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, VAN B. PATTON

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TRANSCRIPT OF TRIAL

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BEFORE: THE HONORABLE G. WIX UNTHANK

DATE: FEBRUARY 8, 1984

VOLUME
TWENTY-EIGHT

DALE SOERGEL MOORE SHAW & ASSOCIATES
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WALKER BLACKBURN

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A P P E A R A N C E S

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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 convened at 9:04 A.M., E.S.T.

THE MARSHALL OF THE COURT: All rise. Hear Ye, Hear Ye. All those having business with the United States District Court, Eastern District of Kentucky, draw nigh and give attention, and you shall be heard. Silence is commanded. Court is now in session. God save the United States and this Honorable Court. Be seated and come to order, please.

THE COURT: All right. Let me do one thing, gentlemen, before we start. The counsel who are appointed counsel - - Mr. Thomas, Mr. Rowland, Mr. Spencer - - all those, will you gentlemen submit to me, before tomorrow afternoon, a letter concerning itemization of expenses which you incurred; that would be your room, transportation and meals.

If you do that then I can take that with me to Cincinnati and see if I can get some advance on your expenses. Do all of you understand that?

MR. HOLLON: Yes, Your Honor.

THE COURT: In other words, even if I couldn't get an advance on attorney's fees, I feel like, you know, at least I can get an advance

for - - pay for your expenses which have been incurred up to this point, something.

MR. HOLLON: That would be appreciated, Your Honor.

MR. SELF: Your Honor, we may ask about the Department of Justice travel vouchers. We have some for the - -

THE COURT: Pardon?

MR. SELF: We have some forms that the Department of Justice uses that shows on a daily basis your rooms and meals - -

THE COURT: (Interrupting) Would that take care of appointed - -

MR. SELF: I'm saying it may be a format for them to use.

THE COURT: Oh, you could use those forms to make your itemization. That would be fine.

MR. SELF: It may help doing it on a daily basis.

MR. ROWLAND: Are you willing to share those with us?

MR. SELF: Yes.

MR. ROWLAND: Thank you.

MR. THOMAS: Thank you, Your Honor.

MR. ROWLAND: Thank you, Your Honor.

MR. HOLLON: Thank you, Your Honor.

THE COURT: Before we start. Mr. Spencer, yesterday when you objected to me assisting the - -

MR. SPENCER: (Interrupting) I withdraw the objection, Your Honor.

THE COURT: I didn't take it personal. My comment coming back, "I have helped you"; that wasn't anything personal. I am not wanting to - -

From time to time I make comments, gentlemen and it might sound a way and it is not intended that way; and counsel makes comments too.

MR. SPENCER: You can't be thin skinned practicing law. People says a lot of things.

MR. SELF: Judge, at my request, the Jury has not been brought up yet. I would like to clarify for the record and with the Court's understanding the procedures to go through with Mr. McCallister with regard to what has been marked for identification as Government's Exhibit No. 45 in the transcript of the Grand Jury testimony of Mr. Jason Moore.

I propose to call Mr. McCallister to have him read questions - - certain

questions from that which pertain only to - -

THE COURT: Let me interrupt you here. The only purpose we have Mr. McCallister here for was for laying the foundation for those exhibits. I feel like we have accomplished that out of the hearing of the Jury.

I understand this. I understand you want the Jury to realize that there is a foundation for exhibits.

I don't feel comfortable, and I think we are getting into - - this was investigated by a Grand Jury, and I think we should stay away from that. What went on in the Grand Jury, unless it is something impeachable, has nothing to do with this trial.

Now, that is my feelings.

MR. SELF: The only questions I pose to have Mr. McCallister read at this point in time, Your Honor, are - - and the Court may want to look at Government's Exhibit No. 45 - - is question one, which is asking - - asking him what his name is, and questions seven thru eighteen, and questions twenty thru twenty-seven, which pertains specifically to what has previously been marked for identification purposes as Government's Exhibit No. 46, to show

these are the records of the Union - - these are the only records of the Union, and that they were produced pursuant to a subpoena duces tecum.

As to the contents of them, and as to writings on them, I am not asking for those portions to be read. This is just a limited portion of the Grand Jury testimony to show these are the records; that these are the only records, and that they don't have the original check stubs, Your Honor.

THE COURT: Yes, sir. I won't let that in just for showing that these are the only records.

I don't - - I mean, that is his statement that these are the only records.

MR. SELF: He is the custodian of the records, Your Honor.

THE COURT: Yes, sir. That's his statement that he is the custodian. And at this point, I am not - - I am not convinced that I should let that go to this Jury at this time.

MR. SELF: The reason that I think it is admissible, Your Honor, is it is a statement of the Defendant under oath. It does not implicate - - these portions do not implicate any other Defendant; does not name any other Defendant.

THE COURT: He might have been under oath, but none of these Defendants were present to cross-examine him under that oath.

MR. SELF: It doesn't matter, Your Honor. He is not culpating any other Defendant by his testimony. And under the rules it is an admissible statement by this Defendant.

We don't anticipate putting into -- the rest of it in that is not prudent.

THE COURT: At the appropriate time that is fine, but at this time I don't feel like it is proper.

MR. SELF: The only other reason is, Your Honor, we have produced some - - the bank has produced some copies of certain checks of the Union.

And as a Juror, I expect they are going to say, "Well, where is the original? We can't look at these. Where are the originals?"

And Mr. Moore states in his testimony that these are the - - "We don't have the originals. I don't have the originals."

THE COURT: I don't feel bad. And I would admonish the Jury that the Grand Jury proceeding isn't this trial. This is the trial.

If the United States

wants to do it that way showing that they issued a subpoena and that these were delivered and that they designated that Mr. McCallister was in possession of them; but that is as far as I am going now.

I am not going to permit into evidence he says these are the only Union records.

MR. SELF: At this point in time.

THE COURT: Yes, sir, at this point in time I am not going to do that.

MR. KIRKLAND: Your Honor, if the Court please. May I suggest that Mr. Self's stipulation of that obviates all of these difficulties. And that is we are willing to stipulate - - and it can be in the form of a written stipulation, or the Court can simply give it to the Jury - - that Jason Moore delivered to Agent McCallister these documents.

THE COURT: All right.

MR. KIRKLAND: And that those documents are, in fact, records of the Local. And that obviates any need to go into what the Grand Jury did or said, as I view it.

THE COURT: I feel that is better at this time to have it be the safe way.

MR. SELF: What about the Court ordering the following. Ask Mr. McCallister - - and lead

him, Your Honor. Was a subpoena issued to the custodian of the records of Local so and so and so and so asking for the production of these records; that Mr. Jason Moore produced these records to Mr. McCallister, and are these the records.

MR. KIRKLAND: I object, Your Honor. I objected to this sort of thing yesterday, and I have got a lot of authority, if the Court wants to hear it.

This is an improper procedure, and they are trying to compound the improper procedure.

I object to any mention of the Grand Jury. The Court mentioned yesterday that I made it sound ominous which, of course, I take issue with; but there is nothing more ominous sounding that this was a Grand Jury investigation when, in fact, it was nothing more than an investigation of the U.S. Attorney's office, and the ATF using the Grand Jury.

It sounds ominous to the Jury. There is no purpose in going into the Grand Jury proceeding before this Petit Jury and I object to it. And I have got tons of authority to support this objection.

It is an improper procedure. There is absolutely no authority where Agent McCallister is being an agent of the Grand Jury. There is no rule, and there is no statute that provides for it.

And they tried to use that to bootstrap this operation into something it was not and could not have been, and I object, Your Honor.

*** *** ***

THE COURT: All right. Let your objection be noted and be overruled. Now--

MR. SELF: I'll ask Mr. McCallister the following questions if I put him on the stand. I'll ask Mr. McCallister was there a subpoena issued to the-- Jason Moore, authorized custodian of records for UMWA Local 5967 requiring the production of financial records UMWA 5967 for the period of December 1, '81 to October 1, '82; including but not limited to all canceled checks, check registers, bank statements, invoices, receipts, bills, financial reports, et cetera, for said period of time.

And, did Mr. Moore, Jason Moore, produce records pursuant to that subpoena to you. Also, are these the only records that were produced.

I have not mentioned grand jury.

THE COURT: Jason Moore didn't turn anything over to Mr. McCallister.

MR. SELF: That's what Mr. Kirkland is trying to get me to stipulate to, Your Honor. I'm saying he turned them over to the grand jury and the grand jury turned them over to Mr. McCallister.

MR. KIRKLAND: Your Honor, we will

stipulate-- I'm willing to do it any reasonable way. We'll stipulate that these check stubs are, in fact, the official records of the local union.

THE COURT: All right.

MR. KIRKLAND: And that they have been produced to the Government, if you want to say it that way, as records of the local.

There is no question about that. We have been willing to stipulate that and, in fact, that's implicit in our pretrial stipulation.

THE COURT: All right. Now, the Court accepts this. These exhibits are union records which--which were produced pursuant to subpoena.

MR. KIRKLAND: Or at request.

THE COURT: Let's just say what a subpoena or request, either one. But now-- And they're now in substantially the same condition as they were at the time they were produced.

That takes care of that, gentlemen.

MR. KIRKLAND: And I ask that that be done by the Court giving that stipulation orally to the jury. There's no need for an agent to introduce it. We're introducing it by agreement, in effect, Your Honor.

THE COURT: All right. That'll be fine.

MR. SELF: Is the Court going to say who produced them?

MR. KIRKLAND: We'll stipulate that Jason Moore handed them over. He was the treasurer. He had them; he handed them over.

THE COURT: All right. Jason Moore, the treasurer-- He's treasurer?

MR. KIRKLAND: He was at the time, Your Honor.

THE COURT: Tresurer of local what?

MR. SELF: 5967.

THE COURT: 5967.

MR. KIRKLAND: They tell me the title is financial secretary, Your Honor.

THE COURT: What records is it he produced?

MR. KIRKLAND: Check stubs, Your Honor.

THE COURT: Check stubs. Anything else?

MR. SELF: That's all he produced, Your Honor.

THE COURT: All right.

MR. SELF: He said that's all he had.

THE COURT: Now, that is exhibit

what?

MR. SELF: What's previously been marked for identification as Government's Exhibit CC, and now has been marked for trial as Government's Exhibit No. 46.

THE COURT: Forty-six, all right. Gentlemen, here's-- I'm going to advise them again on the effect of a stipulation; the stipulation is where the parties agree that it is necessary to produce evidence. And that it's stipulated and agreed that Jason Moore, the financial secretary of Local 5967, upon request produced certain check stubs to the United States. They are now in substantially the same condition as they were at the time of delivery. And they are marked and finally admitted into evidence as Government's Trial Exhibit No. 46.

MR. SELF: On behalf of the United States, Your Honor, for the record we will object to the denial of us to get that in through the testimony and admission of Jason Moore.

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

Are we ready, gentlemen?

MR. PAFUNDA: No, Your Honor. There's one matter that has come up continually through this trial with regard to the Court's admonishments to the jury, and then the Court looks around and says are there any objections to the admonishments. It places a tremendous burden on defense counsel, at least myself, to stand here --

THE COURT: I don't know of any other way to do it.

MR. PAFUNDA: I don't either.

THE COURT: If I give an admonishment and you want me to change it you better trot up to the Bench and say, Judge, I'm objecting to that and I'm suggesting that you change it and modify it some other way.

MR. PAFUNDA: All right. Thank you.

THE COURT: Are we ready to bring the jury up?

MR. SELF: Yes, Your Honor.

THE COURT: All right. I assume in the absence of no objection or any statement you've waived, gentlemen.

MR. PAFUNDA: I have no objection to the stipulation, Your Honor.

MR. SELF: Let the record also reflect that I still intend at a later point to call the -- to put the statement of Jason Moore in through other means.

THE COURT: All right. Fine. Yes, sir, I understand your intentions.

MR. SELF: As I say, this may solve the problem by putting a short witness in.

MR. KIRKLAND: Your Honor, to the extent that that violates the disclosure prohibitions of Rule 6 I object in advance and move in limine that it not be done without a full Bench conference.

THE COURT: All right. If we're going to have that, gentlemen, we go right back to the first thing of letting the whole thing go in. We're not going to play dominoes in this thing.

If you can agree, fine. If you can't agree then we're going to do it the way the Court wants to do it.

MR. KIRKLAND: Well, I ask that we be heard on that, Your Honor. If he tells me what his procedure is and tells the Court --

THE COURT: No, I'm not going to spend

all day letting you gentlemen argue and hassle. We're going to do it or we're not going to do it.

(Reporter's Note: The jury entered the courtroom at 9:22 a.m.)

THE MARSHAL OF THE COURT: Your Honor, all members of the jury are present and in the courtroom.

THE COURT: All right. Ladies and gentlemen of the jury, I think you remember I--back in the beginning on voir dire I stated to you that there are several different ways of the Court receiving evidence. One would be by testimony of the witness, and the other would be--testimony of the witness in court, and the other being the deposition of a witness out of court. I guess possibly another means would be by a stipulation, and another one is judicial notice when the Court takes notice, which we'll advise you of in the event that we have a judicial notice.

The only thing which is significant at this time is what's called a stipulation. A stipulation is where the parties get together and just agree that if the witness were present--as to what a witness would testify. This is for the convenience of the Court and for the convenience of the parties and the convenience of the jury.

Now, it's stipulated

and agreed that Jason Moore, the financial secretary of Local 5967, upon request he produced to the United States certain check stubs, and that these check stubs are now in substantially the same condition as they were at the time they were delivered over to the United States. These check stubs are marked and finally admitted into evidence as Government's Trial Exhibit No. 46.

Now, do all of you understand the effect of the stipulation concerning the foundation of these exhibits?

All right. Are we ready to proceed?

MR. SELF: Yes, Your Honor.

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MR. KEHRLI: Your Honor, the United States calls Mr. Walker Blackburn.

THE MARSHALL OF THE COURT: Raise your right hand and be sworn.

WALKER BLACKBURN, called on behalf of the United States, having been first duly sworn, was examined and testified as follows:

THE MARSHALL OF THE COURT: Please give your name and address.

THE WITNESS: Walker Blackburn, Box 9, Drift, Kentucky, 41619.

MR. KEHRLI: May I proceed, Your Honor.

THE COURT: Yes, sir, please do.

DIRECT EXAMINATION

BY MR. KEHRLI:

Q. Good morning, Mr. Blackburn. My name is Randy Kehrli, and I am representing the United States in this matter. I will be asking you some questions this morning. And if at any time you can't hear the question or you don't understand the question, would you please stop me and ask me

to repeat it or ask me to explain the question to you. Would you do that for me?

A. Yes.

Q. All right. Also would you try and keep your voice up so the ladies and gentlemen of the jury of the Grand Jury can hear all of your testimony here this morning as well as --

THE COURT: (Interrupting) Mr. Kehrli. Pardon me. Just a moment. Mr. Self and Mr. Thomas, would you please approach the bench?

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

THE COURT: I have got this motion for examination.

MR. THOMAS: Yes.

THE COURT: Will he do that next week?

MR. THOMAS: Next week. But we have got a problem. He can't afford it. He hasn't got any money. They may have to arrest him and take him on back. I hate to see that.

THE COURT: Okay. What I am talking about, you know, we won't take him away from the trial. He has a right to be present.

MR. SELF: The only way they will examine him is if he is committed pursuant to Court Order. They will not take him as an outpatient.

THE COURT: That will have to be next week.

MR. THOMAS: Yes. I have no problem with that.

THE COURT: All right.

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

THE COURT: All right. Sorry for the interruption.

MR. KEHRLI: That is fine, Your Honor.

THE COURT: All right.

Q. Mr. Blackburn, as I was indicating to you, I would like for you to keep your voice up so the members of the petit jury and the members of the defense counsel and the Court can all hear your responses this morning.

A. Okay.

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

A. My name is Walker Blackburn.

Q. Mr. Blackburn, where do

you live?

A. I live at Drift, Kentucky.

Q. And what is your current occupation, sir?

A. I am a retired coal miner.

Q. Mr. Blackburn, are you a member of the United Mine Workers of America?

A. Yes, I am.

Q. How long have you been a member of the United Mine Workers of America?

A. I have been a member ever since back in the thirties. 1937 I would say.

Q. All right. Have you worked in the coal mines at any time?

A. I worked thirty-two years.

Q. Do you belong to any local of the United Mine Workers of America?

A. Yes.

Q. What local is that, sir?

A. 5967.

Q. And do you hold an office with that local?

A. Yes.

Q. What is that office?

A. Recording secretary.

Q. Would you tell the members of the Grand Jury what other offices that are in Local 5967 besides recording secretary?

A. Well, you have a president. Also a vice-president, a financial secretary, mine committees, safety committees, compact committees, labor committees, organize committees, and trustees.

Q. What is your responsibility or what do you do as recording secretary?

A. Well, my responsibility as the secretary of that local, I take all mail, I read all minutes, I take down all minutes, and do the transfer cards in the local.

Q. All right, sir. Would you explain to the members of the jury what you mean by taking down minutes?

A. Well, in taking and recording the minutes, you listen what they have got to say; and the main points of the meeting, why -- in what is said, you record it in the books. And that is the law for that local union.

Q. What meetings are you talking about, sir?

A. Each regular monthly

meeting.

Q. Does Local 5967 hold regular monthly meetings?

A. On the second of each month.

Q. How long has Local 5967 held regular monthly meetings on the second -- now, the second -- is that the second day -- the second day of each month, or which day?

A. The second Saturday of each month.

Q. All right. How long has Local 5967 held these regular monthly meetings?

A. Well, that has been going on ever since I have been an officer in that local. And I was an officer about five or six years. And I think it went on all the time. In each local, you have --

Q. (Interrupting) Are you still an officer of that local?

A. Yes, I am.

Q. And you said you have been an officer for five or six years?

A. I would say approximately five or six years.

Q. Have you been recording secretary throughout that time?

A. All the time.

Q. Now, you told the jury what you did when you took minutes. What other duties do you have, sir?

A. Well, we have the transfer -- your transfer book. That is taking care of the membership that comes in the local. If they come in by card, you record that card; and you send one strip back to the district, and one to the International, and one back to the secretary that wrote the card to start with. Then if a guy comes in and doesn't have a transfer card, he has to sign the check-off which the president will give the obligation. Then he has to pay initiation fees of two hundred dollars a month.

Q. Do you have any other duties other than taking minutes and keeping track of the transfers?

A. No, no other duties -- oh, yeah. I am a compact officer.

Q. All right. What is that, sir?

A. Well, that is a politic

thing for the United Mine Workers. I am an International officer. I go to Lexington and Frankfort when they have an election in the State. And we endorse the candidate. We screen them out, check them out, and see what kind of people they are before we take a vote on it. And if they are the right kind of people that will help our people, the working people, why we generally nominate them for that position.

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Q. So you are responsible for that as well?

A. Yes.

Q. All right. In your capacity as recording secretary, do you have or do you take any action with regard to expenditures or checks written by the Local?

A. No way.

Q. All right.

A. Except one thing. That is putting a seal on a check.

Q. Would you tell the Jury what you do when you do that?

A. Well, when you write the check, you have your president to sign that check. And also your financial secretary, the man that wrote the check to start with.

Before the check is cashed, me, the recording secretary, I put the Local seal on that check to be cashed.

Q. You do that on all checks written by the Local?

A. Well, I'm supposed to. But sometimes in the Local meetings, why you will go ahead - - the secretary will get you to sign three or

blanks maybe or four so that he can send his money back to the District which he takes in throughout-- throughout the period of time in the month. And his tax comes in different times of the month. So I just go ahead. They want me to put the seal on the check they fix it up later. Then they mail it in to the District or wherever it may go.

Q. So in that instance, when the money is going to the District, are you saying that you put the seal on prior to the check being filled out, being written?

A. Yes.

Q. But the seal goes on--

A. (Interrupting) The seal has to-- The bank has orders to not take any checks in without the seal on it.

Q. That is for all checks written by the local?

A. All checks and documents leaving that local.

Q. How long has that been the policy of that local to do that, Mr. Blackburn?

A. Well, it has always been that way.

Q. All right. As long as

you have been recording secretary?

A. Yes.

Q. Now, you-- Let me ask you this about expenditures before I move on. Do those expenditures ever appear in your minutes, your union minutes? You record those?

A. No, not the amount of money.

Q. All right. What do you record concerning expenditures or monies spent by the union?

A. Well, if it is a donation by the local or you help somebody in need, you record that. But as far as the dues, the other secretary takes care of that.

Q. All right. If there is a motion made at the meeting for the local to spend some money, and there is a vote taken on that motion, do you record that in your minutes?

A. That's right.

Q. All right. How often does that happen when there is a motion to approve an expenditure in your experience?

A. Well, it happens pretty well every meeting. When you have the bills to be paid

in the book, there has got to be a motion made and seconded by two of the members before that is recorded. Then you go ahead and the president -- and ask them if anybody has got any questions, want to debate on it or anything. And if there is not, why then the motion stands.

Q. Do you record every motion like that in your minutes?

A. Every motion.

Q. And that is part of your duties, isn't it?

A. That is my duty.

Q. All right. You are required to keep those minutes by law, are you not?

A. Right, I have to keep those minutes.

Q. Do you take minutes for every single regular monthly meeting?

A. Every one.

Q. All right. Are there any special meetings that the union holds other than regular meetings?

A. Well, sometimes you will have a special meeting if you ain't got as many as

seven members out. You can't hold a meeting without seven members. If you're short, and you don't have any meeting, then they will set it up maybe a special call meeting if something important comes up that has to be done.

Q. All right. Do you take minutes at those special meetings as well?

A. Yeah.

Q. And do those minutes appear in your Minute Book?

A. Yes.

Q. All right. Where is your Minute Book, by the way?

A. Well, the Court has the Minute Book.

Q. All right. Is that where all of these minutes that you have been talking about are kept?

A. Yes.

Q. And who has custody of that book? Before the Court has it, who had that book?

A. I did.

Q. All right. Has that book been in your custody all during the time when you

are recording secretary of Local 5967?

A. All the time. That book -- the only time -- it is on my desk there at the local hall. The book is laying there all the time. Now, I am right over top of that book. Nobody could have got ahold of that book no way.

Q. All right. Are you the only one that writes minutes in that book?

A. I am the only one that is eligible.

Q. All right. What do you mean by that; that is eligible?

A. Well, I am elected by the membership. And after I was elected, nobody was allowed to fool with that book.

Q. And all minutes of any meeting of the local, whether it is regular or special, are kept in that book. Is that correct?

A. Kept in that book.

MR. KEHRLI: Your Honor, if I could, I would like to have what has been marked for identification as Government Exhibit 6xV --

THE COURT: (Interrupting) 6x...

MR. KEHRLI: V as in victory.

THE COURT: Yes, sir.

MR. KEHRLI: Hand it to the witness, and have him examine that after defense counsel have been given an opportunity to look at it.

THE CLERK OF THE COURT: The Government Exhibit which was previously identified as 6xV has now been marked for purposes of trial as Government's Trial Exhibit No. 47.

THE COURT: Thank you.

MR. KEHRLI: While that is going on, Your Honor, I would also like to have what has been marked for identification -- well, Madam Clerk, I believe there is two 6xV. I believe the Minute Book is also marked for identification, at least according to my exhibit list.

THE CLERK OF THE COURT: The Minute Book, Mr. Kehrli, is marked 6xU.

MR. KEHRLI: I am sorry, Ma'am. I am misreading it. 6xU also marked as a Government Trial Exhibit.

THE CLERK OF THE COURT: The Government Exhibit which was previously identified by 6xU has been now marked for purposes of trial as Government Trial Exhibit No. 48.

MR. KEHRLI: Mr. Marshall, if I could, before you hand the witness 6xV, I would like to

be shown that exhibit, please.

Thank you.

THE MARSHALL OF THE COURT: Your Honor, these two exhibits have been shown to opposing counsel.

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

Q. Mr. Blackburn, I would like for you to examine those two exhibits, if you would, and could you tell the jury what they are.

A. Pardon?

Q. Would you tell the jury what those two exhibits are that you have just been handed.

THE COURT: Mr. Marshall, would you assist the witness and point out the identification numbers so that he may become familiar with them and refer to them for purposes of the record?

THE MARSHALL OF THE COURT: Yes, sir.

THE COURT: All right. Please continue, sir.

Q. All right. Let's start with what has been marked as Government's Exhibit No. 48, the larger book.

Would you tell the Jury what Government Exhibit No. 48 is?

A. Exhibit 48 is the minute book of the Local Union 5967.

Q. Is that your minute book?

A. That's my minute book.

Q. And the entries contained in that minute book were made by you?

A. Well, not all of them. But after I was elected, the minutes was put down by me.

Q. All right. And before you were elected, it was the recording secretary before you.

A. Yes.

Q. All right. And when were you elected again, sir?

A. I don't remember the exact time when I did take - - it's in this book here - - when I did take office the last time.

Q. All right. I am going to direct your attention - - well, first of all, is that the actual minute book that you maintained on behalf

of Local 5967?

A. Yes, sir.

Q. And this is in your custody prior to the time you turned it over to the Court; is that correct?

A. Yes.

Q. And these are the minutes that you are required to keep by law; is that correct?

A. That's right.

MR. KEHRLI: Your Honor, at this time, the United States moves into evidence Government's Exhibit 48.

MR. HOLLON: No objection, Your Honor.

THE COURT: All right. Being no objection, let that which was previously marked for identification as Government's Exhibit 6U is finally admitted into evidence as Government's Trial Exhibit No. 48.

