be represented by the Mine Workers, then we - - what we call, we win the election, and we immediately attempt to set up negotiations with that particula company to negotiate a contract for their employees.

Q. When Mr. Kehrli asked you whether a Local union could organize, I believe your answer was no?

A. A local union under the guidelines of the International, a local union by the

word meaning of organizing, I will still answer no.

Q. All right. Because your definition of organizing is when surveys are conducted, and after the surveys, cards issued, and it's all conducted by the International, isn't that so?

A. That is exactly true.

Q. So when Mr. Kehrli used the word organizing, you were, in your mind, telling him what you understood in terms of International United Mine Workers organizational activities, is that correct?

A. That is correct.

Q. Now, if I may, you were not, and I will use your very example of January 4th, 1982, conducting an organizing campaign at Edgar Jones's office when you were asking those men to sign contracts, were you?

A. I was asking those independent truckers?

Q. To join the Union.

A. To join the Union.

Q. All right. Let's go all the way back in this organization to the rank and file working active coal miner.

I am correct in stating

that any UMWA Coal Miner can go up to another coal miner by himself, or with other men, and do as you did, ask them to join the union?

A. I would say yes.

Q. All right. And here is where I think there might be some confusion.

But that individual coal miner who is working in the coal mines and belongs to the United Mine Workers of America cannot go and get an International survey form, go out and conduct his own survey, and conduct a survey for the International without telling the International about it, is that correct?

A. International will not approve a local union doing an actual organizing drive, no.

Q. So the difference being, any member of the United Mine Workers of America, including the president of District Thirty, yourself, or a rank and file coal miner who belongs to the United Mine Workers of America, can go out and ask other non-union employees to join the United Mine Workers of America?

A. Acting on their own, I would say they can .

Q. All right. Let's look at the local union that the retired coal miner, and the working coal miner belongs to.

When they have meetings, the Local Union can invite people to the meetings, correct? They could invite a mivie star to a meeting, right?

A. They are a self-governing body to an extent, and I would say yes, that they could invite people.

Q. All right. As a matter of fact, isn't it the practice within District Thirty with the Local Unions to have regularly scheduled meetings once a month?

A. The constitution requires it.

Q. And that is the International Constitution?

A. Yes, sir.

Q. But a local union can also call special meetings, is that correct, sir?

A. That is true.

Q. And invite people to those special meetings?

A. If the - -

Q. (Interrupting) If the local people - -

A. (Continuing) If they approve, yes.

Q. In other words, again it gets back to the coal miner himself. If they go into the local and vote to do that, then they can do that?

A. Yes, sir.

Q. And that is the democratic system of the United Mine Workers of America?

A. Yes, sir.

Q. Ernie, do you have those model bylaws in front of you?

A. Yes, sir, I do.

Q. Please explain to the Jury - - do you know if Local 5967 has bylaws?

A. Their own ?

Q. Yes, sir.

A. No, sir, I do not.

Q. Let me ask you this, Ernie. What is the date on that book?

A. December 3rd, 1980.

Q. December 3rd, 1980?

A. That is true.

Q. And how long - - has

Local Union 5967 been around before 1980?

A. They have been in existence since I have been involved in the district, and that has been twelve years.

Q. Now, if you will, I believe Mr. Kehrli asked you to read from article eleven section one thru three, am I recalling correctly, Mr. Justice?

A. What page are you on?

Q. I am not on any page yet.

*** *** ***

MILLERS FALLS
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MR. PAFUNDA: I think it's page forty, is that what he asked you to read from?

A. I believe it was page forty.

Q. And that was from the Model By-Laws?

A. Yes, sir.

Q. And you read that to the jury and it says no officer or member of a local union shall call or authorize a strike?

A. Right.

Q. Nor shall any officer or member encourage or support or participate in any strike or picketing which has not been approved by the International Union.

Mr. Justice, that striking and picketing, do those sections, Sections One, Two and Three apply equally to non-union coal companies as well as signatory coal companies?

MR. KEHRLI: Your Honor, the Government would object to an interpretation by this witness, the document speaks for itself --

MR. PAFUNDA: (Interrupting) I believe there's an ambiguity -- I'm sorry.

MR. KEHRLI: I think it's inappropriate

and incorrect at this time, Your Honor.

MR. PAFUNDA: Your Honor, I apologize again. I think it's proper for this witness to say so and I think there's a question in the air.

