

1 Your Honor, also.

2 MR. KIRKLAND: That's all the questions
3 I have, Your Honor.
4

5 RE-CROSS-EXAMINATION

6 BY MR. HARWELL:

7 Q Mr. Blanton, my name is
8 Aubrey Harwell, and I represent Mr. Edgar Jones.

9 Mr. Blanton, you have
10 testified on Thursday and, again, have testified
11 today as to where you moved your truck when you
12 came out of that access road and came out on
13 Kentucky Highway 680.

14 A I marked approximately
15 the way I done it.

16 Q I beg your pardon.

17 A I marked the way I thought
18 I done it approximately.

19 MR. HARWELL: Yes, sir. I understand
20 that.

21 With the permission of the
22 Court, I would like to get the Marshall to pass this
23 to the Clerk so that it might be marked. This
24 gives a little bit closer view of the access road
25 and 680.

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May the Court please.

If my notes are correct that was not previously marked at pretrial, but should be marked for identification as Defendant Edgar Jones No. 3 Exhibit.

THE COURT: All right. Madam Clerk, you may mark it.

THE CLERK OF THE COURT: Yes, Your Honor.

REPORTER'S NOTE: The Exhibit marked Edgar Jones Exhibit No. 3 was marked and filed herewith.

THE CLERK OF THE COURT: Your Honor, this has not been previously marked for identification, therefore, it has been identified as NPM No. 1, Jones Defendant Exhibit, and has now been marked for purposes of trial as Jones' Exhibit No. 3.

MR. HARWELL: May the Court please. I showed that to the Government this morning. Some of the defense lawyers have seen it, and I'm not sure that all of them have, Your Honor.

THE COURT: All right. Let it be shown to all counsel.

MR. HARWELL: Your Honor, while they are looking at that, I would like to have, with the

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1 Court's permission, this marked for identification
2 as Defendant's Exhibit 4, please.

3 (The Marshall passing
4 Exhibit to Clerk)

5 THE CLERK OF THE COURT: Your Honor,
6 this Exhibit had not been previously marked, therefore,
7 it has been identified as NPM No. 2 for Defendant
8 Jones, and has now been marked for purposes of trial
9 as Defendant Jones Exhibit No. 4.

10 THE COURT: All right.

11 REPORTER'S NOTE: The Exhibit
12 marked Edgar Jones Exhibit No.
13 4 was marked and filed herewith.
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1 THE MARSHAL OF THE COURT: This exhibit has
2 been shown to all the attorneys.

3 THE COURT: Thank you, sir.

4 (Reporter's Note: At this time the Marshal
5 handed the witness the photograph.)

6 Q. Mr. Blanton, the Marshal
7 has just handed you that which has been marked as
8 Defendant Edgar Jones' Exhibits 3 and 4. They are
9 pictures of an area that are somewhat similar. Can
10 you identify those pictures as to the area depicted
11 therein?

12 A. Yeah. This looks like the
13 road on Bill Hall Branch and where Ray-Mac came out
14 onto the main blacktop road.

15 Q. All right, sir. When you
16 say the road that's Bill Hall Branch, that's Kentucky
17 Highway 680, is it not, from McDowell across--

18 A. I guess. I don't know the
19 number of the road.

20 Q. All right, sir. And that
21 other road is the access road, is it not?

22 A. Yes, sir.

23 Q. All right, sir. And is
24 that-- Does that picture depict a view of that road--
25 that access road where the intersection is that is

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1 substantially similar to the way it was in February,
2 1982?

3 A. Well, that point is not as
4 steep as it was. They got a pipeline there now. It
5 used to be steeper than what it is now.

6 Q. That's the area where it's
7 devoid of trees and foliage?

8 A. Yeah.

9 Q. All right, sir. But as to
10 the intersection, that is the access road and that
11 John Hall Branch road, does that picture depict it in
12 a fashion that it substantially was in February of
13 1982?

14 A. Well, the road was more
15 wider, I believe, in February when this shooting thing
16 happened. There wasn't no big hole right there
17 (Indicating) at the bottom of the hill.

18 Q. All right, sir. There
19 wasn't a pothole at the bottom of the hill?

20 A. No. You know, it was more
21 or less flatter ground.

22 Q. So that we can explain
23 better to the jury, are you able, sir, with the Court's
24 permission, to use one of the grease pencils up there
25 and--and I would ask that you outline where it was

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1 that your truck came to rest on Tuesday, February 16,
2 after the shooting that you've described, sir.

3 A. Yeah.

4 MR. HARWELL: Mr. Marshal, there's a red
5 one and a yellow one and a black one. I would ask you
6 if we could use the red one, sir.

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

9 THE WITNESS: I'll give you a general idea.

10 THE COURT: Which one?

11 Q. I'd like you to do it, if
12 you would, sir, on No. 4 and then on No. 3, in that
13 order.

14 MR. HARWELL: Number 4 is more of a
15 straight down view, may the Court please.

16 A. You want me to make where
17 the truck come to a stop there?

18 Q. Yes.

19 A. That's the only thing you're
20 interested in, where it come to a stop?

21 Q. Yes, sir. Now, you under-
22 stand what I am saying; after the shooting. You said
23 you came out and you turned, and you came to a stop,
24 okay. Then everybody ran off the hill.

25 Where it came to a stop

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1 then, not after the grader or whatever pulled it back,
2 where it came to a stop on February 16 after the
3 shooting.

4 (Reporter's Note: The witness marked upon
5 the photograph.)

6 THE WITNESS: You want to know both of
7 them, don't you?

8 Q. Yes, sir. If you'd mark
9 that on both of them.

10 (Reporter's Note: The witness marked upon
11 the photograph.)

12 THE WITNESS: This one right here
13 (Indicating) don't look like it was as far as the
14 other one was, but I'll give you the general area. I
15 marked the area there in red showing where my truck
16 stopped at and which way it headed.

17 Q. Would you put-- Where you
18 marked it, would you put like an arrowhead to repre-
19 sent the front of your truck.

20 A. I done that, sir.

21 Q. You've done that?

22 A. Yes, sir.

23 MR. HARWELL: Judge, understanding Your
24 Honor's rule about staying here can I have the pictures
25 back and look at what he's marked, please?

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1 THE COURT: Yes.

2 (Reporter's Note: At this time the Marshal
3 handed Mr. Harwell the group of photographs.)

4 THE WITNESS: One of them don't look as
5 far as the other one does because it was took at a
6 different angle.

7 MR. HARWELL: All right, sir. Mr. Marshal,
8 would you hand that back.

9 (Reporter's Note: At this time the Marshal
10 handed the witness a group of photographs.)

11 Q. What I'd like you to do,
12 Mr. Blanton, looking at that picture and the red arrows
13 which you have drawn, is tell me, sir, approximately
14 how far it is from the back of your truck to the
15 nearest point on that access road. How close is that?

16 A. I would say it would be
17 highly impossible to tell you by looking at this
18 picture.

19 Q. No, sir. Relying on your
20 memory and what occurred on the sixteenth day of
21 February tell me about how far the back of your truck
22 was.

23 A. About fifty to sixty foot
24 to the closest place to this access road--is what
25 you're asking me.

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Q. Yes, sir.

A. I'm saying fifty to sixty
foot.

Q. All right, sir. Thank you,
sir.

MR. HARWELL: Judge, if I could have one
more photograph marked.

THE CLERK OF THE COURT: Your Honor, the
photograph not previously marked and identified
as NPM, Defendant Jones' No. 3, has now been marked
for purposes of trial as Defendant Jones' Exhibit
No. 5.

THE MARSHAL OF THE COURT: Your Honor, this
exhibit has been shown to all the attorneys.

THE COURT: Thank you.

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

Q. Mr. Blanton, you have testi-
fied about the route that you took to the Ray-Mac site
on Tuesday, February 16, going up John Hall Branch
and passing what you referred to as the Edgar Jones
tipple. You have just been handed, sir, that which
the Clerk has marked for identification as Exhibit 5.
That reflects that John Hall Branch road.

Let me ask you, sir, do

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1 you recognize that which is depicted in that picture?

2 A. Yes, sir. It's Edgar's
3 tipple.

4 Q. Beg your pardon?

5 A. It's Edgar's tipple and
6 Arnold Turner's tipple and Jake--Nick Cooley's tipple.

7 Q. And the John Hall Branch
8 road, is that right?

9 A. Yes, sir.

10 MR. HARWELL: All right. With the
11 Court's permission I would ask that the Marshal pass
12 you a yellow grease pencil. I think there was one
13 up there this morning, Marshal, when we came to court.

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

16 Q. Now, if you would, sir, I
17 would like you to mark as to the three tipples you
18 have mentioned an identification, all right, sir.

19 A. Yes, sir.

20 Q. The sign on the tipple
21 that you referred to as the Edgar Jones tipple, that
22 sign said JPL, does it not?

23 A. I don't know if there's a
24 sign there now or at that time or whatever.

25 Q. You're right. Let me go

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1 back to that time.

2 Does that picture depict
3 John Hall Branch road and those tipples essentially
4 as they were and substantially as they were in
5 February, 1982?

6 A. Yeah, they look the same.

7 Q. All right, sir.

8 A. As close as they could be.

9 Q. All right, sir. Now, do
10 you know what sign there was on the tipple that in
11 your testimony you kept calling the Edgar Jones
12 tipple in February of '82?

13 A. I never seen no sign on
14 the tipple, that's what I'm trying to say. I don't
15 know.

16 Edgar changed his name two
17 or three times, as far as that. As I knowed the
18 tipple Edgar Jones owned it and runned it and things.
19 That's the reason I called it the Edgar Jones tipple.

20 Q. All right, sir. You've
21 got a grease pencil in front of you, do you not, sir?

22 A. Yes, sir.

23 Q. I'd like you to draw a
24 line from the tipple that you referred to as the
25 Edgar Jones tipple off to the left across the John

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1 Hall Branch road, and put an E. J. by it to identify
2 it. Would you?

