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, PEBO GAYHEART, LINVILLE MOSLEY, DONAHUE HALBERT, AUSTIN "BO MOORE, 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 30, 1984

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VOLUME SIXTEEN

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Direct Examination

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A P P E A R A N C E S

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

WILLIAM D. KIRKLAND, ESQ.

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

THE MARSHALL OF THE COURT: All Attorneys and Defendants are present.

THE COURT: Madam Clerk.

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

THE COURT: All right, gentlemen. Are we ready to proceed?

MR. SELF: Yes.

MR. BRANSEN: May I approach the Bench, Your Honor?

THE COURT: Yes.

REPORTER'S NOTE: At this time Mr. Bransen and Mr. Self approached the Bench and the following was heard:

MR. BRANSEN: It just came to my attention over the weekend that one of the Jurors is the son-in-law of one of my clients, James Flinchum, Jr. Mr. Hollon is on the other side of the case. He may not know me, in fact, he probably doesn't. I never saw him before.

THE COURT: Who is the Juror?

MR. BRANSEN: James Flinchum, Jr.

MR. SELF: What is the connection?

MR. BRANSEN: A forced sale. I am from Jackson and I never saw him before, and he never saw me.

MR. SELF: What is his connection with the suit?

MR. BRANSEN: It is his mother-in-law, he is not directly involved except for, and I don't know if he lives close to her or not.

MR. SELF: Who is the other side?

MR. BRANSEN: Mr. Hollon.

It is for a forced sale.

THE COURT: Well, we will take that up later.

MR. BRANSEN: I just found out about it. I wanted the Court to be aware.

THE COURT: I am aware and we will take it up later when we have a chance to reflect on it.

REPORTER'S NOTE: End of Bench Conference.

MR. ROWLAND: May I approach the Bench, Your Honor?

THE COURT: Yes.

REPORTER'S NOTE: At this time Mr. Rowland and Mr. Self approached the Bench and the following was heard:

THE COURT: If I don't speak loud enough at any time, tell me, sir, and I will be happy to speak up.

MR. ROWLAND: What I have is a problem and I don't know whether it needs to be recorded, but over the weekend I caught some kind of a bug and I might have to do a lot of coughing kind of suddenly.

THE COURT: Thanks.

REPORTER'S NOTE: End of Bench Conference.

THE COURT: What I just told the daily copy reporter, I don't feel comfortable with the microphone on. If I don't speak loud enough for anyone to hear me, you let me know and I will raise my voice.

Are we ready to proceed?

MR. SELF: Yes, Your Honor.

THE COURT: Who do you wish to have called?

MR. SELF: Mr. Lynn Parrish.

MARVIN LYNN PARRISH, called on behalf of the Prosecution, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SELF:

Q. Sir, would you state your full name for the ladies and gentlemen of the Jury?

A. Marvin Lynn Parrish.

Q. Mr. Parrish, where do you live?

A. 201 Walnut Avenue, Pikeville.

Q. And Mr. Parrish, are you employed?

A. Yes, I am.

Q. And how are you currently employed?

A. Coal-Mac, Inc.

Q. What position do you hold with Coal-Mac, Inc?

A. I am the president.

Q. Could you speak up just a

little bit, Mr. Parrish, so your voice could carry a little bit back farther this way.

What position - -

A. (Interrupting) I'm the president of Coal-Mac.

MR. SELF: I don't believe those speakers are working, so project your voice the best you can.

THE WITNESS: Okay.

A. (Continuing) President of Coal-Mac.

Q. How long have you held this position ?

A. Since May of '78.

Q. What are your duties as president of Coal-Mac, Incorporated?

A. To supervise the production, leasing, take care of all the general management of the company.

Q. And what is Coal-Mac, Incorporated?

A. It is a company engaged in producing underground strip, purchasing, and leasing company. We sell coal.

Q. Is it a partnership, cor-

And we also leased coal, so we leased, purchased and sold coal.

Q. And how did you sell the coal?

A. At that time, mainly we sold in spot market.

Q. What do you mean by spot market?

A. Well, it's - - we sold to about ten or twelve different utilities, and we bidded every month. The utilities sent us a letter the first of the month requesting a bid for the next month, and we submitted a bid by the tenth or fifteenth of the month of which usually at the end of the month they will notify us if we are successful, and they will be shipped the coal for the next month.

Q. And the coal, when it is shipped to these utilities, how did you acquire it?

A. Well, we acquired it either from our own tipples through the different - - by buying truck coal, from our parent mines, Mack Mining Mines or we occasionally bought coal in the car.

So it was already prepared, and we more or less brokered it to - -

A. That is correct.

Q. And what position - - did you hold the same position of president of Coal-Mac Sales during '81 and '82?

A. Yes, sir.

Q. And who were the owners of the company at that time?

A. At that time it was Frank Justice, Jim McGhee, and myself, Lynn Parrish.

Q. And again, in that period of time, again speaking like the latter half of 1981 and 1982, was this a partnership, corporation, or unincorporated association?

A. Coal-Mac Sales was a corporation.

Q. And was it organized under the laws of the State of Kentucky?

A. Yes, sir.

Q. And what was the nature of the business of Coal-Mac Sales during this period of time?

A. Coal-Mac at that time, we were mainly a sales company and operated tipples, purchased coal from various truck mines, including a related party of ours, Mack Mining.

poration, an unincorporated association, or what, Mr. Parrish?

A. It is a corporation.

Q. And it is organized under the laws of any particular state?

A. In the State of Kentucky.

Q. Is it a publicly held corporation?

A. No, it is not.

Q. And who are the owners of Coal-Mac, Incorporated at this time?

A. Frank Justice, Jim McGhee, Willie Barker and myself.

Q. Mr. Parrish, I am going to take you back just a little bit to the period of the last half of 1981 and the first half of 1982. How were you employed at that time, Mr. Parrish?

A. The company's name at that time was Coal-Mac Sales.

Q. When did it change names?

A. December of '83.

Q. 1983?

A. Yes, sir.

Q. And changed from Coal-Mac Sales to Coal-Mac Incorporated?

Q. (Interrupting) For the record, what do you mean by in the car?

A. We purchased coal two different ways. One, it's already prepared and in the car, and we just give them shipping instructions where to ship it, of course, and what we are paying for it.

Q. By car, do you mean a railroad car or a Dodge?

A. Railroad car, excuse me, railroad car.

Q. And these railroad cars, are they on a private line, or are they on some rail, specific rail line during this period of time?

A. They were on the Big Sandy C and O, and N and W.

Q. The Chesapeake and Ohio Railroad and the North - - N and W Railroad?

A. Yes, sir.

Q. During the period I am speaking of 1981, latter part of '81 and 1982, the coal that you were receiving that Coal-Mac was selling, who were you selling it to, specifically, the best you can remember?

A. The various utilities.

Virginia Electric was probably one of our largest customers.

Q. Where is Virginia Electric located?

A. In Richmond, Virginia.

Q. And how was the coal shipped to Virginia Electric?

A. C & O Rail car.

Q. Who else did you sell coal to?

A. There was Duke Power, Duke Power Company, South Carolina Electric and Gas, and various other utilities and various other brokers.

Q. The Duke Power Company, where is Duke Power Company located?

A. In Charlotte, North Carolina.

Q. Is coal shipped to them via rail?

A. Yes, sir.

Q. South Carolina Electric & Gas Company, where is that located?

A. Columbia, South Carolina.

Q. Is coal shipped to them also shipped via a railroad?

A. Yes, sir.

Q. The coal that you shipped to these and other companies during this period of time, where was it loaded?

A. Various loading facilities. We have tipples in Shelby.

Q. Shelby is where?

A. Shelbiana, Kentucky.

Q. Pike County?

A. Pike County, yes, sir.

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A. We had one north of town on Stone Creek Road. That's again here in Pike County.

Q. Where is Big Creek?

A. Over north of Belfry.

Q. Pike County?

A. Yes, sir. Then we had one in Floyd County. We had one in Eastern Kentucky on Route 80; one at Garrett; and for a while one at Bosco. All those were on Route 80. We had another dock at Kite. Then we had one at Jenkins.

We operated one over at Whitesburg.

Q. When you say you bought truck coal, what do you mean by buying truck coal, Mr. Parrish?

A. We had two buyers in the field and they routinely called on various operators, deep and strip that didn't have loading facilities or tipples, to purchase their coal. Usually it was on a day-to-day basis or a week-to-week basis.

Q. And, to your knowledge, these operators that you called on, where were they located at?

A. They were located in Letcher, Knott, Floyd and Pike County.

Q. And why would you go to a specific operator and attempt to buy coal from him?

A. Because we had orders to-- to ship, to fill.

Q. And was there any specific type of coal that you either were or were not buying?

A. No. We didn't exclude any type--certain type coal.

Q. Are there generally two types of coal in Eastern Kentucky coal fields, Mr. Parrish, or are there more than two types?

A. I think there would be several types in the industry.

Q. Were you purchasing all types?

A. We were--

Q. Was there any type of coal that's produced let's say in Pike and Floyd and Knott Counties that you weren't in the market to purchase?

A. Anything that was so dirty that had to be washed-- We didn't have a washer. We weren't purchasing that quality of coal.

But as far as anything else or any other qualities that we could make a profit on it--we purchased it because we would blend the various

qualities together at our site.

Q. Were you thus purchasing both high sulfur and low sulfur coal?

A. Yes, sir.

Q. Were you purchasing this for sale in interstate commerce?

A. Yes, sir.

MR. SELF: Mr. Marshal, if you would, I'd ask you to hand the witness what's been marked for identification as Government's Exhibit HHHH.

(Reporter's Note: At this time the Marshal handed the Clerk a document.)

THE CLERK OF THE COURT: Your Honor, the exhibit that was previously marked for identification by four letters of the alphabet H has now been marked as Government's Trial Exhibit No. 15.

(Reporter's Note: At this time the Marshal handed defense counsel a document.)

MR. HARWELL: May we approach the Bench, Your Honor?

THE COURT: All right.

(Reporter's Note: At this time all counsel approached the Bench; whereupon the following was heard:)

MR. HARWELL: May the Court please, we object to the introduction of Government's proposed

Exhibit 15. We object on the basis of it being irrelevant to the indictment charges. It alleges or alludes to the fact that Ray-Mac was involved in interstate commerce. If the Court please, Government's Exhibit 15 is a list of various places where coal was shipped during certain periods of time. We believe that the document had no relevancy to this proceeding.

THE COURT: Well, is your thrust to the relevancy or is the thrust to the variance from the indictment?

MR. HARWELL: The exhibit is not relevant. Mr. Marshal, show that to the Judge.

THE COURT: All right.

(Reporter's Note: At this time, the Marshal handed Judge Unthank a document.)

MR. HARWELL: This is Government's proposed 15. It contains shipments from December of '81 through March, 1982.

THE COURT: All right. Mr. Self?

MR. SELF: This is proof of the interstate nature of the indictment and it shows the coal was mined and shipped through interstate commerce, Your Honor.

THE COURT: All right. Let the record note that your objection is overruled.

MR. PAFUNDA: I also object to the introduction of the exhibit marked as Government's Exhibit 15 on the basis that the indictment charges a Hobbs Act violation concerning Ray-Mac. Coal-Mac Sales, as the witness testified, is a separate entity. Whether Coal-Mac is engaged in interstate commerce is not at issue in this matter.

THE COURT: Let the objection be noted as overruled.

THE MARSHAL OF THE COURT: Your Honor, Government's Exhibit 15 has been shown to all counsel and passed to the witness.

THE COURT: Thank you.

Q. Do you recognize the item that's just been handed to you?

A. Yes, sir.

Q. Without going into what it contains, Mr. Parrish, what is that?

A. That's a record of our Coal-Mac 2 facility at Stone Coal, shipments that were made from December, '81 to March of '82.

Q. Now, where did the figures on that document come from, Mr. Parrish?

A. It came from our office. We supplied it.

Q. And it's entitled Coal-Mac 2. Would you explain again for the ladies and gentlemen of the jury what Coal-Mac 2 is.

A. Coal-Mac 2 is the name of the tipple just north of town about a mile up Stone Coal Creek.

Q. By town you mean Pikeville?

A. North of Pikeville, correct.

Q. The coal that was being--

Strike that.

Are you familiar with an operation known as Ray-Mac Coal Company or Ray-Mac Mining Company?

A. Yes, I am.

Q. And during December through March of '82 where was the coal that was mined at that facility trucked to?

A. To Coal-Mac 2.

Q. This tipple?

A. Yes, sir.

Q. All the coal that was brought into the Coal-Mac 2 tipple, was it shipped via rail?

A. Yes, sir.

Q. And does that record that

you have in front of you reflect where the coal that was brought into Coal-Mac 2 was shipped to?

A. Yes, sir.

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

THE COURT: Any objection other than the relevancy?

MR. HARWELL: None other than what we've already stated, Your Honor.

THE COURT: All right. Let the objection be noted; overruled. Now, that which was previously identified as Government's Exhibit 4xH is admitted into evidence as Government's Trial Exhibit 15.

MR. PAFUNDA: Your Honor, the record should reflect other than my comments at the Bench.

THE COURT: Yes, sir.

MR. PAFUNDA: Thank you.

THE COURT: Relevance.

Q. Mr. Parrish, in December of 1981 did Coal-Mac SAles or Coal-Mac 2 or--did your company enter into a long-term contract for the sale of what's known--into a long-term contract for the

sale of compliance coal?

A. Yes, sir.

Q. What is compliance coal?

A. Compliance coal is a coal with a sulfur content of less than 1.2 pounds per million. In lay terms-- Usually if you take six times the BTU of a coal that's 12,000 then you have to have a .72 sulfur. The coal would have to be .72 or less to be termed compliance coal.

Q. If you know, Mr. Parrish, is that coal used for certain types of manufacturing or heating or electric production as opposed to higher sulfur coal?

A. Well, it's used in areas where they have sulfur regulations to prevent burning higher sulfur.

Q. Again, for the record, is that compliance coal low sulfur coal?

A. That's correct.

Q. Did you enter into a contract in December of '81 for the sale--a long-term contract for the sale of compliance coal?

A. Yes, sir.

Q. And would you tell the ladies and gentlemen of the jury who that was with and

the nature of that contract.

A. Yes, sir. We-- It was sold to General Coal Company as agent for us, with the destination of S. D. Warren Company in Maine. So, it was sold to General Coal as agent to S. D. Warren.

Q. And the nature of that contract, the length of it?

A. Five years.

Q. And was this a new contract that you had with S. D. Warren?

A. Yes, sir.

Q. And was it explained to you as to why compliance coal was needed?

A. I'm sorry.

Q. Was it explained to you why compliance coal was needed?

A. Yes, sir, because of the-- in the state of Maine with the current air regulations.

Q. And during December and January--excuse me, December, 1981 and January, 1982 and the first part of February, 1982--

A. Uh-huh.

Q. --where was the coal coming from that you were using to fulfill that contract?

A. It was coming from Ray-Mac and another job of ours, Mack Allen.

Q. Starting with the latter, what is Mack Allen?

A. Mack Allen is another division of Mack Mine that was operating on Mud Creek, on Hamilton Branch of Mud Creek.

Q. And when was Mack Allen put into existence?

A. I think the first coal came off the job in December of '81.

Q. Is this high sulfur coal or low sulfur coal from Mack Allen?

A. It was mainly low sulfur coal. We were mining three seams there. There was a little wider seam that had some sulfur in it, but it didn't account for very much production.

MR. SELF: Mr. Marshall, if you would, would you hand the witness what has been introduced as Government's Exhibit No. 1, the large map.

Mr. Parris, if you would, have the Marshall place it over there, and you can look at it.

May the witness step down from the witness stand to examine the map, Your Honor?

THE COURT: Yes, sir.

Q. Can you see it from there, Mr. Parrish?

A. Yes, sir.

Q. Do you recognize that?

A. Yes, sir.

Q. What is it, the entire exhibit, Mr. Parrish?

A. It is a highway map of Floyd County.

Q. Mr. Parrish, if you would, would you indicate to the ladies and gentlemen of the jury where Mack Allen, the division known as Mack Allen, division of Mack known as Mack Allen was operating during December and thereafter in Floyd County?

A. Right here on -- at the mouth of Hamilton Branch.

MR. SELF: Can the Marshall obtain a grease pencil, Your Honor, so he can mark it for purposes of the record?

THE COURT: All right. Mr. Parrish, I know it is difficult for you to do that. Once you have marked it, if you can, stand around so they can see; then you can point. You are going to

have to stand at the other side. He is indicating what point?

THE WITNESS: The right side of Hamilton Branch, right at the mouth of Hamilton Branch.

Q. Mr. Parrish, is that on what is known as the down side or the Mud Creek side of the watershed?

A. It is the Mud Creek side.

MR. SELF: Mr. Marshall, if you would, hand the witness this yellow grease pencil, if you would, please.

Mr. Parrish, I would ask, if you would, to circle, as best you can, the area where Mack Allen was operating during this period of time, and print Mack Allen above that circle or whatever you draw.

Q. Would you draw an arrow to that or something and write Mack Allen?

A. Yes, sir, I drew an arrow.

MR. SELF: May I approach the map just a moment, Your Honor, so I can indicate on the record specifically what the designation is?

THE COURT: Yes, sir.

MR. SELF: Let the record reflect that the witness has marked approximately three or four X's --

THE COURT: (Interrupting) Let's do this: Get up there and examine it, and go back to the podium and state it on the record.

MR. SELF: May the record reflect the witness has marked on Government Exhibit 1 with a yellow grease pencil indicated by X's at a certain area along Kentucky Route 680 and written Mack Allen with an arrow designating that specific area. May the record so reflect.

THE COURT: The record will so reflect.

MR. SELF: Thank you, Mr. Parrish. You may resume the witness stand, please.

Q. Mr. Parrish, in regard to Mack Allen, who owned the coal that was being mined by the Mack Allen operation if you know?

A. Yes, sir, Elkhorn Coal Corporation owned the coal.

Q. And did you all lease it from -- do -- who leased the coal from Elkhorn, if anyone?

A. We leased -- Beaver

Valley had the coal leased.

Q. What is Beaver Valley if you know?

A. It is a corporation of which one of the principals is Jake Cooley.

Q. And how did you all get to mine the coal?

A. We leased it from Beaver Valley. We subleased it from Beaver Valley Coal Company.

Q. Was this a strip or deep mine operation?

A. It was a strip operation.

Q. Did you strip it auger or --

A. (Interrupting) Stripping auger.

Q. And was that a union or nonunion operation, Mr. Parrish?

A. Nonunion.

Q. And you indicated the first coal came off there in December of 1981?

A. Yes, sir.

Q. And that was transported by a truck to your Mack -- Coal-Mac facility at

Coal Run. Is that correct?

A. That is correct.

Q. Now, did you -- in the same area, Mr. Parrish, did Coal-Mac have a division that was mining other coal in that same area adjacent to Mack Allen?

A. Mack Mining had a division of Ray-Mac.

Q. Before we get to that, would you explain the relationship between Coal-Mac, Mack Mining, and Ray-Mac?

A. Mack Mining is a partnership owned by Frank Justice and Jim McGhee. They also own controlling interest of Coal-Mac sales. Coal-Mac sales was mainly the sales and tipple and processing; and we also leased coal. Mack Mining was a mining company, and it had the various operating divisions of Ray-Mac and Mack Allen.

Q. What do you mean by an operating division?

A. Well, the foremen on that job --

Q. (Interrupting) On what job?

A. On like for instance the

foremen on the Ray-Mac job of the particular division ran that company. It was treated as a separate company as far as books or whatever. And he ran it and was paid on how well the company did. It was almost like a partnership, a smaller partnership or a --

Q. (Interrupting) Did you have any ownership interest in either -- in Ray-Mac Coal Company?

A. No, sir.

Q. Or Ray-Mac Mining Company?

A. (Witness shaking head in the negative.)

Q. What is the term -- what is -- do you know, Mr. Parnish, the name of that mining operation was --

A. (Interrupting) Ray-Mac Coal.

Q. Ray-Mac Coal?

A. Yes, sir, coal company.

Q. You had no ownership interest in Ray-Mac Coal Company?

A. No, sir.

Q. And to your knowledge, do you know who the owners of Ray-Mac Coal Company

were?

A. Yes, sir. The owners of Mack Mining, Frank Justice and Jim McGhee.

Q. Were there any other ownership interests in it?

A. No, sir.

Q. In Ray-Mac?

A. No, sir.

Q. What -- to your knowledge, what was the purpose for the existence of Ray-Mac Coal Company?

A. Would you repeat that? I am sorry.

Q. What was the purpose of the existence of Ray-Mac Coal Company?

A. The purpose was to mine that block of -- or that area of coal there, block coal or the Lease 749.

Q. And who owned the coal that Ray-Mac Coal Company was mining?

A. Elkhorn Coal.

Q. And how did Ray-Mac get an interest in that coal?

A. We subleased the coal from Joseph Mining Company.

Q. And when did you lease it -- we being who?

A. Coal-Mac Sales leased the coal, and we leased the coal around I guess the first of '81. But it was done on a verbal lease. There was a lot of drafts that went back and forth between our office, Joseph Mining's office and Elkhorn before the attorneys agreed on the language.

Q. Do you know when the lease was finally written or executed in writing?

A. The lease was I think executed in '83, effective September 1st, '81.

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

THE CLERK: Your Honor, the exhibit previously marked for identification as a Government Exhibit by four letters of the alphabet K has now been marked for purposes of trial as Government Exhibit Trial No. 16.

MR. PAFUNDA: Your Honor, while the document is circling the table, may I approach the Bench?

Reporter's Note: Whereupon the following Bench conference was heard:

MR. PAFUNDA: Your Honor, on behalf of all the Defendants, I would object to the introduction of the lease on the basis that it is irrelevant and it constitutes an attempt to amend the entitlement. And so to save time, I would like to make this a continuing objection with regard to any document related to Coal-Mac sales. Is that sufficient so that there won't be a lot of Bench conferences?

THE COURT: Fine. Let me ask something. Have all these been made available to these attorneys before this trial?

MR. PAFUNDA: Yeah.

THE COURT: Have some of these attorneys not availed themselves of these at that time, and now they are availing themselves or the opportunity at this time. Is that --

MR. PAFUNDA: (Interrupting) I can only speak for myself. Tom indicated to me that he had these documents made available. And they were available to Mr. Harwell and anyone who wanted them. I don't want to --

THE COURT: (Interrupting) Am I

presumptuous to assume that they didn't examine them at that time, and they are using this opportunity now to examine them?

MR. SELF: I think you are correct, Your Honor, in that assumption.

Shall I show the rest of them so that --

MR. PAFUNDA: (Interrupting) I can only speak for myself. Tom has stated he has had these. I did not look at them. A lease is a lease is a lease. I am not here to attack any lease other than on the grounds I have already stated.

THE COURT: Yeah. How many more of these do you have to introduce?

MR. SELF: I have got another lease -- you know, at least one more lease, and then I have big document. It will take two hours to look at if they go all the way through it.

MR. PAFUNDA: I wish we would hurry up because --

THE COURT: (Interrupting) All right.

(Reporter's Note: At this time the Bench conference was concluded.)

THE CLERK OF THE COURT: Your Honor, counsel for the defense has viewed the exhibit.

THE COURT: Proceed.

Q. Mr. Parrish, do you recognize the group of documents that have just been handed to you by the Marshall?

A. Yes, sir.

Q. Without going into specifics, or in general, what are those documents?

A. It is a sublease between Joseph Mining and Coal-Mac for the area on the left side of the highway there on John Hall Hamilton Branch to the left side of the gap.

Q. Is the document that you have in front of you a true and accurate copy of the sublease you have between Coal-Mac and Joseph Mining Company?

A. Yes, sir.

Q. And is the original in your file or one of the originals in your file in your offices?

A. Yes, sir.

Q. And the second volume - - voluminous documents that you have there, what is that attached to it, Mr. Parrish?

A. That is the base lease between Joseph Mining and Elkhorn Coal.

Q. And is that a copy of the documents that were furnished to you by Elkhorn Coal Corporation?

A. Yes, sir.

Q. And that is a lease between Joseph Mining leasing the coal - - Elkhorn leasing the coal to Joseph Mining, is that correct?

A. That is correct.

Q. And does that cover more coal than the sublease you have with Joseph Mining?

A. Yes, sir.

MR. SELF: Your Honor, at this time I move for the introduction what is now marked as Government's Exhibit No. 16.

THE COURT: All right, gentlemen. It is my understanding we have a continuing objection of relevance and variance.

MR. HARWELL: (Nodding head affirmative)

MR. PAFUNDA: And amendment, Your Honor.

THE COURT: Let those objections be noted and be overruled.

That which was previously marked for identification as Government's Exhibit

4K is finally admitted into evidence as Government's Trial Exhibit 16.

You may proceed, sir.

MR. SELF: Thank you, Your Honor.

Q. Mr. Parrish, as reflected in the lease beween Coal-Mac and Joseph Mining Company, who are the officers of Joseph Mining Company?

A. Joseph Mining is a partnership. Arnold Turner, Sr.; Arnold Turner, Jr.; and, of course, Arnold Turner's three daughters.

I would have to look at the lease if you would like for me to read those off to you.