THE COURT: Ladies and gentlemen of the jury, it's an opinion. You can heard the qualifications of the witness which were given to you when you were placed. An opinion is given just in order to aid the jury in making its determination during the course of this trial.

During the course of this trial, you will hear many opinions. The Court will give instructions -- give you a general instruction in regards to those opinions and you will consider those then. Let the objection be noted and overruled.

Q. According to the Court, Mr. Justice, you may answer the question.

A. In my opinion and interpretation of Article Eleven concerning strikes, Sections One, Two and Three, my opinion will be certainly subject to the approval or disapproval of the International Executive Board. But my interpretation is that Section One, Two, and Three relates only to signatory companies and strikes

involving signatory companies.

Q. If you would, please Ernie, tell these ladies and gentlemen of the jury what you mean by a signatory company?

A. Companies that are under contract or have signed a contract with the United Mine Workers representing their employees and the conditions, the benefits, etcetera that's within that contract.

Q. And was Ray-Mac a signatory company?

A. No, sir.

Q. Now, if you will, sir, return to the International United Mine Workers of America Constitution and I'll ask you to do what Mr. Kehrli asked you to do. Read Section Eight, Article Two.

A. Do you have the page?

Q. Yes, I do. It's page three and it's under Section Objects, that's Objects of the United Mine Workers of America, International Organization. It's the Eighth Section, Article Two, page three in my copy.

A. You want me to read it?

Q. Please do, sir.

A. "To secure legal protection of the right of all workers to organize and to strike and to organize the unorganized, to secure legal protection of the right to strike and to prohibit the use of strikebreakers and privately owned guards during labor disputes and to achieve such other legislation that will be beneficial to members of our craft."

Q. One of the main objectives of the International Union of the United Mine Workers, correct? It's one of your objectives.

A. To legally attempt and try to organize.

Q. Yes, sir.

I notice the last word under that section is craft. I take it that the coal miner considers himself engaged in a craft?

A. I would agree.

Q. Would you explain that to the jury, please, sir?

A. A union within itself in covering only in my opinion coal miners or related workers.

Q. And their work being skilled work?

A. True.

Q. And that's the craft?

A. Yes.

Q. If you will, sir, turn to page fifty-one of the Constitution of District 30 United Mine Workers of America.

I believe if I recall your direct testimony correctly, Mr. Kehrli had you read from Section Four on page fifty, is that correct?

A. I believe so.

Q. Did he also have you read from Section Six on page fifty-one?

A. I believe so.

Q. I will ask you to go in Section Six, down to the middle of the paragraph after the semi-colon so as not to repeat it to the jury, isn't it so that under your District 30 Constitution it states to observe all picket lines called on and endorsed by the International Union or any of its subordinate bodies. Does it say that?

A. It says strike authorized by the International Union, yes.

Q. My question is, does it say this on Section Six down in the middle of the

paragraph. Every member, all right, to observe all picket lines called --

MR. SELF: (Interrupting) Your Honor, we object. He's reading it out of context, Your Honor. He should read all of it at one time.

MR. PAFUNDA: He's already read it all, I'm just trying to save time, Your Honor.

THE COURT: Go ahead, you can do it on cross -- I mean redirect, I assume you're going to have some redirect.

Q. Am I reading this correctly? To observe all picket lines called or endorsed by the International Union or any of its subordinate bodies, am I reading that correctly, Mr. Justice?

A. You're reading it correctly, yes.

Q. All right.

And a local union is a subordinate body?

A. Yes, they are.

Q. Ernie, in that January 4th meeting wasn't Drexil Hall one of the members of that local union that asked you to come up there and get those coal truck drivers in the union, if

you recall?

A. I don't recall.

Q. When Edgar Jones used the word troublemaker did you take him to mean that Drexil Hall was constantly involved in union activities and working on behalf of the union coal miner in bringing those problems to everybody's attention?

A. With my experience representing the miners for almost fourteen years not always, but ninety percent of the time when an operator refers to an officer of the local or a committee as a troublemaker then I immediately interpret that individual to be a union man trying to see that the company upholds their obligations under the contract.

THE COURT: Ladies and gentlemen of the jury, the only thing he is doing is interpreting troublemaker. The only reason I permitted that in was to reflect the feelings which perhaps Mr. Jones had for this individual. That's all. As to -- You think we're getting evidence in here that's troublemakers being one thing and troublemakers being another, that's not an issue here. So disregard this just like you disregarded the others. Is there

any objection or correction?