3 A. Draw a line from the left
4 of Edgar's tippie?

5 Q. Start with Edgar's tippie,
6 the one you called Edgar's tippie, and draw a line
7 across the road--

8 A. Yes, sir.

9 Q. --to your left, as you're
10 sitting there, and at the end of that line put an
11 E. J.

12 MR. HARWELL: For purposes of the record
13 you're using a yellow grease tipped pencil.

14 (Reporter's Note: At this time the witness
15 marked upon the photograph.)

16 THE WITNESS: It's not too plain but I'd
17 say you can make it out.

18 Q. All right, sir. Now you
19 mentioned two other tippies up there. I think you
20 said Joseph Mining, did you not?

21 A. What did you say?

22 Q. I said you mentioned in
23 your testimony two other tippies.

24 A. Yes, sir.

25 Q. All right, sir. And did

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1 you mention one of those as being the Joseph Mining
2 tipple?

3 A. I don't know if the name
4 was Joseph Mining, but one of them is--is Arnold
5 Turner's tipple, and the other one is Nick Cooley's
6 tipple.

7 Q. All right, sir. Let me get
8 you to do this. Relative to the first markings that
9 you have where is the Arnold Turner tipple?

10 A. It's above-- It's above
11 Edgar's tipple.

12 Q. All right. Let me ask you
13 if you would do this, sir. Put that yellow grease
14 tipped pen on the picture right there at the edge of
15 the Arnold Turner tipple, and draw a line up to the
16 left similarly to that which you did for the first
17 one.

18 (Reporter's Note: At this time the witness
19 marked upon the photograph.)

20 A. Okay. I got the line drawn.

21 Q. Put an A. T.

22 A. All right.

23 (Reporter's Note: At this time the witness
24 marked upon the photograph.)

25 Q. Now, where is that third

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1 tipple?

2 A. It's almost straight across
3 from Arnold's tipple.

4 Q. It is on the other side of
5 the railroad tracks, is it not?

6 A. And also the creek.

7 Q. And the creek, that's right.
8 Let me get you to take that
9 yellow grease pen that you've got, sir, and put it on
10 the third or the Nick Cooley tipple. This time instead
11 of drawing to the left draw over to the right, to the
12 outside perimeters of that photograph.

13 (Reporter's Note: At this time the witness
14 marked upon the photograph.)

15 Q. Then put an N. C.

16 (Reporter's Note: At this time the witness
17 marked upon the photograph.)

18 A. Okay.

19 Q. All right, sir. Now, if I
20 understand your testimony from last Friday, you said
21 on Tuesday that you left McDowell and headed toward
22 the Ray-Mac job site, is that right?

23 A. Yes, sir.

24 Q. And you said you went by
25 Edgar's tipple up John Hall Branch, is that right?

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1 A. Yes, sir.

2 Q. And the fact is you also

3 went by Arnold Turner's tipple, did you not?

4 A. Yes, sir.

5 Q. And you also passed across

6 the tracks and the Nick Cooley tipple, isn't that right?

7 A. Yes, sir.

8 Q. All right. And I believe

9 you said, sir, that you saw thirty or forty men, and

10 you referred to them as being at the Edgar Jones

11 tipple?

12 A. Yes, sir.

13 Q. I'll ask you, sir, looking

14 at the photograph before you, Exhibit 5, look at the

15 very bottom of the photograph, the John Hall Branch

16 road, okay.

17 A. Yes, sir.

18 Q. As you proceed up that

19 road and before you get to the tipple you refer as

20 Edgar Jones, there's not really a place to pull of,

21 is there?

22 A. No, sir. There's one after

23 you cross the railroad tracks there and then the one

24 up there before you get to Edgar's tipple.

25 Q. All right, sir. And the

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1 fact of the matter is that there is a place you can
2 pull of between what you call the Edgar Jones tippie
3 and the Arnold--Arnold Turner tippie, isn't that right?

4 A. Yes, sir. That's where
5 Edgar parks his trucks waiting to dump.

6 Q. And the fact of the matter
7 is, the men you saw that morning were in that area
8 between those two tippies, isn't that right?

9 A. Yes, sir.

10 MR. HARWELL: With the Court's permission,
11 I would ask the witness to be given a red pen. There's
12 one there, Your Honor. I'd like to have him circle
13 the area where he saw those men on that Tuesday morning
14 between the two tippies.

15 Q. Have you got a red pencil
16 or pen?

17 A. I've got a red one here.

18 Q. All right, sir. Now,
19 you've been marking that one in yellow, haven't you?

20 A. Yes, sir. I marked on
21 this one (Indicating) with the yellow.

22 Q. All right, sir. Now I want
23 you to mark the area--

24 A. Can I draw a circle?

25 Q. --and make it as precise as

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1 you can as to where those men were on that Tuesday
2 morning.

3 A. Can I draw it--a circle?
4 Will that be fine?

5 Q. That'll be all right, sir,
6 as long as it is your best approximation of where
7 those men were.

8 (Reporter's Note: At this time the witness
9 marked upon the photograph.)

10 MR. HARWELL: May I see that photograph,
11 Your Honor?

12 (Reporter's Note: At this time the Marshal
13 handed Mr. Harwell a photograph.)

14 MR. KEHRLI: Your Honor, before further
15 questioning in that regard may the Government also
16 see the photograph, please?

17 THE COURT: Yes.

18 (Reporter's Note: At this time the Marshal
19 handed Mr. Kehrli a photograph.)

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

22 Q. The Marshal is handing back
23 to you, Mr. Blanton, that which has been marked for
24 identification as Exhibit 5, and I have looked at it
25 as has the Government. You have drawn a red circle
depicting where you are telling this Court and this

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1 jury those men were gathered on that Tuesday morning,
2 is that right?

3 A. Yes, sir. They-- They
4 could have took less space if they was closer together
5 but they had cars parked there and they wasn't all,
6 you know, in a bundle. They-- They was scattered
7 out. They was all looking sort of toward the center
8 but they was scattered out.

9 Q. Yes, sir. Isn't it a fact,
10 sir, that some of those cars and some of those men
11 were north or to the upward part of where your circle
12 is, up toward that second tipple, the Arnold Turner
13 tipple? Weren't there men up there Tuesday morning
14 that you saw?

15 A. The best of my memory there
16 was some standing on the scales and there was a car
17 parked on the scales. Also, like I said, there was
18 cars, and they was all ganged up, in that circle. I
19 tried to give you a general idea of where they was at.

20 Q. All right, sir. But are
21 you telling me that there were no men that you saw
22 Tuesday morning and no cars parked closer to the
23 Arnold Turner tipple than you have drawn?

24 A. Well now, what I'm saying--
25 What I seen was in this area (indicating), and it

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1 might have been because I was looking harder at the
2 group than I was up there because you don't have much
3 time. About the time you get up to his tippie--you
4 come up a little hill, and then that's when you spot
5 them. You've got to come up the hill to see.

6 There could have been more
7 there. There could have been less because I was--
8 when I topped the hill it sort of surprised me, them
9 being there. I figured they'd be up at the job site.

10 They sort of surprised me
11 and I looked at them there, and I was looking to see
12 who all I could see in the bunch and things. I wasn't
13 paying that much attention to Arnold's tippie because
14 I--I was looking there at that place.

15 Q. I see. So they could have
16 been up beyond that circle?

17 A. They could have-- They
18 could have been parked anywhere up and down through
19 there.

20 Q. All right, sir. Did you
21 see Phillip Booth there on that Tuesday morning?

22 A. Yes, sir.

23 Q. Did you see Phillip Dale
24 Moore on that Tuesday morning?

25 A. Yes, sir.

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1 Q. All right, sir. You indi-
2 cated earlier that -- that Phillip Booth and Phillip
3 Dale Moore were there and you made some comment shortly
4 thereafter in your testimony, sir, that they--they
5 hollered and shook their fist at me. Were you referring
6 to Phillip Booth and Phillip Dale Moore?

7 A. There was a group of men
8 there, and I spotted some of them and recognized some
9 of them at the time, and some of them I didn't know.
10 They-- When I said they there was a bunch of them.

11 Q. All right, sir. What I'm
12 asking you, was Phillip Dale Moore one of those men
13 that hollered and shook his fist at you that morning?

14 A. I don't know about Phillip
15 Dale Moore for sure, but I could swear that Phillip
16 Booth did.

17 Q. He did?

18 A. Yes, sir.

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1 Q. Was that done, sir, in
2 a joking fashion or was it done in a menacing mad
3 fashion?

4 A. Well, I didn't take it as
5 a joke. It might have been but I didn't take it
6 as no joke.

7 Q. All right, sir. As a
8 matter of fact, that fellow Booth that you're
9 talking about shook his fist and gestured in a
10 fashion you took to be a man who was the same fellow
11 that had caused it the previously night, is that
12 right?

13 A. Yes, sir.

14 Q. All right, sir. When that
15 call came the previous night or those calls, I
16 should say, Phillip Booth never identified himself,
17 if I understood your testimony.

18 A. No, sir, he didn't.

19 Q. But you did say to him
20 I know who you are or, Phillip, I know it's you?
21 Something along those lines, is that correct?

22 A. Yes, sir, I called him
23 by name and told him I knowed who he was, and -- and
24 he kept on talking. I hung up -- I hung up on all --
25 three or four calls. My wife answered one and hung

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1 up on one of them. There might have been more
2 than that, I don't know for sure.

3 She might have hung
4 up on one or two of them after she recognized,
5 and I hung up on the three or four after
6 that. I hung up on all of them before he got
7 through talking.

8 And through the conversation
9 I did tell him I knowed it was Phillip -- Phillip
10 Booth who done the talking.

11 Q. Could you hear, Mr. Blanton,
12 any extraneous noise, any background noise,
13 people talking or music playing or a television
14 set?

15 A. There was more people there.
16 There was talking louder than what we would talk.
17 There was hollering and going on and things.

18 Q. In the background?

19 A. In the background.

20 Q. From wherever he was
21 calling from?

22 A. Yes, sir.

23 Q. I see. Could you -- Based
24 on what you heard in the background could you
25 identify where it was he was calling from?

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1 A. No, sir, I couldn't.