Q. Are those reflected in the lease?

A. I think so.

Q. And in negotiating that lease, Mr. Parrish, were you actively involved in the negotiation of that?

A. Yes, sir.

Q. And who did you negotiate with?

MR. PAFUNDA: Your Honor, maybe to expediate matters, I object and I don't see the relevancy to this line of questioning.

THE COURT: All right. Let the objection be noted and be overruled.

Q. Who did you negotiate with?

A. With Arnold Turner, Sr.; Arnold Turner, Jr.; and various representatives of Elkhorn.

Q. And what did the lease that you have in front of you entitle - - or entitle Coal-Mac to do?

A. It entitled Coal-Mac to mine coal.

Q. And was it one, two, three or many seams of coal, or what?

A. Gave us the surface mining rights on the fire clay seam.

Q. What do you mean by fire clay seam?

A. That is the name of the seam local to this area.

Q. What is the - - is it fire clay No. 4 seam?

A. Well, fire clay and sometimes Hazard 4 are the same names -- same seam. Hazard 4.

Q. And specifically, or to the best you can, what area on the map of Government's Exhibit No. 1 does - - is this property located?

Could you approach the map and indicate with a circle the approximate area on that map in yellow, where this lease, coal lease that you leased, is located?

A. Also gave us some Elkhorn seams, too.

(Witness marking document)

Q. Would you indicate for the record, Mr. Parrish, what you have done?

A. I have drawn a circle in the approximate vicinity of the 749 lease that we have from Joseph Mining, subleased from Joseph Mining.

Q. On that map, would you indicate where that is?

A. That lease covers the - - I guess it would be - -

Q. (Interrupting) Mr. Parrish, your markings on the map indicate it is just south of Route 680 as it runs from East McDowell over to the Mud Creek area of Floyd County?

A. That is correct.

Q. And you have indicated on the map by drawing a circle and a mark with - - what is the designation you placed on that, Mr. Parrish?

A. That is the area - - I don't know whether I understood the question.

Q. Describe what you put on the map so the record will reflect what you put on the map?

A. I have circled and drawn a large circle in the approximate area of where our sublease from Joseph Mining is located, and that is to the left side of the Hamilton Branch on the mountain between Hamilton and John Hall.

Q. You have circled with a yellow grease pencil?

A. Yes, sir.

Q. Have you labeled it any way?

A. Yes, sir.

Q. How have you labeled it?

A. Ray-Mac.

Q. Thank you, Mr. Parrish.

Mr. Parrish, you say there were seams other than the fire clay seam that you leased from Joseph Mining Company, or from Elkhorn,

which one?

A. From Joseph Mining.

Q. And where were those seams located?

A. The lower Elkhorn seam we have the surface mine rights on what Joseph Mining had and Mink Branch.

Q. Was this what is known as compliance coal, or was it high sulfur coal?

A. It was - - most of it was compliance coal. Most of the seams there are compliance with the exception of maybe one seam, which would be the three and a half or three Elkhorn.

Q. The size of those seams do you know right offhand, Mr. Parrish?

A. No, sir.

Q. Are they reflected in the lease?

A. I am not sure, sir.

Q. Where did you begin mining from in this operation, the fire clay seam?

A. Fire clay.

Q. Have you as of yet got into the other seams?

A. No, sir.

Q. Even as of today?

A. No, sir.

Q. Were you, in strip mining this coal, just to strip mine it and reclaim the land in compliance with Federal and State Regulations?

A. We were strip mining in that - - in the mine.

Q. In strip mining, were you to do anything with the coal that was left in the mountain?

A. No, we weren't. All we were - - we were strip and augering the fire clay seam.

Q. Did you leave any openings so that the other coal could be mined at a later date?

A. Yes, sir.

Q. What specifically, or what does the lease call for you to do as far as what is called leaving the face open on the coal?

A. Part of the area in the lease of Joseph Mining didn't have underground rights, so we were leaving deep mine faceups for subsidiaries of Elkhorn Coal Company.

And then one area of the lease where Joseph Mining did have underground rights, we were going to leave them face up.

Q. For the record, why were you to leave faceups?

A. Because under the laws we have to reclaim and put the high wall back to the approximate original contour.

Q. And was leaving the face so that it could be mined by underground means by either Elkhorn or by Joseph Mining Company, or their subsidiaries?

A. They had the permit over us in order for us to leave it, the faceup.

Q. Now, in the mining of this coal by Ray-Mac, to whom did you pay royalties?

A. Joseph Mining.

Q. And that was for the mineral rights, correct?

A. That is correct.

Q. Did you pay any - - did you pay any royalties to surface owners?

A. Yes, sir.

Q. And in that area that you were mining. who were some of the surface owners that

royalties were paid to?

A. Nick Cooley.

Q. Nick Cooley?

A. Nick Cooley.

THE COURT: Mr. Marshall.

THE MARSHALL OF THE COURT: Yes, Your Honor.

THE COURT: We are going to have a recess for fifteen minutes. During this recess, remember my not now admonition? Do all of you remember my not now admonition?

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

MR. SELF: No, Your Honor.

MR. PAFUNDA: No, Your Honor.

THE COURT: Please excuse the Jury for fifteen minutes. Everyone else will remain.

THE MARSHALL OF THE COURT: The Jurors are out of the Courtroom, Your Honor.

THE COURT: Let me pose a question, gentlemen. You are showing through this witness that they complied with the reclamation laws, they've got the consent of the surface owners.

Now, if you show that, what is to prevent the Defendants from coming back and showing that they didn't do that and keep from - - I

don't understand what all this has got to do with this lawsuit.

MR. SELF: Your Honor, it is not my intention to get into the reclamation at all, or whether they reclaimed it or not.

My purpose in asking the question is to establish that they were leaving face-up rights for the underground mining of coal by other individuals, and that they were paying royalties to both surface and mineral owners, that is all.

That is all I intend to go into. I don't intend to go into the reclamation, or whether it was done or it was not done or the issues of that, it is not my intent.

Two, I don't think that is relevant to this case at all. I totally agree with you.

THE COURT: Well, I sometimes am wondering if you aren't opening the doors of things in what you are doing.

MR. SELF: It is not my intent to do that. Whether the witness mistakes my question and answers that, Your Honor, I have no control over that.

I am trying to just show exactly what I was saying about faceup rights and

about the paying of royalties to surface - -

THE COURT: (Interrupting) What has that got to do with this lawsuit? It is my understanding they want to start off with Elkhorn to Joseph, from Joseph to Coal-Mac, or Coal Sales, and what is the other on this? You can follow it all the way down.

Elkhorn to Joseph, what is the next?

THE WITNESS: Coal-Mac Sales.

THE COURT: Coal-Mac Sales, next one?

THE WITNESS: And then Mack Mining and Ray-Mac.

THE COURT: Mack Mining, and then Mack Mining to Ray-Mac.

THE WITNESS: Right.

THE COURT: Does that get you through all right?

MR. SELF: Your Honor, I doubt that the Court - - the relevancy of those will become very evident during the course of this trial as to who the owners of the royalty and who the owners of the minerals were.

THE COURT: All right. We will be in recess for how long?

Gentlemen, it's become apparent that these exhibits were made available to counsel. Some counsel just didn't pay any attention to them and now you are going to utilize this trial time to do something which you should have done before we came into Court.

During this recess, let's see these exhibits so we can orderly move along. All right. We will be in recess.

THE MARSHALL OF THE COURT: For twelve minutes.

THE CLERK OF THE COURT: All right.

THE MARSHALL OF THE COURT: The Court will stand in recess for twelve minutes..

REPORTER'S NOTE: The Court recessed at 10:02 A.M., E.S.T.

*** *** ***

(Reporter's Note: Court was resumed at 10:15 a.m.)

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

THE COURT: Mr. Marshal.

THE MARSHAL OF THE COURT: All defendants and all counsel and all members of the jury 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. Are you ready to proceed?

MR. SELF: Yes, sir.

THE COURT: Proceed.

DIRECT EXAMINATION (Resumed)

BY MR. SELF:

Q. Mr. Parrish, you indicated in your last question that Mr. Nick Cooley is one of the surface owners in the area that you were mining--that Ray-Mac Coal Company was mining up there. Do you know some of the other surface owners?

A. John B. Newsome, Sam Eversole. I can't recall any others, but there's

various other surface owners.

Q. How were the surface owners paid for mining that was done up there by Ray-Mac?

A. Most of the surface owners were paid fifty cents a ton.

Q. This was based on the coal that was removed from the area?

A. Yes, sir.

Q. And the mineral-- The mineral royalties were paid according to the lease?

A. That's correct.

Q. Okay. When was the property leased from Joseph Mining Company?

A. The least was effective, of course, September 1, '81. We had oral agreements and had been working under the lease together with Joseph, which we-- I can't give you a specific date. Draft copies were going back and forth in early '81.

Q. And when did the-- When did Ray-Mac, if you know, begin mining coal up there?

A. I think the first coal came off the hill in October of '81.

Q. And how was the coal shipped or how was the coal transported from the

Ray-Mac site to wherever it was taken to?

A. By truck.

Q. And who owned these trucks?

A. Independent truckers.

Q. Were they-- Were they or were they not employees of either Ray-Mac, Mack Mining Company or Coal-Mac Sales?

A. No, sir.

Q. And during this period of time you--do you have any idea how much coal was shipped say beginning in October, 1981, from the Ray-Mac site?

A. Without looking at the record, I would say between five and ten thousand tons a month.

Q. Per month?

A. Per month.

Q. This was hauled to where?

A. Well, in October I think the first coal went to Shelby--Shelbiana to our tipples. Starting in November the coal went to Stone Coal or Coal-Mac 2.

MR. SELF: Mr. Marshal, if you would, I'd ask you to hand the witness what's previously been marked for identification as Government's Exhibit YYY.

(Reporter's Note: At this time the Marshal handed the Clerk a document.)

THE CLERK OF THE COURT: The exhibit identified by three letters of the alphabet Y has been marked for purposes of trial as Government's Exhibit No. 17.

(Reporter's Note: At this time the Marshal handed defense counsel a document.)

THE MARSHAL OF THE COURT: Opposing counsel has seen theexhibit, Your Honor.

MR. SELF: Mr. Marshal, just hand that to Mr. Parrish. I think he can hold it up.

(Reporter's Note: At this time the Marshal handed the witness a document.)

Q. Mr. Parrish, do you recognize the document that's just been handed to you?

A. Yes, sir.

Q. What is that?

A. It's a topo of the McDowell quadrant.

Q. And what do you mean by topo?

A. Topo--I don't know whether I can say it or not. It's a map of the--topographic map of the area around McDowell.

Q. Do you know who prepared that map?

A. The United States Department of the Interior.

Q. Was that also prepared by the U.S. Geodetic Survey?

A. Yes, sir.

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

MR. KIRKLAND: No objection, Your Honor.

THE COURT: There being no objection to that which was previously marked for identifcation as Government's Exhibit three Y's, will finally admit it into evidence as Government's Trial Exhibit No. 17.

MR. SELF: Thank you, Your Honor.

Q. Mr. Parrish, for the benefit of the ladies and gentlemen of the jury who are not familiar with topographical maps, would you explain in general, if you know, how that map differs from a highway map.

A. Well, this map shows the various elevations and contours associated with the area.

Q. Do those appear as lines on the map with numbers on them running around the side of the hill?

A. Yes, sir, the elevations do.

Q. Do they go up to a -- a circle, which is usually the top of a hill?

A. That's correct.

Q. Mr. Parrish, if you would, would you take --

MR. SELF: Mr. Marshall, would you hand the witness that yellow grease pencil.

Q. You have that yellow grease pencil, don't you, Mr. Parrish?

A. Yes.

Q. Circle, if you would, Mr. Parrish, the area on that topographical map where

Ray-Mac Coal Company was mining in October, 1982.

(Reporter's Note: The witness marked upon the document at this time.)

Q. Is that the top of John Hall and Bill Hall Branch between McDowell and Mud Creek in Floyd County?

A. Yes, sir.

Q. Is that generally the same area as you indicated on Government's Exhibit No. 1?

A. Yes, sir.

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

(Reporter's Note: The Marshall handed the Clerk a document at this time.)

THE CLERK OF THE COURT: Your Honor, the exhibit that was previously identified by three letters of the alphabet Z has now been marked as Government's Trial Exhibit No. 18.

(Reporter's Note: The Marshall handed a document to all defense counsel.)

THE MARSHALL OF THE COURT: Your Honor, this has been shown to the counsel for the defense.

MR. SELF: Mr. Marshall, if you would, please place that on the easel. Mr. Parrish can see it from there.

Q. Mr. Parrish, do you recognize that document?

A. Yes, sir.

Q. What is that?

A. That's a permit map -- a Mack Mining permit map where the -- where Ray-Mac was mining.

Q. And what, if any, relationship does that map have to the -- the topographical map which has been introduced as Government's Exhibit 17?

A. It's just a blown-up portion of this area right here (indicating) and this area right here (indicating).

Q. And the area you're pointing to being the area previously marked with the circle in yellow?

A. That's correct.

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

THE COURT: Any objection?

MR. HOLLON: No objection, Your Honor.

THE COURT: Being no objection as to that which was previously marked for identification as Government's Exhibit 3Z, it's finally admitted into evidence as Government's Trial Exhibit 18.

Q. Mr. Parrish, there is a red line which appears in the upper left hand portion of that map. Do you know what that red line is?

A. That's the highway between Hamilton and John Hall.

Q. Is that what's known as Kentucky Route 680?

A. Yes, sir.

Q. If you would, Mr. Parrish, would you approach the map and point out to the ladies and gentlemen of the jury what the various colored portions on that map are in gray and blue.

Stand back if you can so the gentlemen of the defense can see what you're talking about.

A. These various shaded areas are areas that we would mine. This area (indicating) reflects the total amount of -- that

would be the surface disturbed; the top of the wall to the bottom.

Q. Now, that map was prepared prior to any mining being done, was it not, Mr. Parrish?

A. Yes.

Q. Approximately where is the top of the mountain at, as best you can determine from that?

A. This area right here (indicating).

Q. The ridge that goes down from it?

A. You can see the top of the ridge here (indicating).

Q. And in obtaining the lease to mine that coal from Joseph Mining Company, did Joseph Mining Company have, to your knowledge, an exclusive sublease on the coal that you were mining at the top of the mountain?

A. No. This parcel one was Joseph Mining's original lease.

Q. What about parcel four?

A. Parcel fourwas added to Joseph Mining's lease so that we would have access

and be able to strip the Barkley's seam.

Q. Was there at one point in time a dispute as to the ownership of parcel four of the lease -- the lease as to parcel four?

A. At one time there was some question that Hillendale Coal Company had some areas leased there.

Q. And, to your knowledge, do you know who Hillendale Coal Company is?

A. I wouldn't know all the owners. I know that Nick Cooley is one of the owners.

Q. Is Nick Cooley the principal owner, to your knowledge?

A. I couldn't comment. I don't know.

Q. At the time you obtained the lease -- final lease to -- from Joseph Mining Company was there some indication in that lease as to Hillendale's ownership of that property? Is there anything in your lease that talks about Hillendale?

A. No. No, sir, I don't think so. I have to review the lease.

Q. To your knowledge, did

Hillendale give up anything in order for you to obtain that lease?

A. That-- If Hillendale would have given up anything it would have given it to Joseph Mining.

Q. Thank you.

Mr. Parrish, again, would you explain to the ladies and gentlemen of the jury the relationship between Coal-Mac and Ray-Mac.

A. The same-- The owners of Mack Mining, which was the parent company, was a partnership. Coal-Mac was a corporation which they controlled.

Q. Would you be specific as to who you are talking about.

A. Jim McGhee and Frank Justice. I'll start over. Mack Mining was owned by Frank Justice and Jim McGhee, and all the surface mining was done in that company. They were the folks that had all the capital behind all the companies.

Coal-Mac Sales was just a sales company, and then it got into leasing and--and tippling and purchasing coal. They was controlled-- They owned two-thirds of it.

It was set up to sell their

coal, which expanded on and bought other people's coal.

Q. Now, all the coal that was mined by Mack Mining Company, was that sold by Coal-Mac?

A. Yes, sir.

Q. Now, what is the relationship between Ray-Mac and Mack Mining Company?

A. Well, Mack Mining-- Ray-Mac was a division of Mack Mining. So, it was just an operating unit of Mack Mining.

Q. Now, to you knowledge, Mr. Parrish, the equipment that was used at the Ray-Mac site, do you know who owned that equipment or leased it or had ownership interest in it?

A. Mack Mining Company.

Q. And what, if any, ownership interest in equipment did Coal-Mac have?

A. Coal-Mac didn't own any equipment there.

Q. Did Coal-Mac have any business function as far as the payments on the equipment?

A. No, sir.

Q. Did you do the bookwork for Mack Mining Company?

A. No, sir.

Q. Who maintained the records for Mack Mining Company?

A. Mack Mining's employees. We were all in the same office.

Margaret Whisman was.

Q. Pardon?

A. Margaret Whisman was the bookkeeper.

Q. Now, Mr. Parrish, the activities that occurred in February--excuse me, February of 1982, what if any effect did that have on the sale of coal by Coal-Mac?

A. Well, it stopped the coal production on that job.

Q. And how long did it stop coal production?

A. I am not real sure. It was nearly two weeks, I think.

Q. And how-- What, if any, effect did that have on any existing contracts for the sale of coal by Coal-Mac?

A. Well, we weren't able to sell that coal and--and we--we had to replace it with other coal.

Q. How did you replace it if you were unable to?

A. By purchasing coal at various other tipples.

Q. And were the-- If you know, Mr. Parrish, how was the cost of the coal that you had to buy in relation to the cost of the coal that you were producing at Ray-Mac?

A. I would have to reveal what we were paying for coal at that time.

Q. Did you lose any orders or lose any sales because of the activities that occurred at Ray-Mac?

A. Well, our contract that we had just signed had to be shipped from that area.

Q. Keep your voice up, Mr. Parrish. You are trailing off.

A. I don't recall us losing any orders that we hadn't had because we weren't able to cover it somewhere else, purchase the coal somewhere else.

Q. The question I failed to ask you, Mr. Parrish, to your knowledge was the operation at Ray-Mac a--was Ray-Mac a signatory to the Bituminous Coal Operators Association contract?

A. No, sir.

Q. In other words, were you union or nonunion?

A. We were nonunion.

Q. Was your Mack Allen--Mack Allen job also union or nonunion?

A. Nonunion.

Q. Mr. Parrish, at this same point or period of time in the early part of 1982 did Coal-Mac engage in the--attempt to lease or did you lease a tipple known as Liberty 5 in Simpson's Branch of Floyd County, Kentucky?

A. Yes, sir.

Q. And why was this tipple leased?

A. It was leased to shorten the haul on the Ray-Mac job and also to purchase outside coal.

Q. What do you mean by shorten the haul on a Ray-Mac job ?

A. At that time, we were paying two fifty to haul the stone coal.

Q. Now, who were you paying two fifty to ?

A. To the truckers. We were paying independent truckers two fifty a ton. I think we could have got it hauled for a dollar fifty to Liberty 5, or we are now hauling now for a dollar fifty.

Q. You are now hauling from Ray-Mac to there?

A. Yes, sir, in some instances.

Q. Does where you haul it to depend upon where the railroad is going to for that coal?

A. Well, it depends on how the coal is prepared. Different tipples we prepare different ways. And also the method of shipment- you know, how the coal can be shipped as far as six thousand ton train or a single car shipment.

And how the various seams are blended together.

MR. SELF: Mr. Parrish, if you would

- - it may be difficult.

Mr. Marshall, would you put up Exhibit No. 1, please?

Q. Mr. Parrish, would you, by use - - Mr. Marshall - - of a red grease pencil indicate where the location of that tipple was in Simpson's Branch?

Mr. Marshall, if you would, please.

Would you point it out, Mr. Parrish, to the ladies and gentlemen of the Jury, then mark it on the map with a red grease pencil?

For the record, how have you indicated that, Mr. Parrish?

A. I have drawn a red X.

Q. And is there some designation on the map as to the location of that?

A. Simpson's Branch.

Q. Thank you, Mr. Parrish.

What - - how many miles difference is it from the Ray-Mac site to - - the coal run as opposed to Simpson's Branch?

A. I am not real sure. I would estimate eight to ten miles.

Q. In difference?

A. Yes, sir.

Q. The Coal-Mac site is just below Pikeville, is it not?

A. Yes, sir.

Q. It is not even shown on that map?

A. No, sir.

Q. When did you begin - - were you in any way involved in the negotiation of the lease of that tipple?

A. Yes, sir.

Q. How were you involved?

A. I was the one doing the negotiating.

Q. And who owned the tipple, Mr. Parrish?

A. Julius Martin and Clarence Turner.

Q. Does Mr. Clarence Turner have a nickname that he is referred to in the community to your knowledge?

A. Yes, sir, Cobb.

Q. In leasing this tipple, did you lease only the tipple itself or the structure.

A. We leased also some coal in Simpson's Branch.

Q. When did you begin negotiating the lease of this tipple and coal, Mr. Parrish? Do you know?

A. Let's see. Probably in late '80, early '81, in that area, late '80, early '81.

Q. And in preparation or in considering the lease of that tipple, did you have some photographs taken of it, Mr. Parrish?

A. Yes, sir.

MR. SELF: Mr. Marshall, if you would, I would ask you to hand the witness what has been previously marked for identification as Government's Exhibit A and B.

THE CLERK OF THE COURT: Your Honor, the exhibits which were previously marked for identification as Government Exhibit A and B have been marked respectively for trial as Government's Exhibits 18 and 19.

THE COURT: It would be 19 and 20, would it not?

THE CLERK OF THE COURT: 19 and 20, Your Honor, that is correct.

THE COURT: Okay.

THE MARSHALL OF THE COURT: Your Honor, Exhibits 19 and 20 have been shown to opposing counsel.

Q. Mr. Parrish, do you recognize these photographs?

A. Yes, sir.

Q. And what are they photographs of?

A. Liberty 5 tipple.

Q. And do you know when those were taken?

A. They were taken in the Spring of '81, or February of '81. I think the date is right on there.

Q. And were those fixed up like that for your benefit?

A. Yes, sir.

Q. And why were they arranged in such a configuration or put together like that, Mr. Parrish?

A. Charles Carlton, our local contractor, was going to do some work for us down there. He arranged to have the photographs made.

Q. And do those photographs truly and accurately reflect the tipple as it appeared at the time the photographs were taken?

A. Yes, sir.

Q. This is the same tipple at Simpson's Branch in Floyd County, is it not?

A. Yes, sir.

Q. Mr. Parrish, in February of 1982, what was the condition of that tipple if you are aware? Do you know?

A. Yes, sir. I don't think the condition had changed since the photographs were taken, not that I am aware of.

Q. Do you remember when you last saw it?

A. No, sir, I don't recall.

Q. Was it prior to -- or how much -- do you have any idea how much prior to say the 26th of February?

A. I can't give you a specific date. You know, I was in that area several times at about that time. There is also a deep mine right above the tipple around the point. And I made several trips over there to look at that faceup area there.

Q. And was that tipple as of -- excuse me. Strike that.

When did you lease the tipple?

A. We signed the paperwork on the thing February 15th, to be effective March 1st.

Q. What year is this, Mr. Parrish?

A. It was in '82.

Q. And were you able to begin running coal through that tipple on March 1st, 1982?

A. No, sir. It had been burned down.

Q. Do you have any idea when it was burned down?

A. The last couple of days of February. It was on a Saturday night. I think February 26th.

Q. And the time you signed the lease, Mr. Parrish, were you all -- was Coal-Mac anticipating putting that tipple into effect on March 1st, 1982?

A. Well, I think we would have had to have done some repairs on the tipple.

We would have been ready to run by probably April 1st.

Q. What was the nature of the repairs that you expected to have to do?

A. We expected to do some electrical work and probably some conveyor work. But the tipple had run coal in it within a year or two years of that when we leased it.

Q. Now, you indicated there was a deep mine adjacent to it. Was that an operation of Mack Mining Company?

A. No, sir.

Q. Who was operating that mine?

A. It was inoperative. It was -- it had been mined several years before. The reason we were making those trips was to just to look at the coal seams in that area.

Q. And then when you leased this tipple, did you also lease some coal?

A. Yes, sir.

Q. And where was this coal located in relation to the tipple?

A. It laid right behind the tipple.

MR. SELF: Mr. Marshall, I ask you,

if you would, to hand the witness what has been marked as identification as Government Exhibits LL and Attachment A and Attachment B.

THE CLERK OF THE COURT: Your Honor, the Government's Exhibit which was previously identified by the four letters of the alphabet L have been marked for purposes of trial as Government 21. The four letters of the alphabet L, Attachment A, has been marked for purposes of trial as Government Exhibit 21A. And the four letters of the alphabet L with Attachment B has been marked for purposes of trial as Government Exhibit 21-B.

MR. ADAMS: If it please the Court, I would object on the same grounds that Mr. Harwell objected to the other documents.

THE COURT: All right.

MR. HARWELL: May the Court please, also, in regard to Government Proposed Exhibit 21-B, given the fact that that is dated October 15th, 1982, we respectfully submit that that is not relevant as to time, and the other reasons that the Court has been advised.

THE COURT: All right.

THE MARSHALL OF THE COURT: The exhibits have been shown to opposing counsel.