MR. KEHRLI: None, Your Honor.

MR. HARWELL: No, Your Honor.

MR. PAFUNDA: May I approach the Bench with regards to my last question?

THE COURT: Yes.

(Reporter's Note: At this time a Bench discussion was held between Mr. Kehrli and Mr. Pafunda.)

THE COURT: Ladies and gentlemen, you are going to be excused for fifteen minutes, then we'll come back and stay till five o'clock, at which time we will adjourn till tomorrow.

MR. SELF: Tomorrow, Your Honor?

THE COURT: I mean until Monday.

Mr. Marshall, please excuse the jury for fifteen minutes.

(Reporter's Note: At this time the jury was excused from the courtroom at 3:45 P.M.)

THE MARSHALL OF THE COURT: Your Honor, all the jury has left the courtroom.

THE COURT: Mr. Pafunda, what is it?

MR. PAFUNDA: Well, first of all, I apologize again. I'm sorry I lost control there for

a moment.

My question is I was going to ask Mr. Justice if in his opinion it would make any sense that a man like Drexil Hall would try to put a whole company out of business when it would supply more jobs for him and the people in his area and supply more money to his local union and better his union?

THE COURT: Do you have an objection?

MR. KEHRLI: Your Honor, we'll object on the grounds and the basis of the witness had no knowledge or procedure for forming an opinion --

MR. PAFUNDA: (Interrupting) I'll withdraw. I just didn't want to do that and get blasted.

THE COURT: When we get to the point, gentlemen, let me remind you that we are professionals and if some professional clearly does something which it's apparent that he knows he's doing to try to get something over on somebody I'm going to instruct the jury that we have the rules and if some fellow is going to do something which he clearly knows he should not, he will certainly not get the benefits of it.

If a fellow obviously

does something that he knows he shouldn't, he can't put water in the buttermilk and get vinegar. I mean, I just don't see that. I don't want that done. Anytime that's done and I see it's done I will rule on it, but I'll rule on it in such a manner that it will be unpleasant to you.

MR. PAFUNDA: I know that.

Your Honor, I've got one more question for Mr. Justice. This is a proper one, I'm just going to have him read something from the District 30 Constitution, then I'm done with him.

THE COURT: Fine, let's have a recess.

Mr. Marshall.

THE MARSHALL OF THE COURT: We'll stand a recess until five after four.

(Reporter's Note: At this time a recess was taken until 4:05 P.M.)

THE MARSHALL OF THE COURT: All rise, the Court is in session. Please come to order.

All counsel and Defendants are present in the courtroom.

THE COURT: Madam Clerk.

THE CLERK OF THE COURT: The record may

so reflect, Your Honor.

THE COURT: Thank you. You may proceed, Mr. Pafunda.

CONTINUING CROSS EXAMINATION

BY MR. PAFUNDA:

Q. Mr. Justice, just one final question.

Would you please read the preamble from the Constitution of District 30?

A. "There is no truth more obvious than that without the U.M.W.A. Code. There could not have been such marvelous social and industrial progress as marks present day civilization. Believing that those whose lots is to toil within the earth's recesses surrounded by particular danger and deprived of sunlight and pure air in producing the commodity which makes possible the world's progress are entitled to protection and an equitable share of the fruits of their labor we have formed District 30, No. 30 United Mine Workers of America for the purpose of establishing by lawful means the principles embraced in the body under this Constitution."

MR. PAFUNDA: Thank you sir. That's

all I have, Your Honor.

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

THE COURT: Does anyone else have any questions?

MR. HARWELL: I do, Your Honor.

CROSS EXAMINATION

BY MR. HARWELL:

Q. Mr. Justice, my name is Aubrey Harwell, and I represent Mr. Edgar Jones.

Mr. Justice, there was some reference made during the course of your prior testimony about organizational survey that was done concerning Ray-Mac, do you remember that testimony?

A. Yes, sir.

Q. All right, sir.

Is it not a fact, sir, that that organizational survey was completed in November of 1981?

A. November of '81?

Q. Yes, sir.

A. I can't disagree with you since the organizing is conducted by the

International Union.

Q. And if I understand, sir, that organizing in the sense that you have defined it is headed up out of the Charleston office, is that correct?