2 Q. Could you make out the
3 identity of any of those voices that you heard
4 in the background?

5 A. No, sir, I couldn't.

6 Q. Could you make out the
7 words that were being said by any of those voices
8 in the background?

9 A. No. I . . .

10 Q. That call upset you,
11 didn't it?

12 A. Yes, sir.

13 Q. Scared you?

14 A. Yes, sir.

15 Q. Scared you because you
16 believed that Phillip Booth was capable of
17 carrying out his threats?

18 A. Not as much of Phillip,
19 see, but his hiring somebody to do it.

20 Q. I see. Mr. Blanton, on
21 Thursday you indicated that you saw Phillip Dale
22 Moore -- Let me start over. Strike that.

23 This past Thursday when
24 you were testifying you stated that on Tuesday --

25 MR. SELF: Objection, Your Honor. Rule

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QEC

1 613, we wish to renew our motion.

2 THE COURT: Overruled. Go ahead.

3 Q. You testified, sir, that
4 you saw Phillip Dale Moore shooting at you on
5 Tuesday, February 15. Do you recall that?

6 A. Yes, sir. He shot on
7 me -- shot at me on the sixteenth.

8 Q. All right. And you also
9 testified, as I remembered, that on -- on the
10 sixteenth Phillip Booth was shooting at you,
11 is that correct?

12 A. Yes, sir, I did.

13 Q. All right, sir. You may
14 have already said this, but what were they
15 shooting, each of them? Pistols? Rifles?

16 A. From what I could tell it
17 was a pistol. I didn't see no rifles or no
18 shotguns or nothing. It was just -- You're talking
19 about these two boys now?

20 Q. Phillip Dale and Phillip
21 Booth.

22 A. All I could see was a
23 pistol a-shooting at me.

24 Q. Let's talk about them one
25 at a time to be fair with this jury. As to

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1 Phillip Booth, did you see him with a pistol?

2 A. Yes, sir.

3 Q. Did you see him fire it?

4 A. Yes, sir.

5 Q. Did you see him fire it
6 more than once?

7 A. Yes, sir.

8 Q. All right, sir. And he
9 was pointing it in your direction?

10 A. Yes, sir.

11 Q. All right, sir. Now, as
12 to Phillip Dale Moore, on February 16th did you
13 see him with a pistol?

14 A. Yes, sir.

15 Q. Did you see him fire it?

16 A. Yes, sir.

17 Q. Did you see him fire it
18 more than once?

19 A. Yes, sir.

20 Q. Did you see him fire it in
21 your direction?

22 A. Yes, sir.

23 Q. And you're absolutely
24 convinced of that, aren't you?

25 A. Yes, sir.

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1 Q. All right, sir. No
2 doubt in your mind about that, is there?

3 A. No, sir.

4 MR. HARWELL: All right, sir. If the
5 Court please, may I ask that the witness be
6 passed Government Exhibit 31 and let me go to my
7 table for a second?

8 THE COURT: All right.

9 (REPORTER'S NOTE: THE MARSHALL HANDED
10 THE WITNESS A DOCUMENT AT THIS TIME.)

11 MR. HARWELL: With the Court's permission
12 I have a magnifying glass pass it to the witness.

13 (REPORTER'S NOTE: THE MARSHALL HANDED THE
14 WITNESS THE MAGNIFYING GLASS.)

15 Q. I have handed you, Mr.
16 Blanton, that which has been marked as Government's
17 Exhibit 31, which is collage of photographs,
18 photographs about which there has been testimony.
19 If I recall they were taken on February 15 of
20 1982 around the Ray-Mac access road off -- on
21 John Hall Branch Road. Let me get you, sir --

22 MR. SELF: If it please the Court,
23 February 16.

24 MR. HARWELL: I'm sorry, I didn't hear.

25 MR. SELF: February 16.

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1 Q. February 16, I misdated
2 myself, Mr. Blanton.

3 There are photographs on
4 that exhibit, sir, that have a hat. That
5 appears to be inside a jeep.

6 A. No, sir, I don't see one
7 inside a jeep.

8 Q. Well, is it inside a
9 truck?

10 A. Yes, sir, there's one
11 inside a truck.

12 Q. All right, sir. Let me
13 get you to use that magnifying glass and tell me
14 what it is that's printed on that hat.

15 A. I can't -- It looks like
16 there's some numbers, 962. It might be -- says
17 local on the top, and the bottom looks like
18 McDowell, Kentucky.

19 Q. I suggest to you, sir,
20 there are two pictures that depict that hat from
21 a little bit different angle. Use the magnifying
22 glass on the second one and see if you don't agree
23 with me that it says Local 5967, United Mine Workers'
24 of America, McDowell, Kentucky?

25 A. That last number could be a

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1 seven, but it looks like a two.

2 Q. All right, sir. Are
3 you looking at both of those pictures with that
4 magnifying glass?

5 A. I have looked at both of
6 them, and the bottom picture the way I'm holding
7 it like this (indicating) on the right here you
8 can see it better in this one --

9 Q. All right.

10 A. -- than you can the
11 top one. Well, I can.

12 Q. All right, sir. And those
13 are on Government Exhibit 31. Do you know what
14 that depicts? What's that the inside of?

15 A. A pickup truck.

16 Q. A pickup truck?

17 A. Yes, sir.

18 Q. Did you know which pickup
19 truck?

20 A. Jason Moore's.

21 Q. Jason Moore's pickup truck.
22 Did you on February 16 see
23 that hat inside that pickup truck up there on the
24 hill?

25 A. Yeah, I did.

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Q. And you saw that hat?

A. Yeah.

Q. And what did that hat
that you saw have on it?

A. I don't remember what it
had on it. I was mostly looking in the truck to
see what all was in it.

Q. It said something about
United Mine Workers on the hat, didn't it?

A. I couldn't tell you that
day what it said.

Q. Can you tell me today?

A. Well, like I said, look --
I said it looks like it was Local 962, but you
said it was a seven with McDowell, Kentucky on
the bottom of that hat.

Q. All right, sir. You
indicated on Thursday, Mr. Blanton, while Mr.
Pafunda was questioning you that -- or better
said, Mr. Pafunda in questioning you asked you
if you had talked about anybody's testimony with
any member of your family or any witness that
has testified. You looked at him and you said,
in substance, you know, there was other people who
told me you was going to ask me that question,

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1 Mr. Pafunda.

2 Do you remember that exchange?

3 A. Yes, sir, I do.

4 Q. Who were the other
5 people who told you Mr. Pafunda was going to
6 ask that question?

7 A. These attorneys right
8 here (indicating).

9 Q. Beg your pardon?

10 A. These attorneys told me
11 they would probably ask me that question, and to
12 be sure I didn't talk to none of the other witnesses
13 or talk to anybody that listened to it inside the
14 courtroom.

15 Q. These attorneys here
16 (indicating)?

17 A. Yes, sir.

18 Q. All right, sir. Living
19 in McDowell, Mr. Blanton, were you back in
20 February of '82 aware of the fact that Local 5967
21 had a meeting on the Saturday before these events
22 up at the Ray-Mac hill on Tuesday?

23 A. No, sir, I didn't.

24 Q. You're not aware of that?

25 A. No, sir.

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1 Q. All right, sir. Mr.
2 Blanton, did you know Danny Newsome in February
3 of '82?

4 A. Yes, sir, I do.

5 Q. As a matter of fact, he
6 was one of those people that hold coal for Ray-
7 Mac just like you did isn't that true?

8 A. Yes, it is.

9 Q. And, as a matter of fact,
10 he was hauling coal on Monday, February 15, 1982,
11 wasn't he?

12 A. Yes, sir, he was.

13 Q. And did you see his truck
14 when it stopped as it approached the picket line
15 up there on that hill that day?

16 A. What day?

17 Q. February 15.

18 A. No, sir, I didn't. Danny
19 got through with the first load. I never did
20 see Danny stop for any load. I stopped at Dick
21 Reynolds market and Danny was sitting there, and
22 I told him that -- there was a picket line up
23 there.

24 Q. All right, sir. Let me
25 ask you this. On February 16 did you see Danny

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1 Newsome's truck stop at the picket line?

2 A. Yes, sir, I did.

3 Q. All right, sir. Did you
4 overhear what the men at the picket line said
5 to him?

6 A. It would be impossible to
7 hear what they said because they was at the bottom
8 of the hill where the shooting took place and
9 I was on top.

10 Q. All right, sir.

11 A. Top of this flat (indicating)

12 Q. Beg your pardon?

13 A. I was on top of this flat
14 where they stripped and everything. He was down
15 there where the shooting took part. There was
16 quite a bit of difference between us.

17 MR. HARWELL: All right, sir. May the
18 Court please, I would move to admit into evidence
19 defendant Edgar Jones Exhibits 3, 4, and 5. I
20 have no further questions at this time of this
21 gentleman.

22 THE COURT: All right. Any objections
23 from any of the defendants?

24 (No response.)

25 THE COURT: The United States?

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MR. SELF: No objection, Your Honor.

THE COURT: Being no objection, let
that which has been previously identified as
Jones 1 through 3 are finally admitted as
Jones' Trial Exhibts 3, 4, and 5 respectively.

THE COURT: Any redirect by the United
States?

MR. DAUSE: Briefly, Your Honor.

MR. SELF: May we approach the bench,
Your Honor?

THE COURT: Yes.

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

MR. SELF: Can we take a break right
now?

THE COURT: Do you want to break before
redirect?

MR. SELF: I have got to leave
otherwise, Your Honor.

THE COURT: Okay, all right.

Reporter's Note: Whereupon
the Bench conference was
concluded.

THE COURT: We are going to be in
recess for fifteen minutes. You are under the not
now admonition. Do you understand?

Any objections or
corrections to the Court's admonition?

MR. SELF: No, Your Honor.

THE COURT: Mr. Marshall, please
excuse the jury for fifteen minutes.

THE MARSHALL OF THE COURT: The jury
may be excused.

THE COURT: You may go ahead.

MR. PAFUNDA: Can I go with him? I
have to.