A. Excuse me. A railroad track lease from the railroad, C & O Railroad covering the Liberty 5 track agreement.

Q. And are those true and accurate copies of the original documents that you maintain in your files, Mr. Parrish?

A. Yes, sir.

Q. And were those documents, to your knowledge, executed on or about the date reflected therein?

A. Yes, sir.

MR. SELF: At this time, I move introduction which has previously been marked for identification as Government's Exhibits 19 and 20, 21, 21-A, and 21-B.

THE COURT: Let's see. We have relevance, variance, amendment.

MR. HARWELL: And the date on that last one, the C & O lease, Your Honor, dated October of '82.

THE COURT: That would bear with relevance.

MR. HARWELL: Yes, sir.

THE COURT: Let those objections be noted as overruled. And let's have as previously

marked for identification as Government's Exhibits A, B, 4L, 4LA, and 4LB finally admitted into evidence as Government Trial Exhibits 19, 20, 21, 21-A, and 21-B respectfully.

MR. SELF: Thank you, Your Honor.

Q. Mr. Parrish, with regard to Government's Exhibit 21, what is the date that appears thereon?

A. I am sorry. What exhibit?

Q. No. 21, the lease.

A. February 15th.

Q. And does it state in there when it becomes effective?

A. I am sure it does. March 1st.

Q. 1982?

A. That is correct.

Q. And the 21-A, Mr. Parrish -- were you a signatory to 21-A?

A. No, sir, I wasn't.

Q. That is the agreement between -- that is how the person you leased it from got title to it. Is that correct?

A. That is one of the steps,

yes, sir.

Q. And what did you lease when you leased the tipple, Mr. Parrish, when Coal-Mac leased the tipple?

A. We leased the structure and the area around the tipple to have an ongoing loading -- or to be able to load coal for that facility.

Q. And 21-B - what is that, Mr. Parrish?

A. 21-B is an agreement between the railroad and us. After the tipple was burned, the -- this is a supplementary agreement concerning just with the track itself. There was two ways to repair the track. The track could have been repaired by a method called advance and refund where the railroad would have repaired the track. We would have had to put up X number of dollars and then got it back as we shipped the coal on a per car basis.

In order for us to do the work on the track with ourselves or through a private contractor, we had to lease this track; and therefore, we were able to hire a contractor and do the work ourselves.

Q. When you initially signed the lease on the tipple, did you have a separate lease for the railroad?

A. What we had with the railroad was called a supplemental agreement which allows us to ship coal from that facility in our own name or in Coal-Mac Sales. And that agreement was done prior to February 15th.

Q. After the tipple was destroyed, Mr. Parrish, was there anything that you had to do or did you ever do anything to get the tipple operational?

A. Yes, sir. Of course, we repaired the track. We first leased the track from the railroad. We probably -- this lease was probably signed after the fact. I would have to check on that. We probably went ahead and made the agreement, and we hired a contractor to tear the track out. The problem was with the track where the tipple had burned over it. Once we started moving that debris, we ended up damaging a lot of other track. So we had to replace I don't know how many feet of it. I would have to say considerable.

Q. What did you have to do as far as the tipple itself?

A. Well, what we did then, we moved in a portable crushing facility which we owned. And we connected it up with one of the hoppers that was already there.

Q. What is a hopper for the record, Mr. Parrish?

A. A hopper is a truck dump, where the truck dumps coal into.

Q. When did that -- what else did you have to do? Did you reconstruct the tipple itself?

A. No, sir.

Q. Is it your plan when you lease the tipple, to move in -- move a portable facility in?

A. No, sir.

Q. When did that tipple become operational again, Mr. Parrish?

A. I would think the Spring of this year.

Q. 1983?

A. Yes, sir.

Q. Mr. Parrish, when you leased the tipple, was the track in such a condition that it could be used without any repairs?

A. Yes, sir.

Q. Mr. Parrish, I want to ask you another question about something you mentioned previously that has to do with the sale of coal. Are you familiar with a company called South Carolina Electric & Gas Company?

A. Yes, sir.

Q. And how are you familiar with South Carolina Electric & Gas Company?

A. Coal-Mac Sales has shipped and sold coal to South Carolina Electric & Gas.

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

THE COURT: Yes, sir.

Reporter's Note: At this time Mr. Self, Mr. Dause, Mr. Kehrli, Mr. Harwell, Mr. Adams, Mr. Hollon, Mr. Thomas, Mr. Moore and Mr. Walbourn approached the Bench and the following was heard:

MR. HARWELL: If Your Honor please, we respectfully object to any question from this witness regarding the South Carolina Coal & Gas. Also, we respectfully object to the introduction of the red book that Mr. Self has and we understand he intends to make an exhibit, his next exhibit. We

submit, if the Court please, that it is irrelevant and immaterial and prejudicial and misleading, and that this particular witness has testified before the Federal Grand Jury and said that there is absolutely no connection in regard to JRM and his company. He further testified before the Grand Jury, if the Court please -- he further testified that they were not -- he was not competing in the same market and that he had no contracts in February with South Carolina Gas & Light. And by that testimony, at that end he apparently desires to get the jury to believe that there was some competition.

THE COURT: All right. Let the objection be noted and be overruled. What is to prevent the witness from testifying one way one time and then another way?

MR. SELF: Let the witness testify and see what he has to say.

THE COURT: Okay.

MR. HARWELL: Thank you, Your Honor.

(Reporter's Note: At this time the Bench conference was concluded.)

THE COURT: Proceed.

Q. Again, Mr. Parrish, are you familiar with the company known as South Carolina Electric & Gas Company?

A. Yes, sir.

Q. And how long have - - have you ever had any business, or has Coal-Mac ever had any business dealings with South Carolina Electric & Gas Company?

A. Yes, sir.

Q. When did those business dealings begin?

A. We shipped coal in '78, 1978 in the summer, fall, and we also shipped to them again in '81 on a monthly basis, summer and fall.

Q. How did you come to ship coal to them, Mr. Parrish, explain that to the ladies and gentlemen of the Jury?

A. South Carolina Electric & Gas - -

Q. (Interrupting) Keep your voice up.

A. South Carolina Electric & Gas sends us a letter every month. We are on a qualified list for spot orders, and we submit - -

they send us a letter on the 8th and 10th, and we fill out a form and send it back in by the 15th a spot solicitation for the following month, and we do it every month.

Q. Explain that just a little bit more, Mr. Parrish.

A. Well, in effect, we quote the coal to them, to South Carolina Electric & Gas, along with the other utilities, or most of them, on a monthly basis.

Every month we send out a quote for X-number of times at a certain price, and they respond by either purchasing the coal or they might not respond.

If they buy, they contact you.

Q. So you put in a bid and just sit back and wait?

A. Sir?

Q. You put in a bid and just sit back and wait?

A. Yes, sir.

Q. During the months of February thru December, 1981, did you sell - - did Coal-Mac sell coal on a spot market to South Carolina

Electric & Gas Company?

A. What were the months then again, sir?

Q. February thru December of 1981.

A. February '81 thru December, '81?

Q. Yes.

A. Yes, sir.

Q. And were these spot market sales?

A. Yes, sir.

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

THE COURT: Let's see, gentlemen, while that is being examined, let's have a recess. We will be in recess until 11:20, Mr. Marshall. Remember my not now admonition?

All right. Gentlemen, is there any necessity of repeating the not now - -

MR. HARWELL: (Shaking head negative)

MR. SELF: No, Your Honor.

THE COURT: Mr. Marshall, you may

excuse the Jury until 11:20.

THE MARSHALL OF THE COURT: You are excused. 11:20, Your Honor?

THE COURT: 11:20.

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

THE COURT: Thank you. Please excuse the remainder of the Court until 11:20.

THE MARSHALL OF THE COURT: All rise. The could will stand in recess until 11:20.

REPORTER'S NOTE: The Court recessed at 11:05 A.M.

REPORTER'S NOTE: The Court reconvened at 11:22 A.M.

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

THE COURT: Mr. Marshall.

MR. MARSHALL: Yes, sir. All Defendants and all their counsel and all members of the Jury are in the Courtroom, Your Honor.

THE COURT: Madam Clerk.

THE CLERK OF THE COURT: The record may so reflect.

THE COURT: You may proceed.

MR. SELF: Madam Clerk, what does the

record reflect as to the marking of what was previously marked as an Exhibit GGGG.

THE CLERK OF THE COURT: That has been previously marked as Government's Trial Exhibit No. 22.

Q. Mr. Parrish, you have it in front of you at this time?

Mr. Parrish, have you ever seen that red notebook, the contents of it, before?

A. Yes, sir.

Q. And in general, where do the records that are contained therein come from?

A. From Coal-Mac's office.

Q. Is that a book that you compiled in regard to your business dealings with South Carolina Electric & Gas Company?

A. I'm sorry, would you repeat that?

Q. Is that a book that you compiled reflecting business dealings that Coal-Mac had with South Carolina Electric & Gas Company?

A. Yes, sir.

Q. And are those true and accurate copies of records of Coal-Mac?

A. Yes, sir.

Q. And the original of those are on file in your office, are they not?

A. That is correct.

Q. Do those in effect reflect the amount of coal shipped to Coal-Mac or by Coal-Mac to South Carolina Electric & Gas, where the coal was shipped from, copies of the monthly spot bids that you made to South Carolina Electric & Gas during 1981-1982?

A. Yes, sir, with the exception of one error in January of '81 in this book that we discovered later.

MR. SELF: Your Honor, at this time I move for the introduction of what has been previously marked for identification as Exhibit GGGG - -

MR. HARWELL: (Interrupting) May Your Honor please, would it be appropriate, given the fact that the witness said there is a mistake, for the mistake to be corrected prior to this exhibit being introduced?

MR. SELF: I intend to have the witness make the correction on the exhibit itself, Your Honor.

THE COURT: All right. This is subject to the usual objections of the variance and irrelevance.

MR. HARWELL: And that which I address

the Court on.

THE COURT: And that which you noted prior, inconsistent statements.

MR. HARWELL: Yes, sir, Your Honor.

THE COURT: All right. Let those objections be noted and overruled; and let that which has been previously marked for identification as Government's Exhibit 4G is finally admitted into evidence as Government Trial Exhibit 22, so you can have the correction made.

*** *** ***

Q. Mr. Parrish, the first document that appears in there, is that the document you are talking about?

A. No, sir. It's the second document, South Carolina Electric and Gas Offer and Award.

Q. It's entitled just as you stated it and dated January, 1981 through November, 1982?

A. That's correct.

Q. And what is incorrect about that, Mr. Parrish?

A. In the awards column, in January, 1981, South Carolina Electric and Gas did not award us any--did not award us any orders and that money.

Q. Do you know how the error appeared in those figures?

A. Yes, sir. There's another utility, South Carolina Public Authority, and that was an award from South Carolina Public Authority. The secretary made a mistake.

MR. SELF: Your Honor, with the Court's permission, may I hand Mr. Parrish a red pen and have him mark through that specific entry?

THE COURT: All right. Hand it to the Marshal.

(Reporter's Note: Mr. Self handed the Marshal a pen; which in turn the Marshal handed to the witness.)

(Reporter's Note: The witness marked on the document at this time.)

MR. SELF: Let the record so reflect that the witness has marked through it with the red pen, Your Honor.

Q. Mr. Parrish, calling your attention to that specific document contained in there, it's the second document you say that's in the group of documents?

A. Yes, sir.

Q. What does that document reflect?

A. This document reflects the tons offered each month and the price each month of coal offered to South Carolina Electric and Gas for sale.

Q. Does that document reflect that from February, 1981 through and including May, 1981 that Coal-Mac sent spot offers to South Carolina Electric and Gas Company which were not accepted?

A. That's correct.

Q. Does your records further reflect that from July, 1981 through December, 1981 that you did submit spot bid offers to South Carolina Electric and Gas and that you were awarded contracts from them for various coal tonnages for those periods?

A. That's correct.

Q. Does it also reflect in there the price varying from thirty-one dollars a ton up to thirty-four dollars a ton?

A. That's correct.

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MILLERS PAPER
EZERASE
COTTON CONTENT

Q. And how was this coal shipped to South Carolina Electric & Gas?

A. By the C & O Railroad.

Q. Does the document further reflect that from January, 1982 thru November, 1982 that Coal-Mac likewise submitted various spot bid offers ranging from twenty-six dollars per ton thru thirty-two dollars a ton that were not accepted by South Carolina Electric & Gas?

A. Yes, sir.

Q. Now, the first document that's in that group, Mr. Parrish, would you explain to the ladies and gentlemen of the Jury what that is.

A. The first document is the - - starting with July of 1981 is - - we were awarded orders from South Carolina Electric & Gas, and this is the mine names that - - or railroad siding names that we shipped them from.

Q. The document reflects January of 1981 in there, does it not, Mr. Parrish?

A. Yes, sir.

Q. And that is not coal that was shipped to South Carolina Electric & Gas?

A. That is correct.

Q. Would you likewise cross that entry out on that specific document, Mr. Parrish.

REPORTER'S NOTE: The Witness marked upon the document at the time.

Q. That reflects the sale of coal in January of 1981 to a different utility, does it not?

A. That is correct.

Q. In this document there's indications of various - - it says mines. Is the mine where it came from?

A. That's the railroad siding.

Q. November, 1980 - - '81 there's an indication of a railroad siding at Eastern; coal shipped from there to South Carolina Electric & Gas. Where's the Eastern tipple, Mr. Parrish?

A. It's on Route 80 in Floyd County at Eastern, Kentucky.

Q. And the Welco tipple?

A. Welco tipple is at Garrett.

Q. Were any of those other tipples in December of 1981 also located in Beaver Creek, Floyd County?

A. Yes, sir. The Dewale

tipple is - - is at Allen.

Q. The coal that was shipped from those, Mr. Parrish, to your knowledge where did that coal come from at those three facilities?

A. Various truck coal suppliers. Are you asking for different names of - -

Q. No. My question was, was this coal that was mined by Mack Mining Company or coal that was purchased by you all?

A. That coal was purchased.

Q. And the Jenkins and Shelbiana and Henry Clay, those are located where?

A. The Henry Clay is located at Marmum Creek in Pike County. The Jenkins siding is located in Jenkins or north of Jenkins. The Ratliff - - Do you want me to continue?

Q. Yes, sir.

A. The Ratliff Two-A and the Shelbiana are in - - all in Shelby Yard.

Q. Located in Pike County, correct?

A. Yes, sir.

Q. The next group of documents that is in the red folder, Mr. Parrish, what are those?

A. Are you talking about the spot coal bid?

Q. Is that what the next group of documents are?

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

Q. And how are they labeled with the tabs?

A. It's labeled February - - The end of January of '81 there is incorrect. The first one is February, '81.

Q. Go ahead.

A. That's a copy of a form that South Carolina Electric & Gas sends to us. We filled it out and sent it back. This (indicating) is a copy of what we sent back.

Q. The forms that appear from February, 1981 thru November, 1982 in that folder, and correct me if I am wrong, are the spot bids and/or the acceptance by South Carolina Electric & Gas for spot bid offers that - - that Coal-Mac made to them during this period of time?

A. That's correct.

Q. Is there any documents following those, Mr. Parrish?

A. Yes, sir.

Q. Explain to the ladies and gentlemen of the Jury what those are.

A. The following documents are - - The first document is a comparison of the offers to South Carolina Electric & Gas with the comparison of the offers to Virginia Electric; price tonnage.

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MILLERS FALLS
EZERASE
COTTON CONTENT

Q. Were you during this same period of time making offers to other utility companies, specifically the Virginia Electric Company, along with the South Carolina Electric and Gas Company?

A. That's correct.

Q. What does that document reflect in general, Mr. Parrish?

A. This document just reflects the offers on a monthly basis and the terms and the price of those offers.

Q. The next documents, Mr. Parrish.

A. The next document is a-- a copy of the offer forms that we used to send to Virginia Electric.

Q. The next group of documents.

A. That's all of those.

Q. Okay. Mr. Parrish, the coal that you were shipping in July--excuse me, from July, 1981 through December, 1981 to South Carolina Electric and Gas Company, what type of coal was that?

A It was 12-5; 1 1/2 sulfur; 12 ash product.

Q. 12,500 BTU?

A. Yes, sir.

Q. And the other numbers you mentioned, what are those?

A. 12 ash. I think the sulfur content could go up to 2 percent. I'll see how we represented it here.

We did represent the sulfur to have no more than 2 percent.

Q. Mr. Parrish, did any of the coal that you were shipping to South Carolina Electric and Gas come from the Ray-Mac operation?

A. No, sir.

Q. Why did it not?

A. The Ray-Mac operation was hauling into Stone Coal in November and December. The Ray-Mac--the job started in October; the first coal came off. Now, a few tons of it went to Shelby. I'm not sure how many turns.

You know, I'd say out of Shelby, that group of tipples, we shipped between fifty-four--forty-five or fifty thousand tons there. There is a chance in the very first month of the job that through coal mingling part of that tonnage could have ended up on that South Carolina Electric and Gas order. I wouldn't know, but after that it never did.

Q. Was the coal you were mining at Ray-Mac a different type coal than South Carolina Electric and Gas Company solicited?

A. Yes, sir.

Q. The coal that you were mining was known as compliance coal?

A. Yes, sir.

Q. South Carolina Electric and Gas was not in the market up here for compliance coal, were they?

A. That's correct.

Q. Do you know?

A. No. We didn't know if they were in the market for compliance coal.

Q. The coal that you were buying for shipment to South Carolina Electric and Gas, were you buying this from exclusive mines that you had under contract?

A. No, sir.

Q. You were buying it from various truck mines throughout Pike and Floyd County, were you not?

A. Yes, sir.

Q. In buying that were you also competing with other purchasers of coal?

A. That's correct.

Q. How-- How does that go about? How do you go about buying coal like that, Mr. Parrish, competing for it?

A. Well, most of the truck operators either sell their coal by the day or by the week. You may contact or one of your employees may contact with a certain operator and offers him so much for this coal for tomorrow or for the rest of the week. Should he accept then the bill's made right there on the spot for maybe is made later that night on the phone.

Q. And in doing so do you compete with anyone in purchasing that coal?

A. You would compete with other folks that were--that were purchasing coal, that's correct; other coal companies.

Q. To your knowledge, Mr. Parrish, if you have any knowledge, the coal that you were purchasing in the East McDowell area-- Were you purchasing coal in the McDowell and East McDowell area of Floyd County?

A. Not that I'm aware of. We weren't purchasing truck coal. We were brokering some coal.

Q. By brokering what do you mean?

A. We were shipping some coal by rail that had already been prepared; just buying it in a car in the McDowell area.

Q. And how did you go about buying it in the car, the same way that you do truck coal?

A. No. No. That-- We purchased rail coal. We give the railroad directions where to ship it, and our name is on the weigh bills with the railroad.

Q. Mr. Parrish, are you familiar with a company known as JRM Coal Company?

A. Yes, sir.

Q. Have you ever had any dealings with JRM Coal Company as far as leasing coal from them or selling coal to them?

A. No, sir.

Q. What, if any, business dealings have you had with JRM Coal Company?

A. I met with Mr. Jones one time I think in the fall of '79 or spring of '80 concerning some coal that a contractor of his was mining in Prestonsburg.

Q. Were you attempting to purchase it?

A. Yes, sir.

Q. And was this compliance coal or high sulfur coal?

A. I'm not really sure on the sulfur content at that time.

Q. Mr. Parrish, had you ever been down to discuss-- Have you ever been to South Carolina Electric and Gas's main office in South Carolina?

A. Yes, sir.

Q. The purpose of going down there?

A. To sell coal.

Q. And how often did you go down there?

A. I've probably been down there three times, two or three times in the last five years.

Q. Were you down there in either 1981--early '81 or early 1982?

A. I could have been down there. I think I was down there in early '81.

Q. Did you often have

discussions with them on the phone?

A. Yes, either me or some of the folks--other people in sales.

Q. Mr. Parrish, during the period of January and February, 1982, did you have any contact with South Carolina Electric and Gas to attempt to enter into a long-term contract with them?

A. What was the period there? I missed the date.

Q. January and February, 1982.

A. No, sir.

Q. And when you talked with them the other times did you attempt to enter into long-term contracts with them?

A. No, sir, I don't recall them. It could have been mentioned, but I don't recall talking about long-term. Specifically we were talking about spot coal shipments.

Q. Again, the difference between spot coal and long term?

A. Spot coal is an order made for one month at a time, as a rule. Term business would be anything, I would suspicion, over a year-long period.

Q. Did you, or to your knowledge

did any member of your company go to the South Carolina Electric and Gas Company during January or February, 1982 and attempt to enter into a long-term contract for the sale of non-compliance coal with them?

A. No, sir.

Q. Did you or any member of your company go to John McCall Coal Company during this period of time and attempt to enter into a long-term contract with them to broker coal to South Carolina Electric and Gas?

A. No, I don't think so. I have no--would say no.

We sold a lot of coal to John McCall. We sold him a lot of coal. We didn't even know where it was going. They just bought it and shipped it.

Q. Explain what the John McCall Coal Company is, to you knowledge.

A. To my knowledge, John McCall is a producing company as well as a brokering company. They buy coal in the car from various mines and ship it to--to utilities or to other brokers or overseas.

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Q. Have you had - - Have you ever had discussions with John McCall about trying to get a long-term contract with South Carolina Electric & Gas?

A. I don't recall any.

Q. And have you ever had any discussions with South Carolina Electric & Gas about a long-term contract with them?

A. No, I don't recall any.

MR. SELF: Just a moment please, Your Honor, I think we are just about through.

Q. Mr. Parrish, as President of Coal-Mac Sales have you ever been approached by officials of the United Mine Workers of America seeking to organize Coal-Mac Sales, Incorporated?

A. No, sir.

Q. To your knowledge, has - - have Mr. Frank Justice or Mr. Jimmy McGhee been approached in an attempt to organize your company?

A. Not to my knowledge.

Q. Have you ever been contacted by any union officials who indicated they were conducting a survey - - a union survey of Coal-Mac or Mack Mining Company?

A. Not - - No, sir, I've never

been contacted.

Q. have you ever been contacted - - To your knowledge, has anyone in your company been contacted, that you're aware of, to solicit information from you as to the - - your volume of coal, the production facilities, your financial situation or your employees' financial situation in conducting a union survey?

A. Not that I'm aware of.

MR. SELF: No further questions, Your Honor.

THE COURT: All right. Gentlemen, we're going to be in recess until 1:00 o'clock for lunch. Please remember my not now admonition.

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

MR. HARWELL: No, Your Honor.

THE COURT: Mr. Marshall, please excuse the Jury until 1:00 o'clock.

REPORTER'S NOTE: At this time the Jury is excused until 1:00 P.M.

THE COURT: The Jury is out of the Courtroom.

The subpoena duces tecum

which we have, which is going to be heard this afternoon at 4:00 or 4:30, was that any part of this gentleman's testimony here?

MR. HARWELL: We think it is, may it please the Court. We don't think it's essential, Your Honor, that you hear that before 4:30 or before we cross-examine.

We were going to ask Your Honor to allow us to reserve possibly additional cross-examination until that hearing. It will be very short.

THE COURT: All right.

MR. HARWELL: Simply stated, we're trying to bring in guns from Ray-Mac and Coal-Mac.

THE COURT: Uh-huh.

MR. SELF: There's been no discussion whatsoever on direct examination about firearms or the purchase of firearms by this witness. I submit to the Court that would be improper cross-examination of this witness.

THE COURT: What's this in getting back on the guns now?

MR. SELF: The subpoena is - - I haven't seen the subpoena. I've been advised of it.

THE COURT: You're speaking about

their employees being furnished with guns?

MR. HARWELL: We served a subpoena on Friday for Ray-Mac, Coal-Mac and a number of individuals asking that they bring those guns in pursuant to the subpoena duces tecum to this Court.

Now, as to whether it's admissible - -

THE COURT: What guns are we speaking of?

MR. HARWELL: We're speaking of the guns, May Your Honor please, involved in the - - the shoot-out on February 16th and February 17th, 1982. I do say, Your Honor, without waiving the rights, given the direct of this testimony it might be more appropriate, Your Honor, as to this witness if we were to call him and have him bring those guns. It's probably arguably correct that they are outside the scope of the direct as it's gone so far.

THE COURT: Make him your witness if you so desire.

MR. HARWELL: Fine, Your Honor.

MR. THOMAS: At this time, Your Honor, we also move under Rule 26.2 and 3500 of 18 USC for any other statements, notes, letters, memos and interviews with the agents or between the agents.

THE COURT: You mean the Jencks Act material?

MR. THOMAS: Yes, sir. Anything other than the Grand Jury information that we already have.

THE COURT: You've already done that, haven't you?

MR. SELF: Yes, Your Honor. I turned ir over a week ago, I think.

THE COURT: All right. We'll be in recess --

MR. THOMAS: We want to know if there's anything else.

MR. SELF: Those fall within my attorney/client privilege.

MR. THOMAS: There's no work product exceptions to those on Gormer versus U.S.

MR. SELF: I'll be glad to argue that.

Mr. Parrish has not reviewed my notes or not looked over them. He has not in any way adopted those.

I'd cite to the Court Hoskins versus U.S. on that specific issue, which says it doesn't cover it.

MR. THOMAS: If that's the case we're entitled to examine this witness outside the presence of the jury to determine if, in fact,they were approved or adopted by him, and that's under the authority of Goldberg versus the United States, 425U.S.94, 1976. We're entitled to any interviews between this man and the prosecutor of the United States.

THE COURT: Did you show him your interview notes after that?