A. That is the office of this region. It's located in Charleston, West Virginia.

Q. For the International?

A. That is true.

Q. So, whatever organizing was done or survey work which was done in regards to Ray-Mac would have been done out of or at the direction of the Charleston office, isn't that right?

A. That is true.

Q. And in so far as the survey is concerned, that survey would have been sent, I guess to Washington, not the district office, am I correct on that?

A. We never seen it, the district doesn't --

Q. (Interrupting) Beg your pardon?

A. They do not send the

district a copy of the surveys.

Q. All right, sir.

Then I interrupted you, I didn't mean to, but did you say you have never seen that survey?

A. I have not read the survey.

Q. All right, sir. You have answered my question.

Let me ask you a few more questions if I might, Mr. Justice, in regards to the meeting of January 4, 1982. That meeting I understand was at the JRM office, initially, the first meeting that day with Mr. Jones. Is that right?

A. Both meetings I believe was at the same office.

Q. Yes, sir. And that was at the JRM office, the office of the JRM Coal Company?

A. I was under the impression it was Edgar Jones' office.

Q. Yes. If I suggest to you, sir, that Edgar Jones' office is the only office in that area in the JRM Office, you would not

disagree with me, would you, sir?

A. As I testified earlier, I am not that familiar with that part of the county or that county. And I would not disagree.

Q. All right, sir.

Now, if I understand your testimony you were the one who called or initiated that meeting, is that right?

A. That is true.

Q. And Mr. Jones, when you initiated or called that meeting agreed to it, isn't that correct?

A. Well, I needed -- you know, when the truck drivers wasn't working, we had intended to talk with them individually in all probability. But since the truck drivers were not working and it's a long trip over there, we went up to talk with Edgar Jones and meet with him, because we knew he would be familiar with the truck drivers in all probability. And he did assist us to the extent that he got -- you know, we asked him could he get in touch with the truck drivers since we had no way of knowing where they lived or whatever.

Q. And he did you the favor by saying he would help you with that, isn't that

correct?

A. Yes, sir, he did.

Q. All right, sir. I think you said in that meeting with him that there was some conversation he had concerning Ray-Mac not being unionized?

A. Yes, sir.

Q. All right, sir. I'll ask you, Mr. Justice, didn't he tell you in essence and in substance that he found it kind of funny that the miners over there had to pay benefits under the union contract and District 30 sat back and did not take any action to unionize Ray-Mac, wasn't that the topic of the conversation?

A. That was part of his conversation.

Q. All right, sir.

Now, you testified, Mr. Justice, in regards to the second meeting at Mr. Jones' office on January 4?

A. Yes.

Q. You had lunch, you recall that?

A. Yes.

Q. During that meeting is it

not correct, sir, that a number of those men, those truck drivers who were there expressed irritation or expressed concern about Ray-Mac not being a union operation?

A. Yes, sir.

Q. Some of them were pretty vocal and pretty outspoken, were they not, sir?

A. Coal miners usually are.

Q. And they were as usual in this case, weren't they?

A. I would say that they were.

Q. All right, sir.

And it was at that meeting I think you said that a number of those people present signed union authorization cards and became members, signed the paperwork to become members of the United Mine Workers?

A. Yes, sir.

Q. All right, sir.

At some point in time later, after the problems in February of 1982 at Ray-Mac, some of the mines in that local went non-union, isn't that true?

A. At this point that is

true.

Q. And it's a fact, is it not, Mr. Justice, that you understand those mines went nonunion because the district did not make any attempt to organize Ray-Mac, isn't that true?

A. I would testify to the fact that I did heard -- hear something to that nature.

Q. All right, sir.

Now, Mr. Justice, other than the meeting, the meetings of January 4th, 1982 you did not have any further meetings with Edgar Jones, did you, sir?

A. No, sir, I have not.

Q. And there was no telephone conversations that you and Edgar Jones had after that. That's true, is it not?

A. That is true.

Q. All right, sir.

As a matter of fact, since you left Mr. Jones on January the 4th, 1982 you and he have not even spoken to one another, have you?

A. No, sir.

MR. HARWELL: Thank you, sir.

THE COURT: Anyone else for the defense?

Any redirect?

MR. KEHRLI: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. KEHRLI:

Q. You testified in response to one of Mr. Pafunda's questions that the survey was the first step of organizing a nonunion company?

A. That would be my understanding the way the International Organizing Department has their guidelines set up.

Q. And then you listed several other steps, signing cards NRLB petition, election, and then you negotiate collective bargaining agreement with the employer, is that correct?