1 THE COURT: All right.

2 THE MARSHALL OF THE COURT: The jury is
3 out of the courtroom, Your Honor.

4 THE COURT: All right, please excuse
5 the witness and the rest of the courtroom.

6 THE MARSHALL OF THE COURT: All rise.
7 The Court will stand in recess for fifteen minutes.

8 Reporter's Note: Whereupon
9 the Court was recessed at
10 10:38.

11 Reporter's Note: Whereupon
12 Court was resumed at
13 10:53.

14 THE MARSHALL OF THE COURT: All rise.
15 The Court is again in session. Be seated and come
16 to order.

17 Your Honor, all Defendants
18 and counsel are present.

19 THE COURT: The jury is not in the
20 courtroom.

21 THE MARSHALL OF THE COURT: That is
22 correct.

23 THE COURT: Yes, I understand you
24 request for a hearing out of the presence of the
25 jury.

MR. SELF: Yes, Your Honor, just
things we anticipate going into on cross examination.

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1 I didn't want to have to come up to the Bench a
2 couple of times. Just do it before the jury comes
3 out.

4 Before I do that, Your
5 Honor, again, I hate renewing my motion. But
6 the question necessitates it. My motion for 613,
7 to be furnished copies of any statement that is used
8 to impeach. The Defendant, Mr. Kirkland, specifically
9 asked didn't he make the following statement to
10 a specific individual. We have not been furnished
11 that. I have asked Mr. Kirkland for it during the
12 break, and I am again renewing my motion on the
13 record for copies of any statements that are attempted
14 to be used to impeach a witness from.

15 THE COURT: Do you have any such
16 statements, Mr. Kirkland?

17 MR. KIRKLAND: Your Honor, certainly,
18 I don't have any written statements. I do interview
19 witnesses, and I have done that fairly diligently
20 in this case. But when you read Rule 613, it is not
21 apparently as interpreted by Mr. Self.

22 It says in examining a
23 witness concerning a prior statement whether written
24 or not, and of course none of these were, the
25 statement need not be shown nor its content disclosed

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1 to him at that time; but on request, the same shall
2 be shown or disclosed to opposing counsel.

3 Well, obviously if it is
4 not a written statement, I can't show it to anybody.
5 And it has been disclosed to opposing counsel when
6 I asked him the question. I said did you tell so
7 and so, you know, whatever.

8 So he is fully aware of
9 the statement. It has been disclosed during the
10 course of the examination. And I can't hand over to
11 him something that doesn't exist, and he knows that.

12 THE COURT: I think it is just like
13 the tapes. He is still probing.

14 MR. KIRKLAND: I don't blame him for
15 probing, Your Honor. If I had a written statement,
16 I certainly would have turned it over. You know
17 that.

18 MR. SELF: Your Honor, I don't
19 think the Rule specifically requires that it be
20 written. It just requires -- the basis for the
21 Rule as indicated in the annotations is to -- designed
22 to protect against unwarranted intrusions or
23 insinuations that a statement has been made and the
24 fact is to the contrary. If he has written or
25 oral, we request that we be advised of it; and if he

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1 is going to advise us during the course of it,
2 that is his position. I will keep renewing it
3 every time it comes up, Your Honor. Thank you.

4 MR. PAFUNDA: Your Honor, before the
5 jury is called back, I recall from last Thursday
6 with matters that were brought up about the affair
7 in Prestonsburg, I still have the right to call this
8 witness as if on cross as to that matter. Correct?
9 I believe the Court granted me that permission.

10 Mr. Dause --

11 THE COURT: (Interrupting) Well, let
12 me ask you this: We have brought on this
13 additional statement that this witness has made.
14 There is an objection to the statement. You were
15 afforded the opportunity to cross examine him as to
16 those statements. You have waived it you said. You
17 don't have any examination.

18 MR. PAFUNDA: That is not what I am
19 speaking of, Your Honor. What I am speaking of was
20 on direct --

21 THE COURT: (Interrupting) You are
22 speaking about something which occurred in
23 Prestonsburg.

24 MR. PAFUNDA: Correct, Your Honor.

25 THE COURT: Well, what is it?

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MR. PAFUNDA: I don't know yet.

THE COURT: I thought in the admonition, we did away with that stuff.

MR. PAFUNDA: That is not it, Your Honor. It is with regard to any statements he made down there under oath. And when I approached the Bench on Thursday, that was the tenor of my request. And I believe, if Mr. Dause recalls correctly, the Court granted me the opportunity at a later time to call this witness as if on cross examination because these matters came out in direct testimony through the witness' response to certain questions by Mr. Dause. I just wanted to clarify that point at this time before the jury is brought back into the courtroom. And as I indicated at the Bench, I wasn't going to go into the whole matter.

THE COURT: Well, certainly if a witness under oath in Prestonsburg made a statement there in Court, you certainly are entitled to show that.

MR. PAFUNDA: Okay. That was the purpose of my request on Thursday.

THE COURT: That is good impeachment providing the proper foundation has been laid.

MR. PAFUNDA: And I will even show the

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1 Court the questions if it comes up. I don't know
2 if it will or not.

3 MR. SELF: I don't think he is
4 asking the Court the right to call him back and ask
5 him if he didn't make this statement, then call
6 witnesses to show if he did or didn't. He has
7 known about this for months.

8 THE COURT: He can lay his foundation
9 here. He is not going to call this witness back
10 until his turn comes.

11 MR. SELF: I just don't want, you
12 know, the opportunity that every one of these
13 witnesses, if they think of something later down
14 the road, you know, bring them back as if on
15 cross examination, Your Honor, having witnesses
16 running in and out, and in and out constantly.

17 THE COURT: No, we are not doing that.
18 And I think that is why he reserved it at that time.

19 MR. PAFUNDA: That is correct, Your
20 Honor. It may not even occur, Your Honor, if it
21 please the Court.

22 MR. DAUSE: I take exception to what
23 Mr. Pafunda says only to this extent: I thought
24 he was going to do that between Thursday and
25 today. I thought that was his expression and

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1 tenor at the Bench, and Your Honor gave him that
2 right. Other than that, I don't differ with Mr.
3 Pafunda's memory on it on what was requested and
4 on what the Court's ruling was.

5 THE COURT: All right.

6 MR. DAUSE: There are a couple of
7 matters that have come up on redirect we thought we
8 should address the Court on out of the presence of
9 the jury.

10 THE COURT: All right.

11 MR. DAUSE: First, at a prior hearing,
12 at a suppression hearing which I believe Mr.
13 Pafunda conducted, there was a gun that was
14 testimony was concerning. We would ask permission
15 to show that gun to the witness to see if he
16 recognizes that gun as the gun involved in this
17 incident, the shooting incident. That is the first
18 thing we would do.

19 Secondly, Your Honor --

20 THE COURT: (Interrupting) Well, let
21 me ask you this: Is this a gun which was going to
22 be introduced into evidence?

23 MR. DAUSE: Your Honor, I am
24 anticipating it will be introduced through other
25 witnesses. We would not move --

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1 THE COURT: (Interrupting) No. I
2 mean it is going to be introduced by the United
3 States?
4 MR. DAUSE: Yes, Your Honor.
5 THE COURT: All right. Then mark
6 it.
7 MR. WALBOURN: Your Honor, may I inquire
8 as to which gun he is talking about?
9 MR. DAUSE: A gun that Trooper
10 Forsythe testified as to in the suppression hearing,
11 and testimony that came with regard to Defendant
12 Hall if I remember correctly. It is already in the
13 Clerk's custody.
14 THE COURT: It is on the exhibit list?
15 MR. SELF: C, Your Honor.
16 MR. WALBOURN: All I am wanting to know
17 is which gun? There were several.
18 THE COURT: Look at it, the exhibit
19 list, as C.
20 MR. DAUSE: D.
21 THE COURT: D.
22 MR. SPENCER: Your Honor, if they are
23 just going to ask the question to identify this gun
24 to see if he can identify it, I would move for them
25 to do that by avowal outside of the presence of the

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1 jury because once they put him on the witness stand --
2 did I understand you right when you said that you
3 are going to ask him if he can identify the gun?

4 THE COURT: Right.

5 MR. SPENCER: Because once it has been
6 paraded in front of the jury, then the prejudice
7 and bias is already there.

8 THE COURT: It is on the exhibit list.
9 They can mark it.

10 MR. WALBOURN: That is true, Your Honor.
11 I just don't see how it is redirect examination.

12 MR. DAUSE: Mr. Pafunda and I think
13 all the other defense attorneys went over the facts
14 of the shooting, Your Honor. I think it is well
15 within the scope of cross particularly --

16 MR. WALBOURN: (Interrupting) That was
17 all in the scope of direct examination, Your Honor,
18 that is where it all got started from.

19 MR. DAUSE: Particularly in view of
20 the questions I think asked of Mr. Pafunda as to
21 whether or not he told somebody else it was a rifle
22 or long gun as opposed to a pistol. I think it
23 particularly makes it appropriate in redirect.

24 THE COURT: I think it is rather
25 specific. I'm going to say this, and we're going to

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1 get off of it, gentlemen.

2 I think it is specific
3 in the cross examination. They ask whether Phillip
4 Dale Moore had a pistol -- Phillip Booth had a
5 pistol. Now, let's see.

6 MR. PAFUNDA: Your Honor, I think Mr.
7 Dause is saying this is Drexil Hall's pistol and
8 so forth.

9 MR. DAUSE: Yes, Your Honor. That
10 is what I attempted to say at least. That we would
11 be asking to see if the witness recognizes it as
12 the pistol that was used by Mr. Hall to fire at him.

13 MR. KIRKLAND: Your Honor, if the Court
14 please, as a practical matter, how could the
15 witness who was driving a truck, part of the time
16 slumped down by his own testimony at a distance
17 of twenty feet with lots of action and activity
18 identify that pistol as being the one that was used?
19 How could he possibly identify that pistol as
20 opposed to one of thousands of others.

21 THE COURT: When he brings that up
22 on redirect, you will be permitted additional
23 cross examination. I think that is a valid question.