MR. SELF: No, Your Honor. The only thing I've showed him, Your Honor, and I'll be glad to show that to Mr. Thomas, is the notes I made in preparation of asking him questions this morning. This was just to give him the line of questioning in the area I was going to.

THE COURT: Show those to counsel.

MR. SELF: I'll be glad to.

THE COURT: The records which you kept were not approved or -- or adopted by this witness?

MR. SELF: As an officer of this Court I'll state my notes that I took in my interviews were not read back to him, were not shown back to him or regurgitated back to him. He didn't

adopt them or approve them, Your Honor.

THE COURT: All right. Mr. Thomas.

MR. THOMAS: I'm also going to ask for the 1981 and 1982 tax returns as they relate to this man's testimony on direct in view of the fact that this is an extortion charge. I think it's very relevant that we see those things.

MR. SELF: I think, Your Honor, if he has a question on those the proper way to obtain them is a subpoena duces tecum, and they should have gotten those earlier rather than in the middle of the trial.

THE COURT: We'll discuss the tax return thing at 4:30 or 4 o'clock.

All right, Mr. Marshall, we'll be in recess until one o'clock.

THE MARSHALL OF THE COURT: Yes, Your Honor.

(Reporter's Note: At this time a recess was taken until 1:00 P. M.)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

UNITED STATES OF AMERICA

-vs- CASE NO. 83-8

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

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TRANSCRIPT OF TRIAL

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BEFORE: THE HONORABLE G. WIX UNTHANK

DATE: JANUARY 30, 1984

VOLUME SEVENTEEN

DALE SOERGEL MOORE SHAW & ASSOCIATES
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DAN ROWLAND, ESQ.

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

BERNARD PAFUNDA, ESQ.

For the Defendant Ranny Blankenship:

ELDRED E. ADAMS, JR., ESQ.

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

WILLIAM D. KIRKLAND, ESQ.

REPORTER'S NOTE: The Court was reconvened at 1:00 P.M., E.S.T.

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

Your Honor, all Defendants, all counsel, and all members of the Jury are present.

THE COURT: Madam Clerk.

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

THE COURT: Are we ready to proceed with cross examination?

MR. SELF: Yes, Your Honor.

MR. HARWELL: Your Honor, may I approach the podium?

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. HARWELL:

Q. Mr. Parrish, my name is Aubrey Harwell. As you know, I represent Mr. Edgar Jones.

Mr. Parrish, if I understand,

you are the president of Coal-Mac Sales, Inc., is that correct, sir?

A. I am the president of Coal-Mac, Inc.

Q. Coal-Mac, Inc.?

A. Right.

Q. All right, sir. Coal-Mac, Inc. is a Kentucky Corporation, is that correct?

A. That is correct.

Q. All right, sir. Now, if I understand your testimony, Mr. Parrish, Ray-Mac was a business partnership consisting of Frank Justice, James McGhee, is that correct?

A. That is correct.

Q. Wasn't Mr. Raymond Pete Barker also part of that partnership, sir?

A. No, sir.

Q. He was not?

A. No.

Q. All right, sir. Are you, sir, paid a salary from Coal-Mac?

A. Yes, sir.

Q. All right, sir. And do you receive any compensation from Coal-Mac other than a salary?

A. No, sir.

Q. Do you receive any portion of the profits generated by Coal-Mac or any of the affiliated companies?

A. No, sir.

Q. All right, sir. If Coal-Mac has an exceptionally good year, do you receive money over and above your salary?

A. I would expect my salary to be raised.

Q. You would expect a raise in salary?

A. Right.

Q. All right, sir. And if on the other hand Coal-Mac doesn't sell much coal in a given year, it has a lean year so to speak, would you expect a lesser amount of compensation for that year?

A. That has happened.

Q. That has happened?

A. Yes, sir.

Q. It's fair to say, is it not, sir, there is some correlation between the financial success of Coal-Mac and the moneys you are paid?

A. That is correct.

Q. All right, sir. Now, Mr. Parrish, you and certain other employees of Coal-Mac have talked to the Government lawyers and some of these investigators on various occasions, have you not?

A. That is correct.

Q. And you have done so to assist them in preparing their case against these Defendants, is that correct?

A. We have talked to them, that is correct.

Q. Yes, sir. And as a matter of fact, some of the people out there at Ray-Mac-Coal-Mac which are officed together have prepared documents in various summary, have they not, and provided those to the Government?

A. That is correct.

Q. All right, sir. And the fact of the matter is that you have met and talked to me only on one occasion, that is true, is it not?

A. That is correct.

Q. As a matter of fact, that was in the presence of Mr. Self, the assistant United States attorney, pursuant to a hearing in this Court, wasn't it, sir?

A. That is correct.

Q. All right, sir. And we have attempted to interview you and other people out there, have we not, sir?

A. Your investigators have.

Q. Yes, sir. Mr. Hillen, this gentleman over here (indicating).

A. (Nodding head affirmative)

Q. As a matter of fact, you all have, on the advice of counsel, decided not to talk to us, is that correct?

A. That is correct.

Q. All right, sir. Mr. Parrish, I take it, given the business relationship, it would be a fair statement that Frank Justice and James McGhee are friends of yours, is that a fair statement?

A. That is correct.

Q. What about Pete Barker, do you consider him a friend?

A. Yes, sir.

Q. All right, sir. Are those people, and I am referring to Mr. Justice and Mr. McGhee, are they in a position of authority within the Coal-Mac-Ray-Mac affiliated entities to replace you

as president?

A. Yes, sir.

Q. They are in that position?

A. Yes, sir.

Q. All right, sir. If they became dissatisfied with your work, for example, they could replace you, is that true?

A. Yes, sir.

Q. All right, sir. Are you aware of the fact, sir that Mr. Justice, Mr. McGhee, Mr. Barker, and several other people doing business as Ray-Mac Mining Company have sued Edgar Jones and some of these other Defendants in a civil case, and am asking the Court - -

MR. SELF: (Interrupting) Objection, Your Honor. What does this have to do with the criminal proceeding?

MR. HARWELL: If the Court please, I think it goes to bias. He testified these people are friends of his, it is a civil case, and I intend to ask him if it isn't a fact that - -

THE COURT: (Interrupting) All right. Now, ladies and gentlemen, I am permitting that this suit, what the suit is about, such as that, is only admitted for the purpose of whether or not it is

to show any bias by this witness, do you understand?

The argument in that civil suit is only relevant insofar as it goes to showing bias, and for no other reason. You understand. All right.

Q. You are aware of the fact, sir - -

THE COURT: (Interrupting) Just a moment. Is there any objections or corrections to the Court's admonition, gentlemen?

MR. HARWELL: Judge, I didn't mean to interrupt you, sir.

THE COURT: Continue.

Q. You are aware of the fact, are you not, Mr. Parrish that Mr. Justice, Mr. McGhee, and Mr. Barker, and some other folks doing business as Ray-Mac had filed a civil suit? I think you answered yes to that, or are answering yes at the time Mr. Self objected.

A. I am aware of the suit. Not of the individuals who were in the suit.

Q. All right, sir. And are you aware of the fact that in that suit they are seeking recovery of one million two hundred and sixty thousand dollars?

A. I really don't recall what the dollar amount is.

Q. All right, sir. And as the Court has advised the Jury, that civil suit is in a different Court than this suit. You are aware of that, are you not, sir?

A. Yes, sir.

Q. All right, sir. Have you been involved in the preparation of that suit?

THE COURT: Just a moment now. I don't want you getting the implication just because that suit is filed it displaces this action. This is an action that stands on its own. Do all of you understand that?

The fact that they have got this suit has nothing to do - - the only thing I am permitting that into evidence is whether or not it reflects any bias on the testimony on the part of this witness. That is all.

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

THE COURT: Yes, sir.

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

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MR. SPENCER: Your Honor, about these objections and statements of understanding and everything in front of the Jury, I would like to object to that procedure, because once the grounds and the response comes out in front of the Jury, I feel that this is going to be a long trial, and I feel that procedure is going to create bias and prejudice in front of the Jury.

So I would like that objection to be a continuing objection on the record.

THE COURT: All right. Let it be noted and be overruled.

MR. HARWELL: I didn't hear what the objection is.

THE COURT: He is objecting to - -

MR. SPENCER: (Interrupting) Procedure.

THE COURT: Procedure.

MR. SPENCER: I objected to the procedure of these objections and stating the grounds on the record in front of the Jury and everything, because I didn't quite feel that is appropriate, because once it is stated, if it is bias or prejudice, or grounds, the response is there.

MR. HARWELL: I guess I should advise the Court that immediately prior to the Court recon-

vening I told Mr. Self that there was some areas of examination when I get to them I intend to come to the Court rather than asking my question and having to object to it.

THE COURT: No, fine. Let's go ahead.

MR. SPENCER: I object to the whole procedure during the trial.

THE COURT: This is the reason is to show bias and that is it. We are letting it in for the purpose of only permitting bias, and that is the only reason it is to be admissible.

MR. SPENCER: My objection, Aubrey is for this whole trial.

MR. HARWELL: I am not arguing and I wanted the Court to know what I was doing.

THE COURT: I think we are doing it the only way it can be done.

MR. SELF: Your instruction to the Jury at this time, is there for bias.

THE COURT: We are going to be getting - -

MR. SELF: (Interrupting) You realize that I had the impression from the Court's admonition that the Court was inferring that there was existing some bias.

THE COURT: No.

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MR. HARWELL: I thought it was the other way.

THE COURT: I just told him this suit had nothing to do with this case and it was not supposed to diminish - -

MR. HARWELL: (Interrupting) It is only the purpose of bias.

THE COURT: Right.

REPORTER'S NOTE: End of Bench Conference.

*** *** ***

PLEASE RELEASE
COTTON CONTENT

THE COURT: Does the jury understand this matter--this other suit which we are talking about neither adds to this case nor detracts from it. This is a case which is tried on this accusation, not this other suit.

It's proper to see if this witness here is biased or prejudiced, and bringing up this other matter--that's the purpose of it, and that's the only purpose you can consider.

You may proceed, sir.

MR. HARWELL: Thank you, Your Honor.

Q. Let's talk just a minute, if we may, Mr. Parrish, about that civil suit.

Have you or any of your--any of your personnel or any of your people help prepare, -- helped prepare documents or assist in regard to that civil suit?

A. I'm not aware of anything--

Q. All right, sir.

A. --Coal-Mac employees.

Q. Being totally candid with this Court and this jury, Mr. Parrish, it's a fact, is it not, that you would like to see those plaintiffs, those friends of yours, win that civil suit?

MR. SELF: Objection, Your Honor.

That's totally improper. He hasn't laid a foundation for a determination, and his personal feelings are not proper in this court.

THE COURT: Well, overruled.

A. If they have a legal right or are entitled to that, I'd like to see them have it.

Q. All right, sir. And isn't it also a fact, sir, that you understand that if the Government successfully convicts these men on trial it'll help Ray-Mac in that civil suit? Haven't you been told that?

A. I've heard that.

Q. Do you believe it?

A. I haven't followed up on it enough to know.

Q. All right, sir. Mr. Parrish, you have some familiarity with the activities--the picketing and related activities that took place up at the Ray-Mac mine site in February of '82, do you not, sir?

A. Very little.

Q. Do you have sufficient knowledge of those things, Mr. Parrish, to tell you whether--to tell me whether or not you agree with me that those activities lasted from February 15, 1982

until February 22, 1982?

A. I know they started on February 15.

Q. All right, sir.

A. I am unsure of when they ceased.

Q. All right. Do you recall as to whether or not they ceased before the end of February, 1982?

A. A week or two weeks there. I'm not real sure.

Q. I'm sorry, sir, I didn't hear you.

A. I'm not sure how long the violence continued.

Q. Yes, sir. Your answer was a week or two--

A. Right.

Q. --and I didn't hear you when you tailed off.

A. A week or two.

Q. After February 15?

A. That's correct.

Q. All right, sir. In any event, before the end of February or by the end of

February there were no more problems up there in terms of pickets, violence, so on and so forth; that's a fair statement?

A. Not that I'm aware of.

Q. All right, sir. Let's talk just a moment, if we might, Mr. Parrish, about the tipple you testified about.

If I understand, that tipple was not leased until February 15 of 1982. Am I correct in my understanding?

A. That's the date I think we signed the papers.

Q. All right, sir. And that you recall from your statement of a moment ago is also the day that the initial problems began up there at the Ray-Mac mining site, isn't that true?

A. That's correct.

Q. All right, sir. You indicated, sir, there was some problems with that tipple in terms of electricity and a conveyor belt, did you not?

A. That's correct.

Q. And the truth of the matter is that that tipple was not operational on February 15, 1982 when the lease was entered into,

was it, sir?

A. That is correct.

Q. That's correct, it was not operational?

A. Yes.

Q. All right, sir. And, as a matter of fact, in the course of negotiating and leasing that--negotiating for and leasing that tipple you're aware of the fact that that tipple hadn't been used since sometime in the fall of 1979, isn't that correct?

A. I was unsure of when it was used the last. It was one or two years earlier, I was informed.

Q. All right, sir. And the truth of the matter is that that tipple was not in very good shape, was it, sir?

A. Not in the best of shape.

Q. I don't mean to split hairs, but I sense a little bit of difference in my statement or question of not in very good shape versus yours, not in the best of shape. The pictures reflect the shape it was in when they were taken, don't they?

A. That's correct.

Q. And though you and I may

disagree with the adjectives they'll show, when the jury gets to see those, the shape it was in, isn't that true?

A. That's correct.

Q. All right, sir. I understood that you said during the course of your direct testimony, Mr. Parrish, that Coal-Mac had a number of other tipples in February of 1982, is that right?

A. That's correct.

Q. Let me see if I can go over what I understand about those that were in existence. You had one in Shelbiana, Kentucky?

A. Yes, sir. We had three there.

Q. I beg your pardon?

A. Three tipples.

Q. Three tipples?

A. Uh-huh.

Q. And you had one on Stone Coal Road?

A. That's correct.

Q. All right, sir. And then you had one on Big Creek siding?

A. That's correct.

Q. Then you had one-- You

mentioned Floyd County. You had one in Floyd County in addition to this tipple?

A. We have more than one in Floyd County.

Q. All right, sir. Where were they? What are they called?

A. The Welco site that we had was at Garrett.

Q. Mr. Parrish, let me be fair with you, sir. I have a problem--I have a hearing difficulty, and when you start out answering you answer me well, and then you let your voice drop. I don't mean to interrupt, but if you could speak up, sir, I would be grateful.

A. What was the question?

Q. We were talking about tipples in Floyd County, and you were telling me the names of where they were located. You said Welco when I interrupted you, sir.

A. The Welco tipple is at Garrett.

Q. At Garrett?

A. Garrett, Kentucky.

Q. All right, sir.

A. Real close to Route 80

there.

Q. Is that in Floyd County?

A. Yes, sir.

Q. All right, sir.

A. And we were operating a siding there at Bosco.

Q. Is that in Floyd County?

A. Yes, sir.

Q. All right, sir.

A. May 1 tipple was at Eastern.

Q. Is that in Floyd County?

A. Yes, sir.

Q. All right, sir. You mentioned, sir, Kite and Jenkins.

A. I'm not--I am not sure, but I think Kite is in Letcher County. It's close to the Floyd County line.

Q. And how about Jenkins, sir?

A. Jenkins is in Letcher County.

Q. All right, sir. Let me ask you this, sir. Those tipples that you had operating in February of 1982, which one of them that you have told us about was the closest to this particular

tipple that was leased on February 15, '82 in Floyd County?

A. The Eastern tipple.

Q. May?

A. Eastern at Eastern, Kentucky.

Q. Eastern?

A. Uh-huh.

Q. All right, sir. And about how far was that from this tipple that was leased in February--on February 15 of 1982?

A. I would think about ten miles.

Q. All right, sir. And the truth of the matter is, sir, as to those other tipples Coal-Mac/Ray-Mac didn't have any problems, had no incidents of violence at any of the tipples other than the one that was leased on February 15 of '82, is that right?

A. That's correct.

Q. All right, sir. If I understood your testimony on direct, sir, you said, and please correct me if I am wrong, you said that the Ray-Mac mine out at McDowell, Lease No. 749, began producing coal in October of 1981, is that right?

A. That's correct.

Q. And I think you said that it produced through that fall after it once started in October, am I correct?

A. Through August. I think August or September of '82.

Q. Of '82?

A. That's correct.

Q. Was that continuous production during that time period except for the period from February 15 until sometime close to the end of February?

A. That's correct.

Q. Would it therefore, sir, be fair to say that that--those events at Ray-Mac only stopped that mine for operating for that period of time commencing February 15 and ending sometime towards the end of February, 1982?

A. That's correct.

Q. Fair statement?

A. Uh-huh.

Q. All right, sir.

Mr. Parrish, let me--let me talk to you, if I might, sir, about JRM Coal Company.

You understand that JRM

Coal Company is a coal company, one-third of which is owned by Mr. Edgar Jones, my client, do you not?

A. I wasn't aware of the ownership.

Q. You knew he was somehow affiliated with JRM, did you not?

A. Yes.

Q. All right, sir. If I understood you, sir, you're saying that South Carolina Electric and Gas Company did not award any coal supply contracts to you all in January, February or March of 1982, isn't that correct?

A. They didn't award us any spot orders.

Q. Any spot orders?

A. Right.

Q. In January, February, March, '82, is that right?

A. That's correct.

MR. HARWELL: May the Court please, I would respectfully request that the Marshal pass to the Clerk for noting as a trial exhibit for identification Government's Exhibit IIII and Government's Exhibit JJJJ.

(Reporter's Note: At this time the Marshal handed the Clerk a group of documents.)

THE CLERK OF THE COURT: Gentlemen, is this to be entered as a Government exhibit?

MR. HARWELL: No, ma'am.

THE COURT: It'll be the defendant's exhibit.

MR. HARWELL: Thank you, Judge.

THE COURT: It'll be Defendant Edgar Jones' Exhibit 1.

THE CLERK OF THE COURT: Yes, Your Honor.

MR. HARWELL: I have got the originals of those from Mr. Self, Your Honor, and he doesn't have a copy. May I give them to him?

THE COURT: Yes, sir.

MR. HARWELL: Thank you, Judge.

(Reporter's Note: At this time Mr. Harwell handed Mr. Self a group of documents.)

MR. SELF: We've seen these and have no objection to their introduction.

THE COURT: Okay. Show them to the other counsel.

THE CLERK OF THE COURT: Your Honor, the exhibit which was previously identified by the Government's exhibit sticker of four letters of the alphabet I has been labeled for purposes of trial as Defendant Edgar Jones' Exhibit No. 1. The exhibit

previously identified by Government's exhibit four letters of the alphabet J has now been labeled for purposes of trial as Defendant Edgar Jones' Trial Exhibit No. 2.

(Reporter's Note: At this time the Marshal handed a group of documents to all counsel.)

THE MARSHAL OF THE COURT: The remaining members of the defense counsel have reviewed the exhibits.

THE COURT: Thank you.

(Reporter's Note: At this time the Marshal handed the witness a group of documents.)

Q. Mr. Parrish, the Marshal has handed you two separate exhibits; one consisting of one page, and another consisting of two pages. Can you identify those, sir?

A. Yes, sir.

Q. All right, sir. Let me get you to focus your attention on that which has been marked for identification as Defendant Edgar Jones' Exhibit No. 1. What is that?

A. That is a profile of Coal-Mac Sales during the month of January, 1982.

Q. AS a matter of fact, it's a customer profile, is it not?

A. Yes, sir.

Q. And it was prepared at your office, was it not, Mr. Parrish?

A. That's correct.

Q. And it lists, does it not, sir, all the customers for Coal-Mac Sales for the month of January of 1982, isn't that correct?

A. It would list the destination where known of our coal. Some of these accounts could have been sold to someone else.

Q. All right, sir. Let's take it column by column. Look at the first column on the left. That listing on the left-hand column has in numerical sequence customers, doesn't it, one through twenty; starting with Dayton Power and Light Company?

A. It has the purchasing company.

Q. That's right, sir.

A. It could have been brokered.

Q. I understand. And the second column lists tons, does it not?

A. That's correct.

Q. And that refers to those tons that were purchased during that month by each

of those customers over in the first column, isn't that right?

A. That's correct.

Q. All right, sir. And then the third column lists destinations, isn't that true, sir?

A. Yes, sir.

Q. All right, sir. Now, let me get you, sir, to look at the exhibit of Defendant Edgar Jones marked No. 2 for identification. I will ask you, sir, if you would agree with me that that is basically the same thing; that is a Coal-Mac Sales customer profile for February of 1982 done in the same format as the first exhibit, the January customer profile?

A. That would list the end user of the coal where known.

Q. I beg your pardon?

A. The end user of the coal if it were known.

A. If I can use for an example, for instance, No. 3, Potomac Electric Power.

Q. Yes, sir.

A. Was the end user of that coal.

Q. All right, sir.

A. But that coal was sold to a -- or was brokered into there. It wasn't a direct sale of Coal-Mac?

Q. All right, sir.

A. Okay.

Q. Now, is that different from Defendant's Exhibit 1? What I am getting at, doesn't each of the exhibits show similar information, one for the month of January and one for the month of February?

A. Yes,sir.

Q. All right, sir. And like Exhibit 1, that which has been marked for identification as Exhibit 2 was prepared by you or by your people at Ray-Mac -- I mean to Coal-Mac. Isn't that true?

A. That is correct.

Q. All right, sir. And

those originals or the information concerning those originals is part of the official books and records of that company. Isn't that true?

A. That is correct.

MR. HARWELL: All right, sir. May the Court please, we move the admission of Edgar Jones Exhibits 1 and 2.

MR. SELF: No objection, Your Honor.

MR. PAFUNDA: No objection.

THE COURT: All right. There being no objection, that which has been previously marked as Government Exhibit 4I, 4J will be finally admitted into evidence as Defendant Jones final Exhibits 1 and 2 respectively.

Q. All right, sir. Now, one or two brief questions about those exhibits. You will agree with me -- you have got them before you, do you not, sir?

A. Yes, sir.

Q. You will agree with me that on that customer profile, Exhibit 1, or customer profile Exhibit 2, showing customer Coal-Mac sales for February and January of '82, that nowhere entered on there is the South Carolina Electric & Gas Company. That is a true statement,

is it not?

A. That is correct.

MR. HARWELL: All right, sir. I believe His Honor's procedure is those be passed to the Clerk after they are admitted, Your Honor, or does the witness keep them?

THE COURT: No. After cross examination.

MR. HARWELL: All right, sir.

Q. Let's get back for a minute, if we can, Mr. Parrish, to the South Carolina Electric & Gas Company. The truth of the matter is that Coal-Mac did not get any spot market contracts with that company in 1982, anytime during the year. Isn't that correct?

A. That is correct.

Q. And as a matter of fact, since December of 1981, there have not been any contracts with that company to the very present moment. Isn't that correct?

A. That is correct.

Q. All right, sir. And that is true, even though your company offered coal to the South Carolina Electric & Gas Company throughout that period of time. Isn't that correct?

A. That is not unusual.

Q. And they just didn't pick up or buy the coal that was offered them. Am I right?

A. That is correct.

Q. All right, sir. Mr. Parrish, are you aware of the fact that in 19 -- in 1982, and prior to that time, the JRM Coal Company had a long term contract to supply coal to the South Carolina Electric & Gas Company?

A. I was aware of that.

Q. All right, sir. And were you aware that that contract was for JRM to supply coal to that utility for a five-year period with two additional five year options?

A. I wasn't aware of that.

Q. You were not aware of the five-year period or the options?

A. That is correct.

Q. All right, sir. Were you aware of how far JRM was in that contract, and I mean how far along as to time in February of 1982?

A. No, sir.

Q. All right, sir. Mr. Parrish, it is a fact, is it not, sir, that the

coal that Ray-Mac was mining at that Ray-Mac site up near McDowell in February of '82, had a lower BTU capability than the coal that was required by South Carolina? Isn't that right?

A. No, sir.

Q. That is not correct?

A. That is not correct.

Q. Let me ask you this, sir: Isn't it true that neither Edgar Jones, my client, or JRM were competing with Coal-Mac in February of '82, to sell coal to coal users on the spot market? Isn't that a true statement?

A. As far as I am aware of, it is true.

Q. And you, being the President of the company, would have some awareness to the contrary, would you not, sir?

A. That is correct.

Q. And you have no such awareness, do you, sir?

A. No, sir.

Q. All right, sir. Do you have any personal knowledge, sir, as to whether or not JRM Coal Company or Edgar Jones were selling coal on the spot market or attempting to sell coal

on the spot market to South Carolina Electric & Utility in February of 1982?

A. I wasn't aware of it.

Q. You had no awareness of that?

A. No.

Q. All right, sir. Sir, you indicated, if I recall your testimony on direct, that you had had a conversation with Edgar Jones you thought in 1979?

A. Or '80.

Q. 1979 or '80?

A. Or early 1980, yes, sir.

Q. All right, sir. That had nothing to do with the South Carolina contract, did it?

A. No, sir.

Q. Where was that conversation?

A. We met Mr. Jones and a fellow buyer, George Adkins and myself, Coal-Mac, at Prestonsburg. And the site was a deep mine, a pit mine there. And we were there to purchase -- Bizzack was contract stripping for him up on top of the hill.