A. That is true.

Q. Did any of those other steps, besides the survey happen at Ray-Mac?

A. To my knowledge, no, sir.

Q. Mr. Justice, why didn't you go to the employees of Ray-Mac and ask them individually to join the union like you did the independent truckers working or hauling for Edgar



PLEASE REVIEW FOR CONTENT

MR. PAFUNDA: Your Honor, may it please the Court, I'd like to interpose an objection at this time.

THE COURT: All right, your objection is noted and overruled.

A. As I stated earlier to organize an operation it normally involves a lot of time. The reason I never attempted to go to the truckers to start with, Frank Scott reported back to me that he had talked -- went over there a couple of times, and we still had the problem. And I had people from the local union calling my office and for that reason myself and Cornelius Owens went and what we had was and what was so confusing probably to the local union and to myself, we -- the operators or the companies in which the coal was mined at that time were signatory, and the prep plant into which it was being hauled was signatory. So, we had one little group of men entangled with a large number of union people. And no -- actually what I would refer to as working side by side, to me that's what -- made it more of a concern to me than what maybe Ray-Mac would have been since organizing is done by the International. So, the reason that myself and my vice-president

went over was that we could personally talk to these drivers and ask themselves to co-operate with us to solve that particular problem with that local union and ask them to join the union and they did so.

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THE COURT: Just a moment. This gentleman has given you an opinion, and stated the reasons or the basis for which his opinion was.

Now, the truth and fact, the truth and verity of the facts upon which he based his opinion is not in issue.

The thing which you are to consider is his opinion, that is what it is. He is stating the basis of his opinion.

It is apparent - - and you only consider what he said about the basis of his opinion as such. What he stated as the basis of his opinion isn't evidence , it is just evidence only as far as he is submitting that is his opinion is not on that basis.

Do all of you understand that?

If a person gives an opinion and he has nothing on which to base his opinion, it is up to you to decide how much credibility you want to give to that opinion.

He is stating what his opinion was.

He is stating the basis of it. He is only permitted for the purpose that

there was a basis for his opinion.

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

MR. PAFUNDA: Your Honor, just a point, unless I misheard, I believe he stated his reason, not his opinion.

THE COURT: What is the difference between his reason and his opinion?

MR. PAFUNDA: The only point I was making is that I believe Mr. Kehrli asked him, Mr. Justice, what his reason was why he gave certain - - why he did a certain thing. I don't know if I am off base or not.

THE COURT: Well, he is asking him why he did such an act.

MR. PAFUNDA: All right.

THE COURT: And he is stating why he did the act.

Now, whether or not that is true or false, isn't in issue. The only thing we are concerned is why he acted.

MR. PAFUNDA: In that regard, Your Honor, I withdraw my objection.

THE COURT: Fine. You may proceed, sir.

Q. So, I believe you mentioned this during cross-examination, but I am not clear on it.

There is a difference between what you were doing with independent truckers at that meeting on January 4th and an International organizing drive if it had taken place at Ray-Mac, isn't that correct?

A. In my opinion, there would be a difference.

Q. And again for the Jury's knowledge, would you explain that difference, please?

A. Well, as I have stated prior, an actual organizing drive at a non-union operation has to be authorized by the International Union.

Normally it is very time consuming. They have got procedures the organizers go through and I have known of cases where it took us from the date we started the survey to the date we actually got the contract of two years in a particular company.

And for that reason, I don't consider what myself and my vice president did by going over and merely talking with the drivers

and not going through any survey or hearing, because we are, ourselves in that particular situation, was already familiar with what the men in the local had told us that was going on.

We merely tried to persuade the independent truck drivers. When I say persuade, I mean just talk to them and explain to them why it would be beneficial to them to join the Union, and why it would be beneficial to the Union.

And before we left, they did sign and become members.

Q And is the fact that they were independent truckers in comparison with Ray-Mac Coal Miner employees, employees working for Ray-Mac, has that also made a difference?

MR. PAFUNDA: Your Honor, I am going to object on the basis of the leading question.

MR. KEHRLI: Your Honor, can I finish my question first before the objection is stated?

MR. PAFUNDA: I thought he was finished.

THE COURT: Finish your question.

MR. KEHRLI: I will repeat the question again.

Q Does the fact that the men you met with and solicited membership in Edgar Jones's

office, is the fact that they are independent truckers in comparison with the situation at Ray-Mac, where those are employees actually working at the coal mine for Ray-Mac, does that also make a difference?