24 MR. KIRKLAND: Your Honor, as Mr. Spencer
25 points out, once you wave a pistol around in front of

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1 the jury, I think the damage has been done. If he
2 says I don't know whether that is the pistol or
3 not, it appeared to be similar to that one, then
4 you haven't got it into the position to introduce
5 it, Your Honor.

6 THE COURT: Gentlemen, we don't know
7 what the witness is going to say. We are arguing
8 right now. We have had four attorneys here, two
9 over there, and we are arguing about something that
10 we don't know is going to happen.

11 MR. THOMAS: Your Honor, that is my
12 problem. He has been in here the whole time we
13 have been arguing.

14 MR. KIRKLAND: He overheard the entire
15 testimony of counsel, Your Honor.

16 THE COURT: Well, I don't think
17 anyone asked for him to be outside. Only for the
18 jury.

19 MR. KIRKLAND: I am sure it doesn't
20 make any difference. I'm sure he would tell the
21 truth. But as a physical fact, Your Honor, the
22 Court knows there is no way he can identify that gun
23 from thirty feet away. That gun is no different
24 from any other gun at a distance of thirty feet with
25 all the activity going on. If he had it in his hand--

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1 THE COURT: (Interrupting) Are you
2 saying he can't ask the question?

3 MR. KIRKLAND: I am saying that as a
4 physical fact, there is no way that this witness can
5 identify that particular gun. And in the observance
6 of that physical fact, I think it is improper to
7 wave a gun in front of the jury and ask this witness
8 if he can identify it.

9 THE COURT: Should I put you on the
10 witness stand and let you testify?

11 MR. KIRKLAND: I don't purport to do
12 that, Your Honor. I just think that they have
13 admitted that there is an insufficient basis from
14 which this witness could possibly identify that
15 particular gun.

16 THE COURT: Well, let that be noted.

17 MR. DAUSE: Your Honor, another matter
18 we would like --

19 THE COURT: (Interrupting) Now, I
20 have stated this before. Gentlemen, you know what
21 I said was incompetent evidence. They didn't object.
22 Now, a lot of times Court's feel compelled if no one
23 objects to something, to let it go on. I can see
24 sometime where the Government feels that if they
25 get something in, it is going to help their side of

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1 the case. And I can see the defense seeing something
2 the same thing, just view it the opposite thing.
3 They figure it is going to help them more than it
4 is going to help you. We are going to sit here
5 two months on stuff that is incompetent. This we
6 can't do, gentlemen. Let's stay within the Rules of
7 Evidence.

8 Now, I think in view of
9 the direct and the cross, it would be proper what
10 you have said. Do it. But as Mr. Kirkland says,
11 there is certainly a lot of falicies there that you
12 can get to the jury. This is you gentlemen's case.
13 Just let it go. Bring the jury back, and let's get
14 started.

15 MR. DAUSE: Just one other matter
16 unrelated to the gun, Your Honor.

17 THE COURT: All right.

18 MR. DAUSE: Under Rule 613B in the
19 Federal Rules of Evidence, we think it would be
20 appropriate to move admission of the statements that
21 Mr. Blanton gave to Detective Forsythe. He was
22 asked about this I think during the examination of
23 Mr. Spencer I believe.

24 THE COURT: All right. Let me ask
25 you this: Is that a prior inconsistent statement or

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1 prior consistent statement?

2 MR. DAUSE: Your Honor, Mr. Spencer
3 I believe was attempting to show that there was an
4 inconsistency in the number of people that the
5 witness observed as to his testimony on direct and
6 as to -- as to his statement he gave to Mr. Forsythe.
7 I think that was the purpose for which Mr. Spencer
8 used the statement.

9 THE COURT: If it is a prior -- we
10 are getting this thing and if this or it is that.
11 Well, what basis does the Government seek to
12 introduce it?

13 MR. DAUSE: Under 613 -- the jury is
14 coming back.

15 THE COURT: We can do that later.
16 There are different rules for prior inconsistent
17 statements or prior consistent statements. Some
18 differ all together. We are going to have to explore
19 the basis for all of them.

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

22 THE MARSHALL OF THE COURT: The jury is
23 present in the courtroom, Your Honor.

24 THE COURT: All right.

25 Madam Clerk?

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

3 THE COURT: Proceed.

4 MR. DAUSE: If the Marshall could get
5 the witness, Your Honor. Mr. Blanton is not in the
6 courtroom.

7 THE COURT: Get the witness.

8 MR. DAUSE: May I proceed, Your
9 Honor?

10 THE COURT: Proceed.

11
12 REDIRECT EXAMINATION

13 BY MR. DAUSE:

14 Q Mr. Blanton, Mr. Harwell
15 was asking questions about three tipples if I
16 understood your testimony correctly. And I think
17 his question to you was corporate names. My question
18 to you, Mr. Blanton, in dealing with the tipples,
19 did you deal with a corporate entity? Did you
20 deal with individual people?

21 A Well, if I want a job,
22 I go see Edgar if I was going to his tipple. And if
23 I was on a job around the tipple there, I would see
24 Arnold. I don't know what the corporation's name
25 was. And Nick was the boss on the other tipple.

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1 And that is the only thing I knowed about.

2 Q And those people were
3 the people you talked to?

4 A Yes, that is who I would
5 talk to.

6 Q All right. Thank you.
7 Now, I think the question was asked in cross
8 examination as to whether or not you saw a cap in
9 a truck seat on Tuesday where the shooting incident
10 occurred. And did you testify that you had seen a
11 cap in the truck seat?

12 A Yes, sir, I did see a
13 cap in the truck seat.

14 Q And whose truck was it?

15 A Jason Moore's.

16 Q Did you see that cap on
17 anybody's head during this shooting incident?

18 A No, I didn't.

19 Q What did you see on
20 Jason Moore's head during the shooting incident?

21 A I seen a boggan or
22 something similar to a toboggan on Jason's head.

23 Q Now, Mr. Blanton, you
24 testified that bullets struck the cab of your coal
25 truck on that Tuesday. Is that right?

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1 A. Yes, sir.

2 Q Would you describe to
3 the Court and the jury what kind of -- if they made
4 any holes, would you describe what kind of impact
5 that had or what effect that had on the cab of your
6 truck?

7 A. Well, they just -- some
8 of them went through the cab, and some of them
9 didn't go through the cab. Some of them just
10 dented up and just knocked the paint off of it and
11 stuff like that. And then some of them went --
12 tore places through the cab. Just different places
13 and things. Some of them you could tell real easily,
14 and some of them you would have to look real hard to
15 see. You just couldn't pass by and see some of them.
16 You had to look for them, and stuff. In fact I
17 guess most of them was found was found by somebody
18 else pointing them out to me. I didn't look at it
19 that close.

20 Q Now, can you tell the
21 Court and the jury -- can you describe the kind of
22 holes that were made from the configuration of the
23 holes and the shape of the hole. Were they clean
24 holes, ragged holes?

25 A. Oh, they was clean. You

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1 could tell the paint had just been knocked off and
2 everything. It was real shiny and bright where they
3 would go through and stuff. They was clean holes -
4 just been made.

5 Q I think further under
6 cross examination you testified on that morning of
7 the shooting, that you were driving passed what
8 you described as Edgar Jones' tippie, you saw
9 Phillip Booth shaking his hand at you?

10 A Yes. Phillip was one of
11 the men shaking his hand at me.

12 Q Were there other men
13 shaking their hands at you?

14 A Yes, just about all of
15 them was.

16 Q Can you recall anybody
17 specifically?

18 A Not right offhand I
19 couldn't. I don't know for sure. Right offhand, I
20 couldn't testify who all was there. I might sit
21 down and think about it and figure out who was
22 there.

23 Q Now, during Mr. Walbourn's
24 cross examination, I believe he asked you if you knew
25 a particular person who was sitting in the courtroom

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1 that you had not identified last Thursday when you
2 testified. Do you know that person?

3 A. Yes, I do.

4 Q. And what is his name?

5 A. He is a Moore. He is
6 Jason's brother.

7 Q. Which person are you
8 talking about?

9 A. The boy in the red shirt
10 there, the second -- right next to Edgar.

11 MR. DAUSE: I ask the record reflect
12 that he has identified the Defendant, Harold Moore,
13 Your Honor.

14 THE WITNESS: The reason I didn't
15 recognize him at the time, he was a slim fellow.

16 THE COURT: Who represents him?

17 MR. WALBOURN: I do. This is Harold
18 Moore, Your Honor.

19 THE COURT: May the record so reflect.

20 MR. WALBOURN: I have no objection for
21 the record.

22 THE COURT: Let the record so reflect.

23 Q. I also -- under Mr.
24 Walbourn's cross examination, you were asked about
25 Hermit Newsome; and I think your response to the

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1 question you said something about his employment.

2 Do you know how Hermit Newsome was employed in

3 February of '82?

4 A. He was the boss for
5 Phillip Booth - at one of his mines.

6 Q Do you know what mine
7 that was?

8 A. No, sir, I don't. I
9 just know it was up in Frasure Creek.

10 Q Do you know -- what do you
11 mean when you say boss? What does that term --

12 A. (Interrupting) Well, he
13 is the one that made all of these decisions how to
14 get the coal out and stuff. And I guess he had the
15 right to hire and fire.

16 Q Do you know who Phillip
17 Booth was mining for?

18 A. Edgar Jones.

19 Q And you were also asked
20 about -- excuse me. On Mr. Kirkland's examination,
21 he asked you about his clients. He asked you
22 generally what they were doing. I want to ask you
23 as to each of them. Teddy Kinney -- do you know how
24 he was employed in February of '82?

25 A. Yes, sir. He worked at

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1 German Stumbo's mines and things for German Stumbo.

2 Q Do you know who -- did
3 German Stumbo own the mine? Do you know?

4 A Edgar Jones owned the
5 coal. He was mining the coal for Edgar. His coal
6 went to Edgar's tippie.

7 Q How about Jason Moore?
8 Who was he working for at that time?

9 A He was hauling coal from
10 some of those mines or maybe all of them. There
11 was several mines. And he worked for Edgar Jones.