Q. Bizzack?

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A. Bizzack. And wewere there to talk to him about the purchase of that strip coal.

Q. All right, sir. Let me see if I can refresh your memory. Didn't you also have a meeting with Edgar Jones and a fellow named David May on Mr. May's houseboat in Jenny Wiley State Park?

A. That's correct.

Q. And isn't it a fact, sir, that that meeting focused on the possibility of you or your company buying JRM?

A. That is correct.

Q. And the truth of the matter is that you all didn't come to terms and you all couldn't buy it. Isn't that right?

A. We never got into negotiations.

Q. I see. You are saying you never negotiated?

A. We met twice briefly for an hour or so.

Q. I am sorry, sir. I didn't hear the last sentence.

A. We met twice there

briefly for an hour or so.

Q. Twice briefly on the houseboat?

A. That is correct.

Q. All right, sir. And if I understood your earlier statement, the focal point of conversation was you all buying JRM. Am I right?

A. That is what we were there to talk about.

Q. On both of those occasions?

A. That is correct.

Q. And your company was desirous at that time of trying to buy JRM. Is that right?

A. Our company was approached by David May who said that he had been approached by Mr. Jones to set up a meeting to see if there was some interest.

Q. For you all to buy?

A. If there was any interest for us to buy.

Q. All right, sir. Do you know Mr. Jack Epling?

A. I don't recall Jack

Epling.

Q. Do you know a Mr. John Williams?

A. No, I don't know -- I don't -- offhand, I can't recall John Williams.

Q. All right, sir. Mr. Parrish, you weren't present on Monday, February 15, 1982, up at Ray-Mac where the picket line was, were you, sir?

A. No, sir.

Q. And you weren't present up there on Tuesday, February 15th of 1982, were you, sir?

A. No, sir.

Q. And it is fair to say, is it not, since you weren't present, that you have no personal knowledge of what occurred up there on those days. Is that true?

A. That is correct.

Q. All right, sir. It is also true, is it not, Mr. Parrish, that during the week of February 19 -- I mean February 15, 1982, you didn't have any conversations whatsoever with Mr. Edgar Jones, did you?

A. No, sir.

Q. I think you have told us about the three conversations you had with him in recent years, have you not?

A. That is the only ones I recall, yes, sir.

MR. HARWELL: All right, sir. May the Court please, I have indicated that there were some matters that properly should -- well, let me move on, and then address the Court in a minute if I may, Your Honor. All right?

THE COURT: (Judge Unthank nodding head in the affirmative.)

Q. Mr. Parrish, I get a little confused on Ray-Mac, Coal-Mac, and Mack Mining. Let me see if I am right.

Am I right in that Ray-Mac was mining coal in Floyd County in February of '82?

A. Ray-Mac -- that is correct.

Q. And that was -- was that the only place that they were mining at that time?

A. That is correct.

Q. All right, sir. Now, other affiliated or involved companies with Coal-Mac obviously were mining elsewhere, weren't they?

A. That's right.

Q. All right, sir. Now, as to the coal that Ray-Mac mined, all of that was sold to Coal-Mac. Isn't that true?

A. (Witness nodding head in the affirmative.)

Q. Every bit of it?

A. All the sales went through Coal-Mac.

Q. All right, sir. Now, Coal-Mac would then take that coal and sell it to the consumer to people such as those shown on Defendant Exhibits 1 and 2 in Kentucky and out of Kentucky. Isn't that true?

A. Well, that is correct.

Q. All right, sir. Mr. Parrish, moving on, sir, you indicated that in February of 1982, that Coal-Mac was selling coal to a paper company in Maine. I believe you said FB or F.D. Warren. Which is it?

A. S.D. Warren.

Q. S.D.?

A. S.D. Warren.

Q. All right, sir. And some of the coal which Coal-Mac shipped to that paper

company was mined by Ray-Mac. Is that right?

A. That is correct.

Q. And in spite of the problems during the last week or two of February, 1982, you all didn't lose your contract to provide coal to that paper company up in Maine, did you, sir?

A. No, sir.

Q. All right, sir. As a matter of fact, you were able to hold on to enough or able to purchase enough coal to fulfill that contract, weren't you?

A. That is correct.

Q. All right, sir. I think you said, referring to that contract and others as well during the course of your answering questions that Mr. Self posed that you didn't believe that Coal-Mac lost any orders due to the activities in February at Ray-Mac. Is that true?

A. Any existing orders.

Q. All right, sir. Now, I think you also said, sir, that you had on occasion visited with South Carolina Electric & Gas Company. Is that right?

A. That is correct.

Q. And if I understood you, you said that you thought that prior to the February, '82 activities, the last time you had been there was early, 1981. Is that true?

A. Early or it could possibly have been mid-summer.

Q. Of 1981?

A. Right. I don't think I was there in the Fall.

Q. But as far as you can recall now, you were not there after the mid-summer of 1981. Is that right?

A. I can't recall.

Q. All right, sir. And I think you also said in response to Mr. Self's questions that you and your company had made no attempt to enter into -- made no attempt to enter into any long term contracts with South Carolina Electric & Gas. Is that true?

A. I made the statement that we hadn't offered South Carolina Electric & Gas any long-term quotes ourselves that we could find. Also I have said that we didn't offer John McCall any long-term business.

Q. All right, sir.

A. And if we could have quoted through another broker, I am not sure of.

Q. Educate me a little bit, Mr. Parrish. Am I correct in assuming that if you quote to a broker, that it is customary in the industry that you sell the broker; and you all really don't care what he does with the coal from that time on as long as he sells it. Isn't that true?

A. That is not true.

Q. That is not true?

A. (Witness shaking head in the negative.)

Q. Then you do care?

A. We care what -- of course, we care. The broker has the relationship with the account. If it is good business, then we would like to keep that account. Well, naturally, we have to care what we ship to that broker.

Q. Are you suggesting, sir, that some of the brokers that you all dealt with to your knowledge, to your personal knowledge, had offered coal on a long-term contract to South Carolina Electric & Gas?

A. Many times in this

industry, folks will offer coal without your acknowledgement.

Q. All right. You had no knowledge then, did you, if any such offer had been made?

A. I'm aware of one, and I don't know the timing of it. I think that we participated in an offer with General Coal to South Carolina Electric & Gas. That is the only one I recall. And I really don't know exactly when that -- I just know that we did it. I don't know if it was the last couple of years or -- it is not current.

Q. It was some time ago, was it not?

A. Yes, sir.

MR. HARWELL: All right, sir. May Your Honor please, I think the procedure that the Court has set forth is such that it would be appropriate for counsel to approach the Bench at this point in time.

THE COURT: All right.

Reporter's Note: At this time Mr. Self, Mr. Dause, Mr. Kehrli, Mr. Harwell, Mr. Moore, Mr. Patton, Mr. Walbourn, Mr. Hollon, Mr.

Bransen, Mr. Pafunda, and Mr. Adams approached the Bench where the following was heard:

THE COURT: Is this going to take time where the jury ought to go out to the jury room?

MR. HARWELL: I don't know. I've got about five more minutes of questions. Whatever Your Honor wishes. Maybe ten, Judge. Not more than that.

THE COURT: Well, go ahead.

MR. HARWELL: Well, if it please the Court, I want to move into questions of Mr. Parrish with regard to his knowledge of violence within his company. He is the head honcho, the President of the company. I intend to probe into this area. I think that it is significant.

THE COURT: What do you want to ask?

MR. HARWELL: I want to ask him if he is aware that his men were armed with firearms and that his truck drivers fired shotguns and questions within that sort of area, Judge.

MR. SELF: Let me state that there are witnesses that have personal knowledge of that that are going to be here to testify. This man could

only testify as to hearsay of these matters.

THE COURT: You can ask him if he were present when these things occurred.

MR. HARWELL: I did. He said that he wasn't.

THE COURT: Okay. Then he has no firsthand knowledge of it.

MR. HARWELL: Your Honor, this man is an executive, a manager, and he may know.

MR. SELF: This was not gone into on direct examination. It is beyond the scope of the direct examination.

MR. HARWELL: His men were involved in a war-like state, and you have a --

THE COURT: (Interrupting) We will overrule.

MR. HARWELL: May I make a tender with you when the jury is excused and ask those questions?

THE COURT: Yes, sir.

MR. HARWELL: And I want to ask him a fact about in May of 1981, in Shelbiana. There was a big shoot-out down there.

MR. SELF: I would object to that.

THE COURT: That has nothing to do with this.

MR. HARWELL: This is not just a one-way situation as the indictment alleges.

THE COURT: The only thing you can inquire into with this witness is as to prejudice or bias. And I feel rather than -- rather than it going to show bias of the witness, I feel like that the value of it is more prejudicial.

MR. HARWELL: Prejudicial to who?

THE COURT: Prejudicial to all parties.

MR. HARWELL: Or Your Honor, I will waive prejudice on behalf of my client.

THE COURT: No, we are not going to go with it, gentlemen. We are concerned with what happened at this mine at this time. That is all.

MR. WALBOURN: Exactly, Your Honor. I don't believe I heard those dates mentioned all morning, and I was very attentive.

THE COURT: I will overrule you.

MR. HARWELL: Judge, are you saying that I can make a tender and ask these questions if the jury leaves the room?

THE COURT: You are wanting to make avowal?

MR. PAFUNDA: Yes, sir.

MR. HARWELL: Yes.

THE COURT: Okay, fine. You can avowal, put it in the record by avowal.

MR. HARWELL: Is that where I ask and answer --

MR. WALBOURN: (Interrupting) Avowal is where the attorney gets to testify.

MR. HARWELL: Oh, I know. I asked these questions and would like to get these answers.

THE COURT: Other than this, have you got any other questions?

MR. HARWELL: I've got two other lines of questions. It may be ten or fifteen questions.

THE COURT: Then you will be through with this witness. Here's what I'd like to do. I would like to do this and then let the jury go. I hate to let them go and then bring them back and let them go again.

MR. HARWELL: I have one or two other lines of questions. And then we will get into this avowal while the jury is out.

THE COURT: Right.

(Reporter's Note: At this time the Bench conference was concluded.)

Q. Mr. Parrish, I have one or two other things I have got to ask you about, sir. Let me direct your attention, again, to this tipple that you told this Jury and His Honor was leased on or before February 15th, 1982.

The fact of the matter is that the knowledge that you all have leased that tipple was not widely known throughout that community up there, was it, sir?

A. I wouldn't know.

Q. You didn't believe it was, did you?

A. We signed the agreement, I think, after lunch on Monday, and I don't know - - I wouldn't - - if it was available, it was by the other parties that signed it. They did live in that area.

Q. Well, on November 1 of 1982, Mr. Parrish, let me ask you if you weren't asked this question: "Was the knowledge or the fact that you all had leased this tipple widely known throughout the community?"

Do you remember being asked that question?

A. Right.

Q. And I ask you, sir, didn't you give this answer: "We didn't think so, the lease was really not - - it lacked one day becoming effective, but I don't think it was widespread known."

Didn't you give that answer to that question?

A. Right.

Q. And wasn't it true?

A. (Nodding head affirmative)

Q. All right, sir. And also, sir, during that same time, November 1 of 1982, you were asked, were you not, whether you and JRM Coal Company were competing during the period of time during January and middle February of 1982, do you remember that question?

A. Yes, sir.

Q. "Competing in the same market to your knowledge?"

And you answered, "Not that I know of."

A. That is correct.

Q. "This coal was compliance type coal, and it was low sulfur coal and JRM's coal was quite a bit higher in sulfur."

You gave that answer to

that question?

A. I gave that answer.

Q. And that answer was true, wasn't it?

A. That answer is how you define -- we were talking about sales there, and John McCall, I understood, sold JRM's coal. If they had salesmen, I wasn't aware of it.

Q. Let me read you the question again.

Question: "Did you and JRM Coal Company competing during this period of time, or during January or the middle of February, competing in the same market, to your knowledge?"

And you are saying that was limited to sales?

A. That was what the statement was beforehand, wasn't it? About sales and afterwards?

Q. No, sir. Before that it was conversation about whether or not coal was being shipped outside the State of Kentucky and Interstate Commerce.

A. (No response)

Q. Nowhere in this question

that I have just read, or the questions you were posed, did you limit the competitive fact to just sales, did you, sir?

A. You have it there, apparently if I did - -

Q. (Interrupting) I will be happy to show it to you if the Court or you so desires with the Court's permission.

Would that help you?

THE COURT: Do you want to refresh your recollection?

WITNESS: Yes, could I, please?

THE COURT: All right. Mr. Marshall, please hand it to the witness.

REPORTER'S NOTE: (The Marshall of the Court handed a document to the witness).

MR. HARWELL: May the record reflect the witness has been handed a copy of his testimony before the Grand Jury on November 1, 1982, and I direct your attention, sir, to page four, the last two lines, Question 25, the one that I read and the part above that you asked about, Interstate Commerce question found at No. 23 and 24 - - 23, do you see that?

THE WITNESS: Yes, sir.

Q. All right, sir. Now, read that question, if you would.

A. May I read 20 and 21, all those questions?

THE COURT: Yes. You may read whatever you wish.

MR. HARWELL: Yes, sir.

THE COURT: Just read it to yourself.

THE WITNESS: Question 20 it says, "And coal run, where did the coal go?" And I said, "Well, most of the coal was going to S. D. Warren Paper Company up in Maine, and it was also going to Mongahelia Power in Pennsylvania, and some of it was going to Duke Power."

And the next question was, "Was any of that coal being mined by Ray-Mac's operation in February of '82 going within the State of Kentucky?"

And I said, "No."

Question 22 was, "All of it was being shipped outside the State of Kentucky?"

And I said, "That is correct."

"And Interstate Commerce?"

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"That is correct." That was my answer.

Question 24, "Mr. Parrish, were you aware of JRM Coal Company?" And I answered, "Yes."

The next question was, "Were you and JRM Coal - - " "Were you and JRM Coal Company competing during this period of time, during January or the middle of February, competing in the same market, to your knowledge?" And I said, "Not that I know of. This coal was compliance type of coal, and it was low sulfur coal and JRM's coal was quite a bit of sulfur - -"

Q. (Interrupting) Quite a bit higher in sulfur, I think, sir?

A. Higher.

Q. If you would, please, read question twenty-six and your answer.

A. I said - - the question was, "Did you have any contracts in February with South Carolina Power & Light?" And I said, "No."

Q. All right, sir. Anywhere in there, did you limit the competitive factor that is talked about in question 25 and the answer you posed?

A. No, sir. But the whole

scope of that conversation was transportation and sales of coal.

MR. HARWELL: I see, all right, sir.

May the Court please, I am completed with this gentleman except for those matters that we discussed with Your Honor at the Bench.

THE COURT: Thank you, sir. Any additional cross-examination of this witness by any of the other Defendants?

MR. KIRKLAND: I do, Your Honor.

THE COURT: All right. I propose to let Mr. Kirland finish, and the Government can finish its redirect and then we will take up the other matter.

MR. HARWELL: All right, sir, Your Honor.

MR. KIRKLAND: Do you want to go out of order, Your Honor? How do you want to proceed?

MR. PAFUNDA: Mr. Kirkland can go first, if it is all right with the Court.

THE COURT: The only thing, if we start at this end (indicating) we end up here. If we start with this end, we end up here (indicating).

Let's keep it orderly as we go down. You will ask questions and if any of them

have anything to ask, they will ask, and Mr. Pafunda is down at the end and he will be the last one.

MR. PAFUNDA: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. KIRKLAND:

MR. KIRKLAND: Mr. Marshall, could we have the Grand Jury transcript back? I think the witness has it. It came from Mr. Harwell, I believe.

Q. Mr. Parrish, I am Bill Kirkland, and I represent some of those coal miners in the corner.

First of all, let me ask you this. Do you recognize any of the faces of those eighteen people who are stacked up over against the wall?

A. Just one.

Q. Which one is that?

A. Mr. Jones.

Q. Mr. Edgar Jones?

A. Yes, sir.

Q. All right, sir. Prior to today, you don't recall having met any of those fellows, is that correct?

A. No, sir.

Q. Approximately how many employees does this accumulation of companies that seem to have the name Mack somewhere included in it, Island Mack, Coal-Mac, Big Mac or whatever, how many employees do you have altogether in all these companies?

A. At this time?

Q. Yes, sir.

A. Approximately one hundred seventy.

Q. Where do most of those employees live?

A. They live in Pike and Floyd Counties.

Q. Back in 1982, how many of your employees lived in Floyd County?

A. Now, if I can clarify, in '82 I wasn't involved in the Mack Mining, I can only speak for the Coal-Mac Sales folks.

Q. Did any of the Coal-Mac Sales folks live in Floyd County in 1982?

A. I am aware that four or five - - we had probably forty some employees, I just have to look. I am sure four, five, or six folks

live down there. Most of them were Pike County.

Q. Basically you took the employees from Pike County over into Floyd County to work, is that right?

A. Well, we were only working the tipples, so we didn't have anything to do with the mining.

Coal-Mac's employees were only involved in the tipples, so there was only like four - - we worked three to five employees at the tipple.

Q. Is there any reason why you didn't seek to employ local Floyd County people?

A. Well, we on all - - the Floyd County tipples that we had, which was the sum total of probably less than ten people involved in the tipples in Floyd County, I would think that seven or eight of those folks lived in Floyd County.

Q. But you did have some of your people drive all the way from Pike County on to Bright Beaver and Garrett and Eastern, is that correct?

A. Drive for information.

Q. Provide for information?

A. Weigh bills and this type of

thing to get back and forth.

Q. But they also drove over there to work, too, didn't they?

A. That is correct.

Q. Now, are you saying that you didn't know anything about the employees at Ray-Mac up on top of the hill?

A. That is correct.

Q. You have no knowledge about who was employed as an independent trucker, or as a coal miner?

A. That is correct.

Q. Now, during 1982, considering all the companies that you testified about, how many UMWA employees did you have?

A. None.

Q. None at all?

A. Yes, sir.

Q. Out of a hundred and eighty, you had no union employee, is that right?

A. That is correct.

Q. Do you know whether any of them had formerly been UMW employees?

A. I couldn't - - I wouldn't be aware of that.

Q. Do you know of any pattern of hiring that would exclude former union employees?

A. I wouldn't be aware of that either.

Q. You wouldn't be aware of it?

A. No, I am not aware of it.

Q. Do you know - - you are not saying it didn't exist, you are just saying you wouldn't be aware of it, is that right?

A. Well, since I wasn't the person that did the direct hiring, I am not aware of it - - of that.

Q. Was it part of your duties to protect your company equipment or property over at Ray-Mac in Floyd County back in 1982?

A. It was not part of my duties.

Q. Whose duties were those?

A. That was the owners and Mack Mining and employees of Ray-Mac.

Q. Who in particular had that responsibility with respect to the strip and auger job that is in question here? Who had the duty to protect that equipment?

A. It would be Pete Barker.

Q. Did you ever discuss with him what he did to protect it in terms of buying insurance, or security guards, or anything like that?

A. No, I can't recall having any conversation.

Q. So he just handled that and you didn't talk to him about it, is that right?

A. That is right.

Q. Now, do you know whether any of these coal miners over here (indicating) ever took a dollar from Ray-Mac - -

MR. SELF: (Interrupting) Objection, Your Honor. Objection, it's a mischaracterization to the witness, and it's not a correct statement based on the record.

THE COURT: Well, let him finish his question.

MR. SELF: I'm sorry.

Q. Ever took a dollar from Ray-Mac and put it in their pocket?

MR. SELF: Objection, Your Honor to the characterization of the Defendants in this case as coal miners, it is not a true statement and it is not based on the facts in the record.

THE COURT: Overruled.

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Q. Do you know whether any of them obtained any dollars from any of your companies?

A. I am not aware of it.

Q. So not a one of those fellows over there (indicating) are any richer today, or were in richer in 1982, as a result of whatever happened up there, is that right?

MR. SELF: Objection.

Q. (Continuing) To your knowledge.

MR. SELF: It's irrelevant, it's a matter of indictment in this case.

MR. KIRKLAND: It is highly relevant.

THE COURT: I am going to sustain that objection as to the form of the question.

Q. Mr. Parrish, to your knowledge, do any of these fellows over here (indicating), coal miners or whatever they are, to your knowledge, obtained any leases that had belonged to one of your companies and then get the lease for themselves?

A. I am not aware of that.

Q. None of the leases changed hands, did they?

A. I am not aware of any of those individuals leasing - - taking a lease away

from us, no, sir.

Q. Okay.

A. Is that the question?

Q. That is the question.

The leases you had in early 1982 you continued to have throughout 1982 and thereafter, didn't you?

A. I wouldn't - - are you referring to just that area there?

Q. Yes, sir.

A. Yes, sir.

Q. In the McDowell area, McDowell-Mud Creek?

A. (Nodding head affirmative)

Q. So then none of these fellows obtained any leases that you all had had previously, is that correct?

A. That is correct.

Q. Now, do any of these men, to your knowledge, obtain any of your equipment and take it away or make it their own, or receive it?

A. The equipment again belonged to Mack Mining, and I am not aware of what - - of what was involved if they were involved in the equipment.

Q. Well, did Mack Mining have any less equipment - - surely you took inventory of your equipment, didn't you periodically?

A. I worked as president of Coal-Mac Sales at that time, and we prepared and sold coal. I am not familiar with what happened on the hill over there.

Q. Okay. But you never did hear that one of the fellows had obtained any of your equipment though, did you?

MR. SELF: Objection, hearsay.

THE COURT: Sustained.

Q. Do you know of anything, Mr. Parrish, other than gunfire that any of these men obtained from any of your companies?

MR. SELF: Objection, Your Honor.

THE COURT: Sustained.

Q. Mr. Parrish, do you know of anything that these men obtained from Ray-Mac or Coal-Mac or Coal-Mac Sales in the early part of 1982?

A. No, sir. I am not aware of anything they obtained from Coal-Mac Sales.

Q. What about Ray-Mac?

A. I can't answer that ques-

tion.

Q. Okay. You are saying you just don't know about some of the companies, is that right?

A. That is correct.

Q. Did you or did anyone under your direction voluntarily give these men anything?

A. Not that I know of.

Q. Okay. Do you know of any person in connection with these fellows that came around to your office and sort of what we call the bagman fashion and asked you all for money?

MR. SELF: Your Honor, objection, there's a characterization of this indictment, bagman, it's irrelevant and it's procedurally a matter of Law.

THE COURT: It seems like I recall this witness saying four or five times he wasn't aware of anything that went on.

MR. KIRKLAND: I am asking about it - - his office is out here on South Mayo Trail now. Do you want me to rephrase that question?

THE COURT: Yes, sir, if you will, please.

Q. I take it, Mr. Parrish,

you spent most of your time at your office as opposed to on the hill, is that correct?

A. At the office and out of town.

Q. Okay. Now, while you were at your office out here on - - is it South Mayo Trail?

A. That is correct.

Q. Did anybody come around purporting to be acting on behalf of these fellows asking for money?

A. Not that I am aware of.

Q. Or leases, or equipment, or coal?

A. Not to me personally, no, sir, that I am aware of.

Q. How much inspecting of the tipple on Simpson Branch did you do prior to entering into the lease on February 15th, 1982?

A. I would say that I had been there five to seven times - - five or six times.

Q. Were those photographs in front of you taken at your request or at your direction, or were they taken by somebody without your knowledge?

A. I called Mr. Carlton and

asked him to see what it would take to put in a screening plant down there.

Q. A screening plant?

A. Portable screening plant, and he brought these photographs up and explained to me the different variation or options we had.

Q. Now, your options at the time you isnged this lease on the tipple were pretty limited, but the fact that that lease would not allow you to tear that tipple down, isn't that a fact?

A. That is correct.

Q. Had that been a hotly contested item in this lease? I believe it is on page eight, Roman numeral VIII, it says that this tipple is not to be torn down, was that a hotly contested item when you negotiated this lease?

A. It was one of the negotiations (Nodding head affirmative).

Q. The truth of the matter is, you all wanted it torn down at first, didn't you, because it was in the way?

A. It was - - it wasn't made for strip coal.

Q. Okay. It was in your way, and you wanted it torn down?

A. Well, I wouldn't say we wanted it torn down.

Q. Well, you wanted it out of the way?

A. (No response from witness)

Q. And isn't it a fact that the value of the siding is much, much more than the value of that old wooden tipple?

A. There was no question, right. (Nodding head affirmative)

Q. The siding, just - - the rights to tipple coal would be worth hundreds of thousands of dollars, isn't that right?

A. I wouldn't think the rights were worth that much, no, sir.

Q. What was the old tipple worth?

A. I wouldn't really know.

Q. In fact, wasn't there a lot of talk in the community about forcing somebody to tear it down because it was not only an eyesore but because they were afraid of the boards falling off and hitting kids?

MR. SELF: Objection, Your Honor, hearsay.

THE COURT: Sustained.

Q. Did anybody put any pressure on the owners that you know of, or were you privied to any conversations where the owners of that tipple were being pressured to tear it down?

A. No, sir.

Q. All right. Would you tell this Jury why the owners didn't want it town down?

MR. SELF: Objection, Your Honor, again it would be hearsay, unless he has personal knowledge of it.

THE COURT: Well, if he knows why he can answer.

A. I really don't know why, why they wanted to.

Q. The site would have been more valuable with the tipple gone, wouldn't it?

A. (No response)

Q. It's pretty obvious that it would?

A. Well, it either would have to be worked on the tipple or you would have to put a new plant in, one or the other.

Q. Most plants have been put in since the fifties - - are made out of steel pretty

much, aren't they?