Q. Mr. Blackburn, I would like to have you turn to page three hundred twenty-five of that book.

A. (The witness complies)

Q. Do you see that page, sir?

A. Yes.

Q. What is on that page?

A. Well, at the top I got the date.

Q. What date is that?

A. That is the second of - - the 2nd and 13th, '82.

Q. February 13th, 1982?

A. Yes.

Q. What date does that represent?

A. Well, February the 13th in '82.

Q. All right. Well, the fact that that date is on that page, what does that indicate?

A. Well, that date indicates that monthly meeting, when it started.

Q. The monthly meeting was held on February 13th, 1982?

A. Yes.

Q. All right. What is on the rest of that page, sir?

A. Well, on the rest of it, you have your local officers and your minutes for that period of time.

Q. All right. Are those the

minutes for the meeting that was held on February 13th, 1982?

A. Yes.

Q. Did you take those minutes?

A. I did.

Q. Is that your signature on the bottom of the page?

A. Yes, it is.

Q. All right. Can you tell from those minutes who was present at that meeting?

A. Yes.

Q. All right. Would you read to the Jury who was present at that meeting?

A. The president at that time was Teddy Kinney.

Q. All right, continue. Who else was present at that meeting?

A. Vice president was Jason Moore.

Q. Was he there?

A. Yes.

Q. All right. Was Mr. Kinney there?

A. Yes, sir.

Q. All right. Continue on.

Who else can you tell was there from those minutes?

A. The financial secretary was Lowell Hinkle.

Q. Was he there?

A. No.

Q. All right. Who else was there?

A. The recording secretary, Walker Blackburn.

Q. Were you there?

A. I were.

Q. All right. Who else was there, sir?

A. The doorkeeper, John Stumbo.

Q. Was he there?

A. Yes.

Q. Okay. Who else was there?

A. Mine committees was Rick Gayheart, Donald Martin and Mel M. Tackett.

Q. Were they there?

A. Yes.

Q. All right. Who else was there?

A. Safety committees were Drexil Hall, Teddy Kinney and John Stumbo.

Q. And were they all there?

A. Yes, they was.

Q. Who else was there, Mr. Blackburn?

A. The local committees was Jason Stumbo and John Stumbo and David Mullins.

Q. Is that Jason Moore or Jason Stumbo?

A. Jason Moore.

Q. All right. Jason Moore and John Stumbo; is that correct?

A. That's correct.

Q. Were they there?

A. Yes.

Q. All right. Who else was there, sir?

A. Comp Act committees was Walker Blackburn and Jason Moore, Teddy Kinney and Lowell Hinkle.

Q. All right. Were they all there?

A. No.

Q. Who was not?

A. Lowell Hinkle.

Q. All right. How can you tell that, sir, from - -

A. (Interrupting) Well, there is an "X" marked.

Q. Is that "X" - -

A. (Interrupting) That "X" represents absent. And a check represents the ones that was there.

Q. All right. Did you make those X's and checks?

A. I made that "X".

Q. All right. There is another entry there that indicates some people were there; who was that?

A. The organize committee, Willie Moore, Jason Moore and Drexil Hall.

Q. Were they all there?

A. Yes.

Q. Can you tell from those minutes if there were any other members there?

A. No. That was all except the membership.

Q. Okay. Could you tell from the minutes who from the membership was there?

A. Well, we don't have no record on the membership.

Q. All right. What's contained in the rest of those minutes on that page for the meeting of February 13th, 1982, Mr. Blackburn?

A. On February the 2nd - - February the 13th in '82, when the meeting started, the president opened the meeting, and prayer was led by the recording secretary, and the roll call of officers; and the correspondence was read by the recording secretary, and also the minutes.

New members-Tony Tackett, David Mullins, Danny Newsome, Avery Allen, all by checkoff.

Reports on mine committee-Rex Gayheart had a talk with the Labor Board. New business-Jason Moore made a motion, and seconded by Rex Gayheart for the membership turned down a ten dollar assessment on the working men.

Financial report at that time was twelve thousand two hundred forty dollars sixty-six cents.

Motion made and seconded to give the widows for the men who got killed - - got killed, two hundred dollars cash, a total of

fourteen hundred dollars, two hundred for each person, comes to fourteen hundred dollars.

Drexil Hall required - -

Q. Is that "Resigned"?

A. Drexil Hall resigned as vice president. And the president appointed by Jason Moore to finish his term. Motion was made to accept the minutes which was read.

The motion was made and seconded to close the meeting - - to close.

Recording secretary, Walker Blackburn, Box 9, Drift, Kentucky, 41619.

Q. All right. You were there at that meeting, were you not, Mr. Blackburn?

A. I had to be.

Q. All right. Do you recall any discussion of Ray-Mac Coal Company at that meeting?

A. At the time the meeting was going on, I don't remember no - - no Ray-Mac at all.

Q. Do you recall any discussion of Coal-Mac at that meeting?

A. After these minutes is taken down, when they start discussion, I am doing something else; and I can't - - I don't know what all happens

to go on.

Q. Do you take down any motion that made, if a motion is made?

A. If a motion is made and seconded, it is put on the book. But other than that, why - -

Q. But you are listening to what is going on so that you can take it down in the minutes; is that correct?

A. Yeah.

Q. All right. Any votes taken by the membership, do you record that in your minutes?

A. No. There wasn't no vote taken.

Q. All right. But if there was a vote taken, you would have recorded that?

A. If they would have voted - - if the membership would have voted, it would have been put in this book right here.

Q. Was there any strike vote taken at that meeting?

A. No.

Q. Was there any vote to set up a picket line taken at that meeting?

A. No.

Q. Was there any money approved for a strike fund at that meeting?

A. No, there wasn't.

Q. All right. Is it a fair statement to say that the only expenditure that was approved at that meeting was the two hundred dollars that you read to the Jury to be given to the widows of men, that were killed?

A. That's two hundred dollars for each widow.

Q. All right.

A. Which comes to fourteen hundred dollars to help them people out for their husbands that got killed over there in that mine.

Q. All right, sir. Was there any other expenditure other than that approved by the membership at that meeting?

A. No.

Q. You are familiar with the policies and procedures of Local 5967, are you not?

A. Yes.

Q. And as an officer of that Local, you are also familiar with the policies and procedures of the United Mine Workers Union; is that

correct?

A. Yes.

Q. All right. Can a Local Union set up a picket without approval from the International ?

A. According to the picket line, the picket line has to be authorized by the International Union or the District to be legal.

Q. Why do you say that, sir? How do you know that?

A. Well, I know that by the constitution of the United Mine Workers in the book.

MR. KEHRLI: It is in the book.

I would like to, if we could, Your Honor, show the witness what has been introduced into evidence as Government's Exhibit Nos. 12, 13 and 14.

THE COURT: All right.

Now, let's get this all down so the Jury understands this. He made a statement "To be legal". But this gentleman is giving an opinion. He reads the constitution, and he gives an opinion as to what is legal and what isn't legal.

When you are saying what is legal, you are saying what is the law. As you

understand, the Court tells you what the law is. Now, I want you to understand this gentleman is just giving you an opinion. Do all of you understand that?

All right.

MR. SELF: Your Honor, may I proceed.

THE COURT: Is there any objection or corrections to the Court's admonition, gentlemen.

MR. KEHRLI: None, Your Honor.

MR. HARWELL: (Shaking head negatively)

THE COURT: All right. Proceed.

MR. KEHRLI: Thank you.

Q. Mr. Blackburn, the constitution you mentioned, is that the constitution that you have there in front of you that has been marked as Government Trial Exhibit 12? Is that the one you are talking about?

A. That's 13.

Q. All right. And what is 13 then?

A. Exhibit 13, this is the constitution of District Thirty.

Q. So, you are talking - - are you speaking of the District Thirty constitution; is that correct?

A. That's correct.

Q. All right. Would you hold that up for the Jury, please.

A. (Witness complies)

Q. All right. Thank you.

And are there any other documents in front of you that - - that you were relying on in giving that opinion about a picket line?

A. Here is Exhibit No. 12, which is the constitution of the International Union.

Q. Now, how do you become - - how have you become - -

MR. PAFUNDA: (Interrupting) Your Honor, I would ask the Court to instruct the witness to answer the question whether he is relying on that document, as well as the District Thirty constitution, to give his opinion.

THE COURT: Well, - -

MR. PAFUNDA: (Interrupting) He is just showing them.

THE COURT: Well, proceed.

MR. KEHRLI: I'll ask him that question, Your Honor.

Q. Are you relying on the

International constitution as well ?

A. And also the District Thirty constitution.

Q. All right. So, both of them say that; is that correct?

A. They both - - they are supposed to correspond.

Q. All right. How do you become familiar with the requirements of those two documents or those constitutions?

A. Well, those constitution books was sent to us by either the International District to be distributed to the membership.

Each membership should have one of those - - each men.

Q. Does 5967 have one of those?

A. Yes.

Q. Do you have one of those?

A. I have got a box full.

Q. All right. Do all of the officers of Local 5967 see those documents?

A. Well, we have a whole box right in the Local Hall there. Anybody that wants them is eligible to get one.

Q. And they are passed out

to the membership?

A. They are passed out to the membership on that day - - on that meeting. And every meeting, why, they are sitting right there in the hallway there for the membership to pick up if they want one.

Q. All right. Are the other officers besides yourself expected to be familiar with those documents?

A. They should be.

Q. Why do you say that?

A. Well, to be an officer of the Union, you've got to know a little something. You have got to know the guidelines of these books here, or you couldn't do your job.

*** *** ***

Q. All right. Mr. Blackburn, are you aware of the International or the District authorizing any picket line by that local at Ray-Mac Coal Company?

A. If it had been authorized by District 30 or the International, I would have been the person to know about it.

Q. Did you know about it? Did you ever become aware of that?

A. No.

Q. Why would you be the person that would know about it?

A. Well, all correspondence and all mail comes directly to me.

Q. Did you receive any such mail authorizing the picket line?

A. No mail on the picket line.

Q. Are you aware of any strike that was authorized by the International or the District of Edgar Jones or any of his operators?

A. No.

Q. Would that correspondence have come through you if one -- if a strike of Mr. Jones or his operators had been authorized by the

International or the District?

A. It would.

Q. Were you ever asked to participate on a picket line of Ray-Mac Coal Company?

A. Never was asked.

Q. Were you ever told of a strike of Edgar Jones and his operators by anyone of Local 5967?

A. No, sir.

Q. Did you ever become aware of some trouble at the Ray-Mac Coal Company that took place?

A. Well, I heard about it. I read about it in the newspapers, and the people were talking. As far as really getting down to know it exact, I didn't know anything about it, because I wasn't there.

Q. Have you ever seen a picket line before conducted by the United Mine Workers?

A. Well, I been on a picket line back in the early sixties, but it was a picket line for a contract.

Q. All right.

A. When you are out of a contract, you have a picket line. And we don't work when we have a contract.

Q. You don't work unless you have a contract; is that correct?

A. That's right.

Q. Were there any operators on that picket line that you walked on in 1960 -- any coal operators picketing with you?

A. Well, they could have been, but I didn't see none of them.

Q. Is that the usual procedure for coal operators to be on the picket line with United Mine Workers?

A. No.

Q. In fact, that would be highly unusual if they were, wouldn't it?

A. That's right.

Q. It would be unusual for foremen to be on the picket line conducted by the United Mine Workers.

MR. HARWELL: Excuse me. Your Honor, I have sat here and not objected, because I didn't want to be rude; but, Judge, this witness is being led unbelievably, and we respectfully object to the

leading.

THE COURT: Don't lead the witness.

MR. KEHRLI: All right.

MR. HARWELL: Thank you.

Q. Mr. Blackburn, what is the normal procedure when the United Mine Workers establish a picket?

MR. PAFUNDA: Your Honor, I'm going to object. This witness says he has only been on one picket line, and that was back in the sixties; and one doesn't make normal procedure.

THE COURT: Overruled.

MR. KEHRLI: You can answer the question, sir.

THE WITNESS: Would you repeat that, please?

MR. KEHRLI: All right.

Q. Who usually walks a picket line conducted by the United Mine Workers of America?

A. Every member you can get on it.

Q. Do foremen usually walk on a picket line conducted by the United Mine Workers of America?

A. I never did see one on a picket line.

Q. And you have been in the union how long?

A. I've been in the union since 1937.

Q. Now, Mr. Blackburn, I would like you to look at the other exhibit that was handed to you by the Marshall. I believe that has been marked for -- introduced as Government's Exhibit No. 47.

Do you see that in front of you?

A. I see Exhibit No. 14 here, is United Mine Workers Model By-Laws.

THE COURT: Mr. Marshall, help him find Exhibit 47.

THE MARSHALL OF THE COURT: Yes, sir.

MR. KEHRLI: I am looking for the first single page that was handed to you with the Minute Book, No. 47.

(The Marshall complies)

A. This document right here is made up by me and the officers of that local, which is called The Guidelines for Relief Fund. And

the people in our local that gets out of work, and they can qualify under these guidelines here, and they will be helped through that local union on finance. That is what this is right here.

Q. Okay. Now, there is something on the bottom of that document as well. Would you look to the bottom half and tell the jury what that is?

A. On the bottom is By-Laws to Adopt By Local Union 5967.

Q. All right. And who made that up?

A. I made that up.

Q. You wrote that. Is that a true and accurate copy of the document you maintained as part of your records?

A. Yes.

Q. Is that a document that you -- that you are required to keep with the minutes?

A. Yes.

Q. Have you kept that document with the minutes?

A. Yes.

MR. KEHRLI: All right.

Your Honor, at this time the Government would move into evidence Government's Exhibit No. 47.

MR. PAFUNDA: Your Honor, I object. I don't know the time. Is he saying he wrote that particular document?

Q. Mr. Blackburn, did you write that document?

A. I didn't - - me and the officers fixed this up.

MR. PAFUNDA: The same question, when?

Q. When did you do that, sir?

A. Well, there is no date here on it, but it's been about two months ago, when we fixed this up. We had orders from the International Union to fix one in the District, so this is what we fixed up.

MR. PAFUNDA: I object and move that it is immaterial and irrelevant.

Q. This is two months ago, Mr. Blackburn?

A. Approximately. Like I say, I don't know the date.

MR. SELF: Your Honor, in that event, we will withdraw the exhibit.

THE COURT: What?

MR. SELF: We will withdraw our motion to offer the exhibit into evidence.

THE COURT: Well, let me see it just a moment.

Mr. Blackburn, may I see it, sir?

THE WITNESS: Yes.

(The Witness complies)

(The Court examining said exhibit)

THE COURT: All right. The motion to withdraw is sustained.

Q Mr. Blackburn, prior to the time that you and the other officers wrote that document, were there any other by - -

MR. PAFUNDA: (Interrupting) Your Honor, I would like to approach the Bench at this time.

THE COURT: All right.

REPORTER'S NOTE: At this point Mr. Self, Mr. Kehrli, Mr. Harwell, Mr. Pafunda and Mr. Spencer approached the Bench; whereupon the following proceedings were conducted.

MR. PAFUNDA: At this time, Your Honor, on behalf of Drexil Hall and Austin Bo Moore, I move for a mistrial.

This document apparently -- when I viewed it, it went around the defense table, and it had no date on it. It is apparent that the attorneys for the Government had talked to this witness.

The obvious question with regards to this document is when was this document drafted, and how it was drafted.

That document was introduced to prejudice this Jury and to indicate that the Local Union had established bylaws in February of 1982 when, in fact, they had not.

The comment that was obviously elicited from this witness, and the manner of the questioning was so as to raise by innuendo that the Local Union had particular bylaws with regard to the regulation of meetings and so on and so forth.

Further, that document was not presented at the pre-trial conference, if I recall correctly.

At this time I again move for a mistrial.

MR. KEHRLI: Your Honor, may I respond.

THE COURT: Yes, sir.

MR. KEHRLI: This document was presented at the pre-trial conference, as indicated by the

Clerk.

MR. PAFUNDA: I didn't see it, and a number of the people at the table didn't see it. If it was, excuse me. I may have overlooked it.

MR. SELF: Your Honor, in light of Mr. Pafunda's statement, I move this document into evidence.

MR. PAFUNDA: It is irrelevant and immaterial in this case, Your Honor.

THE COURT: Gentlemen, this was a document prepared after the time, approximately two months ago, and the Court doesn't feel that at this point that it is proper, and I will sustain the motion to withdraw it.

I will overrule any objections that counsel has made, because it isn't in evidence, and the Jury has been told not to consider anything which isn't evidence.

The attorney is stating a personal opinion as to whether the Jury will be prejudiced and what the implication is.

So, let it be overruled.

MR. SELF: Your Honor, let the record reflect this document was produced in December of 1983, and was brought here and maintained by the

Court since that time. So, it had to be prepared some time prior to December 15, 1983, which was - -

MR. PAFUNDA: I can only go by what the witness tells me.

THE COURT: The witness said approximately two months ago.

MR. SELF: I understand.

THE COURT: All right.

(End of Bench Conference)

*** *** ***

THE COURT: Please proceed, sir. Do you want the question which you previously asked read back to the witness?

MR. KEHRLI: No, Your Honor, I'll continue.

THE COURT: All right.

Q. Mr. Blackburn, as recording secretary of the local are you aware of any bylaws of Local 5967?

A. No.

Q. So if there were bylaws of Local 5967 would you be aware of them?

A. Yes.

Q. The week of February 15, 1982, were any bylaws of Local 5967 in existence?

A. No, sir.

MR. KEHRLI: Your Honor, if the Marshal would, I'd like to have the witness handed what's been introduced into evidence as Government's Exhibit--Trial Exhibit 44 and Government's Trial Exhibit 46.

THE COURT: All right, sir. Please hand to the witness forty-four and forty-six.

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

Q. Mr. Blackburn, would you

look at Government's Exhibit 44 first, please. Do you see that?

A. Yes.

Q. Can you tell what it is?

A. Well, the first one there is a check made to Drexil Hall for ninety-four dollars on the 2nd and 13th, '82.

Q. What's the second document?

A. And signed by Lowell Denny Hinkle and Teddy McKinney.

Q. Teddy McKinney or Teddy Kinney?

A. Ted. Ted McKinney.

Q. All right. What's the bottom check on that document?

A. The bottom check is an eighty-two dollar check made to First Guarantee Bank for cash; signed by Lowell Hinkle and Teddy McKinney.

Q. What's the amount of that check again? Would you look at the amount.

A. The amount is three hundred dollars.

Q. Three hundred or three thousand, sir?

A. Three thousand.

Q. All right, sir. Now, you testified-- Now, what account were those checks written on?

A. First Guarantee Bank.

Q. All right. Is that-- Is that a check written by the Local 5967?

A. Yes.

Q. Now, you testified earlier concerning the seal that you as financial secretary place on all checks written by Local 5967. Now, do you see that seal on those checks?

A. There's no seal.

Q. What's that seal look like?

A. Well, a seal is about like that (indicating). It's got a handle on it and it's got a tape on the bottom of it.

Q. All right. What's it look like when the seal itself is placed on a check? What's it look like on the check?

A. I'd say it looks like-- about the size of a silver dollar--

Q. All right.

A. --with the reading of

Local Union 5967 at Drift, Kentucky.

Q. If that seal had been placed on those checks, even though they're photocopies of the originals, would you be able to see that seal?

A. If it had been on these checks-- This is a photostatic copy here (indicating). I don't know if the seal had went through there or not. If it had been on it it should be--should show on there.

Q. All right. And that seal it-- when it's on the check it's ink, is it not?

A. Yes.

Q. The size of a silver dollar?

A. About the size of a silver dollar.

Q. And it's dark ink, isn't it?

A. Yes.

Q. All right. Do you-- Do you know anything about those checks, what they were written for?

A. This is the second time I've seen these two checks. Yesterday I--I saw them and today. That's the first time I've seen them.

Q. You never saw them before

that?

A. No.

Q. All right. Now, I would like you to-- What's the numbers on those checks, the check numbers on the top right-hand corner?

A. The first one is 1380.

Q. What's the second?

A. 1390.

MR. KEHRLI: All right. Mr. Marshal, would you assist the witness in finding in the Government's Exhibit 46 the check stubs marked 1380 and 1390.

THE COURT: Let me ask this. Mr. Blackburn, the Marshal is just assisting you. Would you rather do it yourself? If you'd rather do it yourself, fine.

THE WITNESS: No, it's all right with me, Judge.

THE COURT: All right. The jury understands this is just done to speed the matters up, that's all. It's not to be considered in this matter just one way or the other. It's just a procedural thing.

THE MARSHAL OF THE COURT: What numbers?

MR. KEHRLI: 1380, Mr. Marshal, and 1390.

(Reporter's Note: The Marshal complied.)

MR. KEHRLI: Mr. Marshal, would you take those two pages actually out of the clip. I believe they're loose.

(Reporter's Note: The Marshal complied.)

THE MARSHAL OF THE COURT: What was the second one?

MR. KEHRLI: 1390.

THE COURT: Take that out, too, Mr. Blackburn.

THE WITNESS: Yes, sir.

THE COURT: There you go.

MR. KEHRLI: Thank you, Mr. Marshal.

Q. Now, Mr. Blackburn, do you see the check stub numbered 1380 in front of you?

A. Yes.

Q. What does it say on that stub?

A. Well, the date is the 2nd and the 13th and '82; to Drexil Hall for committee work--

Q. All right.

A. --days paid.

Q. All right. Would you

look on the second stub, the one marked 1390. Do you see that in front of you?

A. The 2nd and 17th and '82. The check made--Kentucky Power Company; electric service.

Q. All right. Is that 1390 that you're looking at?

A. Yes.

MR. KEHRLI: Mr. Marshal, I believe the witness may have the wrong stub.

THE WITNESS: This is 1391, I believe.

Q. All right. I want 1390, sir. Do you see 1390?

A. 1390 is the 2nd and 17th and '82 to Teddy McKinney for strike fund.

MR. KEHRLI: All right. Thank you. Mr. Marshal, we're through with those exhibits if you'd like to move them back to the Clerk.

(Reporter's Note: The Marshal complied.)

Q. Mr. Blackburn, as financial secretary are you familiar with the local union strike fund?

A. Yeah.

Q. Would you tell the jury how that works.

A. Well, a strike fund is

set up by the membership and when a guy gets laid off or gets out of work and can't help hisself why he gets so much of that money.

Q. Are you-- And what's that money supposed to be for?

A. Well, that's money for food or whatever you need--might be.

Q. Is it for striking miners?

A. Striking miners.

Q. Does anyone have to approve expenditures from the strike fund?

A. Got to be a vote by the membership.

Q. Do you recall any vote by the membership approving that three thousand dollar expenditure to Teddy Kinney from the strike fund?

A. I don't recall, but if it was it would be in this book here (indicating).

Q. It would be in the minutes?

A. In the minutes.

Q. All right. Was it in the minutes of February 13, 1982 that you read to the jury?

A. No.

Q. All right. I'd like you to look at the pages before-- What's the page after that meeting of the minutes on February 13, 1982? Do you see the following page?

A. The 3rd and '82.

Q. And what does that 3-82 mean?

A. That's March.

Q. So that's the regular meeting in March of 1982?

A. The second Saturday.

Q. All right. Would you go to the page preceding that--the page before February 13, 1982 and tell the jury what date is on that page.

A. The 4th and 10th, '82.

Q. No, I'm talking about-- Not the page after the March meeting, I'm talking about the page before the February meeting.

A. All right.

Q. Page 324.

A. That's the 1st and the 7th of '82.

Q. All right. What does that indicate to you?

A. Well, that's January,

and the 7th day of January in the year of '82.

Q. So those are the minutes of the regular meeting held that date?

A. That was a regular meeting date.

Q. All right. I want you to-- Well, first of all, the week of February 15, which would be the week following the Saturday on the 13th of February, 1982, when you took minutes of the regular meeting, the next week, do you recall any special meeting of the local?

A. You're talking about February 15?

Q. Yes.

A. There's no minutes on it.

Q. Do you recall any special meeting that was held?

A. No.

Q. Did you attend any special meeting that was held?

A. If there'd been a special meeting--meeting I would have took the minutes.

Q. All right.

MR. PAFUNDA: Your Honor, I'd ask the

Court to instruct the witness to answer the question, whether he attended this special meeting.

Q. Did you attend any special meeting?

A. No.

Q. If there had been a special meeting would there be minutes in that book reflecting that meeting?

A. If the meeting had been at the local union hall I--I would attend the meeting and--and took the minutes.

Q. All right.

A. If it was somewhere else I wouldn't have been there.

Q. Why not?

A. Well, I just wouldn't.

Q. Would you have been told about it if it were somewhere else as an officer of the union?

A. Might not. Might not have been told.

Q. Were you told about any special meeting?

A. No.

Q. Would you know why you

wouldn't be told about a special meeting?

A. I didn't ask.

Q. Were you aware of any special meeting?

A. No.

MR. KEHRLI: Can I have one moment, Your Honor?

THE COURT: Yes, sir.

Q. Mr. Blackburn, is the strike fund a special account of the local?

A. Pardon me?

Q. Is the strike fund a special account of the local?

A. Yes, a special account.

Q. And is it kept separately?

A. That's right.

Q. Who can take funds out of that account?

A. The financial secretary of that local. He handles that strike money.

Q. Can he take it out on his own or does he have to have approval of the membership?

A. It's got to be signed by

the president and also a seal put on by the recording secretary.

Q. Does the membership have to approve the expenditure before it's withdrawn?

A. Yes.

Q. And this is at a regular monthly meeting?

A. Yes.

Q. Is three thousand dollars a large expenditure for Local 5967?

A. I'd say it would be.

Q. Would that be a-- Would three thousand dollars be large enough that you would record it in your minutes?

A. Yes.

Q. Mr. Blackburn, are you-- do you have any other occupation other than--than being a retired miner?

A. Well, I'm paid by the International Union.

Q. As what?

A. As a compact officer.

Q. All right. Are you involved with the church in any way?

A. Yes, I belong to the

church.