12 Q When you say all those
13 mines, whose mines are you referring to?

14 A Well, German had a mine.
15 German had one or two mines. I don't know exactly
16 how many. Phillip had one or two mines. Maybe more
17 than that. There was about seven mines or maybe
18 ten. I don't know exactly how many mines there was.
19 The way I understood they done, they just took one
20 end loader and went to mine to mine. And all of the
21 trucks went there. And they would load the coal
22 up and haul it all out. And when they cleaned that
23 mine up, they would go to the next.

24 Q Do you know who leased
25 the coal, who owned the coal at those mines?

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1 A Yeah. Edgar owned the
2 coal.
3 Q I see. Kenneth Rolland --
4 who was he working for at that time?
5 A He worked for Edgar
6 Jones.
7 Q Doing what?
8 A Hauling coal.
9 Q And Raymond Hall -- who
10 was he working for in February, 1982?
11 A He worked for Edgar Jones
12 hauling coal.
13 Q I think -- you didn't
14 directly answer this, but you kind of were hinting
15 at it in your answer before. German Stumbo -- who
16 did he work for at that time?
17 MR. HARWELL: If the Court please, we
18 are going to object. This is outside the scope
19 of proper redirect. This could have been brought
20 in when he first stood up to question the witness.
21 MR. DAUSE: Your Honor, I would
22 respond Mr. Kirkland specifically asked him these
23 questions.
24 THE COURT: All right. Overruled.
25 Let's move along, gentlemen.

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Q Who did German Stumbo
work for at that time?

A. He run mines for Edgar
Jones.

PLEASE
COTTON CONTENT

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1 Q Now, in your cross-
2 examination you have been asked about certain inter-
3 views and statements that you made to other people
4 and may have made to other people.

5 At any time in any inter-
6 views prior to your testimony today, have you been
7 asked in detail what happened on that Tuesday and
8 that Monday?

9 A Would you care to repeat
10 that question.

11 Q Certainly. Certainly,
12 Mr. Blanton.

13 You were asked on cross-
14 examination about an interview you had with Agent
15 McCallister, and I want to ask you specifically
16 as to that interview. Were you asked for detail,
17 and were you asked a number of questions in that
18 interview that you had been asked as a witness here
19 in Court?

20 A I still - - I still don't
21 understand your question.

22 Q I'll try to rephrase it,
23 Mr. Blanton. I appreciate your telling me that.

24 About how much time did you
25 recall that Agent McCallister took interviewing you?

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1 A Hour and a half, two
2 hours at the most.
3 Q How about Trooper Forsythe?
4 How long did you talk to him?
5 A I don't really know which
6 one is Trooper Forsythe.
7 They was a detective that
8 came up there in plain clothes, and then there was
9 a State Police in a car.
10 Q All right.
11 A I think Forsythe was the
12 one in the plain clothes. I don't know for sure.
13 Q All right, sir. Whatever
14 statement the policeman, if you recall when inter-
15 viewing you, whichever State Policeman that was, how
16 long did he take to interview you?
17 A At the most, thirty to
18 forty-five minutes.
19 Q Have you been asked more
20 questions in Court than you were asked during the
21 course of those interviews?
22 MR. PAFUNDA: Your Honor, I am going to
23 object. More questions by whom, everybody or Mr.
24 Dause?
25 Q Did I ask you more ques-

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1 tions in the course of this examination than you were
2 asked in those interviews?

3 A I'd say you have.

4 Q Now, I want to ask you
5 specifically. You were shown by defense counsel,
6 when they were questioning you, what purported to be
7 notes of interviews that you - - memorandums of
8 interviews, and in one case a statement that you
9 had given to people.

10 As to the memorandum of
11 interviews produced as a result of Agent McCallister's
12 interview, when was the first time that you saw that?

13 A I think you gave me a copy
14 of it just the other day. Sometime last week was
15 the first time I seen it.

16 Q And the words that were
17 on there, were they your words or Agent McCallister's
18 words?

19 A Well, I don't think they
20 are necessarily all in my words. There was some of
21 them that means the same thing, but worded different.

22 MR. DAUSE: Okay. Thank you. May
23 I have just a moment, Your Honor.

24 THE COURT: Yes, sir.

25 (Government's counsel conferring)

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1 MR. DAUSE: Your Honor, I would
2 request that the witness be shown a copy of the
3 statement that has not been previously marked, the
4 statement that was used on cross-examination, Your
5 Honor, and hand it to the Marshall.

6 I ask that the Court mark
7 this statement that has not been previously marked.
8 And, Madam Clerk, I apologize for not knowing what
9 number should go on it.

10 THE CLERK OF THE COURT: Your Honor,
11 this is a statement that has been previously marked
12 as Court Exhibit No. 3.

13 MR. DAUSE: Court Exhibit No. 3.
14 Thank you, Ma'am.

15 THE COURT: Are you requesting it be
16 marked as Government's Exhibit ?

17 MR. DAUSE: Government's Exhibit,
18 yes, Your Honor.

19 THE COURT: Well, do this. Just
20 remark Court's Exhibit No. 3 as Government's Exhibit.

21 THE CLERK OF THE COURT: The statement,
22 Your Honor, that was previously marked for identifi-
23 cation as Court Exhibit No. 3 has also been marked
24 for purposes of identification for trial exhibit of
25 the Government No. 38.

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1 (Defense counsel examining
2 document)

3 THE MARSHALL OF THE COURT: Your Honor,
4 this has been shown to all counsel.

5 MR. DAUSE: Your Honor, perhaps we
6 need to approach the Bench before I ask any ques-
7 tions.

8 THE COURT: No. Mr. Marshall, take
9 the Jury outside to the Jury Room.

10 You are under the not now
11 admonition.

12 (The Marshall complies)

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

15 REPORTER'S NOTE: The Jury
16 left the Courtroom and the
17 following proceedings
18 were conducted, outside
19 the presence of the Jury.

20 THE COURT: Okay.

21 MR. DAUSE: Does Your Honor wish me to
22 make this an avowal or just state my intentions?

23 THE COURT: What you are doing.

24 MR. DAUSE: Your Honor, I believe that
25 if this isn't admissible under 613-B, it is admiss-
ible under 801, D-1, prior statement of a witness,

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1 D-1-B.

2 THE COURT: A prior statement of a
3 witness may be introduced two ways. One, if it is
4 a prior inconsistent statement, or if it is a prior
5 consistent statement.

6 Please, what is the basis
7 of - - what is the basis of the ruling either way?

8 MR. DAUSE: Your Honor, 801-D 1-B is
9 consistent with his testimony and offered to rebut
10 an expression or implied charge against a recent
11 fabrication. I would offer it under that.

12 And as to the use Mr.
13 Spencer made of it attempting to show inconsistency,
14 I would think it is admissible under 613B.

15 THE COURT: How is Spencer trying to
16 show something inconsistent?

17 MR. DAUSE: Mr. Spencer was attempting
18 to, it seemed to me, Your Honor, to show that the
19 witness had stated different numbers of people were
20 present on the picket line at different times. That
21 is what it appeared to me to be the upshot of his
22 questions.

23 THE COURT: Let me see that statement.

24 MR. SELF: Your Honor, we are offer-
25 ing it as a prior consistent statement, as the Court

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1 has approved in U.S. versus Hamilton. When a
2 witness reads it to the Jury, the statement itself
3 is not marked or not introduced, but the contents can
4 be made to the Jury as a prior consistent statement.

5 MR. WALBOURN: Your Honor, consistent is
6 admissible only as to rebut implied or expressed
7 charge of fabrication.

8 I have never seen that
9 come about in anybody's questioning.

10 THE COURT: Well, I think when it is
11 the integrity of the witness, the fabrication would
12 be one of them. It is when the reputation of the
13 witness is placed in extreme doubt, then the prior
14 consistent statement may be shown.

15 MR. KEHRLI: Your Honor, defense counsel
16 repeatedly on cross-examination - - a number of
17 them, including Mr. Pafunda, and also Mr. Spencer
18 - - implied on cross-examination that the witness did
19 not tell the agent the same thing he has testified
20 here to today. That is the purpose.

21 MR. PAFUNDA: That is an understatement,
22 Your Honor. That is Detective Forsythe's statement,
23 Your Honor, and I never cross-examined this witness
24 about that statement, because I never saw it.

25 THE COURT: This is the statement of

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1 Forsythe. And what they did is proper, gentlemen.
2 They didn't offer this into evidence. They just --
3 they were cross-examining, and they asked leading,
4 "Didn't you tell Forsythe that there were more than
5 twenty-five or thirty?" And he said, "Yeah."
6 He said, "It is anywhere from twenty-five to forty."

7 MR. PAFUNDA: If it please the Court.
8 It is similar to the newspaper article. I can
9 cross-examine the witness on his oral statement to
10 the newspaper reporter, and I can cross-examine him
11 on his oral statement to a particular agent.

12 You don't have to use
13 a writing unless the writing itself is offered.

14 MR. DAUSE: Mr. Spencer used the
15 writing itself, Your Honor. He handed it and tender-
16 ed it to Mr. Blanton during the course of his ques-
17 tioning, and asked questions.

18 THE COURT: That was for refreshing
19 his recollection.

20 MR. DAUSE: Yes, Your Honor. That was
21 the use Mr. Spencer made of it. But he did specifi-
22 cally ask about this, and he specifically asked about
23 any context different numbers of people on the picket
24 line; that would be my position at least, Your Honor.

25 MR. THOMAS: I would object. I don't

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1 think it was timely given to us. For all we know,
2 they could have been holding this back so they could
3 bring it in here as a prior consistent statement.

4 And I think the fact they
5 gave it to us this morning should, in itself, be
6 enough to prevent them from getting it in.

7 THE COURT: I don't think it is proper,
8 gentlemen. I don't think the statement - - I don't
9 think the statement - - the basis of the statement
10 which is said is proper.

11 The question which was asked
12 to him was did he state to Detective Forsythe that
13 there was more - - and you had this which was mixed
14 up too- - how many pickets was there on one day, and
15 how many pickets were there on a subsequent day?

16 And this witness says - -
17 gave an approximate number, and that is an approx-
18 imate number, and that's different.