A. Yes, sir.

Q. And this one was built in the thirties out of wood?

A. It had steel reinforcements there, and wood.

Q. Sort of a makeshift patched up deal?

A. (No response from witness)

Q. And isn't it a fact that you were unable to get insurance on it because it was in such a sorry condition, or did you even try to get insurance on it?

A. We hadn't attempted to get insurance on it.

Q. Had you learned that it was uninsurable because of its condition?

A. No, we had not learned that.

Q. Now, you had already bought this portable plant well before February 15th, 1982, hadn't you?

A. That is correct.

Q. And in fact, you were ready to just move that right on in there to Simpson's Branch, set it up, and load coal using the portable

plant?

A. That is not correct.

*** *** ***

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Q. Are you aware of what assistance your companies rendered to the Kentucky State Police and others at the time of this activity in February of 1982?

A. No, sir.

Q. You just simply didn't go up there and you don't know what all they assisted with?

A. That's correct.

Q. Do you know why the Ray-Mac job was stopped for two weeks at the time of this activity complained of in 1982?

A. I-- Apparently there was violence. I was aware that there was violence going on.

Q. The violence didn't last for two weeks, did it?

A. I'm not sure. I know it lasted a week. I'm not sure exactly when it was over.

Q. Is that the only reason that you know of that you didn't operate for two weeks or that Ray-Mac didn't operate for two weeks?

A. Well, I know the auger was probably--would probably produce half of the tonnage, 50 percent of the tonnage, and it was blown up.

Q. So why wouldn't you work harder with stripping if you couldn't get your auger coal instead of just shutting down the whole thing?

A. Agian, I was aware that two of the large pieces of equipment were lost or two--two large pieces of equipment--the loss of capacity of the job was due to the uncertainty of the times. A piece of equipment was given back to Whayne Supply, so they didn't have near the capacity to produce coal up there after that incident.

Q. So your capacity was reduced and you just shut down for two weeks, is that what you are saying?

A. Well, I don't know the conditions leading to shutdown or whatever. I wasn't on the hill.

Q. All right. Mr. Parrish, as a result of this tipple being destroyed did you all have to pay any money in the form of liquidated damages or otherwise to the owners of that ramshackle tipple on Simpson Branch?

MR. SELF: Objection to the characterization by Mr. Kirkland.

THE COURT: Well, overruled. I think the jury understands that attorneys are going to

characterize things.

Q. Did you all have to pay anything to the owners because it was burned down?

A. We didn't pay for the tipple, no, sir.

Q. But you--you replaced the track?

A. We replaced the track and we paid a monthly minimum rent.

Q. Which was the same as you would have paid had the old tipple stayed up there?

A. That's correct.

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

THE COURT: All right, gentlemen. Anymore down the line here?

MR. WALBOURN: Just briefly, Your Honor.

CROSS-EXAMINATION (Resumed)

BY MR. WALBOURN:

Q. Mr. Parrish, my name is E. J. Walbourn.

And going through the different companies and hierarchies, and what have you, is Mr. Billie Lykins an officer or employee of any of these companies you've mentioned?

A. Yes, sir.

Q. And which one is that, please?

A. Bill worked for Mack Mining and he also worked for Coal-Mac. He drew two checks.

Q. All right. Was he ever with Coal-Mac Sales?

A. He worked for Coal-Mac Sales and Mack Mining.

Q. Okay. And was he an officer or agent of those corporations?

A. No, sir.

Q. Merely a salaried employee?

A. That's correct, sir.

Q. And, sir, do you recall when he became employed?

A. Sir, Mr. Justice hired him. It was that week, but I don't know the specific date, sir.

Q. That week?

A. The week of February 15, yes, sir.

Q. All right. And are you aware of what Mr. Lykins previous employment just prior to being hired by Ray-Mac or Mack Mining was?

A. Yes, sir.

Q. What was that, please?

A. I understand he was a U.S. Marshal.

MR. WALBOURN: Thank you, sir.

CONTINUED CROSS EXAMINATION

BY MR. PAFUNDA:

Q. Mr. Parrish, my name is Bernard Pafunda and I'm from Pikeville, Kentucky, and practice law here.

Did you say your address was Waller Avenue, Mr. Parrish?

A. Walnut.

Q. All right. And that's here in the Bowles Addition?

A. That's correct.

MR. SELF: Objection, Your Honor, move to strike. Where he lives in Pikeville has nothing whatsoever to do with this case and is an attempt to prejudice this man in front of the jury.

THE COURT: I don't know how it's going to prejudice him.

MR. PAFUNDA: I don't know either.

May I continue, Your Honor.

THE COURT: Yes, sir, continue.

MR. PAFUNDA: Thank you, Your Honor.

THE COURT: Overruled.

Q. Mr. Parrish, I believe in response to Mr. Harwell's questions, if I remember

correctly, you stated that your salary as President of Coal-Mac depended upon how well the company was doing from year to year, is that correct, sir?

A. That's correct.

Q. All right. And in 1982 what was your salary, sir, as President?

MR. SELF: Objection, Your Honor.

THE COURT: Sustained.

MR. PAFUNDA: May I respond, Your Honor --

THE COURT: Yes, sir.

MR. PAFUNDA: -- my reason for the question, sir?

THE COURT: Yes, sir.

MR. PAFUNDA: I believe that the door's been opened by the Government on his direct examination, Your Honor, as to his position.

THE COURT: Mr. Harwell was the one who asked the question.

MR. PAFUNDA: And so the question is closed to me, Your Honor?

THE COURT: I'm sustaining the objection.

MR. PAFUNDA: Okay.

Q. Further on direct

examination if I remember correctly, Mr. Parrish, didn't you state that the foreman on the Ray-Mac job held a owner--ownership position with Ray-Mac?

A. No, I didn't.

Q. Who was the foreman on that job at that time?

A. Pete Barker.

Q. And that five to ten thousand tons of coal--was that tonnage for January and February of 1982, sir?

A. I would have to see the production records. We've made them available.

Q. Let me ask you this, Mr. Parrish. Based upon your experience isn't that figure quite a bit high for winter months in strip mining coal?

A. Well, I think in January he had a--he had a good month.

Q. All right.

A. I can't recall. I think it was around fourteen thousand tons.

Q. Isn't it true, sir, that when you're strip mining coal that a lot depends upon the weather?

A. That's correct.

Q. And January and February are winter months and we have bad weather in January and February, correct?

A. We have had bad weather.

Q. And what kind of auger was that, sir?

A. It was a Salem auger. Again, I'm not familiar with it.

Q. Was it a Model 1500 Salem auger?

A. I couldn't discuss what the model was.

Q. Do you know the year of that auger, sir?

A. I was aware that it was a new auger.

Q. But you had never been to the job site yourself, is that correct?

A. I'd been to the job site but I don't ever recall being there after the auger was there.

Q. And I believe, Mr. Parrish, you indicated that the coal truckdrivers were paid two dollars and fifty cents per ton to haul the coal from the McDowell area to your tipple here above

Pikeville, is that correct?

A. I think it was two-fifty, but it could have been two seventy-five; in that area.

Q. And that if they were to haul it from McDowell to the Liberty No. 5 tipple they would be paid one dollar and fifty cents per ton, is that correct?

A. That's what we're paying now.

Q. And I take it since you're in the coal sales business and you call around to various coal companies that you also call Ray-Mac, is that true? You call the job Ray-Mac?

A. Ray-Mac was the--the way we identified it in the company.

Q. All right, sir.

A. That's true.

Q. They have a phone at the job or radios, is that true?

A. I wasn't aware of a phone.

Q. But they do have radios?

A. There is a company radio, yes, sir.

Q. All right. And they can contact the Pikeville office, is that correct?

A. That's correct.

MR. PAFUNDA: Thank you very much, sir.

THE COURT: All right. Any redirect?

MR. SELF: Yes, Your Honor.

THE COURT: Go ahead.

REDIRECT EXAMINATION

BY MR. SELF:

Q. Mr. Parrish, do you have with you the production records reflecting the amount of coal sold from October of '81 through March of 1982?

A. No, sir, I don't.

Q. You don't have those with you?

A. No, sir, I didn't bring them.

Q. Was there any change in production from January to February? Are you aware of those figures?

A. Well, yes. Well, of course, in February production dropped off. If I recall--

Q. Why did production drop off, Mr. Parrish?

A. The amounts-- Ceased production. I think the job was running between five

and ten for October, November and December; and I think January was the first good month.

It was going to go to about fourteen thousand tons. Then, of course, on--on the startup of every job it usually takes a while to get to that peak production level or--or anticipated production level. That job was--should have reached about twenty-five thousand tons a month.

Q. And you don't know about what it produced in February or March?

A. I'm confident it was less than ten--ten thousand tons.

Q. Was that due to weather conditions, Mr. Parrish?

A. It was--February was due to the violence.

Q. What about March?

A. I don't think they worried about the weather, it was violence. March; I'm not sure of the tons.

Q. You were asked by Mr. Walbourn about Mr. Lykins. Was he hired after the violence or do you know?

A. Mr. Justice hired Mr. Lykins, and--and I know he was hired that week

of February--the week of February 15, sometime in there.

Q. Do you have knowledge of why he was hired? Should I ask Mr. Justice?

A. I think you should ask Mr. Justice.

Q. Thank you. In regard to--to the tipple that was there at Simpson's Branch, does the lease require you to pay minimum royalties if no coal is run over it?

A. Yes, sir.

Q. If coal is run over it you pay so much a ton up to the minimum royalties, and then keep paying minimum royalties?

A. You're paying earned royalties, yes, sir.

Q. So you didn't run any coal over that for many months because of the destruction of it, did you?

A. That's correct.

Q. And you had to pay those royalties then regardless of whether you ran coal or not, is that correct?

A. That's correct.

Q. As a result, Mr. Parrish,

of the violence that occurred at Ray-Mac were you all able to sell coal that you had expected to sell?

A. Would you repeat that.

Q. Let me rephrase that.

As a result of the activities that occurred following February 15, 1982, at the Ray-Mac site was there production loss in the capacity of the Ray-Mac mine?

A. Yes, sir.

Q. And what, if any, result did that have on the sale of coal to Coal-Mac?

A. Well, I don't know what the potential losses were. I really don't think we lost any orders, but if we'd had that production we would have probably have sold that also.

Q. Probably. Why do you say probably?

A. Well, as a rule, we didn't-- We sold nearly what we produced every month.

Q. And had you--had you projected the increase in production from Ray-Mac to rise, and did you base projected sales on that?

A. Yes, sir.

Q. And were those sales made because of the violence?

A. The sales were--were made before the violence. The--the sales were then covered with purchased coal.

Q. Was that purchased coal higher than what--the cost would have been had it been mined at Ray-Mac?

A. I would have to review the costs of the purchased coal. At this time I can't ...

Q. In regard to the portable plant that you were questioned about, had that been purchased prior to February, 1982?

A. Yes, sir.

Q. When?

A. That plant belonged to--That plant was probably purchased in '78.

Q. And was it purchased for the use of the Simpson tipple?

A. Yes, sir.

Q. Was it in use prior to being brought down to the Simpson's Branch tipple?

A. It was at our Jenkins facility, yes, sir.

Q. And had you planned on bringing that plant down there to the Simpson's

Branch tipple and setting it up?

A. No, sir.

Q. Mr. Parrish, did you or anyone to your knowledge at Ray-Mac burn the tipple down at Simpson's Branch?

A. No, sir.

Q. Did any--did you or anyone at Ray-Mac tear up the ties there at Simpson's Branch as a result of the tipple being burned down?

A. No, sir.

Q. Had you been successful in negotiating the right to dismantle the tipple, would you have also bent the ties and have torn up the--the rails that were there underneath it?

A. No, sir.

Q. Mr. Parrish, if you would, examine the gentlemen seated against the wall. I'll ask you the question if any of those gentlemen ever came, to your knowledge, to Coal-Mac or Ray-Mac or Mack Mining Company and asked for employment with them?

A. No, sir, but I wasn't aware except for Coal-Mac.

Q. Did any of them come to Coal-Mac, to your knowledge, and ask for a job with

them?

A. Not to me personally, no, sir.

Q. Did you have a policy of excluding Floyd County employees from hiring by any--Coal-Mac or any of its divisions?

A. No, sir.

Q. Did you exclude anybody from any county?

A. Not that I'm aware of, sir, no, sir.

Q. Mr. Harwell asked you in regard to your grand jury testimony-- Were you in your mind, Mr. Parrish, competing in any other areas with JRM Coal Company other than the transportation and sale of coal?

A. I think we were probably competing as far as purchashing coal.

Q. What do you mean by that, Mr. Parrish?

A. Purchasing truck coal at the various--at the different tipples.

Q. To your knowledge, was JRM Coal Company in--in January and February of 1982 purchasing trucked coal in the Floyd County area?

A. I'm not sure that he was or wasn't.

Q. You stated on cross that you had participated with General Coal for an offer to South Carolina Electric and Gas Company. Do you remember when that was, Mr. Parrish?

A. No, sir. I would have to call General Coal and find out.

Q. Was it during the period of late '81 or early '82, or do you know?

A. No. I think it's-- It could have been late '82.

Q. Late '82?

A. Yes, sir.

Q. Was it in any way during the period of when the violence occurred at Ray-Mac?

A. No.

Q. Was it afterwards?

A. I need to check that date. I really need to check that date to get it straight in my mind.

Q. You stated on cross that as a result of the violence over there that Coal-Mac didn't lose any existing orders. Is that a true statement?

A. Yes, sir.

Q. In your mind, as president of Coal-Mac, did you lose any future orders?

MR. SPENCER: Show my objection to the question, Your Honor.

THE COURT: Isn't that repetitive?

MR. SELF: I don't think so, Your Honor.

THE COURT: I'll sustain the objection. I believe it's repetitive. I believe he's dwelled on that subject matter not more than two or three minutes ago.

Q. In regards to the question Mr. Harwell asked you about your meeting with Edgar Jones and David May, would you tell the ladies and gentlemen of the jury when that occurred.

A. That occurred in the summer of '82--fall of '82.

Q. You did not seek Edgar Jones out, did you?

A. No, sir.

Q. You were sought out by Mr. May?

A. That's correct.

Q. Mr. Harwell asked you in

regards to whether coal had been produced consistently except for the period of February 15 to the end of February. Did the company cease production during this period of time, to your knowledge, Ray-Mac?

A. I really can't recall exactly if they were hauling or producing in those two weeks. I'm--I just don't know.

Q. You were also asked by Mr. Harwell whether--a question of whether there was any other problems up there after the--the latter two weeks of February. Did Coal-Mac have any further problems after-- Did Coal-Mac itself have any further violence directed at it?

A. Coal-Mac Sales lost a tipple there.

Q. And was there any activities or--directed towards your office on South Mayo Trail?

A. Just various rumors and-- We had various threats and rumors.

Q. You did have some threats?

A. But I personally didn't know of those threats.

Q. Had you been advised certain threats were made, not without saying who made them or the nature of them?

MR. WALBOURN: I object to that, Your Honor, that's hearsay.

THE COURT: Sustained.

MR. SELF: Mr. Hillen, would you stand up.

(Reporter's Note: Mr. Hillen complied.)

Q. Have you ever seen this gentleman, Mr. Parrish?

A. No, sir.

Q. Has he ever requested to talk with you?

A. Yes, sir.

Q. And what did you tell him?

A. I'd have to seek our counsel's advice.

Q. And our counsel is whom?

A. Well, I--I called Mr. Stratton--Henry Stratton.

Q. And did you consult with me as to whether you should talk with him or Mr.--Mr. Dause or Mr. Kehrli?

A. Mr. Stratton apparently talked to you, and I talked to you also.

Q. Did I ever tell you or any member of the prosecution ever tell you not to talk

to any of them about this matter?

A. I don't recall of you all. Mr. Stratton advised us not to.

Q. Now, you said in response to Mr. Harwell's questions that you provided documents and summaries for the United States. Were those all provided at the request of the United States?

A. The support documents?

Q. Yes.

A. No, sir.

Q. It's not something you volunteered to do, is it, Mr. Parrish?

A. Would you repeat that question.

Q. The documents and the summaries that you prepared or had prepared, those were prepared at the request of the United States, were they not?

A. That's correct.

Q. They were not documents that you volunteered for us absent a request from us, were they?

A. No, sir.

MR. SELF: Just a moment, please, Your Honor.

THE COURT: Fine.

Q. Mr. Parrish, the coal auger that was--that was mentioned, did Coal-Mac or Ray-Mac repair that auger? Do you know?

A. I understand that Mack Mining repaired the auger.

Q. Were you involved in the timetable and how long it took to get it repaired?

A. No, sir.

Q. Now, in regard to the civil suit that Mr.--that Mr. Harwell asked you about; who is your counsel in that civil suit?

A. I am really not involved in that civil suit, Mr. Self. I'm not aware--I understand it's Mr. Combs.

Q. It's not the United States or any of the counsel at this table, Mr. Parrish?

A. No.

Q. That's a private suit between certain parties in which the United States is not a party, is that the way you understand it?

A. That's correct.

MR. SELF: No further questions, Your Honor.

THE COURT: All right. Have you got

some additional questions?

MR. HARWELL: Yes, Your Honor.

THE COURT: Let's approach the Bench and let's see.

MR. HARWELL: All right, sir.

(Reporter's Note: At this time Mr. Harwell and Mr. Self approached the Bench.)

THE COURT: All right.

MR. HARWELL: I'm not going to do anything but stay within the scope of what Mr. Self asked.

THE COURT: What are you going to ask him, sir?

MR. HARWELL: I'm going to ask with regard to his statements on redirect about competing with JRM in February of 1982. There was coal available throughout Eastern Kentucky during that time and people were anxious to sell it with no competitive factor.

THE COURT: Well, hasn't he said--he says it wasn't any difference. Aren't we just beating a dead horse?

MR. HARWELL: I don't think so. He has said in the grand jury and in his testimony that there's no competition except maybe here and there.

THE COURT: Okay.

MR. HARWELL: Mr. Self pinned him down where there is competition. I'm going to ask him about that competition on a couple of questions.

I don't plan on going on and repeating what I asked. That's the only thing that's come up new and different that I didn't have an opportunity to cross on.

THE COURT: Okay.

MR. SELF: He testified about that on direct.

THE COURT: As far as purchasing coal. Regarding competition in buying coal, that's the first time I noted that.

MR. HARWELL: That's the first I've got on it.

THE COURT: Okay. On that you can ask.

MR. HARWELL: That's it.

THE COURT: Okay. Then we'll let him go and we'll get into the avowal proposition.

MR. HARWELL: All right.

(Reporter's Note: End of conference at the Bench.)

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THE COURT: I understand you have an additional question.

MR. HARWELL: Additional questions brought on the subject that we mentioned to Your Honor.

RECROSS EXAMINATION

BY MR. HARWELL:

Q. Mr. Parrish, when Mr. Self got up to ask you questions again, I understood you to say that in January and February of 1982, there might be competition with you all and JRM with regard to purchasing coal. Did I hear you right? Did you say that?

A. I said that.

Q. Sir?

A. Yes, sir.

Q. You said there might be. Do you know of any such competition that existed with JRM in purchasing coal?

A. I am aware that sometime in '81, Mr. Jones secured a tipple down on Route 80 of which we had tipples in that area. As to whether he was purchasing coal or loading coal over there, it could have been. I know he is doing it now, but

he might not have been --

Q. (Interrupting) But I am asking you to direct your attention to then.

A. Right.

Q. One other thing, Mr. Parrish. Is it not a fact, sir, that in January and February of 1982, that throughout this part of Eastern Kentucky, there was an awful lot of coal available; there were an awful lot of truck operators who were calling on folks trying to sell that coal? Isn't that correct? January and February of '82.

A. I think that would be a correct statement.

Q. That is a pretty correct statement, isn't it?

A. Yes, sir.

Q. There was a surplus, as a matter of fact, in January and February of '82, of coal in this part of Eastern Kentucky. Isn't that right?

A. I am not saying there was a surplus, but there was coal available.

Q. Lots of coal available, too. Isn't that right, sir?

A. (Witness nodding head in

the affirmative.)

Q. You agree? You are nodding your head. But that lady that takes it down - she can't take the nods down.

A. Well, surplus and lots -- there was coal available, yes, sir.

MR. HARWELL: All right, sir. Judge, I think I kept my commitment to the Court.

THE COURT: All right. The Court will be in recess until ten minutes after three. My not now admonition is still in effect. Do you all understand?

Are there any objections or corrections to the Court's admonition?

MR. SELF: Not now, Your Honor.

THE COURT: Mr. Marshall, please excuse the jury until ten minutes after three.

THE MARSHALL OF THE COURT: Let's have order, please. The Court is still in session, ladies and gentlemen.

A MARSHALL OF THE COURT: The jurors have left the courtroom, Your Honor.

THE COURT: He said he would like to go through the questions and get it over with so he can leave.

MR. HARWELL: Judge, may I approach the podium and go ahead and ask those questions that Your Honor --

THE COURT: (Interrupting) Yes, sir, go ahead.

MR. HARWELL: That I can't ask in front of the jury?

THE COURT: Well, I think the record reflects that the jury is out of the courtroom. You approached the Bench and inquired into a subject matter which the Court felt wasn't admissible. And you have requested leave and place it on the record by avowal.

MR. HARWELL: Yes, sir. Judge, is an avowal synonymous with a tender or a proffer? Is what I am asking -- Do I get to ask --

THE COURT: (Interrupting) Yes. An avowal is where you put it into the record for the purposes of preserving it.

MR. HARWELL: The same thing, okay.

(Reporter's Note: Whereupon the avowal of Mr. Harwell was heard as follows:

BY MR. HARWELL:

Q Mr. Parrish, you are aware of the fact that in February of 1982, that

Ray-Mac armed its own personnel with firearms and engaged in shooting up there in that picket line in Floyd County, aren't you, sir?

A. I am aware that there was weapons up there, yes, sir.

Q. Weapons on the Ray-Mac side. Isn't that true?

A. Again, I don't know what happened on the hill. I wasn't there.

Q. Yes, sir. But you are aware that there were weapons there. Isn't that true, sir? On the Ray-Mac side?

A. Yes, sir.

Q. And you are aware that those weapons included a number of Uzi's, the Israeli carbine. Isn't that true?

A. I don't know what weapons went to the hill.

Q. You don't know?

A. No, sir.

Q. Where did the weapons that went to the hill come from?

A. Coal-Mac Sales had eight Uzi's.

Q. Had eight Uzi's?

A. That is correct.

Q. All right, sir. And you do understand, do you not, that those eight Uzi's that Coal-Mac Sales had ended up up there on that hill the week of February 15, don't you?

A. I am -- I can't personally say that I know that, no, sir.

Q. You know that those eight Uzi's left that office out there at Coal-Mac that week, don't you?

A. I know that some of them did.

Q. And you variably suspect that they ended up up there on the hill, don't you?

A. (Witness nodding head in the affirmative.)

Q. Sir, these court reporters can't get nods and shakes. So you need to verbalize your response, please. So your answer is yes?

A. Yes, sir.

Q. You variably believe that. All right, sir.

The fact of the matter is in regard to the activities up at the hill, up there at Ray-Mac, you know some of the Ray-Mac men up

there fired at the men on the picket line, don't you?

A. No, sir.

Q. You don't know that?

A. I don't know that.

Q. All right, sir. You do know that nobody from Ray-Mac was injured up there the week of February 15th. You know that, don't you?

A. Yes, sir.

Q. All right, sir. And you are aware that there was one fellow injured up there on the other side, on the union side. Isn't that true?

A. No, sir, I wasn't aware of that.

Q. You don't know that. All right. Are you aware of the fact that a Jeep belonging to one of the men on that picket line was damaged by Ray-Mac employees that week?

A. I don't know that, no, sir.

Q. All right, sir. You don't know it had its top cut off and its windshield shot out? You don't know that?

A. No, sir.

Q. All right, sir. Mr. Parrish, when was it that Coal-Mac got those eight Uzi's?

A. In -- around April 1st or mid -- the first of May, '81.

Q. All right, sir. And as a matter of fact, those Uzi's had been used in armed conflict with other U.M.W. people in May of 1981. Isn't that true?

A. Those Uzi's were purchased to arm our security people.

Q. I see. And as a matter of fact, you are aware of the fact that in arming them, those security pepple use those to shoot at mine workers, aren't you?

A. Not until they were shot at first.

Q. But you are aware at some point they shot them?

A. Yes, sir.

Q. Uzi's?

A. Yes, sir.

Q. All right, sir. Are you referring to the shoot-out down there in Shelbiana

in May of 1981?

A. Yes, sir.

Q. That involved a forty truck convoy from Coal-Mac, didn't it?

A. I couldn't say how many trucks were in the convoy.

Q. You don't know?

A. I wouldn't think it was forty, no, sir.

Q. All right, sir. You are aware of the fact, are you not, sir, that each of those trucks was carrying an armed guard?

A. No, sir. Those trucks didn't have armed guards.

Q. They did not have armed guards. Are you saying you know that?

A. I am saying there were some armed escorts; but I am not aware that each truck had an armed guard in it, no, sir.

Q. All right, sir. Let's talk then for a moment what you know of; that is the armed escorts. Tell us about those.

A. Just three or four vehicles accompanying a number of trucks, probably ten to fifteen, and escorting them from the job site to

the tipple.