Q. Mr. Blackburn, do you know Edgar Jones?

A. Yes.

Q. Is he a member of the United Mine Workers of America Local 5967?

A. Yes..

Q. Do you-- Is he an officer of the union?

A. No.

Q. Do you know Jason Moore?

A. Yes.

Q. Back to Edgar Jones. Is he a-- Do you know what his occupation is?

A. I--I don't know his occupation.

Q. Do you know what he does?

A. Supposed to run a mine.

Q. All right. Do you know Jason Moore?

A. Yes.

Q. And does he hold an office with the local?

A. Not now.

Q. Did he as of February 15,

1982?

A. Yes.

Q. What office was that?

A. He was a--an organizer.

Q. Did he hold any union office itself?

A. Not on that date.

Q. All right. When you say he was an organizer, he was on the organizing committee?

A. Yes.

Q. As indicated in your book, is that correct?

A. That's right, it's in the book.

Q. Do you know German Stumbo?

A. Yes.

Q. Was Mr. Stumbo an officer-- Strike that.

First of all, do you know what Mr. Stumbo was doing the week of February 15, 1982 as an occupation?

A. No. No.

Q. Was he an officer of the local?

A. No.

Q. Do you know if he's a member of Local 5967?

A. No.

Q. He's not?

A. Not now, no.

Q. Was he in February of 1982?

A. He was a-- Mr. Stumbo was an officer. I don't know exactly whether it come under that time or not without looking in the book. But he was a--a local union officer, financial secretary, of that local at one time.

Q. All right. Do you know-- Was he an officer as of February 15, 1982?

A. No.

Q. Do you know Drexil Hall?

A. Yes.

Q. On February 15, 1982 did he hold any office with the union?

A. Organizer.

Q. Did he hold any other office?

A. No.

Q. Do you know Teddy Kinney?

A. Yes.

Q. As of February 15, 1982, was he an officer of Local 5967?

A. Yes.

Q. What office did he hold?

A. President.

Q. Do you know Benny Caudill?

A. No.

****

A. No.

Q. You don't know Benny Caudill?

A. Don't know Benny Caudill.

Q. All right. Do you know whether or not he was an officer of Local 5967 as of February 15th, 1982?

A. No.

Q. He was not?

A. He was not.

Q. Do you know a man by the name of Kenneth Rolland?

A. No.

Q. Do you know anybody named Postman?

A. I've heard the name but I don't know him.

Q. All right. Do you know whether -- as of February 15th, 1982 Kenneth Rolland or Postman was an officer of the Local 5967?

A. No.

Q. Was he a member of 5967?

A. Postman wasn't. I don't know about the other guy.

Q. All right. Postman was

not?

A. No.

Q. All right. Do you know Ranny Blankenship?

A. No.

Q. Do you know Eugene Tackett?

A. No.

Q. Do you know Harold Moore?

A. No.

Q. Do you know Hermit Newsome?

A. No.

Q. Do you know a man by the name of Tim Milan?

A. No, I don't.

Q. Do you know a man by the name of Mose Mead?

A. No.

Q. Do you know an individual by the name of Donahue Halbert?

A. Yes.

Q. As of February 15th, 1982 was he an officer of Local 5967?

A. No, he wasn't.

Q. Was he a member of Local 5967?

A. Yes.

Q. Do you know a man by the name of Austin "Bo" Moore?

A. Yes.

Q. As of February 15th, 1982 was Mr. Moore an officer of Local 5967?

A. No.

Q. Was he a member of Local 5967?

A. I don't -- I can't answer that. I don't -- I don't take care of that membership book. I don't know whether he was a member or not.

Q. Do you recall seeing him at the union meetings?

A. No.

Q. Do you know a man by the name of Pebo Gayheart?

A. No.

Q. Do you know anyone by the name of Linville Mosley?

A. Yes.

Q. All right. And as of

February 15th, 1982 was Mr. Mosley an officer of Local 5967?

A. No, wasn't an officer.

Q. Was Mr. Mosley a member of Local 5967?

A. I believe he might have been.

Q. All right.

A. I'm not sure.

Q. Do you recall seeing him at the meetings?

A. I've seen him at the meetings.

Q. All right. Do you know a man by the name of Raymond Hall?

A. No.

Q. Do you know a man by the name of Van Patton?

A. No.

Q. Do you know an individual by the name of Ed Moore -- Panhandle Moore?

A. Yeah.

Q. Was Panhandle Moore an officer of Local 5967 as of February 15th, 1982?

A. No.

Q. Was he a member of Local 5967?

A. No.

Q. Do you know a man by the name of Phillip Booth?

A. Yes.

Q. As of February 15th, 1982 was Mr. Booth an officer of Local 5967?

A. No.

Q. Was he a member of that local?

A. No.

Q. Do you know what Mr. Booth's occupation was at that time?

A. Coal operator.

Q. All right. Do you know Pearl Booth?

A. No.

Q. Do you know a man by the name of Phillip Dale Moore?

A. No.

Q. Do you know a man by the name of Jake Moore?

A. No.

Q. Do you know a man by the

name of Philman Caudill?

A. No, I don't.

Q. Do you know a man by the name of Basil Ray Moore?

A. No.

MR. KEHRLI: One moment, Your Honor.

THE COURT: Yes, sir.

Q. Mr. Blackburn, can coal operators, the owners of the mines, maintain memberships in Local 5967?

A. They ain't supposed to be.

Q. And why is that?

A. Well, the union is -- is strictly union, and the operator is an operator. It's two different things. You're either an operator or -- or a union. You can't be on both sides.

MR. KEHRLI: Your Honor, I have no further questions of the witness.

THE COURT: We'll be in recess until quarter till eleven. During the recess you're under the not now admonition. Do you understand?

MR. WALBOURN: Your Honor, during this recess I wanted to examine the book, and I don't know that I'll be able to do in that time. Could we perhaps have a few more minutes?

THE COURT: Yes, sir.

MR. WALBOURN: Fine.

THE COURT: What about ten till eleven?

MR. WALBOURN: I'll certainly try.

THE COURT: All right. We'll be in recess until ten till eleven. Any objections to the form of the admonition?

(Concerted Voices: None, Your Honor.)

THE COURT: All right. Please excuse the jury until ten minutes till eleven.

(Reporter's Note: The jury left the courtroom at 10:42 A.M.)

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THE MARSHALL OF THE COURT: The jury is out of the courtroom.

THE COURT: All right.

MR. SPENCER: Your Honor, if I may, I would like -- I didn't object at the time, but I would like to make a motion that the Government not refer to religion like he did there a few minutes ago. I believe that is a cheap tactic when they asked Mr. Blackburn that. And I believe under Rule 610, they are not allowed to do that. They just asked the question and passed on which is a very cheap trial tactic.

THE COURT: Let the objection be noted and overruled.

All right, please excuse the witness and the remainder of the courtroom until ten till.

THE MARSHALL OF THE COURT: Yes, sir. This Honorable Court will now be in recess until ten till.

(Reporter's Note: Whereupon the Court recessed at 10:37 A.M.)

(Reporter's Note: Following a break, the Court was resumed at 10:53 A.M.)

THE MARSHALL OF THE COURT: All rise, please. This Honorable Court is again in session. Be seated and come to order, please.

Your Honor, all attorneys, Defendants, and jurors are present.

THE COURT: Thank you.

MR. KEHRLI: Your Honor, may I ask two additional questions on direct?

THE COURT: Yes, sir. Mr. Blackburn, please come back to the stand.

Madam Clerk, would you reaffirm what the Marshall said?

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

THE COURT: Thank you, ma'am.

Q. Mr. Blackburn, that meeting on February the 13th, 1982, that you have the minutes of, do you recall what time of day that was on Saturday?

A. Nine o'clock in the morning.

Q. All right. Mr. Blackburn, you referred to an individual as Teddy McKinney. Can you look around the courtroom and identify Teddy Kinney for us, please? Do you see

him here?

MR. KIRKLAND: Your Honor, we will stipulate that that is Teddy Kinney, and that he has always had some trouble calling him McKinney instead of Kinney.

THE COURT: All right. The record may so reflect.

Q. That is the individual that you are speaking of?

A. Yes.

MR. KEHRLI: Thank you, Your Honor. I have no further direct.

THE COURT: All right. Which end? Do you want to start down there, Mr. Kirkland?

MR. HARWELL: May the Court please, we will start from this end with me deferring to Mr. Pafunda, Your Honor.

THE COURT: All right. That will be fine.

CROSS EXAMINATION

BY MR. PAFUNDA:

Q. Mr. Blackburn, my name is Bernard Pafunda, and I represent Drexil Hall and Austin Moore.

You are a retired miner, are you not, sir?

A. Yes.

Q. When did you last work in the mines, Walker?

A. March of '68.

Q. And you have been since the thirties, a member of Local 5967. Is that correct?

A. Yes.

Q. United Mine Workers of America?

A. Yes.

Q. How many retired miners are in that local union?

A. I would say around two hundred at the present.

Q. And to the best of your recollection, approximately how many men belong to Local 5967?

A. Approximately three hundred.

Q. And you mentioned in response to the Government's questions that your records and your Minute Books reflect that your

local union took a vote to give some widows some money?

A. Yes.

Q. All right, and what widows were those, Mr. Blackburn?

A. That was the widow I believe over at Mick Branch where they got blowed up in the mine, their husbands. And we made that donation up.

Q. And Mr. Blackburn, prior to February, 1982, you were aware of the fact, were you not, sir, that Ray-Mac, a strip mining company that was nonunion had come into Floyd County and started operations?

A. Yes.

Q. And you were aware of the fact that they were nonunion, were you not, sir?

A. Yes.

Q. And that caused some concern on your part as well as the other retired miners, does it not?

A. Yes.

Q. Because it is a fact, isn't it, that you would like to see all coal operations as union coal operations, would you not, sir?

A. Repeat that, please.

Q. You would like to see all coal companies be union coal companies, would you not, sir?

A. Yes.

Q. Because that helps you retired miners. Isn't that true?

A. Yes.

Q. As well as the active coal miners?

A. Right.

Q. Now, you indicated to this jury that in February of 1982 or right before that, also, that Drexil Hall was not vice-president of Local 5967. Is that what you were telling this jury, Mr. Blackburn?

A. I am a-telling this jury that Drexil was president in January, but not in February.

Q. All right. With regard to that, you have a regular scheduled meeting on the second Saturday of every month, do you not, sir?

A. That's right.

Q. And if an individual is an officer at a regular scheduled meeting and doesn't

resign at that one, he still remains in that position until the next meeting. Correct?

A. Right.

Q. If you will, sir, take a look at that Minute Book and the minutes of the January 7th, 1982 meeting. I don't know what page that is on. I believe it is the page right before 325.

THE COURT: Do you want the Marshall to assist him?

Q. Do you need assistance, Mr. Blackburn?

A. No, I have it here.

THE COURT: Okay. Fine. Go ahead.

Q. All right. Does that page list the officers of Local 5967 United Mine Workers of America?

A. President, Teddy McKinney. Vice-President, Drexil Hall.

Q. All right.

A. Financial Secretary, Lowell Hinkle. Recording Secretary, Walker Blackburn. Doorkeeper, John Stumbo. Mine Committee, Rex Gayheart, Donald Martin, L.M. Tackett. Safety Committee, Drexil Hall and Teddy McKinney and John

Stumbo.

Q. So Drexil Hall held at least two positions in that local union, did he not, sir? He was a member of the Safety Committee, and he was also the Vice-President in January of 1982?

A. Right.

Q. And there is nothing in that January, 1982 meeting where Drexil Hall resigned that position, is there, sir?

A. No.

Q. And you didn't have another regular scheduled meeting in January of 1982, did you, sir?

A. No.

Q. And you didn't have a special called meeting in January of 1982, did you, sir?

A. No.

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Q. All right. If you will, sir, turn to the page of your March, 1982 regularly scheduled meeting. And who does it indicate was vice president of Local 5967?

A. Vice president?

Q. Yes, sir.

A. Vice president in March was Drexil Hall.

Q. All right. So Drexil Hall was vice president in January, and he was vice president in March, was he not?

A. That's right.

Q. And you knew, did you not, sir, that it wasn't until approximately February 17, 1982, that Drexil temporarily resigned that position? You knew that, didn't you, Mr. Blackburn?

A. Yeah, I knew he resigned.

Q. And you knew it was after that regularly scheduled meeting of February 13, 1982, did you not, sir?

A. Yeah, he stepped down.

Q. But it was after that meeting of February 13, 1982, was it not?

A. Yes.

Q. And you knew that, did

you not?

A. Yeah.

Q. So you didn't mean to tell this jury that Drexil Hall was not vice president, did you?

A. You are talking about in March. Right?

Q. I'm talking in February, Mr. Blackburn.

A. I didn't tell the jury that he was vice president in February.

Q. He was vice president?

A. He was not.

Q. On February 13, 1982, Drexil Hall was vice president, was he not?

A. No.

Q. You are saying no because that book says no. Right?

A. Well, this book is what I have to go by. It is supposed to be right.

Q. You attended that February 13, 1982 meeting did you not, sir?

A. Yes.

Q. It was held at nine o'clock in the morning, was it not?

A. Yes.

Q. And your function is to take down the minutes?

A. Yes.

Q. Now, as you take down those minutes, you don't write every word that is said, do you?

A. No.

Q. You just do like a little summary of what goes on, don't you?

A. The main points.

Q. All right. Now, you told the jury about two checks, one of those checks being for $94 and some odd cents made out to Drexil Hall. Right?

A. Right.

Q. And that check was made out for committee work, was it not?

A. I believe it was.

Q. And when a member of a local union performs committee work such as Drexil Hall did and misses a shift work, he presents that at the next regularly scheduled meeting, and he is reimbursed for his pay, is he not?

A. That is the way it is

supposed to be.

Q. That is the way it was, wasn't it?

A. Right.

Q. And that is the way it was in the case of Drexil Hall. Correct?

A. Yes, sir.

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Q. So that was a proper check to Drexil Hall. Correct?

A. Right.

Q. For a legitimate expenditure to Drexil Hall. Correct?

A. (Witness nodding head in the affirmative.)

Q. Your answer?

A. Right.

Q. All right. Now, who opens up that meeting, Mr. Blackburn?

A. The president called it to order.

Q. And that is what happened on February 13th, 1982, on Saturday morning, was it not?

A. Yes.

Q. And after the president called it to order, you say the prayer, do you not?

A. That's right.

Q. And then the business of the union is broughtup. Is that right?

A. Yes.

Q. And then that business is discussed. Correct?

A. Yes.

Q. And then the best you can to your ability, you put down the minutes of that meeting. Is that correct?

A. That's right.

Q. And then the meeting is closed. Is that right?

A. Yes.

Q. And that happened on February 13th, 1982, did it not?

A. Yes.

Q. And then after that meeting of February 13th, 1982 was closed, that local union took up more business, did it not?

A. Well, if it took up more business, the meeting wouldn't have been closed.

Q. All right, on the morning of February 13th, 1982, there was a motion made to go out and strike at Ray-Mac, was there not?

A. Well, if it was, I didn't put it in the book and I didn't hear it. Of course, after meetings are over, they all get in a squabble; and they get back in a corner, and they all talk this and that, something I don't know what they are doing or what they are even saying.

Q. Okay. So there was a vote taken, was there not, Mr. Blackburn; and you were present?

A. Well --

Q. (Interrupting) You are just saying that it is not in that book. Right?

THE COURT: Let him answer the question.

A. Well, it could have been taken. But I won't say it wasn't taken, and I won't say it was. But I don't have it in the book, and it should be in the book if it is taken.

Q. And isn't it true that it is the custom and practice at your local union when strike votes are taken or votes to picket that those votes are not recorded in that book?

A. That is true. Anything concerning a strike vote or a picket line or anything that would contradict the local union is not recorded in this book.

Q. All right. And that is what happened on the morning of February 13th, 1982, isn't it?

A. That's right.

MR. PAFUNDA: Thank you, Mr. Blackburn.

MR. THOMAS: Your Honor, I have a few questions. I would like to approach the Bench first.

THE COURT: Certainly.

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

THE COURT: Go ahead.

MR. THOMAS: Your Honor, at this time I move for mistrial on the basis of that exhibit which the Government tried to introduce which is purported to be the by-laws of this local union. And Mr. Blackburn has recognized it as being manufactured or written down some two months ago around the pretrial time for grounds as stated. The Government should have been aware of this or was aware. And this document was clearly beyond the Enmons Act and is not relevant to this case because the date was partially missing. And it was their duty to diligently investigate what the date was and determine if indeed it is admissible. They have in effect attempted to slap down the defense with an irrelevant and inadmissible document. And I think, although I want to cross examine him on something entirely different, I would like to reserve

an avowal so that I can determine who had him write that down, who was with him, and under what orders he had.

And I would like to reserve that for the end of cross examination when the jury has gone to lunch.

THE COURT: Well, let your motion be noted and overruled. And insofar as reserving cross examination, the only thing the Court can perceive at this time is that you are wanting to go into a purpose for preparation of a document which has not been admitted into evidence. And it was tendered. It was marked. And it was withdrawn by them. And I can't even understand now if the purpose for this document was drawn up is relevant to this matter. So I am overruling a motion for leave to cross examine him on the purpose until I can be convinced that it would be relevant or helpful to this matter.

****

MR. THOMAS: Okay. Note my objection, Your Honor, on the basis that it was brought in front of the jury, and they did ask questions concerning the constitution by-laws and whether it was legal and whether it was an unauthorized strike. And that is going to purportedly say all those people abided by that at that time.

THE COURT: Right. And this jury has been admonished that they are not to consider anything as evidence until it is finally admitted. And following the logic which you established is that this jury would be prejudiced by anything which the government puts up there which wasn't finally admitted into evidence.

MR. THOMAS: After everyone has finished, may I question him.

THE COURT: Yes, sir.

MR. THOMAS: Okay.

THE COURT: You or anyone else can question the gentleman.

MR. THOMAS: Okay. Thank you.

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

THE COURT: You may proceed.

MR. THOMAS: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. THOMAS:

Q. Mr. Blackburn, my name is David Thomas. I represent Eugene Tackett.

Mr. Blackburn, are you familiar with the union hall 5967 located in McDowell, Kentucky?

A. Yes.

Q. And how are you familiar with that, sir?

A. Well, on the second Saturday of each month, I am always there at the meeting.

Q. And you have been going there one time a month for how many years?

A. Ever since '74.

MR. THOMAS: Okay. Your Honor, at this time I would ask that the Marshall be allowed to take this to the Clerk and mark it for identification. It has not been previously marked, and I would like it marked as Exhibit 1 for identification of Eugene Tackett.

THE CLERK OF THE COURT: Your Honor, the photograph that has been identified as NPM Defendant Tackett Number 1 now is marked for

purposes of trial as Defendant Tackett Trial Exhibit No. 1.

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THE MARSHALL OF THE COURT: Your Honor, counsel for the United States has examined the Exhibit.

THE COURT: Has the other witnesses - - I'm sorry. I mean, has the other Defendants' counsel.

THE MARSHALL OF THE COURT: Yes, Your Honor. All other counsel, also. It's being handed to the witness.

THE COURT: Thank you, sir.

(Witness examining said exhibit)

Q. Mr. Blackburn, do you recognize that photograph?

A. Yes.

Q. And what do you recognize it to be?

A. This is the Local Union Hall of 5967 of McDowell, Kentucky.

Q. All right. Is that the way it appears today and the way it appeared two years ago?

A. Well, we did a lot of work on the building.

Q. What changes have been made, Mr. Blackburn?

A. Well, on the inside of the building it was all fixed. A new ceiling was put in, and new doors, new windows.

Q. All right. This represents the outside; isn't that right?

A. That is the outside, the front.

Q. What changes have you made on the outside since February, 1982?

A. Well, the windows was painted.

Q. The fringe of the windows?

A. Yes.

Q. Any other changes?

A. No, not as I recall.

Q. Is that pretty much the way it was back then in 1982, February, other than the painting on the windows?

A. Yes.

MR. THOMAS: Your Honor, at this time I would move for this introduction as Eugene Tackett's Exhibit No. 1.

MR. KEHRLI: No objection.

THE COURT: All right. There being no objection, let that which has been marked as Tackett

Trial Exhibit No. 1 finally be admitted into evidence as Tackett's Trial Exhibit 1.

MR. THOMAS: Thank you, Your Honor.

Q. Mr. Blackburn, there are two doors on that picture; is that right?

A. Yes, sir.

Q. And what - - when you go in that left door, what - - what area is that? What is it used for?

A. That left door and that room there is used for supplies.

Q. Okay. What about the right door?

A. The right door is where you go in. That's the entrance.

Q. How many people can go in and fit inside the Union Hall in McDowell?

A. I'd say a couple hundred.

Q. Okay. About how big is that Union Hall?

A. I would say about twenty by thirty, approximate.

Q. Twenty feet by thirty feet?

A. Yeah.

Q. And you've seen a

couple hundred people in it before?

A. No, I haven't seen a couple hundred in it, but I'd say it will hold a couple hundred.

MR. THOMAS: All right. Thank you very much, Mr. Blackburn, I appreciate it.

THE COURT: All right. Next.

MR. ROWLAND: Just one second, Your Honor.

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. WALBOURN:

Q. Mr. Blackburn, my name is E. J. Walbourn, and I would like to ask you a few questions.

The meetings you hold on the second Saturday of each month, are there always the same number of people there, or are there some months a lot of people and other months not too many people?

A. Some months you have more than others.

Q. Now, Mr. Kehrli, the gentleman for the United States that was asking you some questions, read off a bunch of names and asked you

if you knew them or didn't know them.

I would ask Benny Caudill to stand up.

(Mr. Caudill complies)

Q. Mr. Blackburn, do you know this gentleman?

A. Well, not by name, but I know him when I see him on the road. But as far as - - I don't know his name.

Q. Okay. Do you know him to be a member of your Local up there?

A. I don't know that.

Q. All right, sir.

Mr. Blackburn, would you turn to page 288 in that minute book.

A. (The Witness complies)

Q. Sir, I would ask you on that page to look where there is a listing of new members; can you do that for me, please?

A. New members.

Q. Yes. Have you found that, sir?

A. Yeah. I found new members.

Q. All right. Would you read the names there, please?

A. Harold D. Moore, Jessie Jones, Robert Darrell Stanley, Gray D. Johnson, Cleo Tackett, all by checkoff.

Q. All right, sir. And what does that mean, "all by checkoff"?

A. Well, by "checkoff", that's the people that had to pay the initiation. They are new men.

You have either got to pay a checkoff or bring a transfer card from another Local Union to get in.

Q. Okay.

Sir, do those records indicate then at that time - - and what is the date of that meeting, please?

A. That is the 5th and the 12th of '79.

Q. All right. At that meeting, those men became members of the meeting; is that right?

A. That's right.

Q. All right.

Now, the first gentleman on there was a man named Harold D. Moore; is that correct?

A. Yes.

Q. Do you know who Mr. Moore is?

A. Well, I might meet him on the street. I wouldn't know his name.

Q. All right. Are there local members up there that you know their name but not their face, and others that you know their face but not their name?

A. That's right.

Q. Because there's quite a few members in that local up there.

A. See, the only people that I know - - I don't keep a membership list.

The only way I know is on election time, when you get a print up from the International Union.

But if they come in by transfer card, and it is accepted, or by checkoff, they are recorded here on the book.

And when you go through that many men all the time, you can't remember names.

Q. Okay. Looking out over these group of men over there, even though you don't know some of their names, do you kind of recognize

most of the faces?

A. Well, I know some of them guys by name like Jason Moore, Ted Kinney, German Stumbo, and Mosley and Edgar Jones. And I would say that I know most of them.

Q. Okay. Most of these are men that just work up there and live around you; is that correct?

A. Yeah.

Q. And a gentleman such as Mr. Caudill, who stood up, you didn't know his name, but you knew his face?

A. That's right.

MR. WALBOURN: All right. Thank you very much, sir.

THE COURT: Mr. Spencer.

MR. SPENCER: I have no questions.

THE COURT: Mr. Adams.

MR. ADAMS: No questions.

MR. BRANSEN: I do, Your Honor.

CROSS-EXAMINATION

BY MR. BRANSEN:

Q. Mr. Blackburn, my name is Hershel Bransen, and I represent Donahue Halbert.

Mr. Blackburn, does your Local Union keep the names on the membership list even though these people don't come to the meetings or don't pay dues anymore?

A. Yes, but not me.

Q. Excuse me?

A. The financial secretary, he keeps the membership.

Q. He keeps the names?

A. (Witness nodding head affirmatively)

Q. But do you know that - - if that is the practice, to keep these names, even though they don't pay membership or don't come to the meetings?

A. Well, he's got a book. Every man that belongs to that Local is recorded in that book, name, rank and Social Security and address.

Every man that is in that, he has that book. And when they pay dues, they record it on that book.

Q. Okay.

A. It's not in this book.

Q. Right. But do those names

remain there even though they - - they have stopped paying dues and don't come to meetings?

A. They remain in that book. That book, that's not taken down. But if they get in - - get four months in the red with our dues, they either come back as a new member with a checkoff, or not get in at all.

Q. Okay. Did you see Donahue Halbert at any meetings during February, 1982?

A. No, I can't remember Donahue being in in February. But I can remember him when he has been at the meetings.

Q. When is the last time you saw him at a meeting?

A. We had an election, and he come in and voted.

Q. When was that?

A. I don't know. I can't recall the date and the year; but Donahue has always been a member of that Local.

Q. Does he pay any dues?

A. Well, he's bound to be, or he couldn't be a member. I don't keep - -

Q. (Interrupting) Do you know that he pays any dues?

A. No. But if he hadn't paid dues, he couldn't have got in there.

Q. So, you are saying that Donahue Halbert was an active Union member.

A. Yes, I believe he was.

Q. But you don't know that he was, do you?

A. No, I don't know for sure. But I know he had to be a member before he would have been allowed to vote in an election; and he voted, because - -

Q. Do you have it recorded that he voted?

A. No.

MR. BRANSEN: No further questions. Thank you.