19 Now you are seeking to get
20 in the entire statement, which are other matters
21 other than - - it has nothing to do with the number.
22 The statement which you are trying to get in has
23 nothing to do with the number there.

24 MR. SELF: If it please the Court.

25 THE COURT: You get into the thing

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1 here where a fellow says, "Yeah, I made a prior
2 inconsistent statement." Then the admissibility of
3 it after he admits it.

4 MR. SELF: Under the hearsay rule,
5 specifically, the prior consistent statement is
6 a not hearsay statement, and it is admissible to
7 show when a witness's credibility has been attacked.

8 THE COURT: When the witness - - now,
9 not just been attacked.

10 MR. SELF: Yes, Your Honor.

11 THE COURT: No, sir.

12 MR. SELF: U.S. versus Hamilton made
13 that very clear in the situation that we had Virgil
14 Reed and the prior consistent statement of his, and
15 they tried - - the defense tried - -

16 THE COURT: (Interrupting) The Court
17 remembers that very well. Just not merely attack-
18 ed.

19 MR. SELF: Implied or expressed charge.

20 THE COURT: A witness's credibility
21 is placed in issue when he gets on the stand.

22 MR. SELF: Correct.

23 THE COURT: That does not automatically
24 make a prior consistent statement admissible right
25 there.

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There must be some - - some serious question as to the credibility of the witness before it becomes admissible.

MR. SELF: Well, they - - let me just say that they have attacked his motive, Your Honor.

They have charged him with - - they have expressly and implied - - inferred to the Jury that he has some motive for coming in here and testifying other than what he does; that his story is a recent fabrication, by the cross-examination of Mr. Kirkland and others, that he is making this whole story up. Even from their opening statements when they said something about his motor, the repairs done on it.

The statement goes to the
- - specifically to Drexil Hall, Your Honor. That
he fired at Mr. Blanton first.

THE COURT: Right.

MR. SELF: And it is offered under this rule by this witness, or we can bring Detective Forsythe in with the original of this and put it in through him as a nonhearsay statement offered to - - as a prior consistent statement.

THE COURT: Isn't Forsythe the one
that put this in?

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1 MR. SELF: Could possibly be, Your
2 Honor. All we wanted to do is if he had seen this
3 statement and if he signed it, Your Honor.
4 THE COURT: All right. Let him see the
5 statement.
6 MR. SELF: We will wait and preserve
7 it and put it in through Detective Forsythe, Your
8 Honor.
9 But we just merely want
10 to ask him -- have it marked for identification
11 at this point, and ask him if he recognizes it.
12 THE COURT: All right.
13 MR. PAFUNDA: Your Honor, Mr. Self's
14 remarks are very interesting. He alluded to Drexil
15 Hall, and I thought the original tenor of their
16 argument was Mr. Spencer's question about the number
17 of pickets.
18 MR. WALBOURN: Your Honor, we want the
19 original statement too. This is a typed statement
20 not signed by Mr. Blanton.
21 MR. SELF: Your Honor, we will move
22 to substitute the original at the time we have it.
23 We don't have the original in our possession at this
24 point. The State Police --
25 THE COURT: (Interrupting) Let this

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1 be shown to this witness, and let him be asked.
2 Has it been marked, Madam Clerk.

3 THE CLERK OF THE COURT: Yes, Your
4 Honor.

5 MR. WALBOURN: Your Honor, while the Jury
6 is out, and the Court always says to get it on the
7 record, I would object to any further reference to
8 this statement, either through this witness or
9 through Detective Forsythe.

10 This witness says, yes,
11 I gave the statement. Yeah, I probably told him
12 that, so it is not inconsistent with anything. It
13 is a hearsay statement when offered by Mr. Forsythe.

14 THE COURT: So, it is a prior consis-
15 tent statement when you get down to whether or not
16 it is admissible; because the credibility of the
17 witness is being attacked, which is something we have
18 got to pass somewhere else.

19 MR. WALBOURN: To rebut an implied charge
20 of fabrication, and in the Hamilton case, and since
21 I was the culprit of the questioning in that; that
22 is where I attempted to show that Mr. Reed had
23 subsequently fabricated testimony.

24 The Government said, "No,
25 we want to show that a long time ago he gave testi-

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1 mony consistent with what he is saying today."

2 THE COURT: We will argue that out
3 later, Mr. Walbourn.

4 Are we ready to have the
5 Jury brought back in?

6 MR. PAFUNDA: For the record, Your Honor,
7 I join in Mr. Walbourn's objection.

8 THE COURT: All right. All Defendants
9 join in Mr. Walbourn's objection.

10 MR. KIRKLAND: Your Honor, I am not sure
11 I want to join in this. I want the record to reflect
12 that I don't necessarily join in their motion to
13 keep it out.

14 THE COURT: Well, to the contrary, if
15 you do not, say you do not want to join in or that
16 you do want it the other way. It doesn't make any
17 difference.

18 MR. KIRKLAND: I do not at this point
19 want to join in their motion.

20 THE COURT: All right. I was doing
21 that for the convenience of counsel, and keeping them
22 from having to get up.

23 MR. KIRKLAND: Usually we would, Your
24 Honor, and maybe we disagree here. I am not sure
25 whether I agree or disagree and, therefore, I want

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1 to be taken out of the blanket of their motion.

2 THE COURT: You're out.

3 MR. KIRKLAND: Good.

4 MR. SPENCER: Your Honor, not to draw
5 this on, but I want this clear. Mr. Kirkland is
6 out of the objection. He is not receiving the
7 benefit unless he specifically objects; is that
8 correct?

9 THE COURT: Yes.

10 MR. SPENCER: All other counsel are
11 unless they specifically state otherwise; am I
12 correct?

13 THE COURT: Yes, sir.

14 MR. SPENCER: All right. Thank you.

15 THE COURT: All right. Let's get the
16 Jury back in, gentlemen.

17 (The Marshall complies)

18 THE MARSHALL OF THE COURT: The Jury is
19 back in the Courtroom, Your Honor.

20 THE COURT: Thank you.

21 Madam Clerk.

22 THE CLERK OF THE COURT: Yes, Your Honor.
23 The record may reflect that the Jury is back in the
24 Courtroom and that all Defendants and all counsel are
25 present.

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1 THE COURT: All right. You may proceed.

2 MR. DAUSE: Thank you, Your Honor.

3 REPORTER'S NOTE: At this point
4 the Jury returned to the
5 Courtroom and the following
6 was heard:

CONTINUING EXAMINATION

7 BY MR. DAUSE:

8 Q Mr. Blanton, have you
9 been handed what has been marked for identifica-
10 tion as Government's Exhibit No. 38?

11 A Yes, I have.

12 Q I would just ask you if
13 you have ever seen it - - that before?

14 A Yes, sir. I made this
15 statement at the top of Bill Hall Branch hill in the
16 State Police car.

17 Q Do you recall who you made
18 it to?

19 A There was a undercover
20 agent there in plain clothes, and the State Police
21 was there, I believe it was.

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

23 Your Honor, may the witness
24 be shown what has been marked as Defendant Edgar Jones
25 Exhibit No. 5.

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1 THE MARSHALL OF THE COURT: What exhibit
2 number was that?

3 MR. DAUSE: Five.

4 THE COURT: Five.

5 THE MARSHALL OF THE COURT: The Exhibit is
6 already up here.

7 Q Mr. Blanton, are you
8 looking at what has been marked as Defendant Edgar
9 Jones' Exhibit No. 5?

10 A Yes, I have.

11 Q Is that an aerial photo
12 that shows the tipples you previously testified about?

13 A Yes, it is.

14 Q Now, you testified there
15 are three tipples on there; is that correct?

16 A Yes, sir.

17 Q I think Mr. Harwell asked
18 you to draw in red a circle which indicated the
19 approximate location where you saw the group of
20 men gathered on Tuesday or the morning of the
21 shooting; is that correct?

22 A Yes, sir.

23 Q Now, you - - in your testi-
24 mony you said something about coming up a rise or
25 something, and they caught you by surprise to see

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1 them there.

2 Describe for the Court and
3 the Jury how you approached that tipple and if the
4 rise divides the tipple areas?

5 A Well, it - - just before
6 you get to Edgar's tipple, there is a small hill.
7 And you can't see up on top of the bank down at the
8 bottom of the hill. And I was coming up on the
9 hill there, and there was them men, and it sort of
10 surprised me.

11 I didn't make it all the
12 way to the top before I spotted them. I was kind of
13 watching to see if they was working there that day.
14 And I figured that if they was working, I wouldn't
15 have no trouble up there.

16 And I seen them on Edgar's
17 place there where he - - his trucks parked and waited
18 to dump, and they was gathered up there in a bunch
19 there.

20 Q Is that rise between what
21 you have called Edgar Jones' tipple and Arnold
22 Turner's tipple? Is it between those two tipples?

23 A No. I was talking about
24 the hill that you come up beside Edgar's tipple
25 before I seen them.

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1 Q All right.

2 A It is a small hill. It
3 ain't very big. And I was, you know, coming up it.
4 And as I come up, I seen them, because I got up level
5 with them, I guess you call it.

6 Q All right. Now, my question
7 is does that hill - - that hill in the road, is it
8 between the Turner tippie and the Jones tippie?

9 A No, sir. It is almost
10 beside of Edgar's tippie. It starts at the top of
11 Edgar's tippie.

12 Q Close to Mr. Jones' tippie?

13 A Yes, sir.

14 Q And that is where you saw
15 the men gathered?

16 A I saw them around the scale
17 house there above his tippie, and some of them stand-
18 ing on the scale house.

19 And I think there was a
20 vehicle, maybe two, parked on the scale house.

21 Q What did you see in the
22 way of men gathered at the other two tippies?

23 A There was nobody at the
24 other two tippies. Edgar - - not Edgar, but Nick
25 hadn't run his for a long time, and Arnold wasn't

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1 running at all that day.

2 Usually you see the
3 trucks there at Arnold's before you see anything,
4 because they are all there waiting to dump.

5 Q Now, up on the top of
6 Bill Hall Branch at the intersection of the coal
7 access road up to the Ray-Mac job site and public
8 road, where were the men who were gathered - - non-
9 Ray-Mac employees who were gathered at the bottom of
10 the hill? Were they standing on the access road
11 or on the public road?