Q. Those armed escorts were at least in part armed with Uzi's I think you have indicated?

A. Yes, sir.

Q. And they were in part armed with AR-15's, were they not, sir?

A. I wouldn't know if there was AR-15's there.

Q. Did Coal-Mac have any AR-15's in May of '81?

A. Not at that time, sir.

Q. Did you all, Coal-Mac, obtain AR-15's after that time?

A. Coal-Mac didn't.

Q. Did you?

A. I bought one in -- sometime. I don't know. May or April of '82.

Q. All right, sir.

A. Personally.

Q. Did Ray-Mac or Coal-Mac in '81 or in '82, before the end of February, possess AR-15's to your knowledge?

A. Repeat that question, please.

Q. All right, sir. In nineteen hundred and eighty-one, or in the first two months of 1982, did Coal-Mac or any of its folks have AR-15's?

A. I understand that Mack Mining purchased --

Q. (Interrupting) Mack Mining. All right, sir. Do you know when they were bought?

A. I couldn't answer that question.

Q. You know how many there were?

A. No, sir.

Q. Do you know about when they were bought approximately?

A. I think they were bought-- bought after the violence.

Q. Bought during -- after the Shelbiana violence?

A. No, February 15th violence.

Q. I see. But during that week you believe?

A. I believe, but I am not for sure.

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Q. All right, sir.

You indicated as to Shelbiana, that there were armed escorts. In addition to that, there were helicopters over-flying those trucks, were there not?

A. Yes, sir.

Q. Coal-Mac helicopters or Mack Mining helicopters?

A. One helicopter.

Q. One helicopter. And that helicopter, as a matter of fact, had a passenger on it who was armed. Isn't that true?

A. I am sure he was probably armed, yes, sir.

MR. HARWELL: All right, sir. May the Court please, that concludes my tender or avowal. Thank you, Your Honor.

THE COURT: You are avowing that if permitted --

MR. HARWELL: (Interrupting) I am avowing, that if permitted --

THE COURT: (Interrupting) That you would ask those questions in the presence of the jury.

MR. HARWELL: That if I would have asked

those questions, he would have given those answers; and it should be part of the record, Judge.

Thank you.

THE COURT: All right.

MR. SELF: May I ask just a few questions for the record.

THE COURT: Yes, sir.

MR. PAFUNDA: Your Honor, if it please the Court, I do not think it is proper in an avowal proceeding for the person who tendered the witness to come back on this type of examination. The avowal has been placed in. The witness has given his testimony in response to the tendered questions. And that concludes the avowal.

MR. SELF: I want the record to be complete, Your Honor.

THE COURT: Let's let the record be complete.

BY MR. SELF:

Q. Mr. Parrish, the people that fired on the convoy, do you know who they were?

A. No, sir.

Q. Where were they firing on the convoy from?

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A. We were ambushed right at the junction of 23 and the road that goes over to the Shelby yard.

Q. Mr. Harwell said you were in armed conflict with union personnel. Do you have any information either firsthand or hearsay that union personnel were involved in the shooting?

A. No, I don't know who was involved in it.

Q. The fact is you were shot at from the hills by a bunch of unknown snipers?

A. That is correct.

Q. And was this during the coal strike of 1981?

A. That is correct.

MR. SELF: No further questions, Your Honor.

THE COURT: Let me get this. Now, this is something I want. Mr. Parrish, of course, it is stated at the onset of this thing that you weren't, of course, present.

THE WITNESS: Yes, sir.

THE COURT: They came back and asked you if you had any suspicions or beliefs. But is there any information which was given with regard to

these matters which is something which is your own personal knowledge that is not based upon hearsay?

THE WITNESS: Sir, I was president in the '81 -- in the ambush -- I was President then.

THE COURT: You were President when the ambush occurred?

THE WITNESS: Yes, sir.

THE COURT: This is in 1981. How long before this matter occurred in February of '82?

THE WITNESS: Well, that ambush, sir, was during the U.M.W.A. strike there. I would think probably May.

THE COURT: May of '81?

THE WITNESS: Yes, sir.

THE COURT: And this other matter of which this trial is about occurred in February of '82?

THE WITNESS: Yes, sir.

THE COURT: All right. Was Coal-Mac in existence then?

THE WITNESS: In -- Coal-Mac Sales at that time --

THE COURT: (Interrupting) No. I am talking about Coal-Mac Mining Company, the one

that was involved in the violence in February. Did it have any part in that --

THE WITNESS: (Interrupting) In '81?

THE COURT: Yes.

THE WITNESS: The '81 incident was -- nearly all of the employees of Coal-Mac Sales. Coal-Mac Sales ran the tipples, and the Mack Mining employees mined the coal.

THE COURT: All right.

THE WITNESS: Now, there could have been in those weeks there that we convoyed the coal at different times one, two, or three of the Mack Mining employees riding with us in '81; but very few of them.

THE COURT: All right.

MR. SELF: May I ask was Ray-Mac even existence at the time of the ambush at Shelbiana?

THE WITNESS: We were not operating as -- Ray-Mac came into being on that job up there. That job was not operating at that time.

THE COURT: All right. That is all. All right, gentlemen, we will be in recess until what?

THE MARSHALL OF THE COURT: 3:10, Your

Honor.

THE COURT: Are we going to need this witness any further?

MR. SPENCER: Your Honor, we reserve the right to recall him because I think it would be necessary.

MR. KIRKLAND: I have a question when the jury gets back, Your Honor.

MR. SELF: Your Honor, we have gone through recross. In fact, re-recross.

THE COURT: What is that, Mr. Kirkland?

MR. KIRKLAND: The Force Majeure clause. I think he overlooked -- with respect to the tipple, he said that they had to pay minimum royalties right on after the tipple was burned. And the lease provides that there would be no payment of any kind under the Force Majeure clause. And I just want the jury to see that. I think he is simply mistaken about it, but I think the jury ought to hear it.

MR. SELF: Well, that is a legal determination I think, and it is beyond the scope of --

MR. KIRKLAND: (Interrupting) I don't

think the presence of a fire that burns down a tipple is a legal determination. I think it is a factual determination that I think the jury ought to make.

MR. SELF: He said he paid the royalties?

MR. KIRKLAND: I want to ask him that, Mr. Self. I think he is mistaken. I think if he looks at this and searches his memory, he will find that he is mistaken.

MR. SELF: Well, we would object as to improper recross examination.

MR. THOMAS: Your Honor, as long as we are talking about improper, your reference to facial expressions the other day -- does that apply to both sides?

THE COURT: Yes, sir.

MR. THOMAS: Thank you.

THE COURT: It applies to everyone.

MR. SELF: If Mr. Thomas has an accusation to make with some of the counsel of the United States, I will be glad to discuss it with him either now on the record or after. Do you have some allegation that we are violating the Court's order?

THE COURT: What he is saying, and I observed it, occasionally someone on one side might approve of something that is said, and they smile or nod their head yes or shake their head no. And I feel that is demonstrative. And it shouldn't be done in front of the jury. And I am saying this, gentlemen. I've said it before. I am saying it again, and I'm sure before this trial is over, I will say it a few times. Maybe I might get more serious. But we are professionals. Professionals do not let their emotions or their inner feelings come into it. You do your job. And let's don't make accusations against each other. Don't let our emotions get into it. Everybody does their job as a professional. That is all. That is all we are asking.

Mr. Kirkland, just please be more observant. We will let him stay here. We kindly had thrown this up in his schedule. And we were saving this until the last so that the gentleman could leave and step down. And when the jury would come back, we would start with another witness. You may remain around, sir. He has one more question.

THE MARSHALL OF THE COURT: All rise, please. This Court is in recess until 3:10.

REPORTER'S NOTE: The Court reconvened at 3:10 P.M., E.S.T.

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

THE COURT: Mr. Marshall, what do you have to say about the attorneys?

THE MARSHALL OF THE COURT: All attorneys are present, and all Jurors are present, Your Honor.

THE COURT: Madam Clerk.

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

THE COURT: What is the saying, everyone can talk about the weather and no one can do anything about it.

Mr. Kirkland, do you have additional - -

MR. KIRKLAND: (Interrupting) Yes, Your Honor.

THE COURT: One additional question that you desire to ask the witness.

FURTHER CROSS-EXAMINATION

BY MR. KIRKLAND:

Q Mr. Parrish, you are

familiar with the clause that is called Force Majeure in the lease of the tipple which burned? I will read to you - - this is Government's Exhibit, I think, 21, "Rental and royalty payments as provided for herein shall be suspended during the time which sublessee is unable to conduct operations contemplated by this sublease agreement due to the existence of Force Majeure."

"The term Force Majeure as used herein shall mean any causes beyond the reasonable control of the sublessee, including but not limited to industrywide railway and coal mining strikes, acts of God, riots, fires, explosions, floods, or other causes not within the control of sublessee."

Have you read that along with me on your copy?

A. Yes, sir.

Q. In view of the fire which apparently destroyed the tipple, or at least its usefulness, were you all relieved of making minimum rental and royalty payments until you got your portable plant in?

A. No, sir. We didn't exercise Force Majeure.

Q. You decided to go right ahead and pay them, is that right?

A. Yes, sir. That would have been - - we would have had to Force Majeure the very first payment.

Q. And that was, I suppose, in large part because you got your portable plant in in what, two or three days?

A. The portable plant was there a year afterwards.

Q. But ordinarily it only takes about three days to put a portable plant in and get in operation, is that right?

A. No, sir. We didn't operate there because of the uncertainty at the time.

Q. All right. So your statement is that you elected not to go under this paragraph in your sublease, is that right?

A. Because we felt it was improper since it was the first payment.

Q. Improper?

A. Yes, sir.

Q. Why did you feel it was improper?

A. Well, I think that we had

been negotiating a year there and there was certain individuals that, in that lease, that were expecting some monetary out of that, and we made the decision to continue payment out of just good faith.

Q. And, of course, the fact that the people who had leased the tipple to you were insisting on some money too, is that correct?

A. Were what?

Q. They were insisting on some money as well?

A. No, I didn't say they were insisting.

Q. Well, I am asking you if that isn't a fact?

A. No, they didn't insist on money.

Q. Isn't it a fact though that the site was cleared for you and available for use within days after this fire?

A. No, sir.

Q. That is not a fact?

A. No, sir. That is not a fact.

Q. So out of the goodness of your heart you continued to pay, even though you

didn't have to, is that correct?

A. Out of good faith, yes, sir.

Q. All right.

THE COURT: All right, sir. You may stand down, sir.

MR. SELF: May I ask a question directly on what Mr. Kirkland asked, Your Honor? And I will approach the Bench if you would like.

THE COURT: Yes, let's approach the Bench.

REPORTER'S NOTE: At this time Mr. Kirkland and Mr. Self approached the Bench, along with Mr. Adams, Mr. Kehrli, and Mr. Spencer and the following was heard:

MR. SELF: Two questions. He made the statement only operate because of uncertainty, and I want to ask him what he meant by that.

Two, he said the portable plants were in one year, and I want to ask why it took another year to get it in there.

THE COURT: I don't - - I was under the impression he said it operated a year after that. Wasn't that it?

MR. KIRKLAND: He said he waited a year to put in the portable plant.

MR. SELF: I want to ask him why it took that long, what uncertainty he was talking about.

THE COURT: Well - - no, uncertainty we have been on that enough. He said because it was the uncertainness of the violence, he has gone into that and there is no need to go into that again.

MR. SELF: The tipple, Your Honor, I don't think that was gone into.

THE COURT: I think he said they didn't operate the tipple because, for that period, they tried to get him to say two or three days, but he said because of the violence and uncertainty and that is the reason they didn't do it for two weeks, something like that.

There is no need commenting on that again.

MR. SELF: I'm just trying to follow upon recross.

THE COURT: Well, I mean, it's good, but I mean just don't have him repeat the same thing over again.

MR. KIRKLAND: It's also called getting the last word, Your Honor.

THE COURT: Well.

MR. SELF: May I also ask him why it took the year to get the portable plant in?

THE COURT: Well then, he can come right back and get into why did you do it in two or three days, and it can done in two or three days.

MR. KIRKLAND: Your Honor, it's widely known in the coal business you can move a portable plant in and get the thing operational in three to five days.

Do you want me to go back into that again?

THE COURT: You are not going to go back into it again.

MR. SELF: You have got to rebuild the rail, and you don't do it in two or three days, Mr. Kirkland.

MR. KIRKLAND: I don't know whether you can - - where he is going to put the portable plant, that is not in evidence and you are talking about another day's testimony from this witness right here.

MR. SELF: I didn't open it, Mr. Kirkland.

MR. KIRKLAND: But you - -

THE COURT: (Interrupting) We are not

getting into the uncertainty again, and I wasn't aware that it took a yearto get that portable plant in there.

MR. SELF: Your Honor --

MR. KIRKLAND: (Interrupting) They elected not to is what he said. They chose not to do it.

MR. SELF: That is not what he testified to. I think the Jury is entitled to an explanation of why it took a year, and the reason why - -

MR. KIRKLAND: (Interrupting) Then I am going to have to go back into when they could have done it, if he wanted to, and put on an extra witness if they wanted to in three days.

I am not sure whether all of this is relevant, but if he wants to open the doors, I think I should be entitled to a response to any he opens.

THE COURT: Well, I am going to let him go into the portable plants, the year, briefly just touch on it, let's go.

MR. KIRKLAND: Then may I ask questions in response to that?

THE COURT: If something new comes up, that is fine.

MR. KIRKLAND: Okay.

REPORTER'S NOTE: End of Bench Conference.

MR. SELF: May it please the Court.

RE-DIRECT EXAMINATION

BY MR. SELF:

Q. Mr. Parrish, why did it take one year to get a portable plant in there, since the tipple - -

A. (Interrupting) Well, we had to - - we didn't start - - even start working on it - - on a plant on a track until mid-summer or early fall; and it took six weeks to so for a private contractor to get the track prepared.

Then the market or the market broke about November of '82, as far as outside purchases of coal, so we didn't start operating anything until early '83.

Q. Why didn't you go in there right after the fire and replace it?

A. Well, we had - - all our plants were really busy at that time, that plant came from Jenkins, and we didn't have a portable at that time to put in there right after it burned, and probably wouldn't have until we saw what was going to

happen with it.

Q. And could you have moved a portable plant in there and shipped coal by rail two or three days after it burned?

A. No. You would have had to - - the tipple burned over the top of the track, so the track work would have had to have been done.

They might have possibly done it in two months or three months, something like that.

MR. SELF: No further questions, Your Honor.

RE-CROSS-EXAMINATION

BY MR. KIRKLAND:

Q. Mr. Parrish, did you have anything to do with hiring the personnel that were going to work at that Simpson Branch tipple?

A. That worked there now?

Q. No. That were going to be working there after you put it into operation, after February 15, 1982?

A. No, sir. But one of the folks - - one of the gentlemen that worked for me would.

Q. That worked under you?

A. Yes, sir.

Q. I will ask you if it isn't a fact that after you leased that tipple, it was your intention to tear the track out anyway?

A. No, sir.

Q. Isn't it a fact that you told people who sought employment at that time that it would not be operational for a while because the track would have to be replaced?

A. I can't recall anyone coming to me personally about employment there.

Q. So you don't know what was said about employment?

A. If someone else did, they approached a foreman or whatever, I can't - - I don't know what was said.

Q. Isn't it a fact that the track and the ties were in bad condition, as well as the tipple being in bad condition?

A. Well, I think the track and ties could have been operational. Apparently they were operational, because the railroad issued us a supplemental agreement, and the railroad inspects the track when they issue that supplemental agree-

ment, and that was done prior to this. So we were ready to ship coal through that tipple, providing that we did the mechanical things necessary to run coal through that tipple.

Q. I will ask you if it wasn't told to local people, at least that you would not operate that tipple for two or three months, because you were going to replace the track?

A. I can't - - I can't - - I am confident that I didn't say that. Maybe some of my employees did.

THE COURT: Are you through, sir?

MR. KIRKLAND: I am through, Your Honor.

THE COURT: Thank you, sir. You are temporarily excused.

MR. SPENCER: We reserve the right to recall him later on.

THE COURT: I told him he is temporarily excused, Mr. Spencer.

MR. SPENCER: Okay.

THE COURT: Now, I am not going to require this witness to stand around here at the Courthouse and wait for somebody to recall him.

You will be given at least eight hours notice, sir, if we need to bring you back.

MR. PAFUNDA: The same thing as the other witness last week, we can give him at least a day's notice.

THE COURT: I haven't said anything to that other witness. I can't reach back, I have got him before me.

Thank you, sir. Call your next witness.

MR. HARWELL: May the Court please, could we pass Edgar Jones Exhibit 1 to the Jury?

THE COURT: Yes, sir.

MR. HARWELL: I think the Government might want to pass theirs, or some of them, Your Honor.

MR. SELF: Take the time to pass all of them.

THE COURT: Is that all of them?

MR. SELF: No, sir. Your Honor, on behalf of the United States, I request the Government's Exhibits A, B be passed to the ladies and gentlemen of the Jury.

THE COURT: Let me explain this. It is procedure in this Court, we don't permit the exhibits to be given to the Jury until all sides have had the opportunity to cross-examine witnesses.

If we didn't do that,

you would be given exhibits and their cross-examination and they would want to be seen again, and it is like examining a witness, you have to have something in order.

Now, it is procedure of this Court one puts on an exhibit, then they cross-examine, and after the cross-examination is completed, then you can see the exhibits.

All right.

MR. SELF: Would you please set these others in front of the Jury and they may view them. I ask permission, Your Honor, if any of the Jurors want these, that Mr. Marshall hand them specifically to them.

MR. HARWELL: We specifically request, Your Honor, the pictures of the tipple also.

MR. SELF: Yes, we would likewise.

THE MARSHALL OF THE COURT: (Handing document to the Jurors.)

THE COURT: All right. The pictures are given to the members of the Jury.

THE MARSHALL OF THE COURT: I am giving them to them now.

THE COURT: Let's do this. Give that to the back row, when the back row examines it, you

hand them down to the front row and let's keep these things going back and forth.

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

MR. SELF: Your Honor.

REPORTER'S NOTE: At this time Mr. Self and Mr. Harwell approached the Bench for a Bench Conference out of the hearing of the Reporters.

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THE COURT: How far do you live from Winchester?

JUROR: Fifty-two miles. It's an hour's drive.

THE COURT: All right. I don't think they're predicting too much on this snow.

MR. SELF: Mr. Marshal, would you get Mr. Frank Justice, please.

THE COURT: Go right on and look at the exhibits. We're just going to have him come in and we're getting ready.

FRANKLIN DELANO JUSTICE, a witness herein, being called by counsel for the United States; after having been first duly sworn, was examined and testified as follows:

THE MARSHAL OF THE COURT: Give your name and address to the Court Reporter.

THE WITNESS: Franklin Delano Justice; P. O. Box 2024, Pikeville, Kentucky.

MR. SELF: May we approach the Bench just a moment.

(Reporter's Note: Mr. Self and Mr. Harwell approached the Bench; whereupon the following was heard;)

MR. SELF: This may speed this up. They can take all the time they want to look at the

exhibit, but it may be that they expect this is their last shot at them. Maybe you can advise them that at the end of the trial all the exhibits will be made available to them.

Counsel, do you have any objection to that?

MR. HARWELL: I object to that. I think it's better to pass them when they come in. I'm for doing that suggested by Mr. Self earlier.

MR. SELF: I have no objection. I was just thinking it may speed them up if they know they're going to get another shot to look at them. I am saying that maybe they're under the impression they won't have another chance because we don't have a--a lot of experienced jurors on there, Your Honor, and they're thinking that this may be the only shot they get at it.

MR. HARWELL: The point I'd like to make--

THE COURT: We've got someone there that's been there--been there before.

MR. SELF: Most of them haven't though.

THE COURT: Yes.

MR. HARWELL: The point I'd like to make is that in this case apparently, if you look at the proposed Government exhibit list, there's going to be

several hundred exhibits. It's awful easy for some to get lost in the shuffle.

MR. SELF: Okay.

THE COURT: Thank you, gentlemen.

(Reporter's Note: End of conference at the Bench.)

THE COURT: Let me suggest this, two of you can look at the same exhibit.

Hold that up and let Mr. Sloan read over your shoulder. That will help speed this up a little bit.

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MR. PAFUNDA: May I approach the Bench while some of the jurors are looking at the documents?

THE COURT: Yes, sir.

MR. PAFUNDA: Judge, my client, Drexil Hall, passed me a note and asked me a very good question. He asked a question whether this witness has talked to Mr. Parrish concerning Mr. Parrish's testimony before he will testify. And I was wondering what would be the proper way to elicit that from him in this particular instance.

THE COURT: Ask him on cross examination.

MR. PAFUNDA: I will do that. Thank you, sir. I didn't know if the Court wanted to do it.

THE COURT: I don't think we will get to it before 4:30 because of the subpoena duces tecum. It is my fault. I should have directed the Marshall to take the jury to the jury room with the exhibits and let them examine them there; and we could have gone on and heard this other matter. I think -- you know, of course, we are learning this as we go along. We just didn't realize. We can't fault the jury. In fact, we should -- we ought to

compliment them.

MR. PAFUNDA: It would be my impression -- I don't know about Mr. Kehrli. But you may want to take some more time if you want to do this. You know, with the snow and everything, we are not going to get much of this examination. It is just a suggestion.

THE COURT: Mr. Justice is here. And I think he would appreciate it if he said two or three words before we adjourn.

MR. PAFUNDA: You can let him say hello to me. Thank you, Judge.

THE COURT: All right. Mr. Self, you may proceed.

MR. SELF: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. SELF:

Q. Sir, would you state your full name, please, for the ladies and gentlemen of the jury; and keep your voice up so that I can hear. I am the farthest person away at this point in time.

A. Franklin Delano Justice.

Q. Mr. Justice, where do you live?

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A. Quails Ridge, Pikeville.

Q. And Mr. Justice, how are you employed?

A. I am the owner of -- or partner in Coal-Mac Sales. A stockholder of Coal-Mac Sales you might say.

Q. And who are the other stockholders in Coal-Mac Sales, Mr. Justice?

A. Lynn Parrish and Jim McGhee, and Woody Burke.

Q. And other than ownership in Coal-Mac Sales, do you have any other ownership interest in any of the related companies of Coal-Mac?

A. Yes, sir.

Q. And at this point in time, what are they, Mr. Justice?

A. The same percentage I have in Coal-Mac Sales.

Q. Is Coal-Mac Sales a partnership or corporation?

A. It is a corporation.

Q. Do you know when it was formed?

A. I think it was formed in

1978.

Q. Mr. Parrish -- or Mr. Justice, calling your attention to the period of time late, 1981, and 1982, did you have any ownership interest in an entity known as Mack Mining Company?

A. Yes, sir.

Q. At that period of time or during this period of time, what was Mack Mining Company?

A. Mack Mining Company was a partnership made up of myself and Jim McGhee.

Q. And what was the business-- the nature of the business of Mack Mining Company?

A. We were strip mining, surface mining.

Q. In what areas?

A. Well, in Pike County and Floyd County.

Q. And what if any relationship existed between Mack Mining Company and Coal-Mac Sales during that period of time?

A. Yes, sir, Coal-Mac Sales was owned by Jim McGhee and myself and Lynn Parrish at that time.

Q. And what if any relationship existed between the operation of Coal-Mac Sales and the operation of Mack Mining Company, if any?

A. Coal-Mac Sales was commissioned by us to sell all our coal for us.

Q. And did they sell all of your coal?

A. Yes, sir.

Q. Other than Mack Mining Company during this period of time, Mr. Justice, did you have any ownership interest in any other coal mining operations in this area specifically -- let me rephrase my question.

Are you familiar with the company known as Ray-Mac Mining Company or Ray-Mac Coal Company?

A. Yes, sir.

Q. What if any interest did you have in Ray-Mac Coal Company?

A. Jim McGhee and myself were owners of Ray-Mac Coal Company.

Q. And what was the corporate structure of Ray-Mac Coal Company?

A. Ray-Mac was just a

division of Mack Mining Company.

Q. What do you mean by division of it, Mr. Justice?

A. It just had a name. It was just a name that we used for bookkeeping procedures to tell how the company was doing.

Q. What was the difference between Mack Mining Company and Ray-Mac?

A. Well, Mack Mining Company owned several companies like Ray-Mac.

Q. Such as?

A. Mack Allen and Mack Elkhorn.

Q. Where was Ray-Mac Coal Company operating?

A. Floyd County, John Hall Branch.

Q. And the nature of the mining operation it was engaged in, Mr. Justice?

A. Surface mining.

Q. And the method of mining?

A. Stripping and auger.

Q. Was Ray-Mac either a corporation partnership or an unincorporated

association?

A. Well, Mack Mining Company owned Ray-Mac; and we had a foreman that run the job for us. He was entitled to one-third of the profits of that bookkeeping procedure we had.

Q. And who were entitled to the other two-thirds of the profits?

A. Jim McGhee and myself.

Q. Was this more in the nature of a partnership between you three? Did the foreman have any ownership interest?

A. Well, Mack Mining Company owned the equipment and everything that had to do with mining. The foreman just shared in the profits as a boss of the job.