THE COURT: All right. Next.

*** *** ***

CROSS-EXAMINATION

BY MR. KIRKLAND:

Q. Mr. Blackburn, my name is Bill Kirkland, and I am from Frankfort, and I represent the miners over there pretty much on the end to your left.

Let me ask you. Did you say that you recognized the name "Postman" as being a person that perhaps you had known in the McDowell area, or you heard that name used.

A. I heard the name, but I don't know him if I meet him in the street.

MR. KIRKLAND: Would you stand up.

(Reporter's Note: Mr. Rolland complied.)

Q. Do you remember him?

A. Yeah, I remember him.

Q. And do you remember that on that February 13 meeting he joined the union that day.

A. I wouldn't know whether he did or not.

Q. That would be handled by, what, the payment of his dues?

A. (Nodded his head.)

Q. What would his initial dues be?

A. Well, if you work, it is a dollar and a quarter--if you don't work, it is a dollar and a quarter; and if you work, it is thirty-two ten each month.

Q. I will pass you a check from Kenneth Rolland made payable to the UMWA, and see if you have ever seen this before. This has been previously marked as Exhibit B.

THE CLERK OF THE COURT: Your Honor, the exhibit previously identified as Defendants German Stumbo, Teddy Kinney, Jason Moore, Raymond Hall and Kenneth Rolland, by alphabetic letter B as in boy has now been marked for the purposes of trial as those defendants' Trial Exhibit No. 2.

(Reporter's Note: At this time the Marshal handed counsel for the United States the exhibit.)

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

THE COURT: Thank you, sir.

(Reporter's Note: At this time the Marshal handed the exhibit to the witness.)

Q. Mr. Blackburn, you have been passed a check on the account of Kenneth and Bonnie Rolland in the amount of fifty dollars; do you see that check?

A. Yes.

Q. It is marked Defendant's Exhibit No. 2.

Do you see who that check is made payable to?

A. The check is made payable to Local Union 5967, U.M.W.A.

Q. Is that your local union that you belong to?

A. Yes, it is.

Q. Now, do you see what it is marked paid for?

A. Marked paid for union dues.

Q. And it is in what amount?

A. Fifty dollars.

Q. And on what date is that check dated?

A. February the 13th in '82.

Q. Would you tell the jury, if you know, how the amount of fifty dollars is arrived at? What makes up that fifty dollar initial payment.

A. Well, the -- the fifty dollars could have been a payment on initiation,

and I say it was.

Q. All right. Initiation plus some monthly dues maybe?

A. Yes.

Q. All right.

A. Could have been.

Q. Is that a fairly common amount that a person would pay the first time that they become a member of the U.M.W.A.?

A. Could be.

Q. And that is your local -- number for your local; is that correct?

A. Yes.

Q. Now, as recording secretary, do you handle these checks?

A. See, I don't handle none of these checks, none of this money. That is the other secretary's job.

All I do, I just record the minutes. You have a financial secretary that takes care of all the money, all the checks that comes into that local.

Q. All right. My question now is once Mr. Rolland joined on that Saturday, do you mark that down in your book anywhere?

A. No. It -- that is the financial secretary's job.

Q. All right. Do you remember Mr. Rolland being there, now that you think back on it, or can you recall?

A. Well, I can't recall, because I don't know who all is in the meeting.

But the financial secretary had his desk, and he is over here, and people is paying dues; and I don't even see that.

MR. KIRKLAND: I see.

Your Honor, I move that check be admitted into evidence.

MR. KEHRLI: No objection, Your Honor.

THE COURT: There being no objection, let that which has been marked as Rolland, Moore, Kinney and Hall -- or is it -- no, it's Moore, isn't it?

MR. KIRKLAND: Stumbo, Jason Moore, Teddy Kinney, Kenneth Rolland.

THE COURT: All right. Let that be finally admitted into evidence as Defendant's Exhibit No. 2.

MR. KIRKLAND: Thank you, Your Honor.

Q. Mr. Blackburn, you have

stated that an active, working miner who belongs to your local pays thirty-two dollars and ten cents a month dues; is that right?

A. Yes.

Q. Is there also some money that comes into the local from the coal company where he works?

A. No.

Q. All right. There's no payment per ton for coal that is mined or hauled or shipped?

A. No. The thirty-two ten, according to the constitution, is cut over the payroll and goes to the District, and comes from the District back to the local union, their part.

The local union doesn't get no thirty-two ten. That is split between the International and the District and the local.

Q. All right. How much does the local get out of that thirty-two dollars and ten cents?

A. I don't know.

Q. A few dollars?

A. I don't know. I'd say twelve dollars. I don't know exactly what. But I

know out of the dollar and a quarter I know dues, we only get a quarter out of each man's dues.

Q. All right. Now, if there were twenty nonunion miners on the Ray-Mac job just three miles up the road, how much extra money per month would the McDowell Local give if those men joined the union?

MR. KEHRLI: Objection based on relevancy.

THE COURT: All right. Overruled.

Q. Would it be twenty times the twelve dollars?

A. I say that's about right.

Q. Two hundred forty dollars a month?

A. (Witness nodding affirmatively).

Q. Would that help your local right smart?

A. Yeah. It would help them more than it would the local.

Q. It would help the District and the International?

A. No, the one that went into the local.

Q. All right. It would help the miners themselves; is that what you're saying?

A. Yeah.

Q. They would get a lot of benefits?

A. Right.

Q. Get retirement benefits?

A. Yes.

Q. What about medical benefits?

A. And medical benefits.

THE COURT: Don't you think you've stretched the limits, Mr. Kirkland?

Let's move along.

****

Q. Mr. Blackburn, you stated that you had been on one picket line, I believe; is that right?

A. Right.

Q. Have you seen other picket lines?

A. I have seen them being - - been passing in the car and seen them - - a group of men on the road there. I'd say it was a picket line.

Q. All right. Is it - - when it is decided that there's going to be a picket line, do the Union members sometimes get their families, their wives and children to help on the picket line?

A. Well, they get their wives. I know their wives would be on the picket line back in the early years.

Q. What about their kids, if they are grown? Do they sometimes help - - get on the picket line?

A. No. No kid ain't allowed on the picket line.

Q. What about - - what about a neighbor or a brother?

A. Well, yeah.

Q. Anybody you can get?

A. Anybody you can get - - that wants to. It ain't your problem to tell them whether they are Union or not Union.

If they want on the picket line, they get on.

Q. All they have to do is want to help the Union; is that right?

A. Yeah.

Q. Do you know a man by the name of Stiffy Stumbo that lives up Frasure's Creek?

A. Yes.

Q. How long have you known him?

MR. SELF: Your Honor, this is beyond the scope of direct examination.

THE COURT: Overruled.

Q. How long have you known Stiffy?

A. Well, I'd say I have known him twenty-five, thirty years.

Q. Was he a Union member all during those years that you - -

A. (Interrupting) He's always been a Union member.

Q. Is he related to German Stumbo over there?

A. German - - that's his son.

Q. Now, several years ago, before German became an operator, was he a Union member at the McDowell Local?

A. He was an officer, financial secretary.

Q. In fact, did he assist in getting the Union Hall where it now is?

A. Yes, he did.

Q. What did he do?

A. Well, he helped to get the money to - - to get the men and help build it. And him and Jason, they built it, remodeled the building.

Q. And they were real strong there in the Local?

A. Yes, they was strong Union men at that time.

Q. Now, talking about Jason Moore, has he been an officer in the Union there for a long time?

A. Yes.

Q. Has he had different committee assignments over the years?

A. He's held every office in the book here.

Q. Do you know whether or not he's had committee assignments that caused him to have to come into contact with Edgar Jones?

A. I don't know. He could have.

Q. Do you know whether he's had to approach him about hiring and firing and working conditions; or do you know?

MR. SELF: Objection. That would be totally hearsay.

THE COURT: Sustained.

Q. Mr. Blackburn, do you remember the District meeting that was held at Marlow's in the fall of 1981?

A. Yeah.

Q. Did you go there?

A. I was there.

Q. And was Jason Moore there?

A. Yeah.

Q. Was it brought up about try-

ing to unionize Ray-Mac at that meeting?

A. I can't remember if it was.

Q. Do you remember Jason Moore standing up at the podium with a microphone and asking for help?

MR. SELF: Your Honor, that's hearsay. We would object to that.

And the witness has also indicated he didn't remember.

THE COURT: Overruled.

Q. As you think back, do you remember that now?

A. I remember I was with Jason that day. I remember him getting up on the mike and trying to sing that day.

I don't know what else. He could have said all this. I don't know.

Q. Did he do anything else besides try to sing?

A. Yeah.

Q. What else did he do?

A. He was talking, but I don't know what he was talking about.

Q. Could you not hear him?

A. I couldn't hear where I was

sitting.

Q. I see. But, now, were you, on or about that time, asked to send a telegram to the International asking them for help to organize Ray-Mac?

A. I sent a telegram, but it wasn't to organize Ray-Mac.

Q. What was it?

A. It was to organize a small - - small companies that was working there in their area there before they quit paying dues.

And I was ordered by Drexil to send a telegram to President Church, and have a Commissioner come in and get that trouble settled.

Q. Would that include Ray-Mac, if it were operating in your territory?

A. Well, that was over the Union dues, failed, not to be cut by the operator.

And they signed the contract and was obligated to cut the dues, and they come up short; and that is what all the trouble was about.

*** *** ***

Q. There's been some testimony here about the HJR Coal Company being a nonunion operation. Are you familiar with HJR Coal Company at Drift?

A. I don't know of that number--that company at Drift.

Q. All right. That's not in the McDowell-

A. No.

Q. --local territory, is it?

A. No.

Q. So the McDowell local wouldn't have any particular interest in what went on at Drift, would it?

A. No.

Q. And I believe you testified it's been a long-standing policy of the McDowell local that the minutes would never reflect the vote taken for a work stoppage or strike, is that right?

A. Well, you never did-- We never did take no minutes on a work stoppage or a picket line. We never-- It's custom to never record them in the book.

Q. How long had that been the custom?

A. Well, ever since I've been there, '74.

Q. Wasn't there a lot of talk around McDowell about Ray-Mac operating up on top of the hill nonunion?

A. Well, I'd say there was.

Q. Wasn't it a concern of all of the local union miners that Ray-Mac was up there operating nonunion?

A. Yes. I've heard them talk.

Q. Many times or a few times?

A. Well, a few times.

Q. What about that weekend of that meeting on February 13, was it talked about around that weekend?

A. Well, I don't know about that--

Q. You don't recall?

A. --that particular date.

Q. Where did you hear it? At the restaurants? At the church and everywhere?

A. You heard it everywhere you went.

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MR. KIRKLAND: Thank you, Your Honor, that's all.

THE COURT: Anything further from this side?

MR. HARWELL: Your Honor, I have no questions of this witness.

THE COURT: All right.

MR. KEHRLI: Your Honor, I have redirect.

THE COURT: Okay. We've got two minutes before we recess.

MR. KEHRLI: I won't be done in two minutes, Your Honor.

THE COURT: All right. We're going to recess for lunch. During this recess we'll be in recess until one o'clock. The not now admonition is in effect. Do you understand?

Is there any corrections or objections to the form of the admonition?

MR. SELF: No, Your Honor.

MR. ROWLAND: No, sir.

THE COURT: All right. Please excuse the jury until one o'clock.

(Reporter's Note: The jury left the courtroom at 11:44 a.m.)

THE MARSHAL OF THE COURT: The jury's out of the courtroom, Your Honor.

THE COURT: Please excuse the witness and the remainder of the court.

THE MARSHAL OF THE COURT: Yes, Your Honor. This court will be in recess until one o'clock this afternoon.

(Reporter's Note: Court recessed at 11:45 a.m.)

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

UNITED STATES OF AMERICA

-vs- CASE NO. 83-8

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

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TRANSCRIPT OF TRIAL

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BEFORE: THE HONORABLE G. WIX UNTHANK

DATE: FEBRUARY 8, 1984

VOLUME TWENTY-NINE

DALE SOERGEL MOORE SHAW & ASSOCIATES
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I N D E X

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ROBERT FORSYTHE

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EXHIBITS

Government Exhibit 49 Pg. 202
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For the Defendant Eugene Tackett:

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For the Defendant Linville Mosley:

LOWELL E. SPENCER, ESQ.

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

BERNARD PAFUNDA, ESQ.

For the Defendant Ranny Blankenship:

ELDRED E. ADAMS, JR., ESQ.

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

WILLIAM D. KIRKLAND, ESQ.

REPORTER'S NOTE: The Court commensed at 1:01 P.M., E.S.T.

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

Your Honor, all parties, all counsel and all member os the Jury are present.

THE COURT: Madam Clerk.

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

THE COURT: Thank you.

Are we ready to proceed?

MR. KEHRLI: Ready, Your Honor.

THE COURT: Would the witness please return to the stand.

(Mr. Blackburn complies)

THE COURT: You may proceed, sir.

MR. KEHRLI: Thank you, Your Honor.

FURTHER REDIRECT EXAMINATION

BY MR. KEHRLI:

Q Mr. Blackburn, I think there's some things that some of us may be confused

about based upon your answers to direct examination as compared to your answers on cross-examination.

I'm going to ask you about some of those things and ask you to testify about the facts and about what you know took place.

Mr. Blackburn, do you - - do you know Mr. Pafunda prior to today?

A. Mr. who?

Q. Mr. Bernie Pafunda.

A. Yeah, I know Bernie.

Q. All right. How do you know Mr. Pafunda?

A. Well, I met him at the - -

MR. SPENCER: (Interrupting) Show my objection. This is not relevant, and it has not been covered on cross.

THE COURT: Well, overruled.

A. (Continuing) I met him at the District office.

Q. And do you know him as an attorney?

A. Yes.

Q. All right. Do you know who he represents?

A. He represents the United

Mine Workers.

Q. Okay. Have you talked to him before?

A. Yes.

Q. Now, I would like you to - - to look at the minutes again, Government's Trial Exhibit No. 48. And turn to the meeting of February 13th, 1982, if you would, sir.

It was on page three twenty-five.

A. (The witness complies)

Q. Now, those minutes indicate that Drexil Hall resigned as vice president; is that correct?

A. Now, what month are you talking about?

Q. February 13th, 1982, on page three twenty-five, Mr. Blackburn.

A. Yes, that's when he resigned.

Q. Do you know when he resigned? When did that happen?

A. Now, I don't know for sure.

Q. Did it happen at that meeting?

A. It happened at that meet-

ing.

Q. It did?

A. Yes.

Q. All right. Then the next month's minutes on the next page, March of 1982, as Mr. Pafunda pointed out, indicates that Drexil Hall was still vice president.

Can you explain how he can still be vice president in March, when he resigned in February?

A. Yeah. Well, we had - - at that time we didn't have - - it takes a working man - - active miner to be a president of a Local Union. And at that time we didn't have anybody qualified.

And we had to get in touch with the District office to get a retired miner appointed for this job.

So, the District appointed a retired miner, which was Oscar Mosley for that job, the president of that local.

Then he put in the vice president, which was Revera Stewart. And that is how come that happened like that.

Q. Well, I'm still somewhat

confused as to why Mr. - - Mr. Hall resigned as vice president in February, and then in March was still listed as vice president; do you know why that happened?

A. No, I don't.

Q. All right. Now, I notice in the March - - strike that.

Are these minutes ever read to the membership?

A. Every - - every month.

Q. All right. And what does the membership do after - - who reads the minutes, first of all?

A. The recording secretary, me.

Q. What does the membership do after you read the minutes to them?

A. Well, the president calls for a vote and any discussion about the minutes, and then they vote on it, whether it passed or not passed.

Q. And what happens if they don't pass?

A. Well, you've got to go back over the same thing again. You have another meeting.

Q. All right. Do you read them to make sure if there's any errors in the minutes, whether they are true and accurate?

A. They are supposed to be true and accurate.

Q. All right. Now, is there any indication in the March minutes as to whether or not you read the previous month's minutes of February to the membership during the March meeting?

A. No. I read the minutes in the March meeting.

Q. You read the minutes of the February meeting?

A. Also, yeah.

Q. And what did the minutes of the March meeting indicate about you reading the minutes? What does that say?

MR. ROWLAND: Excuse me, Your Honor. I don't think it is relevant, and I don't think it is redirect. I object.

MR. KEHRLI: Your Honor, it is in response to Mr. Pafunda's questions concerning Drexil Hall's resignation or lack thereof during the February meeting.

THE COURT: All right. Let the

objection be overruled.

Q. Do you find that in the March meeting about the previous month's minutes?

A. Yes.

Q. What does it say?

A. Do you want me to go all over the whole thing?

Q. No, just the part about the minutes at the bottom there.

A. New membership-Ricky Hampton, Mick Guard by checkoff-Rolland Bentley, Keith Hall, Carter Salsbury, Randolph Howell - - I mean Rudolph Hall, Phillip Rogers, Barry Little.

And the mining committees is to go back and check on the membership.

Motion made and second - - motion made and seconded to put any member that is four months behind with his dues on the drop sheet after fifteen days - - after fifteen days.

Motion made and seconded to accept the minutes which was read.

Motion made and seconded to close the meeting.

Signed by me.

Q. So the minutes of February were read and approved by the membership?

A. Yes.

Q. Now, Mr. Blackburn, you said in response to Mr. Pafunda's cross-examination that nothing contradictory to the union is written in these minutes. What did you mean?

MR. PAFUNDA: Objection, Your Honor. I don't believe that was the witness's answer; nothing contradictory to the union. I may be mistaken.

THE COURT: Let the objection be noted and overruled.

Q. Or nothing contradicting the union, I believe is your exact language. Do you recall what you mean?

THE COURT: Let's do this. If Mr. Blackburn recalls his testimony then let Mr. Blackburn tell us what he thinks his testimony was and then explain it.

Do you recall, sir?

THE WITNESS: Yes.

THE COURT: All right.

THE WITNESS: I believe my testimony might have been on--on the strike fund or picket line which--that was never recorded in the book. Anything

concerning something like that you didn't record because--because it would get you obligated maybe. That's why you don't record that kind of information.

Q. When you say get you obligated, do you mean it might make the union or some person liable for something?

A. Yes.

Q. A strike that's not authorized by the International contradicts the union, doesn't it?

MR. PAFUNDA: Your Honor, I'm going to object, this is beyond the scope of redirect. Mr. Kehrli is going back over his direct examination.

THE COURT: Overruled. Overruled. Can you answer the question, Mr. Blackburn?

A. Can you repeat that, please.

Q. Yes. A strike that's not authorized by the International United Mine Workers is--contradicts the union, does it not?

A. Well, not necessarily. District can call.

Q. All right. A strike that's not authorized by the district and not authorized the International contradicts the union, does it not?

A. That's right.

Q. A picket that's not authorized by the International and not authorized by the district also contradicts the union, does it not?

A. Right.

Q. How do you know that, sir?

A. Well, I've always heard that so I took it for granted it was true.

Q. Is it in the constitution and bylaws of the United Mine Workers of America?

A. I don't know for sure but I believe it might.

Q. Now, there's no indication of any strike vote or picket vote in the minutes of February 13, 1982. To your knowledge, was there any discussion whatsoever at any time during or after the meeting?

A. Could have been after the meeting. They all get together in a huddle. I don't--

Q. Let me finish the question first, sir, before you answer.

A. Go ahead.

Q. To your knowledge, was--

was there any discussion whatsoever at any time on that Saturday before or after the meeting that you heard--that you heard--concerning a picket or a strike at Ray-Mac?

A. I didn't hear anything about it.

Q. Did you hear at any time during or after or before the meeting on that Saturday any discussion concerning any strike of Edgar Jones and his operators?

A. No.

MR. HARWELL: May we approach the Bench?

THE COURT: Yes, sir.

(Reporter's Note: At this time all counsel except Mr. Rowland, Mr. Branson and Mr. Kirkland approached the Bench; whereupon the following was heard:)

MR. HARWELL: May the Court please, I respectfully object to that question and the answer and move they be stricken. There is no factual basis for Edgar Jones to strike, and that's been asked, I think, three times during the Government's examination of this witness. I refrained from coming and bothering the Court, but I think enough is enough. I object to it.

Edgar Jones can't strike. The Government knows that.

They have salt and peppered this thing with Edgar Jones to create an image we believe to be improper, Your Honor.

THE COURT: Let that be noted and overruled.

Now, gentlemen, this witness has had in a sense the-- He's on the compact. He's working for the union. He says that anything that's contradictory to the union's purpose--it's done outside of his presence. He knows nothing about it.

Now, he's not saying it doesn't happen. He says he doesn't know anything about it. That's-- That's what he's saying. We're beating a dead horse.

All right. Let's go. That's all.

(Reporter's Note: End of conference at the Bench.)

Q. Mr. Blackburn, after that meeting adjourned on Saturday morning, February 13, 1982, did anything happen outside the building that was not an official action of the union that you're aware of?

A. Yes.

Q. What was that?

A. That some of the members

was arrested that day.

THE COURT: Approach the Bench, gentlemen.

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

THE COURT: All right. Now, I'm trying to remember the direct. I'm trying to remember on the cross. I'm trying to remember all of this, gentlemen. Is this outside of it?

MR. KEHRLI: I didn't intend to elicit that response.

THE COURT: What?

MR. KEHRLI: I didn't intend to elicit that response.

MR. WALBOURN: Why did you ask it then.

MR. KEHRLI: To find out if there was any vote taken or unauthorized action taken after the meeting about Ray-Mac.

MR. SELF: We need to voir dire this witness.

MR. HARWELL: Judge, this is one of the few times I agree with Mr. Self. The Government says they're not aware of what he's saying. I'm not aware of anything.

THE COURT: All right.

(End of conference at the Bench.)

THE COURT: A response was made to an answer, and that response isn't in evidence. You'll not consider that. Do all of you understand that?

(The Jurors nodded their head in the affirmative)

THE COURT: All right. I think you're going to need to go to the Jury Room for a little while. Mr. Marshall, would you take them to the Jury Room.

While you're in the Jury Room the not now admonition is in effect. Do you understand that?

I assume you'd rather go to your Jury Room rather than the temporary room.

(The Jurors nodded their head in the affirmative)

THE COURT: All right.

THE MARSHALL OF THE COURT: Go directly to the Jury Room.

REPORTER'S NOTE: At this time the Jury left the Courtroom at 1:20 P.M.

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

MR. KEHRLI: May I proceed, Your Honor?

THE COURT: Yes, sir.

MR. KEHRLI: All right.

Q. Mr. Blackburn, what happened after the union meeting? Who was arrested?

A. Well, I don't know who all. Like I said, I don't know all those guys. Some of them said there was a restraining order so.

They was all in a huddle outside. I just went on and got in my car and went on home.

Q. Was that that same Saturday that the meeting took place?

A. It could have been.

Q. All right. So you don't know whether people were actually arrested or not?

A. No, I really don't know whether it was that day or not.

Q. You don't know whether it was that day or not?

A. No.

Q. It may have been a different day?

A. It could have been.

Q. You're talking about a restraining order that was issued?

A. Well, I think that might have been a restraining order.

Q. Were you there when this restraining order was issued?

A. No. I just came out the door, like I said, and got in my car.

Q. All right. How did you learn about this, sir?

A. Well, I--I seen them down at Prestonsburg at the courthouse down there.

Q. That was sometime later--

A. Yes.

Q. --during the next week?

A. (Nodded his head in the affirmative.)

MR. KEHRLI: All right. Can I have one moment, please?

THE COURT: Yes, sir.

MR. KEHRLI: Your Honor, based upon the voir dire of this witness and, of course, after defense counsel have been given the opportunity, the Government would move that the Court instruct the jury that that is not to be considered as evidence, as it already has, and admonish them that that arrest--that that incident, if any, had nothing to do with this case.

THE COURT: Well, the Court-- I would like to state to them; you understand that came out of a--a state action which had nothing to do with the case herein. They're just to disregard it.

MR. PAFUNDA: Your Honor, if it please the Court, I'd object to that admonishment because that-- The Court just reinforces what the witness had already said, that this came out in a state action. It makes it appear that the state action, whatever it was, was contemporaneous with the remarks of the time frame that Mr. Blackburn's confused about.

He places it on Saturday, February 13, 1982; and thus when these men walked out of a local union hall they were arrested. That, in fact, did not happen.

If I can cross-examine Mr. Blackburn--

THE COURT: Yes, let's do. Cross-examine.

MR. SELF: Your Honor, if there's some question that it in any way relates to this case, Your Honor, just instruct the jury that what happened outside--what, if any, arrests occurred had nothing to do with the facts of this case nor should it draw any inference either for or against the defendants or for

or against the Government.

THE COURT: Here's what I want to know is this; whether it's a mischaracterization. Now, if this had been a restraining order there would be no arrests.

MR. PAFUNDA: That's correct.

THE COURT: If this was a mischaracterization of what occurred, all right, I can advise the jury that this statement was a mischaracterization, and what occurred was a civil matter.

MR. PAFUNDA: It wasn't even filed until February 19 and--and was a Friday.

THE COURT: All right.

MR. PAFUNDA: Your Honor, the reason I objected to an admonishment is because now we have--whether the remark was inadvertent or not we have another remark by this particular witness and we need to fashion some type of remedy for this jury. They have guns, other remarks, and I'd like an admonishment to the effect that Mr. Blackburn was confused about the times.