12 A They was on the public
13 road mostly. Wasn't nobody on their road. It was
14 all - - all of the public road. And they had
15 vehicles parked on both sides of the road. And
16 then they was in between the vehicles and also stand-
17 ing by a fire or standing in a bunch there together.

18 Q Now, which side of the
19 access road were they on, the Mud Creek side or the
20 McDowell side?

21 A They are more to the Mud
22 Creek side.

23 MR. DAUSE: Your Honor, I'd ask the
24 witness be shown what has been previously marked
25 as Government's Exhibit D.

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THE CLERK OF THE COURT: Do you wish it
marked for trial identification at this time?

MR. DAUSE: Yes, please.

*** **

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COTTON CONTENT

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1 THE CLERK OF THE COURT: Government Exhibit
2 which was marked for identification as exhibit alpha-
3 betical letter D has now been marked for purposes of
4 trial as Government's Trial Exhibit No. 39.

5 MR. DAUSE: I think the record should
6 indicate that the Marshal had previous time to check
7 this gun to see that it was unloaded.

8 THE MARSHAL OF THE COURT: That's correct,
9 Your Honor.

10 THE COURT: All right.

11 THE MARSHAL OF THE COURT: Opposing counsel
12 have viewed the exhibit.

13 THE COURT: All right, sir.

14 (Reporter's Note: At that time the Marshal
15 handed the witness the exhibit.)

16 Q. Mr. Blanton, you have what's
17 been marked as Government's Trial Exhibit 39. Is
18 there a sticker on there that says No. 39?

19 A. Yes, there are.

20 Q. I'll just ask you, sir, if
21 you've ever seen it before?

22 A. I don't know whether I have
23 or not.

24 Q. Thank you. Was there a
25 time prior to the shooting incident on that Tuesday

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1 that you talked with anyone about hauling coal for
2 Edgar Jones?

3 A. Yes. One time, it may have
4 been around the first of December, we wasn't doing
5 too good up there.

6 THE COURT: Pardon. Hand the exhibit
7 back to the Clerk, Mr. Marshal--proposed exhibit.

8 (Reporter's Note: At this time the Marshal
9 handed the Clerk the exhibit.)

10 MR. HARWELL: May we approach the Bench
11 on this before he goes into this question?

12 THE COURT: Yes, sir.

13 The jury will be in recess
14 at this time. You're not to discuss the case among
15 yourselves. You're still under the not now admonition.
16 Do you understand that?

17 Any objections or correc-
18 tions to the form of the admonition?

19 ALL COUNSEL: No, sir.

20 THE COURT: Please excuse the jury
21 until one o'clock.

22 (Reporter's Note: The jury left the court-
23 room at 11:47 a.m.)

24 THE MARSHAL OF THE COURT: The jury is out
25 of the courtroom.

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1 THE COURT: Gentlemen, maybe it's my
2 cold, maybe I'm just a little more irritable today,
3 but it doesn't seem like we've accomplished one thing
4 this morning--

5 MR. ROWLAND: I agree.

6 MR. SPENCER: I'll agree, Your Honor.

7 THE COURT: --except just listen to
8 the attorneys talk. We're going to have to get off
9 of dead center, gentlemen, and get moving in this
10 thing.

11 Go ahead, Mr. Harwell.

12 MR. HARWELL: May the Court please,
13 though the witness--though Mr. Dause had not gotten
14 the entire question out of his mouth, the first part
15 of his question was, in substance, did you,
16 Mr. Witness, discuss trucking coal for Edgar Jones
17 before-- And I objected.

18 I don't know where he's
19 going with that question, but the first part of it
20 indicates it is not proper redirect and should have
21 come out initially. If it's something Edgar Jones
22 said we didn't get another Rule 16, and we object.

23 THE COURT: Let's see what Mr. Dause
24 says.

25 MR. DAUSE: Your Honor, it's not

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1 something which Mr. Jones said, that's first. I felt
2 like it was proper redirect given the questions on
3 cross as to Mr. Blanton's employment and his prior
4 connections prior to the Ray-Mac situation, is the
5 reason I thought it was proper redirect.

6 MR. HARWELL: Your Honor, maybe I won't
7 have an objection. I'm not sure where the question is
8 going.

9 THE COURT: Well, maybe the Court's got
10 an objection. If we still haven't got off of dead
11 center I'm still wondering if we'll be going on this
12 thing at the end of the day, gentlemen.

13 Let me get this.

14 Mr. Kirkland asked this witness if his-- I guess,
15 basically, if his clients weren't just good union
16 members. I think the thrust would be that they're
17 good union members and they were out there operating
18 on union business. Now, you come back and show that
19 they were working for--they were working for Edgar
20 Jones.

21 Now, are you going to ask
22 him if he didn't discuss this with Edgar Jones or
23 what?

24 MR. DAUSE: No, Your Honor. I do not
25 believe that my question was intended that way. I

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1 don't believe that would be the response I would get.

2 THE COURT: What were you asking and
3 what was the purpose of it?

4 MR. DAUSE: The purpose, Your Honor,
5 was to show the state of mind of other defendants;
6 those being the persons--

7 THE COURT: What other defendants?
8 The state of mind of what other defendants?

9 MR. DAUSE: Would you like for me to
10 make an avowal and ask him the questions?

11 THE COURT: Yes.

12 MR. WALBOURN: Your Honor, may we excuse
13 the witness, please?

14 MR. THOMAS: You can't if we make an
15 avowal.

16 THE COURT: We're making an avowal.

17 MR. WALBOURN: Oh, okay.

18 MR. DAUSE: It'll be brief.

19 THE COURT: Yes. Let's be specific.

20 MR. DAUSE: Yes, Your Honor.

21
22 AVOWAL EXAMINATION

23 BY MR. DAUSE:

24 Q. Mr. Blanton, did you have
25 a conversation with anyone concerning hauling coal

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1 for Edgar Jones?

2 A. Yes, sir. It was around--
3 I think it was around the first of December.

4 Q. Of what year, Mr. Blanton?

5 A. Of '82, I'd say it was.
6 It was before the shooting.

7 Q. Before the-- The year
8 before the shooting? December before the shooting?

9 A. Yeah. Right.

10 Q. Now, who was the conversa-
11 tion with?

12 A. It was with Carson Akers.

13 Q. All right. And what did
14 you ask Mr. Akers?

15 A. I asked him did he need
16 any more extra trucks, I'd like to come down there
17 and haul coal--haul some extra coal for him.

18 Q. What did he tell you?

19 A. He said no, they didn't
20 need nobody at that time.

21 Q. Did you have a conversation--
22 Did you relay this conversation to any of the defen-
23 dants?

24 A. Yeah. Later on I talked
25 to Jason and some more of the boys up there around

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1 the fire barrel.

2 Q. Jason who?

3 A. Jason Moore.

4 Q. All right, What, if any-
5 thing, did Mr. Moore say to you?

6 A. I was talking to him about
7 it. He said, no, don't--don't see Carson. He said
8 to go see Papa, he's the one that decides everything.

9 MR. DAUSE: That's my avowal, Your Honor.

10 MR. HARWELL: If the Court please, that's
11 objectionable. It is hearsay. Carson Akers is not a
12 coconspirator, defendant or anything else.

13 It's totally outside the
14 proper scope of redirect examination.

15 MR. DAUSE: I believe, Your Honor, that
16 the statement that I was interested in wasn't the
17 statement of Mr. Akers, it was the statement of
18 Mr. Moore. I think it's proper in showing the state
19 of mind of the coconspirators and the defendant in
20 this time period. Also, it goes to--to their union
21 involvement or nonunion involvement.

22 THE COURT: Well, you got it in the
23 record by avowal. The Court doesn't feel like it's
24 proper redirect.

25 MR. KIRKLAND: Your Honor, I--it's too

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1 late to object again, but I would note that this
2 pistol, which they were going to try to get this
3 witness who's still in the courtroom to identify, was
4 passed all the way around this table some twenty-five
5 or thirty feet each lawyer looking at it, the jury
6 watching each of us look at it; it was passed to this
7 witness. Then, just as we predicted, he said, I don't
8 know whether I've seen it or not.

9 My clients have been preju-
10 diced by flashing a pistol around here when there's
11 no way that this man could identify it. I contended
12 then it was physically impossible to identify this
13 particular pistol under these circumstances. They
14 persisted in introducing it. In effect it's the same
15 as introduced even though they knew this man could not
16 introduce it and he could not identify it.

17 MR. SELF: Your Honor, may the witness
18 be excused while we argue this?

19 THE COURT: Yes. You may be excused
20 until one o'clock.

21 THE WITNESS: Okay. Thank you, sir.

22 (Reporter's Note: At this time the witness
23 left the courtroom.)

24 THE COURT: Go ahead.

25 MR. KIRKLAND: I don't know what can be

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1 done at this point, Your Honor, to erase the prejudice
2 that occurs concurrently in the minds of these jurors
3 who have seen another object which was brought in
4 front of them for inflammatory purposes, which couldn't
5 be introduced. And the Government knew at the time
6 they put it out in front of them that it couldn't be
7 introduced.

8 I can't object after the
9 horse is out of the barn, after the bell has been
10 rung. I've been prejudiced. I think it's clearly
11 improper, and I think they knew it was improper up
12 front.

13 THE COURT: All right. Anyone else,
14 gentlemen? Have you got a response?

15 MR. SELF: Yes, YOur Honor. I think
16 it's perfectly clear. Mr. Blanton says he can't look
17 at the serial number on that and tell you it was the
18 same serial number that Drexil Hall had in his hand.
19 I think when asked he'll probably say that's the same
20 type of gun that I saw in Drexil Hall's hand.

21 Mr. Pafunda in his opening
22 statement made it clear to the ladies and gentlemen
23 of the jury that's the gun that Drexil Hall used was
24 given--turned over to Det. Forsythe. As Det. Forsythe
25 has already said, that's the gun that Drexil Hall gave

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