Q. Shared in the profits or loss?

A. Yes, sir.

Q. Mr. Justice, if you know, when was the property or the mining operations that Mack Mining Company -- do you know when the permit work began on that site?

A. Yes, sir. It was July, 1980, I think, sir.

Q. And what is -- for the

benefit of the jury, what is permit work? What does that consist of?

A. That is getting a permit from the State allowing you to operate a mine.

Q. Do you know when the permit was actually issued?

A. Yes, sir. It was July 26th, 1981.

Q. Do you know when the actual -- any work started on this site?

A. Yes, sir. It started around the first of August.

Q. And prior to your going into the area ahead of John Hall and Bill Hall Branch, had there been any mining in this seam of coal that you were working in?

A. Not on these properties.

Q. Pardon?

A. Not on these properties.

Q. And the coal that you were mining was owned by whom, Mr. Justice?

A. I think Elkhorn Coal Company was the owner of it.

Q. Was it then leased by Coal-Mac from Elkhorn?

A. Joseph Mining Company.

Q. What, if any, relationship did Ray-Mac have with the sale of that coal that was leased by Coal-Mac? Did they lease it for you, or explain to the --

A. (Interrupting) Would you repeat the question, please?

Q. The coal was leased by Coal-Mac. Correct?

A. Yes, sir.

Q. Was the coal then mined by Mack Mining Company, a subsidiary of Ray-Mac?

A. Yes, sir.

Q. The equipment was owned by Mack Mining Company. Correct?

A. Yes, sir.

Q. When you begain to work over there, Mr. Justice, how many men did you initially employ?

A. I don't remember exactly; twelve, fourteen probably.

Q. Who was in charge of the hiring and firing of personnel on the Ray-Mac job?

A. Raymond Barker.

Q. Is that also known as Pete

Barker?

A. Yes, sir.

Q. What was your operating interest or involvement in the actual operation of Ray-Mac Coal Company?

A. My involvement in the company is more or less the legal part of it; banking and leasing and stuff of that nature.

Q. Did you have any involvement in the day to day mining of coal at the Ray-Mac site?

A. No, sir.

Q. Did you visit the site often?

A. Well, quite often when it first started.

Q. The coal from Ray-Mac initially and beginning up to February 15th of 1982, where was that coal taken to?

A. We trucked it back to Stone Coal and Shelby.

Q. Did you have any relationship as to the employment of drivers that were hauling that coal? Did you hire the drivers or people that hauled it, Mr. Justice?

A. Our company did, yes.

Q. And who was in charge of the hiring of the drivers on this job ?

A. I am not sure, sir, whether Mr. Barker did it or whether I did it or someone else did it.

Q. Were these drivers, though, independent operators as opposed to employees of either Mack Mining Company or Ray-Mac or Coal-Mac Sales?

A. Yes, sir, independent operators.

Q. Mr. Justice, in relation to the Ray-Mac activities prior to the 15th of February, 1982, had you ever -- you, to your knowledge, anyone associated with Ray-Mac, Mack Mining Company or Coal-Mac ever been contacted by officials from the United Mine Workers of America in an attempt to solicit your employees to signing up as U.M.W.A. members?

A. No, sir.

Q. Did you have, prior to the 15th of February, 1982, any knowledge of any such contact to your employees or to the company or to company officials?

A. No, sir.

Q. Prior to the 15th of February, 1982, Mr. Justice, had you been contacted by any United Mine Workers of America International organizing personnel in regard to the conducting of a, "survey,"?

A. No, sir.

Q. Were you aware that such a survey at the time, or in the latter part of 1981, were you aware of any such surveyance?

A. No, sir.

Q. To your knowledge, did they talk to anybody at Coal-Mac or Ray-Mac or any of your subsidiaries about that survey?

A. Not to my knowledge, sir.

MR. SELF: Mr. Marshall, if you would, I would ask you to show Mr. Justice the large topographical map introduced into evidence, that one.

THE MARSHALL OF THE COURT: Government Exhibit No. 18.

Q. Mr. Justice, do you recognize the area depicted upon that topographical map?

A. Yes, sir.

Q. Would you explain to the ladies and gentlemen of the jury what that is?

A. This map obtained by Ray-Mac is strip -- surface mining coal.

Q. And where did your initial mining operations begin as depicted upon that map, Mr. Justice, if you know?

A. Right here, right here, sir, we started a road in the latter part of August.

Q. Began a road?

A. Yes, sir.

Q. And where was that road run from, and where did it run to, Mr. Justice?

A. Up to the John Hall Branch to the seam of coal.

Q. Is that road depicted upon that map?

A. Yes, sir.

Q. How is it depicted, Mr. Justice?

A. It has got oblong squares with dash marks.

Q. Is there any indication or designation of that road by letters or anything?

A. It has got road A.

Q. Road A?

A. Yeah.

Q. When that road was constructed, were there any other access roads leading up to the mine site constructed off of Route 680 up to that site?

A. No, sir.

Q. Was that road -- has that road ever been changed -- not the condition of the road with potholes, but has the location of that road ever been changed from the time it was built to the present time?

A. No, sir.

Q. Is that -- are there other access roads to the Ray-Mac site other than that one?

A. No, sir.

Q. Is that both the mine entrance and the emergency entrance also?

A. Yes, sir.

Q. Now, where did the mining operation first begin, Mr. Justice, when Ray-Mac started?

A. Right along here, sir.

Q. Is that where the road

intersects what is now called Switchback?

A. Yes, sir.

Q. Is that approximately where the road intersects with the seam of coal?

A. Yes, it is.

Q. In which direction did this mining operation begin? Going toward the top of that map or towards the bottom of that map?

A. Going this way, sir.

Q. Going back down the area of Mud Creek?

A. Yes, sir.

Q. And when did the -- when did you begin mining toward the top of that mountain toward Route 680 to your knowledge?

A. This way?

Q. Yes, sir.

A. Around December, January, something like that.

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Q. Did you cease mining back in the Mud Creek side and begin mining in that direction or mining both directions simultaneously?

A. I am really not familiar with that part.

Q. You say December, December of what year, Mr. Justice?

A. 1981.

Q. Now, there has already been some evidence in regard to the ownership of mineral leases in that area. Were you also responsible for acquiring certain service rights during that area?

A. Yes, sir, I was.

Q. And from whom, specifically from whom did you obtain leases or easements or surface royalties, Mr. Justice?

A. Mostly back in here (indicating), and I talked with them personally.

Q. Is that indicated on the map, the surface owners on those?

A. Yes, sir, it is.

Q. And does Mr. Dave Akers appear on there?

A. Yes, sir, it does.

Q. Who else, Mr. Justice?

A. Mr. Nick Cooley owned the area right in here (indicating). I talked with him.

Q. Is that the area bounded by the area where his name, Cooley, appears?

A. Yes, sir.

Q. Did you arrange for the lease of the surface rights to that area?

A. Yes, sir.

Q. Would you explain to the ladies and gentlemen of the Jury why it is necessary to obtain surface rights for the mining of mineral rights for the mining of coal for the record?

A. Well, it is necessary from the standpoint that you would like to go to the surface on it.

You do some damage to their property, and we feel like we should pay them something for it.

Q. With regard to Mr. Nick Cooley, how much were you paying Mr. Cooley for mineral - -

A. (Interrupting) Fifty cents a ton for every ton we took off of that property.

Q. And do you know when this began and when it ended?

A. I couldn't tell you without looking at the records.

MR. SELF: Thank you, Mr. Justice.

Q. Mr. Justice, how far, if you would, please, with a pen up there, tell us how far around you went back toward the Mud Creek side before they started mining on the McDowell side?

Do you have any idea of that, or should I ask someone else?

A. They mined it here (indicating), and I don't know whether they mined this out (indicating) or before, whether they mined this out or not (indicating). I am not familiar with it.

THE COURT: This would be a good point, gentlemen. Mr. Justice, I apologize at this point, but we will have to cease for the day.

Ladies and gentlemen of the Jury, we are going to be adjourned until tomorrow morning at 9:00 o'clock. Remember during this adjournment you are not to discuss the case among yourselves, nor to permit anyone to discuss the case with you, or in your presence.

You understand you are not to make up your minds upon the issues of this trial until you hear all the evidence together with the

Court's instructions. No radio, no television, no newspapers. You are not to read any of those or listen to any of those.

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

MR. SELF: None, Your Honor.

MR. PAFUNDA: No, sir. Your Honor, possibly - - it's been commented here at this table that possibly there is some snow on the way. You might remind the Jurors to check the phone in the morning.

THE COURT: Yes, sir. Madam Clerk.

THE CLERK OF THE COURT: Ladies and gentlemen, you will have a recorded message tonight, and it will be the same message that you checked during the weekend. It will instruct you that the Jurors who are trying the case on trial, that you are to report at 9:00 A.M. in the morning.

Now, in the even that there is a heavy snowfall tonight, I will check with His Honor early in the morning, and upon his direction I will change your message.

But again, I cannot change that message until after I - - I will move it up a half hour, if that is all right with

you, Your Honor, until 6:00 A.M. I cannot change it until after that. Please do not dial it prior to that time. If I try to change it by remote control, and you are trying to dial, I will not be able to do so.

So if we do have heavy snow, please check it after 6:00 A.M. in the morning, and if there has been a change, it will be a different recording.

THE COURT: Mr. Justice, you may step down.

REPORTER'S NOTE: At this time Mr. Justice left the room.

THE MARSHALL OF THE COURT: All Jurors are out of the Courtroom, Your Honor.

THE COURT: Thank you, Mr. Marshall.

Madam Clerk, let's near the motion to quash service.

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

THE COURT: Come around, Mr. May.

REPORTER'S NOTE: At this time Mr. Marrs Allen May,

DALE SOERGEL MOORE SHAW & ASSOCIATES
COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

REPORTER'S NOTE: (Continued) of the lawfirm of Stratton, May and Hays, Pikeville, Kentucky approached the podium and the following was heard:

THE CLERK OF THE COURT: This matter is called on motion on behalf of the movant, Coal-Mac Sales, Incorporated, Mack Mining Company, a partnership composed of Frank Justice and Jim McGhee; Coal-Mac Incorporated, and Ray-Mac Coal Company, Incorporated, to quash subpoena duces tecum that was issued on January 25th, and this is the hearing on said motion.

MR. WALBOURN: Your Honor, are the Defendants required to attend during this hearing?

THE COURT: If they want to stay, they are welcome.

MR. WALBOURN: Thank you.

THE COURT: If they leave, they are going to waive their presence.

Do you gentlemen want to stay or leave, it is up to you?

You were told about making the arrangements for your wife, weren't you?

MR. BRANSEN: That was my client, Your Honor. I would like to point out to you, too, that

that procedure will take from three to five days, not just one day.

THE COURT: All right. Mr. May.

MR. MAY: Your Honor, I am Marrs Allen May of the lawfirm of Stratton, May and Hays, P.O. Box 851, Pikeville, Kentucky. I am here on behalf of certain entities and persons who are named in a subpoena which was issued by this Court apparently on January the 25th, 1984.

This subpoena was delivered to the offices, which contain the offices of J Coal Mining Company, Inc. on January the 27th, 1984 at the approximate hour of 12:00 o'clock, or shortly thereafter.

At that time, Mr. Bill Lykins, an employee of J Coal Mining Company, was present at the building. We have attached to our motion to quash the subpoena the affidavit of Mr. Lykins as to what occurred on that day.

In substance, the two men appeared, who Mr. Lykins had previously met but did not recall the names of, and handed him the subpoena which I am sure that a return is made - - has been made on, and it is presently in the record.

At that time, Mr. Lykins,

as set forth in his affidavit, accepted the subpoena, said thank you, the two men said thank you, and left the premises.

The subpoena itself as appears upon the face thereof is directed to Coal-Mac Sales, Inc., d/b/a Mac Mining Company.

Your Honor, there is no longer such a corporation in existence as Coal-Mac Sales, Inc..

Further, it names Coal-Mac, Inc.. There is presently in existence a corporation named Coal-Mac, Inc.

It also is directed to Ray-Mac Coal Company, Inc.. There is not now, nor was there ever, such a corporation as Ray-Mac Coal Company, Inc.

In the body of the subpoena, they set forth quite a list of materials that are to be produced, not only by these nonexistent corporations, and the one existing corporation, but also directed that materials be produced by certain individuals which are named within the body of the subpoena but are not directed - - the subpoena is not directed to.

Those individuals are Frank

Justice, Jim McGhee, Lynn Parrish, Raymond Roger Barker, and Billy Lykins.

Further, Your Honor, there is written in hand at the end of it additional information, the following notation:

"Payment of any fees if applicable guaranteed by Neal and Harwell, Attorneys."

Your Honor, it is the position of these movements that this subpoena is totally ineffective and defective.

Your Honor, in the first place, other than the corporation Coal-Mac, Inc., there is no other of these entities which are set forth which are even in existence.

Further, I think it is clear under the rules that upon the serving of a subpoena duces tecum, it is necessary that there be a tender of witness fees and mileage. No such tender was undertaken on this occasion.

Your Honor, we have set forth in our memorandum, which I am not sure whether the Court has had an opportunity to read as of yet - -

THE COURT: (Interrupting) Yes, sir, I have seen it.

MR. MAY: (Continuing) But I think

it goes without saying that this is a complete failure to comply with the rules in regard to service of a subpoena duces tecum.

Further, I believe, Your Honor, as set forth in the citations which we have given, that this is to be strongly construed, and that they must strictly comply with the rules insofar as the service of this subpoena.

Further, Your Honor, we contend that service was made upon Mr. Bill Lykins, who as pointed out in the subpoena, is an employee of J Coal Company, Inc., and is not an employee of the only existing person or corporation named within the subpoena, Coal-Mac, Inc.

Further, it is their duty to show that Mr. Billy Lykins, who was an employee, as I have before stated of J Coal, had agency to act upon behalf of Coal-Mac, Inc.

I think that the cases as we have clearly said in the - - and the rule itself, provides that service must be made upon an officer of the corporation, or a general agent of that corporation.

Mr. Lykins clearly meets neither of these qualifications.

Further, Your Honor, we feel that this subpoena as it is written is clearly overbroad in that it seeks information which is not even relevant - -

THE COURT: (Interrupting) What does it ask for?

MR. MAY: Your Honor, it asks for all records and documents relating to prior owners owned by, leased by, or loaned to Coal-Mac Sales, Inc., Mack Mining Company, Coal-Mac, Inc. during 1981 and 1982 including but not limited to at least eight Uzi's and one Ingram firearm; records of all firearms purchases made by Coal-Mac Sales, Inc., or any of its subsidiaries, including but not limited to Ray-Mac Coal Company, Inc. should be furnished; records of all ammunitions purchased during 1982 for the above companies should also be furnished; all checks, purchase orders and invoices should be furnished.

In addition, Messrs. Frank Justice, Jim McGhee, Lynn Parrish, Raymond Roger Barker and Billy Lykins all officers and/or principals of Coal-Mac-Ray-Mac should provide records or documents relating to personally owned weapons, or any weapons borrowed by these officials for use in

2/15-26/82 McDowell, Kentucky conflict with picketing UMWA workers on John Hall Branch.

In addition, Coal-Mac-Ray-Mac leadership named heretofore should provide records, checks and/or ammunition purchases for weapons used by Ray-Mac workers in firing at the UMWA workers above.

Your Honor, this was, as I said, delivered on Friday some time after 12:00 o'clock noon.

Needless to say all the employees of the company had left at that time. There was no way that it could have been possible for them to have gone back through the records enumerated in this subpoena with no personage there to do so and try to find anything, if there did exist any such records.

Further, it would have been impossible and it was impossible for them to contact any of the merchants that they may have possibly purchased such weapons from to try to determine what date it was done so that they might restrict it at least in some area, and probably the only record that exists would be a canceled check, or something of that nature.

THE COURT: Let me ask you this, Mr. May.

MR. MAY: Yes, Your Honor.

THE COURT: Let's make an assumption that that is a defective subpoena duces tecum.

MR. MAY: Yes.

THE COURT: Now, let's assume this, and I don't know. Of course, I realize the vertical and horizontal structure of coal mining sometimes gets a little different, but it is my understanding that Coal-Mac Sales does all of the selling of coal; they handle the selling of coal?

MR. MAY: I think at one time, Your Honor - -

THE COURT: (Interrupting) Now, Mack Mining, it is my understanding, owns Ray-Mac. Mack Mining furnishes the equipment.

Mr. Barker, of course, was the foreman, and he - - Mr. Barker, with the equipment of Mack Mining, who was Ray-Mac, and they did the mining on this strip.

Now, we have this. Here is where I guess I am attempting to be a little compromising. I think the evidence is going to reflect that the Defendants, or someone, in February,

I think, bought some weapons, and they bought some ammunition. I think on the other hand, what they are seeking is to find out if any of the employees of Ray-Mac, or anyone who was up there had some guns up there, and I think the evidence already is clear they had some guns up there.

I think what they are wanting is they would like to look at the records which might reflect any of the guns which any of the employees of Ray-Mac, and I am saying its associated companies, which would be Mack Mining and I don't think Coal-Mac Sales, maybe Coal-Mac Sales, might have been up there, and that is what they are after.

They would like to get back, and I am sure they would have liked to get back all the way back to when they had this thing out at Shelbiana up there on the bridge, but they are not going to get back to it.

They would like to, but the Court is not going to permit them to do that.

For the same period of time that they are going to show where they bought guns and they bought ammunition, I feel that it ought to be the other side of the coin, they ought to be able to inquire about whether - - did they buy

their guns, did they buy the ammunition. Mr. Harwell, you are shaking your head.

MR. HARWELL: It may be just reacting, Judge, but I would like to be heard before Your Honor rules on that part of it, please, sir.

THE COURT: Well - -

MR. HARWELL: (Interrupting) I didn't mean to do what I had been told not to do.

THE COURT: You are not going to get in that thing, you will get it in the record, but you are not going to let the Jury get this thing.

I don't care if they had a thousand guns out there, that has got nothing to do with this case here.

MR. HARWELL: But may the Court please those thousand guns out there at Shelbiana up on the hill at Ray-Mac, regardless when they were purchased - -

THE COURT: (Interrupting) We are not getting it in. You are getting it in the record, but we are not going to get it before the Jury.

MR. HARWELL: Is Your Honor telling me that I am not allowed to get in any gun records unless they were purchased during February 15th to February 22nd from Ray-Mac or Coal-Mac people?

We already heard testimony

today of Mr. Lynn Parrish of the eight Uzi's. He had them, and he suspects, and if they left his office, they ended up at Ray-Mac, Judge up on the hill.

THE COURT: He said he had them. He don't know where - - suspecting is conjecture.

MR. HARWELL: Yes, sir. We believe we are entitled to, through proof, which is kind of hard to get at, to show where they went since we have been told that there were Uzis up there in the hands of the Coal-Mac-Ray-Mac people, Judge.

MR. MAY: Your Honor, I think a good analogy of this would be two cars, speeding down the road, and one of the drivers of the car is charged with speeding, and then he wants to bring evidence that the other driver was speeding. The fact that one was speeding has nothing to do and is irrelevant to the - -

THE COURT: (Interrupting) Now, they are contending, I understand they were contending self-defense.

MR. MAY: I understand.

THE COURT: I think they are entitled to show there are guns on the other side, if they had guns, what kind of guns they had and such.

MR. HARWELL: That is my point, Judge.

THE COURT: But now, in self-defense that would be permissible, but I am just telling him I don't care if they bought a thousand guns out there at the bridge, that has nothing to do - - you might get it through discovery, but you are not going to get it at this trial.

MR. HARWELL: But Judge, how do I get it outside of a subpoena. We have knocked on the door and asked, and they won't talk to us.

We have served a subpoena and they say no you all screwed up on your seventeen subpoena, Mr. Harwell, because that was Pretrial.

We then served this subpoena, and we made a mistake, Judge. I tendered at noon today a check - -

THE COURT: (Interrupting) You made a mistake and that is why I said assume that that - - but what I am trying to do is find out - - can you get them in the record if any you have, or if you don't have any record, make an application to such, but if you have any records regarding those guns, and there has already been kind of submitted that there were guns up there by the guards, and that is what they are after.

MR. MAY: Your Honor, we are in the process and I have instructed our clients to try to determine if there are such records in anticipation of the Court's ruling.

I'm glad to see that Mr. Harwell has conceded that the subpoena itself is defective. Your Honor, I would also point out, getting back to the point of--of the records, and I would like to cite to the Court the case of the United States of America v. Winke; 604 F.2d 407, a 1979 case where the court dealt with a subpoena almost on the same line as this one. The court said, "A subpoena which sought all files, records, correspondence, writings, inter-office communications, interagency communications and records relating to the investigation of defendant was properly quashed as being overly broad in scope."

MR. HARWELL: May I say--

THE COURT: In some cases asking for all is overly broad; in other cases it isn't. In other cases they hold it's a significant designation.

MR. MAY: Uh-huh.

MR. HARWELL: Judge Unthank, let's at least have this record show that Mr. Harwell concedes the subpoena is bad, sir. Mr. Harwell conceded that Mr. Harwell should have seen to it that his people

took a check out there.

And let the record further reflect, and I'm prepared to put on proof, that today between twelve o'clock and one o'clock a forty-dollar check was delivered out there to Ray-Mac, Coal-Mac to secure that part of the problem, which Mr. Harwell concedes is the problem.

I don't concede that the subpoena is bad, but if they want to put us to chore of serving everyone of these individuals and giving them checks we'll have it at that.

MR. MAY: Your Honor, I'm afraid that the rules provide that it cannot be cured by subsequently tendering the payment.

THE COURT: Well, gentlemen, we're still-- Let's don't deal on technicalities. Let's deal on what--what we're going to have to get in.

MR. PAFUNDA: If it please the Court, there were depositions scheduled back in December in another case, and if Mr. Stratton wants to-- It was on his office's motion for protective order, which was overruled; and I've yet to address that in another case. Now, I may be willing to strike a deal with him on costs and subpoenas if he'll overlook the technicality.

THE COURT: Let me ask you this, what we're interested in was any records to be reflective of weapons in the ownership of weapons which might have been in the possession of--of Ray-Mac employees, Mack Mining employees or Coal-Mac Sales in February what?

MR. HARWELL: February 15, 16, 17--on through the next week, Your Honor, 1982.

THE COURT: And that's where we're at.

MR. MAY: All right, Your Honor. As I've previously--

THE COURT: And any purchase of ammunition or something of this nature that might have happened.

MR. MAY: Your Honor, as I previously stated, I have had my clients examining their records to see if we can determine if there is--are such records.

THE COURT: All right. If they're going to contend self-defense and there are such records then I think they're entitled to see if they are there. That would support their defense of--of self-defense.

MR. MAY: All right, Your Honor.

THE COURT: I think they're entitled

to it.

MR. MAY: Your Honor, I'm not prepared at this point to--to do that without the--the further service of a subpoena for that purpose.

MR. HARWELL: We'll get a subpoena served if you'll tell us--if the Court please, if you'll tell us you'll accept service. We'll get a subpoena served tonight. We might be knocking on somebody's door kind of late but we'll be happy to do that.

MR. MAY: They're welcome to do so, Your Honor.

MR. HARWELL: We'll get it served, Your Honor.

THE COURT: All right.

MR. HARWELL: Might we ask the Court to please ask counsel if we could have his home address so we might serve him as soon as court closes?

MR. MAY: Your Honor, I'm not an officer or a general agent of the--the corporations in question. If he wishes to serve me, my address is Chloe Creek. If he wants to come over and serve me I will again move to quash the subpoena.

MR. HARWELL: If the Court please, I take it he's entered an appearance by this filing for all

these parties for whom he moves to quash. Might I inquire as to whether that's correct, because I don't note on the last page of his capacity when he signed off.

MR. MAY: I'm not an attorney of record in this proceeding, Your Honor. I'm not a party to this, or at least as far as I'm concerned none of my parties are--are parties to this proceeding.

MR. HARWELL: Judge Unthank, he's right. I'll tell you this, Judge, he can make it tough on us but we'll get it done.

THE COURT: Okay.

MR. PAFUNDA: Judge, I know where they live. I've already served them once. They'll be served again. It just seems-- It's going to happen sooner or later.

It may save his client a lot of aggravation.

THE COURT: You gentlemen do that outside of court, gentlemen.

MR. PAFUNDA: Thank you.

MR. MAY: Your Honor, I'm willing to meet with Mr. Pafunda and Mr. Harwell, and we'll sit down and discuss it. I'm sure we can work out some agreement on it.

THE COURT: All right, gentlemen, that will be fine.

Mr. Marshal, we'll be adjourned until tomorrow morning at nine o'clock.

THE MARSHAL OF THE COURT: All rise. The court is adjourned until 9 a.m. tomorrow.

(Reporter's Note: Court adjourned at 4:55 p.m.)

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STATE OF KENTUCKY)
)
) SS.
COUNTY OF JEFFERSON)

We, BRUCE D. HANDY, WILLIAM J. KALBFLEISCH, & RICHARD L. COULTER, Notary Publics, within and for the State at Large, do hereby certify that the foregoing proceedings were taken before us at the time and place and for the purpose in the caption stated; that the witnesses were first duly sworn to tell the truth, the whole truth, and nothing but the truth; that the proceedings were reduced to shorthand writing by us in the precense 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 30th day of January, 1984.

Bruce D. Handy
Notary Public

William J. Kalbfleisch
Notary Public

Richard L. Coulter
Notary Public