It didn't even happen close to the time frame of the--of the local union meeting which Mr. Kehrli's been discussing.

MR. KEHRLI: Your Honor, perhaps we should ask the witness just one more question.

THE COURT: Go ahead.

MR. KEHRLI: I would intend to ask this question in front of the jury; did this incident he's referring to--is he sure it happened on that date.

Q. What would your response be, sir? Are you sure that that incident you're referring to happened on the Saturday of the meeting?

A. I'm not sure it happened on that date. See, you was trying to pin me point down there. I don't know. They was-- I don't know what date it happened.

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MR. KEHRLI: And then let the Court admonish the jury.

THE COURT: Well, let's do this: Now, I want Mr. Blackburn to understand. He could very easily misunderstand this. I think Mr. Blackburn has gone out of his way to be truthful in this matter and sincere. I think sometimes -- I don't want him to misunderstand and think that somebody is jumping on him. If you ask a general question sometimes, you get a general answer, gentlemen. And the question -- I mean the answer -- as Mr. Blackburn understands the question, that is the way he is going to answer it. And if the question is asked so that he misunderstands it, then he is going to respond the way he believes it to be. Isn't that correct, Mr. Blackburn?

THE WITNESS: That's right, Judge.

THE COURT: So, you know, let's pay particular attention to the questions asked.

The Court just feels like it will advise the jury that the response of the witness was with regard to a matter at another time, about another subject matter which has no bearing on this trial. And this jury will not consider it.

MR. HARWELL: May the Court please,

would you consider, Your Honor, changing that admonishment only slightly when you make reference to the other matter, you say civil matter.

THE COURT: That is fine.

MR. KEHRLI: No objection to that, Your Honor.

MR. ROWLAND: For the record, I object to the admonishment. I think that something else needs to be done. He has characterized these gentlemen over here as criminals. They walked outside a meeting hall and got arrested. That in fact didn't happen.

MR. HARWELL: Judge, I don't mean to nitpick. I think the reason that defense lawyers -- and I can certainly speak for myself -- are so concerned is that the allegations set forth in the indictment of this alleged conspiracy commenced very early in 1982. Any activities as Your Honor knows from the minihearing, the proof will indicate that any activities commenced on the 21st day -- the 15th day of February. This predates it by two days, Judge. And that is why I expressed the concern I did.

THE COURT: All right. Let all those objections be noted and overruled.

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MR. PAFUNDA: Your Honor, one other matter. Mr. Kehrli's questions -- he intended to establish Mr. Blackburn as an expert on labor matters. The foundation wasn't laid for his opinion in that regard. It is an opinion on an ultimate issue of law in this case.

Now, my hands are cuffed. When I sit in front of a jury, I can't stand up and object. If I object, I draw full attention to that matter.

MR. KEHRLI: Your Honor, I have not attempted to qualify this witness as an expert witness. I am asking him --

MR. PAFUNDA: (Interrupting) He has given an expert opinion.

MR. KEHRLI: Mr. Pafunda, I am asking him to tell this jury what he knows about the policies and procedures in Local 5967. He is qualified to do that. That doesn't require expert testimony.

MR. PAFUNDA: Your Honor, if it please the Court, I believe these questions were directed with regard to the interpretation of the International constitution and District constitution and as to whether work stoppages had to be authorized by the International or the District.

The only way to cure that defect now is for me to go back and ask Mr. Blackburn questions as if he were an expert and as if he had been qualified as an expert.

THE COURT: You may do so.

MR. PAFUNDA: Your Honor, I have got to do that in front of those twelve people that are going to decide this case.

THE COURT: Yes, sir, you do.

MR. PAFUNDA: I move -- at this time, I move to strike that portion of his testimony with regard to that.

THE COURT: Let that be noted and be overruled.

MR. KEHRLI: I am ready to proceed, Your Honor.

THE COURT: All right. Bring the jury back.

MR. ROWLAND: While the jury is coming back, could I inquire if I am getting a fever or is it getting hot in here again?

MR. SELF: It has cooled down now.

MR. ROWLAND: Is it?

MR. THOMAS: Great.

THE COURT: Mr. Walbourn, feel him and

see if he has a fever.

MR. WALBOURN: He has -- what is the word? Clammy, cold and clammy.

THE COURT: All right.

MR. WALBOURN: No pulse, Your Honor.

THE MARSHALL OF THE COURT: Your Honor, all Defendants and the jury are present.

THE COURT: All right. Ladies and gentlemen of the jury, the remark which the witness made with regard to some activities which occurred outside of the union hall, I want to admonish you that that was an inadvertent remark. And this referred to something which occurred at another time in a civil matter which wasn't relevant to the case or the trial here. Do you understand that? Strike that as stricken from the record, and you won't consider it as evidence in any way in this case.

All right, any objections or corrections?

MR. PAFUNDA: No, Your Honor.

THE COURT: You may proceed.

Q Mr. Blackburn, to your knowledge at any time did you become personally aware of any strike vote or picket vote that was

taken by the members of Local 5967 to strike or picket Ray-Mac whether it is recorded in your minutes or not?

A. There was no vote taken. If there was, I wasn't there.

Q. At that time during late January and early February of 1982, Mr. Blackburn, do you know approximately how many members Local 5967 had?

A. No. I don't keep those records.

Q. Would you have an idea? Was it -- was it a large number?

A. It could have been three fifty or four hundred.

Q. All right. And these employees, these members, did they work for a number of coal operators in the Floyd County, McDowell area?

A. Yes.

Q. Do you have any idea how many operators those members worked for approximately?

A. No idea.

Q. Was it a large number? Are there a lot of union coal mines in Floyd County, Kentucky and the McDowell area?

A. I think we had along about that time around twenty -- twenty small companies. I don't know for sure, but give or take.

Q. Now, on cross examination conducted by Mr. Kirkland, he asked you about a telegram that you sent. Do you recall that telegram?

A. Yes.

Q. Now, I would like to direct your attention to page 329 of your exhibits, Government's Trial Exhibit 48. Would you look at that page, sir? Is there anything in the minutes -- first of all, is that a copy of the minutes of a union meeting?

A. Yes.

Q. What is the date of that meeting?

A. June the 12th in '82.

Q. Is there anything in those minutes about that telegram that you testified about earlier?

A. Yes.

Q. Would you read that portion of the minutes to the jury, please?

A. I will have to contradict

that statement. It says the International -- nominated for International President on June the 7th and 10, '82, Drexil Hall give all reports on the union dues. Walker Blackburn and Drexil Hall went to Pikeville on union dues. Drexil Hall was put in the office of President; Jay Moore for Vice-President. Walker Blackburn sent a telegram to Sam Church on the union dues. A suit was filed in Federal Court on the union dues. Signed by me. That is the telegram right there.

Q. Do you recall what the contents of that telegram was?

A. I don't know what we put in the telegram, but --

Q. (Interrupting) Do you know what the purpose of the telegram was, sir?

A. The purpose was -- for the telegram was the coal companies behind on the union dues. They was under contract, they was obligated to pay them dues.

Q. And they weren't paying their dues?

A. And they wouldn't pay them. And then when they didn't pay them, that put

them nonunion.

Q. What coal companies are you talking about?

A. Well, I believe there might be five or six of them was sued in Court here.

Q. Do you recall the names of them?

MR. HARWELL: May the Court please, I object. I think that gets into ancillary matters, has no appropriate value, and is outside theproper scope of redirect.

MR. KEHRLI: Your Honor, may we approach the Bench on this question?

THE COURT: Well, overruled. Go ahead.

Q. Do you recall the names of those coal companies?

A. I might, but -- there is the Adkins Brothers, Phillip Booth -- no, I can't. There was six coal companies.

Q. Was one of those six companies operated by German Stumbo?

A. I believe -- no, I don't think so.

Q. Was one of those coal

companies operated by Hermit --

MR. HARWELL: (Interrupting) May the Court please, the witness has said he can't remember. I object to the leading.

THE COURT: Don't lead the witness. Proceed.

Q. Do you recall whether or not any of those coal companies either were operated by or supervised by any of the Defendants?

A. I don't know. I don't thinkso. I don't know who supervised them. But I know they was sued here in court.

Q. All right. Well, one of them was the Adkins Brothers and Phillip Booth?

A. Yes.

Q. Are you telling this jury that effectively those companies went nonunion at that point?

A. Well, after they failed on not paying their dues, they automatically put theirself nonunion.

Q. And how does that work when a company pays the dues? How does the union collect the dues?

A. Well, the company --

MR. PAFUNDA: (Interrupting) Your Honor, I am going to object now. This is outside the scope of redirect clearly.

THE COURT: Sustained.

Q. Mr. Blackburn, Mr. Kirkland asked you on cross examination if it would help the local if twenty men working at the top of the hill for Ray-Mac began paying union dues. Would it help the local if those same twenty men couldn't work because of violence?

A. No.

MR. KEHRLI: Your Honor, may I have one moment.

THE COURT: Yes, sir.

Q. Would it help the local if those same twenty men at the top of the hill working for Ray-Mac were shot at?

A. No.

MR. KIRKLAND: I object, Your Honor. That is designed for prejudicial effect.

THE COURT: Well, sustained. Let me state this, and I think the jury understands.

Sometimes things get into the courtroom both ways. You are not to consider it into evidence. One time the thrust is one way

this time the thrust is the other. Those matters have nothing to do with the rule of this case. You are not to consider them.

Any objection?

Continue.

MR. KEHRLI: Thank you.

Q. Thank you, Your Honor.

And those two coal companies that you mentioned, Adkins -- the Adkins Brothers and Phillip Booth, do you know whose coal they were mining?

A. No.

MR. KEHRLI: Your Honor, at this time, I have no further questions of the witness.

RECROSS EXAMINATION

BY MR. PAFUNDA:

Q. Mr. Blackburn, I am going to talk to you again now.

My question is wouldn't you agree with me that violence just doesn't help anybody?

A. Repeat that, Bernie.

Q. Violence just doesn't help anybody.

A. Violence don't help nobody.

MR. PAFUNDA: Thank you, Walker.

THE COURT: Anyone else? Are we through with this witness?

MR. KEHRLI: Your Honor, the United States would ask that he be permanently excused.

MR. PAFUNDA: I would like to keep him on call, Your Honor.

THE COURT: All right. Now, Mr. Blackburn, when we say you are on call, that means you are going to be given twenty-four hours notice. You are not going to be jerked up to come back again. Will you please leave your telephone number where you can be gotten in touch with by the Marshall?

THE WITNESS: Yes, sir.

THE COURT: Thank you, sir. You may stand down.

THE WITNESS: Thank you, Judge.

THE COURT: Yes, sir.

MR. SELF: Detective Robert Forsythe.

THE MARSHALL OF THE COURT: Mr. Blackburn, go out this way.

THE COURT: Well, maybe he has-- do you have something you have to pick up this way, Mr.

Blackburn?

THE WITNESS: No.

THE COURT: It would be easiest if you went out this way.

THE WITNESS: Thank you, Judge.

THE COURT: Yes, sir.

Let me explain to the jury I think you notice we have a procedure of a witness coming in here and going out this way. We feel this is an excellent idea because if the witness has to go back out that way, it would take a little more time. This is just one of the procedures. It has nothing to do with the trial of the case. It is just procedure. That is all.

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THE MARSHAL OF THE COURT: Raise your right hand and be sworn.

ROBERT FORSYTHE, called on behalf of the United States, having been first duly sworn, was examined and testified as follows:

THE MARSHAL OF THE COURT: State your name and address to the court reporter, please.

THE WITNESS: Robert Forsythe, Ivel, Floyd County, Kentucky.

THE COURT: Please proceed.

MR. SELF: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. SELF:

Q. Sir, would you state your full name to the ladies and the gentlemen of the jury.

A. My name is Robert Forsythe.

Q. Mr. Forsythe, where do you live?

A. I live in Floyd County at Ivel, Kentucky.

Q. And, Mr. Forsythe, how are you currently employed?

A. I am a sergeant with the

Kentucky State Police.

Q. And how long have you been with the state police, Sgt. Forsythe?

A. Eleven years this October.

Q. And where are you currently assigned to?

A. I am the Pike County squad sergeant.

Q. What are your duties as squad sergeant?

A. I am the supervisor over sixteen uniformed troopers assigned to Pike County.

Q. How long have you been assigned to the Pikeville post?

A. My full term, eleven years.

Q. Is your title Sgt. Forsythe or Detective?

A. Sergeant now.

Q. Are you over uniformed troopers or detectives?

A. I'm over the uniformed troopers of the county.

Q. Sgt. Forsythe, in

February of 1982, were you also employed with the Kentucky State Police at the post here in Pikeville?

A. I was.

Q. What was your title and rank at that time?

A. I was a detective assigned to Floyd County during February of '82.

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Q. What is the difference? Essentially explain to the Jury the difference between a Detective and a Sergeant as far as what your duties are?

A. Well, a Detective is assigned to different cases by a Sergeant or a Lieutenant. Assigned to work the cases and, whereas a Sergeant is more of an administrative.

Q. In February of 1982, Sergeant Forsythe, did you have an occasion to go to the top of the John Hall and Bill Hall Branch in Floyd County?

A. Yes, sir, I did.

Q. And how did you come to go over there? Did you receive a call into the State Police Post?

A. On February the 16th of '82, I was at the State Police Post that morning, and I was in the radio room when a call came in.

Q. Based on that call, did you do something?

A. And based on the call that the radio personnel received, I drove from Post 9, Pikeville, located at Coal Run, to John Hall Branch in Floyd County.

Q. Do you know who placed the call that came into the post?

A. Yes, sir, I do.

Q. Who was that?

A. Jackie Blair, an employee of Mack Mining.

Q. And do you know, or was it stated where the call came from, Mr. Blair?

A. I do not know where the call came from.

Q. What did you then do, Sergeant Forsythe?

A. After I received the call, I drove to the top of John Hall Branch at the Ray-Mac Mining location.

Q. Approximately what time did the call come in, or did you get there, or both?

A. Approximately around 8:20, 8:30, I believe.

Q. In the morning?

A. Yes.

Q. And when you got to the top of the mountain, what did you find?

A. They were - - I believe there was three coal trucks parked at the entrance to

the road leading to Ray-Mac's Mine. And there were several other vehicles parked there. And there were several employees of the Ray-Mac Coal Company.

There was one Kentucky State Police Officer there, and there was a vehicle, a green colored Jeep that was parked on the side of the road on John Hall Branch there.

There was also a newspaper reporter from Floyd County there.

Q. And did you investigate the scene to see what had happened?

A. Yes, sir.

Q. And in the course of that investigation, did you take some photographs and talk to some people?

A. I took several photographs while there, and I interviewed several people.

MR. SELF: Madam Clerk, if you would, I would ask you to hand the witness what has already been introduced into evidence as Government's Exhibits 24 thru 30.

While she is doing that, just for the record, Sergeant Forsythe, what day of the week or date was this?

A. Tuesday, February the 16th,

1982.

Q. While they are examining those, the - - where were the three coal trucks located that you said you found?

MR. WALBOURN: Your Honor, I would ask that we either listen or examine the pictures.

MR. SELF: I withdraw the question, Your Honor, and give them time to look at it again, Your Honor.

(Defense counsel examining said exhibits.)

MR. SELF: If I may ask for Exhibit No. 23 also to be included in there. There is one on one sheet and one on the other, and I didn't flip back far enough on the sheet, Your Honor.

(Defense counsel examining said exhibits.)

THE COURT: Let me ask you, gentlemen. These are already in evidence?

MR. SELF: Yes, Your Honor.

THE COURT: What is the necessity of you gentlemen seeing them after they are in evidence before they are handed to this witness?

MR. THOMAS: We'd just like to look at the pictures, Your Honor.

THE COURT: I guess what I'm - - I guess the point I want to make, gentlemen, is if you want to see them before you begin cross-examination, you are entitled to see them.

MR. WALBOURN: Your Honor, there have just been - - we are close to Exhibit No. 50, and it is kind of hard to keep track of what was No. 23 and what was No. 29. And if they are going to be given to the witness, and they are going to be answering questions, I just wanted to refresh my memory as to what they were.

THE COURT: That's a good point. Continue showing them to counsel.

Take your time, gentlemen.

(Defense counsel continuing examining said exhibits.)

THE MARSHALL OF THE COURT: Your Honor, counsel for the defense has examined the evidence, and it is now handed to the witness.

MR. SELF: Thank you, Mr. Marshall.

THE COURT: All right. Please proceed, sir.

MR. SELF: Thank you, Your Honor.

Q Sergeant Forsythe, would you take time and examine those photographs?

A. (Witness complies)

Q. Have you ever seen the photographs themselves before, Sergeant Forsythe?

A. No, sir.

Q. Have you ever seen the area - - the pictures - - the things depicted in those photographs before?

A. Yes, sir, I have.

Q. How did you come to see the scene that is depicted in those photographs?

A. These photographs were taken after I arrived at the location at the entrance to Ray-Mac Mining, but they were not taken by me.

Q. And is that the scene as you saw it when you arrived, or was that after you arrived?

A. This appears to be the scene after I arrived, because my Detective's car is parked there.

Q. And who is that? Whose car is that?

A. It is my car.

Q. Oh, your car.

A. It was my car.

Q. And when you arrived, the

coal truck - - the coal truck with the red cab, was it sitting back where it is depicted in this photograph when you arrived?

A. Where this vehicle is sitting is where it was sitting when I arrived.

Q. Okay. Do you know approximately what time of the day those photographs were taken?

A. They had to be taken between quarter till 9:00 or 10:30 A.M. that morning.

Q. Sergeant Forsythe, one of those Government Exhibits No. 28, I call your attention specifically to that.

A. Yes, sir.

Q. Examine that photograph.

A. (Witness complies)

Q. Did you have or cause that photograph to be taken?

A. Again, I did not cause these photographs to be taken, nor did I take them; but I recognize what is in the picture.

Q. Would you show the ladies and gentlemen of the Jury the photographs you are talking about? It appears to be a color photograph of a black object or thing in the center of it;

is that correct?

A. It does.

Q. Would you tell the ladies and gentlemen of the Jury what that is?

A. It is a graphite substance from the vehicle that was parked here. And it appears to be gunpowder, but it is not.

Q. Did you think it was when you had the photograph taken, when you saw it there?

A. Yes, sir.

Q. And you checked it out, and it wasn't gunpowder, was it?

A. No, it was not.

Q. And where was this substance at?

A. It was in the - -

Q. (Interrupting) Was it beside the vehicle?

A. Beside the vehicle that was parked there.

Q. And what kind of vehicle was parked there?

A. A green Jeep.

Q. And did you determine what kind of graphite substance or where it came from?

A. It came from inside the vehicle.

Q. Inside the Jeep?

A. Yes, sir.

Q. From a filter of some kind?

A. Yes.

MR. SELF: Mr. Marshall - - excuse me.

Q. The other photographs, do they also depict the Jeep that you are talking about?

A. No, sir. There is no photograph of the Jeep.

Q. What is introduced as Government's Exhibit No. 29 and 30, do you recognize those two photographs?

A. Exhibits 29 and 30 are photographs of a bed of a coal truck.

Q. And based on - - did you observe the area depicted in those photographs?

A. Would you repeat your question.

Q. Did you see what those pictures are that were up there?

A. Yes, sir.

Q. What part of the coal truck were they?

A. It is the - - the side of the coal truck, the top portion.

Q. And did you observe what - - did you form an opinion as to what those - - what was depicted in those photographs?

A. It appears to me to be a bullet hole, a bullet indentation into the bed of the coal truck.

Q. Did you observe the red coal truck that was sitting there while it was there?

A. Yes, sir, I did.

Q. Did you observe any other bullet holes there, Sergeant Forsythe?

A. The only ones that I recall of this coal truck was at this location, the bed of the coal truck.

Q. Did you examine the coal truck carefully to see if there were any other bullet holes in it.

A. I went around the vehicle, and these were the only ones that I saw.

MR. SELF: Mr. Marshall, if you would,

would you hand the witness what has already been introcuced as Government's Exhibit No. 31.

(The Marshall passing said exhibit to defense counsel.)

THE COURT: What was the number of those other exhibits there?

MR. SELF: 23 thru 30, Your Honor.

THE COURT: 23 thru 30.

MR. SELF: Yes, Your Honor.

THE COURT: And this is Exhibit No. 31.

MR. SELF: Yes, Your Honor.

THE COURT: All right, sir.

THE MARSHALL OF THE COURT: Your Honor, the opposing counsel has viewed the evidence.

THE COURT: Thank you, sir.

THE MARSHALL OF THE COURT: I am now handing it to the witness.

THE COURT: Thank you, sir.

Q. Sergeant Forsythe, examine that.

A. (Witness complies)

Q. And I ask you, if you would, do you recognize the vehicles depicted in those photographs?

A.

A. Yes, sir. This is a photograph of the green colored Jeep that was parked at the location of Ray-Mac Mining on John Hall Branch.

*** *** ***

Q. And is that Jeep in substantially the same condition in those photographs as when you first observed it?

A. Yes, sir, it is.

Q. And were the bullet holes there when you found it?

A. Yes, sir, they were.

Q. Did you at the time run a license check to determine the owner of that Jeep?

A. Yes, sir, I did.

Q. And who did the owner come back to be?

A. The owner came back--the license plate I ran came back to be Bryan Coal Company.

Q. And is the Jeep such a configuration that one can see inside it by standing on the outside?

A. Yes, sir, it is.

Q. And did you examine the contents of that Jeep to see what was in it?

A. Yes, sir, I did.

Q. And did you find anything in that Jeep?

A. Yes, sir, I did.

Q. What was there?

MR. WALBOURN: Your Honor, may we approach the Bench, please?

THE COURT: Yes, sir.

(Reporter's Note: At this time Mr. Self Mr. Dause, Mr. Adams, Mr. Branson, Mr. Walbourn, Mr. Hollon approached the Bench; whereupon the following was heard:)

MR. WALBOURN: Your Honor, it is my anticipation Mr. Self is asking this witness what was found in the Jeep, and I believe that through discovery in the pretrial conference they located a derringer pistol.

At my request, Mr. Self has traced this pistol, and it belongs to none of these defendants. It belongs to an individual by the name Harold Stumbo is our information.

Therefore, Your Honor, it has no relevancy to any of these defendants, and should not be admitted into evidence in this case.

We don't know who put it there, Your Honor.

THE COURT: But it was found there by these officers who came there, and it was in substantially the same condition as when they arrived as it was immediately after this occurred.

MR. WALBOURN: Yes, Your Honor, but it

has no relation to any of these defendants.

MR. SELF: Who it belongs to is a matter of proof. I think the inference--

THE COURT: (Interrupting) Let the objection be noted and overruled.

I think that basically this raises more of--where this raises more of an issue is when you find a stolen gun.

MR. WALBOURN: Pardon.

THE COURT: When you find a stolen gun, that raises more of a problem.

MR. PAFUNDA: Your Honor, if Mr. Self is correct, then you have to look at it this way. That Jeep could have had a howitzer in it, and something else pulled up behind it for three weeks.

The fact it doesn't have or does have doesn't prove one thing one way or the other or have any probative value in this case. It is not against the law to have a Jeep or have a gun in the vehicle.

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

(Reporter's Note: End of conference at the Bench.)

THE COURT: Just a moment.

Mr. Walbourn, come back. Just Mr. Walbourn.

Reporter's Note: At this point Mr. Walbourn approached the Bench whereupon the following procedures were held:

THE COURT: The reason I made reference to that was where they permit the showing that the gun was there, and then identified the owner, and then they come back and the owner then says his gun was stolen.

Now, that really presents a problem in evidence, because you are permitting elements of another crime to come in. But that isn't -- at this point that isn't applicable in this case.

MR. WALBOURN: I sure hope the Government knows where they're going with it, Your Honor, because it is over my objection.

THE COURT: All right.

(Reporter's Note: At this point the Bench conference ended.)

THE COURT: Proceed, sir.

MR. SELF: Thank you, Your Honor.

Q. Sergeant Forsythe, what did you find inside that Jeep?

A. I found located in the

driver's side of the front seat of the Jeep was a .38 caliber Derringer.

Q. And what, if anything, did you do with that Derringer?

A. Took possession of the Derringer.

MR. SELF: Marshall, if you would, I would ask you to hand the witness what has been previously marked for identification as Government's Exhibit No. C.

THE CLERK OF THE COURT: Your Honor, the exhibit previously marked for identification purposes as Government alphabetical Exhibit C has now been marked for purposes of trial as Government Trial Exhibit No. 49.

THE COURT: Did you say that was Exhibit "C"; is that right, Madam Clerk?

THE CLERK OF THE COURT: Yes, Your Honor.

THE COURT: Thank you, ma'am.

(Marshall passing set of documents to defense counsel.)

THE MARSHALL OF THE COURT: Your Honor, defense counsel has examined the exhibits, and it is now being handed to the witness.

THE COURT: Thank you, sir.

Q. Sergeant Forsythe, would you examine the object that has just been handed to you?

A. Yes, sir.

Q. Have you ever seen that Derringer -- object before?

A. This is the Derringer that I removed from the Jeep.

Q. On the morning of February the 16th, 1982?

A. Yes, sir.

Q. How do you know that?

A. By my initials and the case number that I used that day.

MR. SELF: Your Honor, at this time I would move for the introduction of what has now been marked for identification as Government Exhibit No. 49.

MR. PAFUNDA: Judge, I just want to look at the tag that is on there again, please.

MR. SELF: May I also see it too, Mr. Marshall?

THE COURT: Yes, sir. Mr. Marshall, show it to Mr. Self.

THE MARSHALL OF THE COURT: Yes, Your Honor.

(The Marshall complies)

MR. SELF: If the Defendants wish, we can mark that tag as a separate exhibit as No. 49-A, if there is some question about it.