THE COURT: Do you have any objection?

MR. PAFUNDA: Yes, Your Honor. Leading, and it assumes facts that are not in evidence at this particular point in time.

THE COURT: Let the objection be noted, be overruled, this is redirect.

A. The truckers became actual members of the United Mine Workers with the exception they - - take for instance say we had organized Ray-Mac, then the employees of Ray-Mac would have paid dues, and they would have earned credit toward their pension when they became retirement age.

But independent truckers, they do not earn any credit toward their pension for the simple reason that they are self-employed.

And the only thing that they have by paying dues and becoming a member is that that entitled them to attend Local Union meetings, to hold Local Union officers, but if they want to earn credit toward their pension, then what they do then, and I explained it to the truckers, that

before they signed that they could form a cooperation and they could work for that cooperation.

That cooperation in turn could pay man hour royalty into the fund on them, and they could earn credit toward their pension which that would be expensive on an independent trucker, so they chose not to earn any pension credit, but just simply become a member of the United Mine Workers.

Q. Is it not a fact that an organizing drive at Ray-Mac in an attempt to change Ray-Mac from a nonunion to a union operation would require International approval and sanction.

MR. PAFUNDA: Your Honor, may it please the Court, this is redirect and again I may get a continuing objection.

Mr. Kehrli is leading the witness.

THE COURT: All right, all right. Redirect. On redirect it is necessary sometimes to have leading questions. Let the objection be noted in the record, and continue to answer the question.

THE WITNESS: Would you restate that, please.

Q. Is it a fact that any organizing attempt, or any efforts to change Ray-Mac Coal Corporation from a nonunion to a union operation would have required official approval and sanctioning by the International United Mine Workers of America?

A. I can't answer that with a yes or no. I can give you an explanation.

Q. All right. Please do.

A. Frequently we sign a coal company up under contract without going through an organizing drive.

For instance, if we have a coal company contact us, or some of its employees and say the majority of us wants to be represented by the Mine Workers, and the company is willing, then we go out and the operators sign the standard agreement.

Q. That is correct. That is called voluntary recognition, isn't it?

A. That is true.

Q. Right. Absent Ray-Mac coming to you directly and doing that - -

A. (Interrupting) If I was in the office, and I got a call from one of the employees

of Ray-Mac, or from one of the operators that Ray-Mac was willing to sign a contract and that the majority of the employees had given their consent to being represented by me, or by the Mine Workers, I would either go myself or send a representative over there for them to sign a contract.

Q. Yes. If Ray-Mac was not willing and required an organizing attempt, an effort to organize those nonunion employees to get majority status and NLRB election and cards signed so that the United Mine Workers could bargain collectively for those employees, that organizing effort requires the International approval and involvement, does it not?

A. I wouldn't start an organizing drive at Ray-Mac without the consent of International, unless the company and the men had assured me that they were ready to sign.

Q. All right, thank you.

What is a strike?

A. A what?

Q. What is a strike as defined in these documents (indicating) that you testified about, United Mine Workers Constitution and the Constitution of District Thirty?

A. When the men on their own voluntarily ceases work.

Q. Is that the same as a work stoppage as it is sometimes called, a work stoppage?

A. To me there would be a difference. To the majority of the people there would not be.

Q. What is the difference to you, sir?

A. A work stoppage on occasion occurs when the men just stops work for a short period of time and says, "Employer, you do this, you're not on strike, but we are ceasing work due to safety reasons, or due to whatever reasons, and when this is corrected or when you have agreed to do this, we go back to work."

That, in my opinion, is a work stoppage.

If the employee just merely goes out on strike at a signatory company without using the grievance machinery on normal everyday problems, that is a strike.

Q. When you sent your field representative, Frank Scott, to attend that Union

meeting, did you instruct him to tell those employees to return to work?

A. No, sir, not at the time. Depending on the circumstances as to what he finds after he gets there determines whether or not he instructs them back to work.

Q. I see. And he did go, did he not?

A. Yes, he did.

Q. And he did conduct an investigation, and find out what was happening concerning the work stoppage at that time, did he not?

MR. PAFUNDA: Your Honor, if it please the Court, this is repetitive questioning. He has already testified to this, Your Honor.

THE COURT: Mr. Kehrli, is this repetition?