MR. WALBOURN: I don't think they - - I don't think they took that tag out of the vehicle, so I would ask that happen.

MR. SELF: The tag is merely on there for the purposes of identification, Your Honor.

If there is some objection to it, we can just get Madam Clerk to mark the weapon itself as an exhibit.

THE COURT: Well, just do this.

The Jury understands those tags weren't on them at the time they were found. The tag isn't evidence. Do you understand that?

(Jurors nodding affirmatively)

THE COURT: All right, proceed.

MR. WALBOURN: Your Honor, I would ask

the tag be taken off, or I would like to approach the Bench.

THE COURT: Approach the Bench.

The Jury will be in recess for fifteen minutes.

MR. KEHRLI: Your Honor, while the Jury is in recess, can we pass them exhibits that were testified to by the last witness, Mr. Blackburn, Exhibit No. 48.

THE COURT: Yes, sir. Do you want to take Mr. Blackburn's exhibits back into the Court-room with you - - I mean back into the Jury Room?

MR. THOMAS: And the Defendants' Exhibits.

THE COURT: And the Defendants' Exhibits.

(Jurors nodding affirmatively)

THE COURT: You understand that we don't permit - - in other words, a witness must be examined and cross-examined before you can see the Exhibits.

We do that to expedite this matter.

Do you have any objection to taking them - - Mr. Blackburn's exhibits - - back to the Jury Room with you?

(Jurors shaking head negatively)

THE COURT: By reason of that, you will be there twenty minutes. Don't spill coffee on them. And don't discuss those exhibits among yourselves. You understand the not now admonition is now in effect?

(Jurors shaking head in the affirmative)

THE COURT: Are there any objections or corrections to the not now admonition.

DEFENSE COUNSELS: No, Your Honor.

THE COURT: Mr. Marshall, please excuse the Jury.

(The Marshall complies)

THE CLERK OF THE COURT: Your Honor, can I state for the record what exhibits I am giving the Marshall.

THE COURT: Yes, Ma'am.

THE CLERK OF THE COURT: Government's Exhibit Nos. 44, 46, 48; Defendant Tackett Exhibit No. 1; Government's Exhibits 12, 13 and 14.

THE COURT: Are there any more, gentlemen?

MR. KIRKLAND: Our check.

THE COURT: Madam Clerk, Mr. Rolland's

check.

THE CLERK OF THE COURT: Thank you, Mr. Kirkland.

THE REPORTER: Could you give me those numbers again?

THE CLERK OF THE COURT: Yes. Government's Exhibits 12, 13 and 14; Government's Exhibits 43 - - 44, 46 and 48; Defendant Tackett's Exhibit No. 1; Defendants Stumbo, Kinney, Rolland, Jason Moore and Raymond Hall's Exhibit No. 2.

MR. PAFUNDA: Judge, they may want to take the photograph back from yesterday about the hills and stuff. I don't know.

THE COURT: What are we talking about?

MR. PAFUNDA: Mine. My little photograph from yesterday.

THE COURT: This is Mr. Blackburn's.

MR. PAFUNDA: The one from Trooper Stephens yesterday. He put a couple of marks on it. I'm sorry. They don't want to look at it.

THE COURT: This is Mr. Blackburn's. Do you want to take the aerial picture back with you?

(Jurors nodding affirmatively)

THE CLERK OF THE COURT: The Defendants Austin Moore and Drexil Hall's Exhibit No. 1.

MR. PAFUNDA: Thank you.

THE COURT: Now, you have only got eighteen minutes. Go ahead.

REPORTER'S NOTE: At this point the Jury exits the Courtroom; whereupon the following was held:

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THE MARSHAL OF THE COURT: The jury's out of the courtroom.

THE COURT: What have you got there about identification?

MR. WALBOURN: Your Honor, the tag on there makes reference on there to items that this officer has not testified about.

MR. SELF: That's correct, Your Honor. It identifies Benny Caudill's vehicle, and this officer has not testified about that being Benny Caudill's vehicle.

If the Clerk wishes to mark that as--as 49A--the tag itself, with the exhibit being 49 at this point in time.

THE COURT: All right.

MR. SELF: It's a chain of custody, Your Honor, matter, and that's all.

THE COURT: Well, the tag ought to identify the exhibit such as that-- It's not supposed to be a running version of the history of the case. That isn't--

MR. SELF: I realize that, Your Honor. If Mr. Walbourn has an objection I can understand his objection.

THE COURT: All right.

MR. SELF: I need that marked. I also have some other ones in the same way that I need to mark.

THE COURT: Let's correct those during the recess.

MR. SELF: Yes, Your Honor.

THE COURT: We'll be in recess until two-thirty.

(Reporter's Note: Court recessed at 2:15 p.m. and reconvened at 2:33 p.m.)

THE MARSHAL OF THE COURT: This Honorable Court is again in session. Be seated and come to order.

Your Honor, all jurors, attorneys and defendants are present.

THE COURT: Let me state something for the record. Somebody said something about Monday being Washington's Birthday or something like that. That's on the 20th?

THE CLERK OF THE COURT: Uh-huh.

THE COURT: In all other parts of the federal government that's a national holiday. In this courtroom it isn't going to be.

Here's what it is. We're having this trial Monday, Tuesday, Wednesday and Thursday to accommodate the counsel and other parties, which is

also for the jury. But I realize at the end of four weeks because we miss one day we're adding another week--another week onto the trial.

We will-- That's going to be one holiday we're working, on the 20th.

MR. SELF: I think we worked it last year, too, Your Honor.

THE COURT: I guess we did.

MR. SELF: I think so. I think we did.

THE COURT: That's just the breaks of it.

All right. Let's proceed.

MR. SELF: Thank you, Your Honor.

Madam Clerk, would you hand the witness what's been marked as 49 and 49A.

THE CLERK OF THE COURT: Your Honor, for the record, during the recess the evidence tag was removed and given the no. 49A. The .38 derringer now bears the exhibit no. 49.

THE COURT: Thank you, ma'am.

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

Q. Sgt. Forsythe, the

weapon that you've just been handed, is that again the same weapon that you found in the seat of the Jeep parked at the Ray-Mac site?

A. It is.

MR. SELF: Your Honor, at this time I'd renew my motion for the introduction of what's previously been marked for identification as Government's Exhibit 49.

MR. WALBOURN: Other than previously noted, Your Honor.

THE COURT: Let the-- Let that which has been marked for identification as Government's Trial Exhibit 49 be finally admitted into evidence as Government's Trial Exhibit No. 49.

MR. SELF: Thank you, Your Honor.

Q. Sgt. Forsythe, a few minutes ago I asked in regard to some color photographs previously introduced as Government's Exhibits 23 through 30. I asked if you had taken those photographs. I think you responded that you had not.

A. That's correct.

Q. Did you, in fact, take those photographs?

A. I took these photographs on a colored slide. I was not aware that the Government

transformed them into color prints. That's why I said I did not take those particular photographs.

Q. During the recess did you examine the slides and see that those were photographs that were made from them?

A. I did, and they represent the same as the colored slides.

Q. And those are the ones that you took on the morning of February 16?

A. They were.

Q. Sgt. Forsythe, you also indicated that you had examined the red coal truck that's depicted in these photographs. Did you crawl up under it or down in the engine to see if there was any other bullet holes in it?

A. No, sir, I didn't.

Q. Did you notice any other damage to it, the vehicle or--other than what you've testified?

A. No, sir, I did not.

Q. You didn't open the hood and look down in the radiator to see if there were any bullet holes in it, did you?

A. I did not.

Q. After you took the

EASE CONTENT

photographs and recovered the derringer, Sgt. Forsythe, what, if anything, did you do at that time?

A. I interviewed Danny Blanton.

Q. Who is Danny Blanton?

A. He was the driver of the coal truck in the photograph.

Q. And after you interviewed Danny Blanton did you reduce his--did you take any statement from him?

A. I took a written--a written statement from Danny.

Q. And was that signed by Danny Blanton?

A. It is.

Q. Do you have that with you at this time?

A. Yes, sir, I do.

Q. Do you have the original of it?

A. Yes, sir.

MR. SELF: Madam Clerk, I'd ask that the statement that Sgt. Forsythe has be marked for identification as the next Government's exhibit.

THE CLERK OF THE COURT: The written

statement, Your Honor, which was not previously marked for identification has been identified as NPM No. 11 for the United States, and has now been marked for purposes of trial as Government's Exhibit No. 52.

It has been assigned No. 52 and that I previously marked during the recess two other exhibits for the Government, Your Honor.

MR. SELF: Thank you, Madam Clerk.

THE COURT: All right.

MR. WALBOURN: After all counsel have seen this may we approach the Bench?

THE COURT: Yes, sir.

THE MARSHAL OF THE COURT: Your Honor, Government's Exhibit 52 has been shown to all counsel.

(Reporter's Note: At this time all counsel except Mr. Thomas and Mr. Rowland approached the Bench; whereupon the following was heard:)

MR. WALBOURN: Your Honor, I must presume that after the statement has been shown to all counsel and marked that it's going to be attempted to be introduced into evidence. This has absolutely no relevancy, the statement of Danny Blanton. Mr. Blanton was on the stand and seen for parts of two days testifying. It's a statement he gave.

It's inadmissible, Your Honor. It has no relevancy.

THE COURT: Let me see the statement.

MR. SELF: May it please the Court, I'm moving to introduce the statement under Federal Rule 801(d)(1)(b) as a consistent prior--prior consistent statement of the witness Danny Blanton which was made approximately twelve noon on the sixteenth of February, 1982.

They have attempted or-- It speaks of express or implied fabrications for motive or influence. It's very evident in the record, Your Honor, they've tried to impugn Mr. Blanton's credibility. This is offered as substantive evidence under this rule and I'd recite to you the case of United States v. Hamilton. It was proved--

THE COURT: Uh-huh.

MR. SELF: --such a statement can be read to the jury, Your Honor.

MR. WALBOURN: I'd like to make a record on that, please.

THE COURT: All right, go ahead.

MR. WALBOURN: Under United States versus Hamilton if the witness takes the stand and makes Statement A, B, and C. Counsel then cross examines him and claims that A, B, and C are a recent fabrication, and hadn't he before this always maintained it was D, E, and F. This is rehabilitating a prior consistent statement.

That didn't take place in this case, Your Honor. We questioned this Government-- The Government questioned him and we questioned him. I think the only reference to that statement was that he now -- at trial he said it was like twenty-five pickets and in the statement he said forty.

THE COURT: Uh-huh.

MR. WALBOURN: That was the only thing different. This is not rehabilitating it with a prior consistent statement. Its attempt is to bolster and bootstrap his testimony.

Anytime you -- Under Mr. Self's theory anytime you cross examine a witness and he tells something differently on the stand than he previously does or tells something consistent on the stand with what he said previously, Your Honor, they think they can offer that as a consistent prior statement. Your Honor, under the theory you can take

a fifty-nine page statement and a witness could have on page fifty-seven have said there were thirteen pickets instead of twelve; uh-huh, you're attempting to say he's a liar and a fabricator and we want to offer the whole statement to bolster his credibility.

The only thing that that witness was ever questioned on concerning this was the number of pickets.

THE COURT: Okay. Anyone else?

MR. PAFUNDA: Yes, Your Honor, I join in Mr. Walbourn's objection. Also, if this statement is allowed to be entered into evidence then my client, Austin "Bo" Moore and Drexil Hall have been prejudiced. In addition to the arguments of Mr. Walbourn I'd claim the Sixth Amendment as well as the Fourteenth; cross examination and due process.

MR. ADAMS: May I add also that I think if it were put into evidence, taken back in the jury room as an exhibit and I think it gives undue emphasis.

MR. PAFUNDA: If this statement is to go to the number of pickets then this statement should be redacted, something needs to be done to it.

The only question ever brought up was by Mr. Ed Spencer.

THE COURT: Anything else, gentlemen?

MR. SPENCER: I asked him a question about the pickets, that's true.

THE COURT: Uh-huh.

MR. SPENCER: I remember him saying on the witness stand right there. The Government said -- He said I've signed so many statements and everything I don't remember what all of them did say. He said that right outright. And that was only handed to him -- a copy of it, typewritten copy to refresh in his memory. That was not inconsistent with his testimony.

THE COURT: Okay.

MR. KIRKLAND: I have not yet heard what the charge of recent fabrication is. I don't know what the United States is contending that has been recently fabricated or what they're contending we have implied was recently fabricated. There has been no charge of recent fabrication.

MR. SELF: I think in Mr. Pafunda's opening statement he put in issue the credibility of Danny Blanton.

THE COURT: You don't place credibility in issue by an opening statement.

MR. SELF: It's clear in the record

that his motive was attacked, and therefore this is admissible as a prior consistent statement.

THE COURT: Uh-huh.

MR. HARWELL: We'd like to note an objection, may the Court please, as the other counsel have articulated.

THE COURT: How about the Fourteenth Amendment, how does that apply?

MR. HARWELL: It applies --

MR. SPENCER: That's in the state. You have to have the Fourteenth in with it, and I believe that was just a slip of the tongue; due process.

THE COURT: All right.

MR. HARWELL: A confrontation clause issue, may the Court please, and also a Sixth Amendment fair trial issue.

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

MR. SELF: Thank you, Your Honor. May I hand this (indicating) back to the witness, Your Honor?

THE COURT: Yes, sir.

(Reporter's Note: Mr. Self handed the witness a document at this time.)

MR. SELF: Your Honor, I renew my motion for the introduction of what's now been marked for identification as Government's Exhibit No. 52.

THE CLERK OF THE COURT: All right. Let the objections be noted and overruled.

Let that which has been marked as Government's Trial Exhibit 52 be finally admitted into evidence as Government's Trial Exhibit No. 52.

Now, ladies and gentlemen of the Jury, let me state to you the purpose for which we're admitting this. I think all of you remember - - what was it, Mr. Blanton?

MR. SELF: Blanton.

THE COURT: Blanton. When Danny Blanton testified he was on the stand for almost - - what, a part of one day and a part of another day. He was here for a while.

He gave considerable testimony, and this is a statement that was given by Mr. Blanton. This is what is called a prior consistent statement.

Now, the consistency of this matter is admitted - - The consistency, if any, in this matter is permitted as bearing upon credibility

of the witness. In other words, it may be asserted that, well, the witness said something at one time and it's consistent with what he stated after, and you may consider that as credibility. Now, of course, on the other hand this Court has heard arguments sometimes where consistency might have been an unfavorable impression upon the credibility.

You are the ones who have to decide what the credibility of the witness is going to be. This is merely admitted for the purpose of assisting you in making a determination as to the credibility of what you want to give to Danny Blanton. Do you understand that?

Now, the consistency as contained in this statement is not for the purpose of reemphasizing evidence which you've already heard, nor is it to detract or take away from that which you've already heard. This is merely as bearing upon the credibility of the witness, Danny Blanton, if, in your opinion, he has any such credibility.

Do you understand?

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

THE COURT: Yes, sir.

(Reporter's Note: At this time Mr. Self, Mr. Moore, Mr. Pafunda, Mr. Walbourn, Mr. Kirkland and Mr. Spencer approached the Bench; whereupon the following was heard:)

MR. SELF: May it please the Court, I take extreme exception to the Court's instructions. Pursuant to Rule 801(d)(1) this is substantive evidence and can be used by the jury in finding the guilt or innocence of a defendant beyond a reasonable doubt. The rule is very clear and the annotation is very clear on that.

I call the Court's attention to the annotation of 801(b)(1); "Substantive evidence which is not going to credibility. It will be considered by the jury as substantive evidence going to the guilt or innocence of the defendants."

I would ask the Court that--to further advise the jury it may be considered for credibility but it may be considered as substantive evidence in and of itself.

THE COURT: Well, I still--I still--I don't think this statement is evidence, something which a witness didn't say.

MR. SELF: Well, the rule is very clear and the case law is very clear.

THE COURT: I don't care about the rule. Is the statement something which a witness didn't say?

MR. SELF: No.

THE COURT: All right.

MR. SELF: It is substantive evidence, Your Honor. It's not just a credibility thing. That's my objection.

THE COURT: Well--

MR. SELF: You told them it goes to credibility and it's admissible as non-hearsay statement.

THE COURT: The purpose of it is bearing on credibility to dispell any--anything with regard to motive or something which this witness would have which would make him testify to something falsely.

MR. SELF: No, Your Honor. The rule is very clear.

THE COURT: All right.

MR. SELF: The cases are very clear. That's how it gets admitted when the credibility or motive is attacked. A prior statement is substantive evidence and can be used alone to find the guilt of a defendant, and the Sixth Circuit has made this clear, especially in grand jury cases. It alone can suffice to

withstand a motion for judgment of acquittal; therefore it's substantive.

THE COURT: Okay.

MR. SELF: I just ask the Court to in addition advise the jury they may consider it for credibility but they may also consider it as evidence, the statement itself.

THE COURT: Anything further?

MR. PAFUNDA: I'd like on behalf of Drexil Hall and Austin Bo Moore to object to the admonishment. It does not cure the defect or the objections that I raised earlier with regard to the introduction of the statement.

MR. WALBOURN: I would join in that, Your Honor.

THE COURT: Fine, gentlemen. Anything else, gentlemen?

(SILENCE)

THE COURT: Okay.

MR. WALBOURN: Are you ruling on the motion of the United States, Your Honor?

THE COURT: Yes, sir. I'm overruling the motion.

Gentlemen, come back here so you can get your objections and save us from

coming back.

Now, I'm going to state to the jury further that the--the prior--the alleged prior consistent statement is--is not to negate any evidence which was contained in the witness's testimony. In other words, it is--it is not to negate any of the witness's--the prior consistency. It's not to negate that which was consistent--previously consistent, nor is it to emphasize that which was previously consistent.

MR. WALBOURN: I don't understand that, Your Honor. I'm sorry.

THE COURT: All right. It is evidence in this sense, it is not to be considered by the jury as--just because it's consistent.

MR. KIRKLAND: Your Honor, as I understand the rule, it says it must be offered to rebut and express or imply a charge against him of recent fabrication or improper influence or motive.

I have yet to hear the United States articulate what the charge of recent fabrication is.

THE COURT: Do you have to articulate something which is implied, Mr. Kirkland?

MR. KIRKLAND: I'd like to know what it is.

THE COURT: It's implied from the circumstances that Mr. Blanton hated the union. Mr. Blanton's been very much placed in issue before this jury.

MR. KIRKLAND: My position is, Your Honor, that a general attack on credibility does not bring into play Rule 801(d)(1). It's not--

THE COURT: Okay.

MR. KIRKLAND: A general attack does not do it.

THE COURT: I think it's been more than a general attack against Mr. Blanton. That's the way the Court perceives it. I'm sure you don't perceive it as that. But the record will reflect whether or not there's been an attack on Mr. Blanton's credibility sufficient to support the introduction of prior consistent statements.

The only thing is I don't want the prior consistent statement to be used to emphasize points which you already have in. It's-- It's not for the bolstering of that. That's what I want to rule out.

MR. WALBOURN: That's the sole reason that testimony is being introduced, Your Honor.

THE COURT: That's why my admonition

to the jury is that that is not to bolster. It's not to prevent that from which the jury heard from being evidence.

MR. WALBOURN: As I understand the case upon this this statement itself does not go to the jury. The piece of paper of that statement does not go to the jury.

MR. SELF: I think Mr. Walbourn is correct in that, Your Honor.

THE COURT: Well, we're talking about what goes in the jury room, gentlemen. I believe--

MR. SELF: That's right, Hamilton.

THE COURT: --in Hamilton we didn't let it go to the jury room. I'm going to be consistent in this thing. But, however, I will permit the prior consistent statement to be read to the jury.

Let your objections be noted, gentlemen, and be overruled.

MR. SELF: Let my objection be noted for the Court failing to give the required admonition--failure of the further required admonition.

THE COURT: As I say, I'm going to state to the jury that--that this isn't to say what they heard from Mr. Blanton isn't evidence.

(Reporter's Note: End of conference at the Bench.)

THE COURT: Now, let me state this in addition so that there will be no misinterpretation. I am not saying what I instructed you this is bearing on credibility. I am not saying that the effect of this isn't to say that what Mr. Blanton has said before isn't evidence. What Mr. Blanton said before is evidence. This is based upon consistency of what Mr. Blanton said.

The purpose of admitting this is not to reemphasize that which Mr. Blanton has already testified, but it is to expound upon the credibility of Mr. Blanton. Do you understand?

I take it by the nods of your heads, that you do.

All right, proceed.

MR. SELF: Thank you, Your Honor.

Q Sergeant Forsythe, when was this statement taken from Danny Blanton?

A. This statement was taken on February 16th of '82, approximately 12:00 P.M.

Q Would you read -- tell the ladies and gentlemen of the jury exactly what Mr. Blanton told you?

A. The statement from Danny Blanton on February 16th, 1982, at 1200 hours by

Detective R. O. Forsythe. I was driving the first truck off the hill when I got to the John Hall Branch. I saw about forty pickets. I saw Drexil Hall with the pickets. I went to school with him, and I know him very well. He had his right hand in his jacket pocket. When I pulled beside him, I saw him pull a bright pistol out and shoot at me. I thought he shot me. Repeating, I thought he shot me, period. Several shots were fired from the pickets. Pete Raymond Barker was in front of me in a regular truck or a Blazer type truck. He started shooting toward the pickets. The pickets then left. Signed Danny Blanton. Witnessed by Trooper J. A. Rederick.

Q. That was a signed statement -- that was a signed statement he gave you some three or four hours after the shooting. Correct?

A. It is.

Q. Sergeant Forsythe, what if any investigation did you do that day in regard to that incident?

A. I also interviewed Raymond Pete Barker.

Q. And other than interviewing

Mr. Barker, what if anything else did you do?

A. I also drove to the location where the Jeep was towed into and took some more photographs of the Jeep.

Q. Why was the Jeep towed in, Sergeant Forsythe?

A. There was no one there to drive it. And it was not driveable I would believe.

Q. Why would you say that?

A. Because there was several bullet holes in the vehicle.

Q. Based on your experience as a State Trooper, were you able to examine the bullet holes in that Jeep?

A. I did examine the bullet holes in the Jeep.

Q. Could you tell, based on the location of that Jeep, where some of the bullets--the weapons that were fired that created those bullet holes were located?

A. You can.

Q. Based on your opinion as a State Trooper and your experience, where were those shots fired from?

A. Some of the entry holes to the Jeep were fired from the front of the vehicle. Also some were fired from the rear of the vehicle.

Q. Explain that in layman's terms, would you, please?

A. In other words, if I was standing in front of the Jeep, and I fired several rounds into it, you can see the entry holes going into the Jeep. It would make an indentation first; and if it was a strong enough, higher velocity cartridge, it would penetrate that metal and make an indentation. As it would exit, it would make an outer -- a maroon-shaped, outer and would come on the outside of it. In other words, there was entry to the front part of the Jeep and exit, and there was entry from the direction of the rear of the Jeep as if I was also shooting from the rear of the Jeep towards the Jeep -- it was from the back of the Jeep also. So there was people shooting from the front of the Jeep going into it. There was people behind the Jeep that shot also into the vehicle.

Q. That is the same Jeep that is depicted in Government's Exhibit 31?

A. It is.

Q. Did you also, while you were up there, see the truck that is depicted in that same set of photographs?

MR. SELF: Mr. Marshall, does he have Government's Exhibit 31 there in front of him, a set of photographs in a glassene envelope?

A. Exhibit 31 is photographs of the Jeep.

Q. Would you turn that over on the back of it? Did you observe that vehicle, the truck that is depicted in those photographs up there at the time, Sergeant Forsythe?

A. Yes, sir.

Q. And was it parked substantially as to where it is depicted in those photographs?

A. Yes, sir.

Q. Is that sort of in between the mountains of the cut-through at the top of the mountain?

A. It is.

Q. Did you observe any physical damage to that vehicle?

A. No, I did not.

Q. Did you see anyone come up and take that vehicle off the mountain, or do you know how he got off the mountain?

A. I do not recall how it got off the mountain.

Q. Sgt. Forsythe, are you involved in any additional investigation on Tuesday?

A. Say again your question, please.

Q. In relation to this matter, were you involved in any further investigations on Tuesday?

A. That terminated my investigation on Tuesday.

Q. Now, when you were up there on Tuesday, Sgt. Forsythe, do you know an individual by the name of Bill Lykins?

A. I do.

Q. And do you know him as your former commander in the Pikeville State Police Force?

A. I do.

Q. You know him quite well, do you not?

A. I do.

Q. As does anyone else that has ever been assigned there while he was Trooper Commander?

A. That's correct.

Q. Was Captain Lykins there at any time when you were there on Tuesday?

A. I did not see Captain there Tuesday.

Q. Did you see him on Wednesday?

A. No, sir, I don't believe I saw him on Wednesday. I am not positive. I don't recall seeing him on Wednesday.

Q. Were you up at the Ray-Mac site at any time on Wednesday?

A. I was.

Q. What happened -- were you involved in any activity with regard to the Ray-Mac situation on Wednesday?

A. Wednesday, the State Police post again a.m., early that morning received another complaint of shooting incidents on top of John Hall Branch. At that time, I was the Special Response Team team leader. The Special Response Team may be known as the SWAT Team was activated. We went to the scene of the Ray-Mac location of the John Hall Branch. And there was nothing going on at that time. There was no shooting. The shooting had allegedly already happened. As far as any searches, we did not go into the woods. And we left. A detective was assigned to work that case other than myself.

Q. Who was that?

A. I believe that was Detective Claud Tackett.

Q. Did you conduct any investigation then on Wednesday?

A. No, I did not.

Q. Why, if you know, Sgt. Forsythe, was the SRT team activated on Wednesday?

A. Well, the SRT team would be activated under high-risk conditions. And when someone is shooting at each other, it is high-risk condition. And that is when the team should be activated.

Q. And did they take any activity, the SRT team on Wednesday?

A. Just being activated and going to the scene and leaving. That is all.

****

Q. On Thursday of that week, were you involved in any additional investigation into the Ray-Mac activities?

A. Thursday morning, there were two troopers assigned at the location of Ray-Mac Mining. They called in by radio and advised that they had been under fire, under gunfire.

Q. Who were those two troopers?

A. Trooper James Stephens and Denny Williamson.

Q. Based on their calling the post, what if anything did you do?

A. The -- excuse me. The SRT Team was again activated. We went to the scene. By then, the alleged shooting had already stopped by the time the SRT Team arrived.

Q. Why do you use the legal terminology alleged, Sergeant Forsythe?

A. Well, I was not there when the shooting happened.

Q. Continue if you would, please.

A. And we went into the woods. Me and the SRT Team divided up. There was three

members went one direction, and three-four went the other alongside of the mountain ridge. The three members slightly above myself picked up some cartridge casing, spent cartridges. And also a little later, they saw some individuals on the other side of the ridge or down below the ridge. And the reason I know this, they advised me by radio that they did see these people.

MR. SELF: Madam Clerk, I would ask you to hand the witness what has previously been introduced into evidence as Government's Exhibit No. 8. It is an aerial photograph, and I think it is on top there.

Mr. Marshall, before you hand that to Sergeant Forsythe, would you flip the acetate back on that, please? Would you flip the acetate back, please?

Q. Sergeant Forsythe, if you would, please, is there any markings on that photo as you have it in front of you?

A. The only markings would be the Government Exhibit markings.

Q. Is that Exhibit No. 8?

A. That is.

Q. Do you recognize the

area depicted in that photograph?

A. Yes, sir, I do.

Q. What is that?

A. It is the top portion of John Hall Branch and Bill Hall Branch location of Ray-Mac Mining entrance road.

Q. And do you know when those photographs were taken?

A. They were taken this year approximately two or three months ago by Sergeant Detective Williamson.

Q. At the time you were there on Thursday, February the 18th, is the area substantially the same as it is depicted in that photograph?

A. No, sir. It has been disturbed. The topographical soil has been moved by it appears to be a gasline road.

Q. Is the area that is leading down to where the two branches, John Hall and Bill Hall came together bare patch earth going up both sides of the hill, isn't there?

A. That is correct.

Q. Is that the gasline you are talking about?

A. It is.

Q. On February the 18th, 1982, was that gasline -- had it gone through there then?

A. It had not.

Q. Were there trees in the area on both sides of the road there where that gasline is now?

A. That is correct.

Q. Can you on that photograph, Sergeant Forsythe, pick the area or show the area where you and the SRT Team went into the hills on Thursday?

A. Yes, I can.

MR. SELF: Mr. Marshall, if you would, please, would you display that on the board, and I would ask the witness permission to step down and to show the ladies and gentlemen of the jury on the photograph with the acetate on the back specifically where they went into the hills.

Mr. Forsythe, just a moment, please, until he has had a chance -- would you flip the acetate back, Mr. Marshall? Thank you.

With the Court's permission, can the witness step down and identify

certain areas on that photograph?

THE COURT: Yes, sir.

Q. Mr. Forsythe, would you show the ladies and gentlemen just as a point of reference where the Ray-Mac operation was on Thursday, February the 18th, 1982.

A. The mining operation was right here.

Q. And the area that you indicated was a gas line, would you show that to the ladies and gentlemen?

A. The gas line the way it runs at this time runs up this ridge line like so.

Q. And does it also run across the road?

A. It also comes across like this.

Q. Sergeant Forsythe, where into the woods did you and your men go?

A. This is a high rock cliff on this portion. We went in approximately a hundred and fifty feet on the other side of the rock cliff and came back in this direction.

Q. And where if anyplace in that is it depicted in that photograph where you found

some cartridges?

A. The cartridge casings were found on this -- in this vicinity right through here. Again, this gas line road was not there.

MR. SELF: Would you please, Mr. Marshall, give him the yellow grease pencil.

THE MARSHALL OF THE COURT: I have the red one. I don't see the yellow one.

THE WITNESS: Here it is.

Q. Would you on the photograph itself and not on the acetate mark the location where the cartridges were found?

A. (Witness complied).

Q. How have you marked it, Sergeant Forsythe?

A. By a circle yellow in color.

Q. Okay. Would you put your initials immediately under those, please?

A. (Witness complied.)

Q. And would you place the date? These were found on 2/18/82?

A. They were.

Q. Would you place that date,

also, please?

A. (Witness complied.)

Q. You said there were other members of your team that informed you they saw some individuals in the hills. Is the area depicted on that photograph where they were at?

MR. KIRKLAND: Objection, Your Honor. That has to be hearsay. If he heard where they were or heard something, that is hearsay. If he saw them, that is different.

THE COURT: All right, overruled.

Q. Is it on that photograph, Sergeant Forsythe, where the other members of the SRT Team were when you received information that they had allegedly spotted somebody?

A. I don't know for sure if it would show if that is where they were or not.

Q. Were they on the McDowell side or the Mud Creek side, your team, when you received that transmission?

A. They would be on the -- as you are going towards McDowell at John Hall Branch, they would be on the right hand side of the roadway.

Q. So were they on the

McDowell side of the watershed as opposed to the Mud Creek side of the watershed, or do you know?

A. I don't know. The ridge line runs -- which side of the ridge line it was on, I don't know.

****

THE COURT: Let me interrupt. What is the--

MR. SELF: (Interrupting) I will move on, Your Honor.

THE COURT: All right.

MR. SELF: I will move on.

THE COURT: Fine.

Q. Sgt. Forsythe, would you flip that ascetate over on that photograph. Where you have marked on the photograph, is there any markings the same marking on the ascetate, the same area?

A. RB 9.

Q. RB 9?

A. I believe that is it.

Q. Based essentially in the same area?

A. Pretty well close to it.

Q. Thank you. You may resume the stand, Sgt. Forsythe.

Now, what evidence or what materials did you find while you were in the woods on the 18th?

A. There were several -- several cartridge casings, eight millimeter

catridge casings, and 35 millimeter Remington catridge cases found there.

Q. And those were found where you marked that photograph. Is that correct?

A. Yes, sir.

MR. SELF: Madam Clerk, I would ask you to hand the witness what has been marked for identification previously as Government Exhibits -- bear with me a second, Madam Clerk. Was previously marked for identification Government's Exhibit PPP and QQQ.

THE CLERK OF THE COURT: Your Honor, these exhibits were marked during the recess. Government Exhibit which was previously marked by three letters of the alphabet P has now been marked as Government's Trial Exhibit No. 50. The box which accompanied the exhibit has now been marked for identification as 50-A.

The Government's Exhibit which was previously marked for identification by three letters of the alphabet Q has now been marked as Government's Trial Exhibit No. 51. The box that accompanied that exhibit has now been marked as 51-A.

THE COURT: What have we got? Empty boxes.

MR. HARWELL: Yes, sir, Your Honor. We have got two of them.

THE MARSHALL OF THE COURT: Your Honor, counsel for the defense have examined the exhibits which are being handed to the witness.

THE COURT: All right.

****

Q. Sergeant Forsythe, I would ask you to examine what has been marked for identification as Government's Exhibit No. 50.

A. There are fifty-seven 8 millimeter spent cartridges and two 35 millimeter spent cartridges along with --

Q. (Interrupting) Exhibit that is marked for identification as Government's Exhibit No. 50, Sergeant Forsythe.

A. Exhibit No. 50, -- that is what I described, the 50 -- the 8 millimeter Mauser cartridges.

Q. And have you ever seen those cartridges before?

A. No, I haven't.

Q. Where did you first see them?

A. These were the cartridges that were picked up there at the location.

Q. Marked previously on Government's Exhibit No. 8.

A. They are.

Q. How do you know that is the same ones?

A. Because those are the only

ones that were turned in.

Q. And the document that has been marked for identification as 50A, the box, have you ever seen that box before?

A. These was the box these have been placed in.

Q. The box wasn't with the shells when you found it, was it?

A. No, they were not.

Q. It is just something you put them in after you got back?

A. That is correct.

Q. Your Honor, at this time I would move -- let me say the document that has been marked or the exhibit that has been marked as 57, Sergeant Forsythe.

A. What is your number again?

Q. Excuse me. 51. I'm sorry.

A. 51 are two spent cartridges, 35 millimeter.

Q. And are those 35 millimeter cartridges that you also found in the hills on February 18th, 1982?

A. That is correct.

MR. SELF: Your Honor, at this time, I move introduction to what has previously been marked for identification as Government's Exhibit 50 and 51.

MR. ADAMS: Your Honor, I would strenuously object on the grounds of relevancy.

THE COURT: Do you want to be heard at the desk? Do you want to be heard at the desk and placed in the record?

MR. ADAMS: Yes, sir, please.

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

MR. ADAMS: Your Honor, all we have got are a bunch of shells that were found there. We don't know if they were left there by a deer hunter. Maybe someone does like I do and was out shooting on a Sunday afternoon. I think it is prejudicial to us and not really linked in with these Defendants. It is just -- they just assume because they found them up there that they are related to this shooting. I don't think there is any evidence that links them with the Defendants, and I would object to it.

MR. SELF: These are the ones that

came out of Panhandle's gun.

MR. ADAMS: Out of his gun?

MR. SELF: Uh-huh. The 35 millimeters came out of Panhandle's gun.

MR. ADAMS: You have got evidence of that?

MR. SELF: Uh-huh.

MR. ADAMS: Well I will withdraw my objection based on that representation by Mr. Self.

MR. SELF: The police report shows the two millimeter cartridges came from his gun.

MR. ADAMS: On the other ones, I would object to them if they were just found and there is no expert testimony that they belong to the Defendants. I would object to it.

MR. PAFUNDA: I would also object because there is no proper foundation laid. I would also point out that on the box it says wanton endangerment.

MR. SELF: That just establishes chain of custody.

MR. ADAMS: If he don't have a ballistics expert, I would object to those on no foundation.

THE COURT: All right, gentlemen.

THE COURT: Let the objection be noted and be overruled, and let that which previously has been marked for identification as Government's Trial Exhibit 50, and it is finally admitted into evidence as Government's Trial Exhibit.

And go ahead.

MR. SELF: 50 and 51, Your Honor. I am so moving.

THE COURT: Let me see that.

(The Court examining said exhibit.)

THE COURT: And that which has been previously marked for identification as Government's Trial Exhibit No. 51 may finally be admitted into evidence as Government's Trial Exhibit No. 51.

MR. SELF: Thank you, Your Honor.

Q. Sergeant Forsythe, those cartridges were found - - were the 8 millimeter Mauser cartridges found altogether in one location.

A. In that vicinity, yes, sir.

Q. At the time they were found, Sergeant Forsythe, would you describe the condition of them at the time they were turned over to you on the 18th?

A. They appeared to be in the

same condition when they were turned over to me that day as they are now.

Q. Were they covered with mud and leaves and dirt, and appeared that they had been there a while or not?

A. No, sir, they were not.

Q. Does that go for both 50 and 51?

A. That's correct.

Q. And what did you do with those, Sergeant Forsythe?

A. They were transported to the Crime Lab located in Ashland.

Q. And who did you give them to there?

A. Our expert firearms examiner by the name of Allen Hammond.

Q. Now, the box that has been marked for identification as 51-A, Sergeant Forsythe, you didn't find that up in the hills also, did you?

A. No, I did not.

Q. Did you just place them in there for the purposes of being able to mark on them?

A. I didn't place them in this box. I placed them in this plastic envelope here.

Q. Thank you.

On the 18th, after you found the cartridges, Sergeant Forsythe, what, if anything else, did you do?

A. The three members of the SRT team continued on in - - on up the ridge line, and myself and three other members came back out of the woods and drove down to the Mud Creek side of John Hall Branch, and went up another road directly across from John M. Stumbo School, which runs in the same direction as John Hall Branch does towards McDowell.

We went up in there and did not find anything. And there were several other troopers called into the area, and we came back out of the woods and went out the mouth of that particular roadway in front of the John M. Stumbo School, and the helicopter landed behind the John M. Stumbo School that belonged to Mack Mining.

Bill Lykins was also inside the helicopter, and the pilot was, I believe, Allen Jacobsen.

Captain Lykins, Bill Lykins, advised me that they had spotted a truck - -

Q. (Interrupting) Don't say what he said. Based on what you were told, what, if anything, did you do?

A. Based on the information I received, I requested - -

MR. WALBOURN: (Interrupting) Your Honor, that's just another way of getting around hearsay. Based on what he heard, he did something. If he is going to do that, he might as well tell what he heard.

THE COURT: Well, let it be noted and be overruled.

Pursuant to - - just tell what you did after you talked to Captain Lykins.

THE WITNESS: Four members of the SRT team got into the helicopter and flew to the location where we landed where a green four-wheel drive truck was.

The SRT team exited the helicopter, and I contacted two people, one by the name of Jason Moore, and the other one, a person I know now, by the name of Parsons.

I talked to Jason Moore

and asked him what he was doing in the area, and he advised me he had lost a hunting dog the night before.

I talked to him a little more, and I patted him down, searched him, and did not find a weapon.

I looked inside his vehicle, and I did not see any visible signs of any weapons. And I advised Jason Moore that it would be best, considering the surroundings and the reasons we were there, for him to leave the area, and he did.

Q. Do you see the gentleman who identified himself as Jason Moore in the Courtroom today, Sergeant Forsythe?

A. Yes, sir.

Q. Could you describe where he is seated and what he has on?

MR. KIRKLAND: Your Honor, we will stipulate he can identify him and that it was Jason Moore that he saw at the helicopter.

THE COURT: All right. Let the record so reflect.

Q. Is that Jason Moore who told you he was out looking for a dog?

A. Yes, sir, that's correct.

Q. And is his physical appearance substantially the same as it was at the time that you found him?

MR. KIRKLAND: (Interrupting) Objection, Your Honor. We stipulated that this was the same man. There is no question about it.

THE COURT: Overruled.

Q. Is his physical condition substantially the same now as it was then, Sergeant Forsythe?

A. It appears to be the same.

Q. How was Mr. Moore dressed; do you remember?

A. He was dressed in casual working clothes. In other words, not in a suit and tie, just common everyday working clothes.

Q. Was there anything unusual about his appearance or condition of this clothes?

A. No, sir.

Q. And do you have in front of you what has already been asked you about Government's Exhibit No. 31, a sleeve full of photos that has got a Jeep on one side and another vehicle on the other?

A. I do.

Q. Do you see the vehicle that is - - I think a truck is on the other side.

A. Yes, sir.

Q. Have you ever see it before other than at the Ray-Mac site?

A. Yes, sir. This is the same type vehicle that were - - that was near the helicopter where Jason Moore was, and is licensed to Jason Moore.

Q. Did Mr. Moore have anything in his hands at the time you found him?

A. No, he did not.

Q. Did he have a dog lease in his hand?

A. No, not to my knowledge.

Q. Did you examine the front seat or the floorboard of the vehicle for any dog leashes or collars in there?

A. I did examine the front cab of the vehicle and the bed of the vehicle, and I did not see a dog collar or a leash.

Q. Was there a dog - - what is called a dog box in the back of the truck?

A. No, sir.

Q. And were there any leashes or ropes in the back of the truck?

A. Not that I remember.

Q. Did Mr. Moore leave the area after you told him to?

A. He did.

Q. What, if anything, did you do after that?

A. We got back in the helicopter and flew back to the John M. Stumbo School, and that terminated that portion of the investigation that day.

Q. Again, why was the SRT team activated on Thursday, February 18th?

A. It was a high-risk situation where shootings were involved, and the troopers were running a high risk of danger of life.

Q. The troopers were under fire.

A. They were.

Q. Okay. Now, on Thursday the 18th, did you see the individual - - did you see Billy Lykins?

A. I did.

Q. Did you talk with them about

what was going on?

A. I did.

Q. Did he encourage you - - did he call in the S.W.A.T. team?

A. No. I was the one that activated the S.W.A.T. team, since I was the team leader at the time.

Q. Did Captain Lykins tell you what to do or try to - -

MR. WALBOURN: (Interrupting) I object, Your Honor.

THE COURT: Good objection.

MR. SELF: I will rephrase my question.

Q. Based on any instructions from Captain Lykins, did you do anything?

A. Not based on any directions of Bill Lykins.

Q. He was not over you in any respect at that time as far as the chain of command, was he?

A. That's correct.

MR. WALBOURN: Your Honor, this officer is an experienced officer, and I don't believe he needs to be led quite as bad as he is, and I would object

to it.

THE COURT: Sustained.

MR. SELF: Thank you, Your Honor.

Q. Was there anything else that occurred on Thursday, Sergeant Forsythe?

A. Not that I took part in, and not that I know of.

Q. Let me ask you just a minute.

Back when you were up in the hills area where the cartridges were found, Sergeant Forsythe, what time was it that you all got into the hills at that point?

A. Between 9:00 and 10:00 A.M.

Q. What was the weather conditions at that time?

A. They were - - it was a type of a misty-type rain, fog - - a mist or a fog in the area.

Q. And, to your knowledge, had that been - - strike that.

Where you found those cartridges, Sergeant Forsythe, could you see anything in the Ray-Mac site?

A. You could.

Q. What could you see?

A. You could see the location of the equipment and the - - you could - - it was slightly above the fence where the Ray-Mac employees had their equipment, and where they were mining the coal.

Q. And were they - - was any of the equipment operating at the time you were there?

A. Not at the time I was there, not operating.

Q. Could you see men over there at the Ray-Mac site over where you were at?

A. I did.

Q. Could you hear anything they were saying or doing?

A. You could hear people talking, but to understand what they were saying, no.

Q. So, you could hear just voices?

A. You could.

Q. Could you tell where those people were that were talking, although you couldn't hear what they were saying?

A. You could tell the direction where they were - - see them.

Q. Approximately how far were you, when the cartridges were found, to where the nearest piece of equipment at Ray-Mac was at?

A. A straight-line distance, air miles or air, you would say a hundred and fifty, two hundred yards.

Maybe, you know, give or take. I'm not positive.

Q. It was not five hundred yards, was it?

A. No.

Q. Sergeant Forsythe, when were you next over at the Ray-Mac site?

A. I activated the team again that Friday morning before daylight.

Q. Friday?

A. I did.

Q. Is that based on any - - why did you do that?

A. There had been two mornings straight in a row that shootings had occurred at Ray-Mac Mining, and hoping to catch the people that was involved - - involved in the shootings, I called

the SRT team out early, way before daylight - - early that morning.

We drove to the location, and I was let out of the vehicles, under the cover of darkness, and went into the woods and laid there waiting for other people - - for the people to come back to the crime scene.

Q. Did anybody come back?

A. No, they did not.

Q. How long did you wait in the hills?

A. Approximately until 9:00 - - 8:00 A.M., 9:00 A.M.

Q. What was the weather condition that morning?

A. It was cold and misty-type rain.

Q. Was it fun?

A. No, sir, it was not.

Q. Wasn't a TV show, was it?

A. No.

MR. SPENCER: Show my objection, Your Honor, to a comment like that.

THE COURT: Sustain the objection. as to the leading.

MR. SELF: Thank you.

Q. When did you next go back to the Ray-Mac site, Sergeant Forsythe?

A. I was - - myself, I was back on the site that Monday.

Q. And what caused you to go back on the site?

A. An explosion had occurred that Sunday.

Q. And when you went over there, what time did you go over there?

A. A.M. that day.

Q. What did you find?

A. Myself and Agent McCallister went to the Ray-Mac Mine site where a coal auger had been blown up with an explosive device.

We took photographs of that auger. And a search of some more equipment located next to the auger revealed another live explosive device.

Q. How was that explosive device packaged?

A. Packaged in a basketball, with a safety fuse coming from the basketball.

Q. And what do you mean by

"safety fuse"?

A. A safety fuse is a fuse used to ignite an explosive device. And you strike a match or a lighter, and one foot of it was burned equalling about forty-five or fifty seconds.

MR. SELF: Madam Clerk, would you hadn the witness what has already been introduced as Government's Exhibit Nos. 32 and 33.

THE MARSHALL OF THE COURT: The witness has been handed the exhibits, Your Honor.

THE WITNESS: Exhibit No. 32.

Q. What is that, Sergeant Forsythe?

A. It shows the equipment that the basketball device was on, and it also shows a close-up of the explosive device itself.

Q. Was that a new basketball?

A. No, sir.

Q. In the picture, as it appears there, it looks just like a basketball. Was there something in it?

A. It was.

Q. What was in it?

A. nine sticks of Eureka

Explosives.

Q. Dynamite?

A. Whether or not it is called dynamite or water gel, it was an explosive.

Q. And after you found that, what did you do?

A. After I saw the device, I cleared the area and called for an expert in this field, which I am not, by the name of Razor Allen, who is employed by the State Police, to render safe these type of explosives.

Q. By "render safe", you mean to defuse it?

A. I do.

Q. And were you there when anything was defused?

A. I was.

Q. Did you observe what went on?

A. I did.

Q. What did he do?

A. Detective Allen removed the basketball, removed the black tape around the basketball, removed the safety fuse and cap, and also the nine sticks of explosives.

Q. Did he take them apart?

A. He did.

Q. Did he blow it up at that point ?

A. No, he did not.

Q. What did he do with it? Or did you see what he did with it?

A. He placed it in some evidence bags and kept them in his possession.

Q. The photographs in 33, do you recognize those, Sergeant Forsythe?

A. This is a photograph of the coal auger located at Ray-Mac Mining that was blown up.

Q. Is that the way it was afterwards or before?

A. Afterwards.

Q. Was there any damage to the dozer as a result of the bomb, or could you tell, Doctor Forsythe?

A. I couldn't tell if there was any damage to the dozer. I don't believe there was.

Q. Were you looking for damage to the dozer?

A. No. But I did not see any.

Q. Did you recover any other evidence at that time, Sergeant Forsythe?

A. Myself and Agent McCallister went into the ridge line at this location where the auger was sitting, and there was some gloves - - some coal gloves, you might say, the cheap, cloth gloves that were found on that ridge line.

They were brand new gloves, still with the staple and package on the gloves.

And I believe that is about all that was found.

Q. The photograph up there in Government's Exhibit No. 8, can you depict on that where you went into and found those, or is it shown?

(The Witness approaches the easel and said exhibit.)

A. Agent McCallister and myself walked this ridge line going back here in this direction.

Q. At the top of the point as it comes down to the gap in the road; is that what you are talking about?

A. Yes. As we - - the auger

is located right here in this vicinity. We went around this bend, and came into it on this back side, and then walked this ridge and came back down this way. (Indicating).

Q. About where did you find the gloves at? Does it shown on there or not?

A. It was located somewhere on this side. Right in this vicinity right here. (indicating).

Q. Would you take a yellow pencil and draw a circle around that area there, Sergeant Forsythe?

Just put your initials under it.

(The Witness complies)

A. Again, this gas line was not there at that time.

Q. That area was heavily wooded - - excuse me.

What was the condition of that area when you went there, Sergeant Forsythe?

A. The same as on each side of the clear line, brush and trees.

Q. The gas line was not through there at that time; is that your testimony?

A. That's correct.

MR. SELF: Thank you. You may reum resume your seat.

Q. Detective Forsythe, during your - - did you find anything else up in the hills that day?

A. No, sir, I did not.

Q. Did you see any evidence - - any other evidence that you observed or any other thing that you observed up there?

A. You could - - as far as any evidence, no.

You could see where something or someone had walked through the woods there where the leaves were disturbed.

Q. Based on your experience as a State Trooper, did you form an opinion as to how long those disturbances had existed in the woods?

A. It was recently.

Q. Did you attempt to follow the tracks?

A. We did.

Q. And where did you follow them to?

A. Those tracks led us to the

head of - - what is known as Hood's Fork.

MR. SELF: Mr. Marshall, if you would, I would ask you to hand the witness - - excuse me - - what was previously introduced into evidence as Government's - - just bear with me a second - - as Government's Exhibit No. 7.

THE MARSHALL OF THE COURT: The witness has been handed the exhibit, Your Honor.

THE COURT: Thank you, sir.

Q. Sergeant Forsythe, do you recognize the area depicted in that photograph?

A. It shows the head of Hood's Fork, the residence of Sam Bentley.

Q. Would you place that up on the easel, please, Sergeant?

A. (The witness complies)

*** *** ***

Q. Again, Sergeant Forsythe, what is depicted in that photograph, as best you know?

A. This is Hood's Fork -- leading up to the head of Hood's Fork.

Q. Where is -- did you describe some individual that lives there? Who is that?

A. That is the residence of Sam Bentley.

Q. Can you see it on that photograph? It is hard to see back here.

A. You can't see his residence.

Q. Where is it at?

A. Right at the fork.

Q. The fork of the highway?

A. Hood's Fork.

Q. Does that photograph depict the area that you and Special Agent McCallister came over the top of the hill into?

A. Yes, sir.

Q. Where is that, please?

A. We followed --

Q. Where did you follow the

tracks down through there?

A. On this backside of this mining operation, which is Ray-Mac going back through here.

And we came up on this vicinity here, as you overlook into Hood's Fork; and we went down into that direction.

Q. Did the tracks lead down there, or were you just --

A. (Interrupting) That is where we lost them, right on this -- right through here.

Q. Would you draw a little yellow circle about where you lost them?

If you would, just draw a line in the area that you traced the tracks with a yellow pen, if you can. If you can't, just say so.

A. Where do you want the line drawn again?

Q. Well, start from where you -- where you came up over the hill there first, or can you find it?

A. Well, this shows the backside of the mining operation. We was on the --

over on this side, and came around this vicinity around up through here.