MR. KEHRLI: Well, I am leading into another area, Your Honor, specifically asked by Mr. Pafunda with regard to the reasons.

THE COURT: Well, if it's just - - I mean, if it is just reiteration just to emphasize a point, please don't do it.

But if it is leading to

something else, something legitimate, let's do it.

Q. He did make an investigation, did he not?

A. He informed me that he did.

Q. Mr. Pafunda asked you if a Local Union could invite particular people to its meetings. Did a fact that a particular person or persons, or a particular type of people, enter into your agreement with Mr. Scott after he returned and reported to you from that meeting?

A. Enter into an agreement?

Q. Yes. You testified earlier you agreed with his decision at that time.

A. I said - - I believe I testified to the fact that I did agree as to his reason for leaving the meeting early, and that was the extent.

Q. Do you know whether he gave those employees any instructions at that meeting?

A. If I remember correctly, he informed me - -

MR. PAFUNDA: (Interrupting) Your Honor, objection.

MR. WALBOURN: Objection, Your Honor.

MR. SPENCER: Objection.

THE COURT: You can state yes or no whether you know whether he gave you instructions, but please don't state what he said, that would be hearsay.

Q. Do you know whether or not he gave those people at that meeting instructions?

A. I was not there.

Q. Did he tell you afterwards whether or not he gave those people instructions?

MR. SPENCER: Show my objection, Your Honor.

A. Yes, he did.

THE COURT: That is all right. I will permit him to answer yes he told him.

Q. Did he tell you what those - - without saying what they were, did he tell you, did Frank Scott tell you what those instructions were that he gave to those people at that meeting?

A. Yes.

Q. Did you agree with those instructions that Mr. Scott gave at that meeting?

A. From what he related to me, yes.

Q. Why did you agree, or what facts, or on what facts, or what facts do you base your

decision on in making and agreeing with Mr. Scott?

THE COURT: Now, if he is answering why, it is going to go around the hearsay rule, and I am not going to permit it.

MR. KEHRLI: All right. Let me approach it from this angle, Your Honor.

Q. When you - - Mr. Scott reported back, did he not?

A. Yes, he did.

Q. You had a conversation at that time, did you not ?

A. Yes.

Q. And did you tell him that you agreed with his decision?

A. Yes, sir.

Q. Did you tell him why you agreed with his decision?

A. I agreed with his decision based on what he told me.

Q. Do you recall what you said to him when he reported back to you what you told him?

A. I said Mr. - - I didn't call him Mr. - -

THE COURT: (Interrupting) Just a

moment now. What he said to him is hearsay, isn't it?

MR. KEHRLI: No, it is not. With respect - - with respect to declaring he is here at trial. I am not talking about what Mr. Scott told Mr. Jones.

THE COURT: What he said to him was outside of this Courtroom.

MR. KEHRLI: But he is here available for cross-examination.

MR. WALBOURN: Your Honor, I am going to object to this entire line.

First of all, he is relying on hearsay; second of all, we have got back to the same point three times now.

THE COURT: Sustained.

Q. One last set of questions.

THE COURT: Mr. Self has - -

Q. (Interrupting) Who is the Executive Board member in Pikeville that belongs to the District Thirty that is also executive board member of the International ?

A. J. B. Trout is the IEB member for International in District Thirty.

Q. Did you have any discussions

with Mr. Trout regarding whether or not he authorized any strikes or picket at Ray-Mac during February, 1982?

A. He did not.

Q. When you solicited the membership - -

MR. KEHRLI: Your Honor, I believe that has probably already been covered, so at this time I have no more redirect.

THE COURT: All right.

Thank you, sir.

All right. Are we through with this witness, gentlemen?

MR. PAFUNDA: Gentlemen, I have no further questions of this witness; however, I would not like him to be excused, I will call him in my case in chief.

THE COURT: Mr. Justice, you aren't permanently excused.

Let me ask you this. Is he permanently excused as a United States witness, and he has become a witness of - -

MR. SELF: (Interrupting) No, Your Honor. We still would like the subpoena to be maintained. We ask that Mr. Justice be available in case

of any other questions, which I don't know.

If some questions come up, we may need to have him around the Courtroom for this trial. But he just kindly needs to be available.

THE COURT: Well, I think Mr. Justice is on call. He has got a telephone.

MR. PAFUNDA: If it please the Court, Your Honor, I will give him at least three days notice before I call him.

He doesn't have to remain around the Courthouse.

THE COURT: Mr. Justice, you are on call.

MR. JUSTICE: Yes, sir.

THE COURT: You may step down.

I am going to repeat my admonition. We are going to be in adjournment until Monday morning at 9:00 o'clock. During this adjournment, you are not to discuss the case among yourselves, nor to discuss it with anyone.

You are not to permit anyone to discuss it in your presence. Remember, no newspapers, no radio, no television.

Do you understand the

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

MR. HARWELL: No, Your Honor.

MR. PAFUNDA: No, Your Honor.

THE COURT: Mr. Marshall, please excuse the Jury until Monday morning at 9:00 o'clock.

Just one moment, hold it.

Madam Clerk, tell them about your Code-A-Phone just in case of the weather.

MR. SELF: Your Honor, there is precipitation of snow predicted on Sunday, so please check.

THE CLERK OF THE COURT: Yes, normally after you are impaneled you don't have to check it, but you are not due in here until Monday, check your message on Sunday evening, and we will have a message on it for you.

Now again, if it should snow Sunday evening, or if it snows during the night after you checked it, before you leave your home on Monday morning, if there is a heavy snowfall, check it again, because it can change.

A JUROR: Will there be a message Sunday night?



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THE CLERK OF THE COURT: We will have a message for you telling you to report, and that is in the event of a snowfall.

THE COURT: Until you are told not to report, you are to report, do you understand? You are to come. Yes, sir.

A JUROR: If I was to call on Sunday night, and Monday morning --

THE CLERK OF THE COURT: As long as it snows. If it does not snow, you don't have to call.

A JUROR: We don't have to call Sunday?

A JUROR: 6:30 Monday morning, if I am not on my way up here, I am at work in Winchester.

THE CLERK OF THE COURT: You don't even have to check it unless there is a heavy snowfall.

If there is a heavy snowfall, if in the event of a heavy snowfall and if you wait and not check it before 6:30, even if that will make you late in arriving, chances are it is going to be delayed anyway and you won't have to make that trip.

So that 6:30 checking is only if you have had a snowfall that

night that you have to check it again.

THE COURT: If there is no question of the weather - -

THE CLERK OF THE COURT: (Interrupting) You don't even need to check it again the next morning.

A JUROR: But we should check it Sunday in case something comes up like if counsel cannot come and there is no Court.

THE CLERK OF THE COURT: No. You can check it Sunday, we will have one, we will put it on to tell you to come in Monday.

A JUROR: I understand that.

THE COURT: If it doesn't snow, you are to come in Monday. If you call and you don't get an answer, I am saying you come until you are told not to come.

THE CLERK OF THE COURT: And you don't forget now you dial zero and dial collect and there is no charge for your call.

THE COURT: Thank you.

THE MARSHALL OF THE COURT: The Jurors are out of the Courtroom.

MR. SELF: One thing, Your honor, we would request that the thirty-five hundred

material provided to the defense counsel be returned for those witnesses.

THE COURT: All right. Gentlemen, return any Jencks Act material you have got with regard to the two witnesses who have testified.

MR. SELF: Yes, sir, Your Honor.

THE COURT: Gentlemen, let me get this to you. I notice several in the Courtroom sometimes get a little demonstrative. They shake their head yes and smile when someone is saying something which they approve, or they frown and shake their heads when they say something that they don't approve.

Let's don't do that. That partakes in the nature of an athletic contest, and this is not that. This is a judicial proceeding. Let's observe this.

Mr. Marshall, we will be in adjournment until 9:00 o'clock Monday Morning.

THE MARSHALL OF THE COURT: All rise. The Court is in adjournment until 9:00 A.M. Monday morning.

REPORTER'S NOTE: The Court recessed at 4:45 P.M., E.S.T.

*** *** ***

STATE OF KENTUCKY )
)
) SS.
)
COUNTY OF JEFFERSON )

WE, BRUCE D. HANDY, JAMES E. EDMONDSON, & GEORGE R. CAMERON, Notary Publics, within and for the State at Large, do hereby certify that the foregoing proceedings were taken before us at the time and place and for the purpose in the caption stated; that the witnesses were first duly sworn to tell the truth, the whole truth, and nothing but the truth; that the proceedings were reduced to shorthand writing by 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 26th day of January, 1984.

George R. Cameron
Notary Public

Bruce D. Handy
Notary Public

James E Edmondson
Notary Public