Q. Can you mark that with a yellow pen?

A. I did.

Q. Would you put your initials beside it, Sergeant Forsythe?

A. Yes.

Q. And that is on Goverment's Exhibit No. 7, correct?

A. Yes, it is.

(Witness complies)

Q. Now, at the time you were there, the strip mining operation that is depicted in that photograph, was that there at that time?

A. Oh, this was not there at the time, this right here (indicating).

Q. All the area -- all the strip mining operation that you can see in the upper left hand corner was not there?

A. That's right.

MR. SELF: You may resume the witness stand,please.

(Witness complies)

Q. Did you find any other physical evidence up there at that time?

A. No.

Q. Sergeant Forsythe, did you, during the next week, have the occasion to talk to any of the Defendants in this case?

A. Not that week I did not.

Q. Did you ever have an occasion to talk to Defendant Drexil Hall?

A. I'm sorry. I did talk to Drexil Hall on February 24th.

Q. 1982?

A. I did.

Q. How did -- how did you come to talk to Drexil Hall?

A. Danny Blanton had obtained a warrant of arrest for Drexil Hall.

Q. And were you assigned to investigate allegations of that complaint?

A. Of the shooting that occurred on that Tuesday, the 16th. Blanton had obtained a warrant in District Court in Floyd County, and it was executed by a State Police Officer, I believe, on the 17th.

I had not interviewed

Drexil Hall, and I went to his residence on February the 24th.

Q. And did you take a statement from Drexil Hall?

A. I did.

Q. Do you have that statement with you at this time?

A. Yes, sir.

MR. SELF: I would ask you to hand that to the Clerk to mark it for identification as the next Government's exhibit at this time.

(Witness complies)

THE COURT: Make sure everyone else gets to see that too.

THE CLERK OF THE COURT: Your Honor, this statement, not previously marked, has been identified as MPM for the Government, No. 12, has now been marked for the purposes of trial as Government's Trial Exhibit No. 53.

(Marshall passing exhibit to defense counsel)

THE COURT: While they're examining that, you are going to be in recess.

While you are in recess, do not discuss the evidence.

Is there any objections or corrections to the form of the admonition?

DEFENSE COUNSELS: No, Your Honor.

(Reporter's Note: The jury left the courtroom at 3:57 P.M. whereupon the following proceedings were held:)

****

THE MARSHAL OF THE COURT: The jury is out of the courtroom, Your Honor.

THE COURT: Let me make a statement. I want to give you something to think about while I'm back in Chambers.

We had pretrial. During pretrial we had--concerning the foundation of the exhibits. Now, in the foundation of the exhibits you can have something where the person has found--the first link in the chain of the exhibits. Then that can pass through thirteen or fourteen hands, which would be other links.

Now, the purpose of the pretrial was establishing that next link. I assume the Government was supposed to have that person here at that time to establish that first link.

But then you go from the first link to various links thereafter. Now, I-- We've had a couple of occasions where this has come up.

I think you went up there with a S.W.A.T. team and they found a bunch of shells, them and you together, is that correct?

THE WITNESS: That's correct.

THE COURT: All right. Now, anyone that knows any basic thing of evidence at all knows that

the first thing to make something relevant in evidence would be the first person who found that. That first person-- The first person who found it, the conditions when he found it, and substantially it was the same thing when he turned it over to someone else. That's the first primary thing in evidence--in getting something in evidence, isn't that correct?

MR. SELF: In most respects, yes, Your Honor.

THE COURT: Well, what are the exceptions to it?

MR. SELF: Well, one of them is this basketball bomb. It was discovered by someone else but Mr. McCallister is the one who took it out of the dozer. I mean the first person who saw it and then hollered at him to come and get it-- I don't see wasting the Court's time by putting someone on who said I found it first.

THE COURT: Fine. Now, about the shells-- I think we had something about those bullet fragments which we had, which aren't finally in evidence. I don't want the United States to think that they can pick into a thing where seventeen or eighteen persons handled something and this one person would be the best witness, and that's going to negate the necessity of

having that first person to establish it.

Now, I assume that the-- at the pretrial of this thing-- Were all of those members of the S.W.A.T. team present at the pretrial?

MR. SELF: Your Honor, counsel said they didn't have to be.

THE COURT: Now, I don't want--don't want that to be used either way. I don't want it to be used as a crutch for the Government.

MR. SELF: I'm not trying to, Your Honor.

THE COURT: I don't want the defendants to make an agreement and then come up here and make it appear like this Court isn't observing the rules of evidence. Now, that's what I don't want.

MR. SELF: Your Honor, I don't want defense counsel and this Court to think when I say I'll have someone here I can't or I won't. When I do I do, and when I say I will I will.

THE COURT: Well, do you all want the other members of the S.W.A.T. team here? Mr. Adams?

MR. ADAMS: No, Your Honor, I don't-- That's fine. I don't necessarily have to have members of the S.W.A.T. team. As I indicated to the Court earlier, I am concerned about the relevancy.

THE COURT: All right. The Court's satisfied on the relevancy issue. The Court feels like it's sufficient, they're admissible.

The only thing that I'm concerned about is the foundation.

MR. SELF: Your Honor, I doubt if I can call members of the S.W.A.T. team and they can specifically identify the bullets that they found.

MR. PAFUNDA: Exactly my point. That was exactly my point, Your Honor.

MR. KEHRLI: Your Honor, that question wasn't raised at the pretrial hearing. If these gentlemen raised that question--

MR. SELF: Your Honor, I'll be glad to try.

MR. WALBOURN: I think we've all learned our lesson on this. I think we've learned our lesson on this. I doubt if they'll ever be any more stipulations regarding these matters.

THE COURT: Fine. That's-- That's one thing we've learned. But although we've established it there I--we still have to resolve it here in this trial.

I don't want somebody to say, well, these fellows down there had a trial and

nobody knew what the rules of evidence were, because all of us know what the rules of evidence are.

We've got to clear up this trial.

MR. SELF: If there's some challenge to these as evidence I'll withdraw and bring in every member of the S.W.A.T. team, Your Honor, and take another two days to do that.

THE COURT: If it's necessary we'll take two days.

MR. SELF: If the defendants have an objection to these cartridges.

THE COURT: I think there's--there's no challenge to the foundation of the cartridges.

MR. PAFUNDA: My objection still stands, Your Honor, in this regard.

THE COURT: What's your objection, Mr. Pafunda?

MR. PAFUNDA: My objection is what the Court just stated. A witness should be in that chair--not the chain of custody but the proper witness to introduce these items as exhibits to be placed into evidence.

THE COURT: All right. Any statement you might have made to the contrary in the pretrial--you're withdrawing that?

MR. PAFUNDA: That's not correct, Your Honor.

THE COURT: You now want them here?

MR. PAFUNDA: No. My statement at the pretrial, and I believe this was the stipulation that was entered into, was that the Government would not have to establish the chain of custody; like this item went to Ashland and--

THE COURT: Let's get back. I think the statement is going to be different from what you're representing. Now, Madam Clerk, again tell them what the statement they made at the pretrial was, which is in the record, in regards to the Government's exhibits.

THE CLERK OF THE COURT: The only Government exhibits that I note, Your Honor, without looking at the transcript were that Aubrey Harwell objected to the foundation on behalf of Edgar Jones to Government's Exhibits 5xX, 5xU, 5xV and 6xA; and the person to authenticate that would be at the trial.

Hershel Branson stated he had no objection to the foundation of the--of the rest of the U.S. exhibits.

E. J. Walbourn; no--no objection as to the foundation.

Lowell Spencer; no

objection as to foundation.

Eldred Adams; no objection as to foundation.

Dan Rowland; no objection as to foundation.

Francis Dale Burke; so stipulates as to foundation and chain of custody.

Tom Hollon; no objection as to foundation or chain of custody.

David Thomas; no objection as to foundation and chain of custody.

Bernard Pafunda: no objection as to foundation, chain of custody.

MR. PAFUNDA: I don't object to that, Your Honor, but that means, if we take it all the way to the--to the literal end, that the Government can put anybody in that chair and say, here are the bullets; boom, move it in. Why even go through it then?

See, that's my point.

MR. ADAMS: Your Honor, maybe I didn't articulate my objection very well. What I'm getting at-- I don't dispute that this officer found some shells upon the hill.

THE COURT: Yes.

MR. ADAMS: What I'm getting at is

the situation of what if he found a Civil War cannonball upon the hill. I don't dispute--

THE COURT: Right.

MR. ADAMS: The Civil War cannonball that he found, but what's that have to do with the case. I don't think I stipulated that away.

THE COURT: I understand your objection.

MR. ADAMS: All right.

THE COURT: The Court is satisfied that there's enough evidence with regard to these matters to satisfy--to satisfy the relevancy. The final issue is whether or not the jury thinks that they're there. I'm satisfied there's enough relevancy to warrant this matter going to the jury.

THE CLERK OF THE COURT: Judge, just so I don't leave anyone out, William Kirkland--he had no objections as to foundation. He requested to look at the minutes books, and--and the Judge gave him permission to do so. Also, he reiterated his objection to tapes for the record.

THE COURT: Fine. Now, I'm getting back to this, gentlemen, we can bring the other three members of the S.W.A.T. team in and they can all testify, if they can, as to what they found or haven't found. Do

you all want that done?

(SILENCE)

THE COURT: I assume from your silence--

MR. PAFUNDA: Your Honor, I don't. Here's my point, as the Court mentioned, and as Mr. Self knows, this is about the fourth witness that this has occurred on. I just don't want the situation--

THE COURT: The Court is getting tired of this occurring zip, zip, zip, like that. I don't particularly care for that, gentlemen.

It sounds like you're going through the thing and saying, well, this third man would make a better witness so therefore we're going to use him to get it in. Let's don't do that.

MR. PAFUNDA: If we go along here with what we've just mentioned and take it to the extremes-- I hate to use the man's name in vain, but we could put Walker Blackburn in there and say that these are shells that were found in the hills; zip, zip, zip.

THE COURT: We'll be in recess for three minutes. We've got three minutes, gentlemen. I'm sorry I took that time up.

(Reporter's Note: Court recessed at 4:03 p.m.)

(Reporter's Note: The Court was reconvened at 4:10 P.M.)

THE MARSHALL OF THE COURT: All rise, please. This Honorable Court is again in session. Be seated and come to order.

your Honor, all defense counsel, Defendants and jurors are present.

THE COURT: Thank you. You may proceed, sir.

MR. SELF: At this time, Your Honor, I renew my motion for the introduction of what's previously been marked -- I ask the witness to be handed what's previously been marked as Government's Exhibit 53.

THE COURT: All right.

MR. PAFUNDA: Your Honor, I have no objection to the introduction of that exhibit.

THE MARSHALL OF THE COURT: Your Honor, all attorneys have viewed this exhibit.

THE COURT: All right.

(Reporter's Note: The Marshall handed the witness an exhibit at this time.)

Q. Sergeant Forsythe, you've been handed at this time what's been marked for identification as Government's Exhibit 53. Have

you ever seen that document before?

A. This is a statement that I took from Drexil Hall on February 24th at 2:45 P.M., 1982.

Q. Is that 1445 military time?

A. That's right.

Q. And -- In whose handwriting is that statement?

A. That's my handwriting.

Q. Did you take -- Did you reduce Mr. Hall's statement to writing, and is that his statement as you reduced it to writing?

A. It is.

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 No. 53.

THE COURT: Is there any objection?

MR. PAFUNDA: Your Honor, I have no objection to the introduction of that.

THE MARSHALL OF THE COURT: Stand when you address the Court, please.

MR. PAFUNDA: Excuse me.

THE COURT: Let me see that statement.

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

THE COURT: Any other objections? Any objections by any of the defendants?

(SILENCE)

THE COURT: All right. Being no objection let that which has been marked for identification as Government's Trial Exhibit No. 53-- is finally admitted into evidence as Government's Trial Exhibit 53.

Q. Sgt. Forsythe, do you see the gentleman in the courtroom who gave you that statement?

A. I do.

(Reporter's Note: At this time Defendant Drexil Hall stood up.)

Q. Is that the gentleman that's now standing?

A. That's Drexil Hall.

MR. SELF: Let the record reflect he identified the defendant Drexil Hall.

THE COURT: The record so reflects.

Q. Sgt. Forsythe, would you read the statement that Mr.-- Did Mr. Hall sign that statement?

A. He did.

Q. Sgt. Forsythe, other than those statements did Mr. Hall make any other statements to you at that time in regard to the incidents of February 16, 1982?

A. Yes, sir.

Q. What were they?

A. Questioned him on the location of the firearm which he said he used in the altercation. Drexil Hall advised that he did not have it with him at his residence at that time but he would turn it over to me. And later-- He said if I would come back later that afternoon he would have it for me.

Myself-- I returned later that afternoon. Drexil Hall was not there but I contacted his wife. She gave me a .32 caliber automatic pistol.

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 39 and 39A.

THE CLERK OF THE COURT: Your Honor, during the recess, at the request of the Government, Government's Exhibit 39 was given a Clerk's tag, and the evidence and identification tag was marked as Government's Exhibit--Trial Exhibit 39A and removed from 39.

(Reporter's Note: At this time the Marshal handed the witness an exhibit.)

Q. And was witnessed by you?

A. Myself and Agt. McCallister.

Q. Would you read the statement that Mr. Hall signed for the ladies and gentlemen of the jury.

A. Government's Exhibit No. 53: "Statements of Drexil Hall; Wednesday, February 24, 1982 at 1445 hours; by Det. R. O. Forsythe. Drexil Hall has been advised of his rights. He states that he understands them. On Tuesday, February 16, 1982, at 0830 I was at the mouth of Ray-Mac Company and John Hall Branch on a UMWA picket line. We were trying to organize Ray-Mac Coal Company. Pete Barker was in front of three coal trucks traveling off of the hill. When they got to where we were I tried to flag Danny Blanton down. He was in the front coal truck. I heard a shot. I could not tell which direction it came from. Then several shots were fired from both directions. I had a .32 auto F.I.E. in my coat pocket. I shot it seven times. I shot several times towards Pete Barker and the other person with him, and then up the hill towards the coal trucks. I was being fired upon so I returned fire."

Signed, Drexil Hall, witnessed by Det. R. O. Forsythe; signed, Dennis McCallister, Special Agent for the ATF.

Q. Sgt. Forsythe, would you examine the weapon that's just been handed to you.

A. (The witness complied.)

Q. Have you ever seen that weapon before?

A. This is the pistol that I received from Drexil Hall's wife.

Q. This was on February 24?

A. Yes, sir.

Q. How do you know that that's the same one you received from her?

A. I've marked the movable parts with my case number and my initials.

MR. SELF: Your Honor, at this time I'd move the introduction of what's previously been marked as Government's Exhibit No. 39.

MR. PAFUNDA: Your Honor, I have no objections.

THE COURT: Being no objections, that which was previously marked for identification as Government's Exhibit 39 shall be finally be admitted into evidence as Government's Trial Exhibit No. 39.

Q. How long did you maintain that in your possession, Sgt. Forsythe?

A. Until I transferred it

to the crime lab in Ashland on 3-26 of '82.

Q. Did you have any further discussions with Drexil Hall in regard to this weapon?

A. Later on-- Not in the near future I did not have any discussions. Several months after this altercation Drexil Hall came to the state police post to Coal Run with a court order from Judge Harold Stumbo, District Court Judge in Floyd County, for this weapon to be released to him.

Q. And did you turn it over to him?

A. I did not.

Q. Did you tell him why?

A. I advised Drexil Hall that the weapon was involved in a federal court case still under investigation and that I could not release the weapon to him, and for him to advise Judge Stumbo the same if he had any questions.

MR. SELF: One housekeeping matter. Madam Clerk, would you hand the witness what was previously marked for identification as Government's Exhibit No. 38.

(Reporter's Note: At this time the Marshal handed the witness an exhibit.)

Q. Do you have that, Special

Agent--Sgt. Forsythe?

A. I have Government's Exhibit No. 38.

Q. And is that a typed version of the statement that was given to you by Danny Blanton, which you previously read?

A. It is.

Q. It's just a typed version of it, is that correct?

A. It is.

MR. SELF: Thank you. Just a moment, please, Your Honor.

THE COURT: Let me see that.

(Reporter's Note: At this time the witness handed the Court a group of documents.)

Q. Sgt. Forsythe, you indicated you knew Captain Lykins and previously you were under him, correct?

A. That's right.

Q. Have you had any conversations or communications with him with regard to this case?

A. Myself and Captain Lykins are close friends. As far as addressing him and telling him the investigation of this case, no, I have not.

Q. Has he in any way attempted to encourage your investigation or prompt your investigation or cause you to do any investigation in this case?

A. He has not.

MR. SELF: No further questions, Your Honor.

THE COURT: Which end do you want to start from, gentlemen?

MR. KIRKLAND: I don't have any questions, Your Honor.

MR. SPENCER: I might have wanted to ask some. If he doesn't cover it then I will, Your Honor.

THE COURT: All right. That'll be fine.

MR. WALBOURN: I apologize for Mr. Spencer.

CROSS-EXAMINATION

BY MR. WALBOURN:

Q. Mr. Forsythe, my name is E. J. Walbourn.

Regarding Government's Exhibit No. 49, the derringer. I believe you testified

that you took that into your possession?

A. That's correct.

Q. And you took it out of the seat of a Jeep automobile, is that correct?

A. I did.

Q. Was there anyone in the Jeep at that time?

A. No.

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Q. You just reached in the vehicle and got the weapon out. Is that correct?

A. Yes, sir, I did.

Q. Now, how long have you been a law enforcement officer, please?

A. I was employed by the State Police in October of '72.

Q. And you seized this weapon because you thought perhaps it might be relevant to the man you were investigating. Is that correct?

A. You are correct.

Q. Now, as an officer, you of course, did have a check ran on this gun to determine who was the owner, did you not?

A. Not I -- I don't recall having a trace check by the ATF or not. I did run a NCIC check for the serial numbers to check and see if the gun was stolen.

Q. And it was not?

A. Yes, sir.

Q. It was stolen?

A. No, sir. I did have a test run on it -- a check on it.

Q. And it is your understand

ing, is it not, that that weapon does not belong to any of these defendants?

MR. SELF: Objection, Your Honor. That would be hearsay.

THE COURT: Overruled.

A. I do not know who owns this weapon.

Q. That weapon belongs to a Mr. Harold Stumbo, does it not?

A. I say again I do not know.

Q. Okay. But you did not have a check caused to be run to determine who was the owner of that weapon?

A. I did not.

Q. And you had the means to do that, did you not?

A. Yes, sir.

Q. Now, Mr. Forsythe, regarding the Jeep you have testified, I believe you said at some point on the sixteenth, you went to a location where that Jeep had been towed. Is that correct?

A. Yes, sir.

Q. And you took pictures of that vehicle?

A. I did.

Q. And do you have those with you today?

A. All evidence I have, all photographs I have have been turned over to the government.

Q. Over to who?

A. To Tom Self, the U.S. Attorney.

Q. Okay. So if there were pictures or the pictures were developed or if the pictures were any good, the government would have them in their possession. Is that correct?

A. Yes, sir.

MR. SELF: Let the record reflect Mr. Walbourn has seen those photographs, Your Honor.

THE MARSHALL OF THE COURT: Stand when you address the Court.

MR. SELF: Sorry, Your Honor.

MR. WALBOURN: Indeed I have not, Your Honor.

THE COURT: Well --

Q. (Interrupting) Mr. Forsythe, regarding Government's Exhibit No. 31,

I believe that is the Jeep and some seats. Do you have that in front of you, sir?

THE COURT: Let's say this and get it on the record. Whether you have or haven't, we will discuss that after five o'clock, gentlemen.

MR. WALBOURN: I understand that, Your Honor. But I felt when Mr. Self made a statement, that I should respond to it.

THE COURT: All right. He has made a statement that you have seen it. And you have said you haven't.

MR. SELF: They are available, Your Honor.

THE COURT: We will inquire into that after five o'clock and after the jury has gone home and in a recess.

MR. WALBOURN: Thank you.

Q. Mr. Forsythe, who took those pictures, if you recall?

A. I took these -- I took colored slides representing the same that these pictures show.

Q. Okay. Now, were those in addition to the ones you took after the Jeep had been towed to someplace?

A. These were the first photographs that were taken at the scene.

Q. All right. And you took subsequent photographs where the Jeep had been towed to?

A. Yes, sir, I believe I did.

Q. All right, sir. Thank you.

There are, when those photographs depicted in No. 31 were taken, were there anyone -- were there any individuals in that area in addition to Ray-Mac employees, officers with the Kentucky State Police, or I believe a local magistrate or deputy sheriff who was there that you recall?

A. There was news media there.

Q. Okay. In addition to those, were there any other people other than Ray-Mac employees, officers with the Kentucky State Police, and constable or magistrate or someone of that nature, and news personnel?

A. That is the people I recall seeing there.

Q. Okay. You don't recall seeing any of these gentlemen seated as defendants, do

you?

A. No, sir, I do not.

Q. Now, in one of the photographs, I believe in Government's 31, there are some photographs showing the -- some seats. Are you on that side, sir?

A. On the rear side of 31, the back side.

Q. Okay. Now, the lower right hand picture -- do you see that, sir?

A. Represents a Jeep and people in front of the Jeep.

Q. All right. Are those people -- are you able to identify those people in front of the Jeep?

A. To identify these people individual, no, sir. But to my interpretation, they were employees of Ray-Mac Coal Company.

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Q. Okay. And does it appear that at least two of those individuals have rifles or shotguns in their possession?

A. Yes, sir, I can see two long guns either rifles or a shotgun.

Q. Mr. Forsythe, when you interviewed Danny Blanton, approximately how long did your interview last with him?

A. Approximately fifteen minutes, twenty minutes.

Q. Okay. In addition to the statement you have read from, did you take any notes concerning that interview?

A. No, sir. This statement is all I took.

Q. And when you examined the Jeep's location after it had been towed, you found that it had had substantial damage done to it, did you not?

A. It did.

Q. All right. One of the tires had been shot out?

A. Yes, sir.

Q. The windshield was completely shot out or demolished?

A. It had a bullet hole in the windshield.

Q. The radiator had several holes in it?

A. There was several holes all the way around the vehicle, several shots.

Q. Okay. The top had been slashed, too, had it not?

A. I do not recall the top being slashed.

Q. Okay. But if it had been, that would be reflected on the photograph you took?

A. Not necessarily the very top -- the top portion of the Jeep would not have been reflected.

Q. Now, Government's Exhibit No. 8, prior to today, how many times have you seen that photograph?

A. Prior to today, that is the first time I have viewed these photographs.

Q. Okay. You had viewed them during one of the recesses up at the Bench, had you not?

A. I did look at them up there.

Q. Okay. And that was prior to your testimony regarding those photographs, was it not?

A. That's right.

MR. WALBOURN: Thank you very much, sir.

THE COURT: Mr. Spencer?

MR. SPENCER: I believe he covered it, Your Honor.

THE COURT: All right. On down.

MR. THOMAS: Yes, Your Honor.

CROSS EXAMINATION

BY MR. THOMAS:

Q. Mr. Forsythe, my name is David Thomas. I represent Eugene Tackett.

First of all, I have got a preliminary question. I note in your statement that you had interviewed Raymond Barker. Is that correct?

A. That is correct.

Q. And did you reduce that interview to a writing?

A. Yes, sir, I did.

Q. Do you have that writing with you today?

A. Yes, sir.

MR. THOMAS: Your Honor, if it is okay, I would like to ask the Marshall -- would we be allowed to examine that writing and any other writings he might have with him? Should I wait until afterwards?

THE COURT: You can ask him some questions about it.

Q. Do you have any other writings that you use or have made in relation to this case?

A. No, sir. The only other writing that I have with me that has not already been introduced has been a statement from Raymond Pete Barker.

MR. PAFUNDA: Your Honor, I would ask the witness -- the Court instructs him to answer the question if he has the rest of the notes.

THE COURT: What?

MR. PAFUNDA: The investigative notes. May I approach the Bench, Your Honor?

THE COURT: He just said any other writings.

MR. PAFUNDA: He said he didn't have them with him.

THE COURT: He is asking the questions. You can get him next.

Q. Do you have any arresting notes, Officer Forsythe?

A. No, sir.

Q. Okay. I would like to see that writing if it is okay, Your Honor?

THE COURT: Mr. Marshall, show it to him.

Q. Thank you.

Mr. Forsythe, how long have you been investigating criminal activities as a State Policeman?

A. Since October -- well, I was employed by the Commonwealth October, '72, and entered the academy and came to Pikeville in '73, the first part of '73. I have been a Trooper, Detective, and now a Sergeant here now.

Q. And in your investigations, do you make it a habit to collect as much evidence as you can from the scene?

A. You are correct.

Q. And isn't that particularly the case when you are not aware of who caused the problem if there are two sides involved?

A. Repeat your question.

Q. If there are two sides involved, isn't it particularly important to make a complete investigation when you do investigate a case like this?

A. Yes, sir, it is.

Q. Now, you state that you had learned, when you went up there, that this was a union activity. Is that right?

A. No, I did not say that.

Q. Would you like to look at your statement that you did make and refresh your recollection?

A. Are you talking about -- yes, sir. The statement I made to whom?

Q. It just says your statement.

A. I later learned in part of this investigation that the union was involved. But the morning that I went up there on Tuesday, the 16th, it was my understanding that the union was involved, yes, sir.

Q. And you found that out from the Ray-Mac people who were there. Is that correct?

A. Yes, sir.

Q. And you also were aware, weren't you, that a number of Ray-Mac employees were also involved in the shootings that morning on Tuesday?

A. Yes, sir.

Q. How many Ray-Mac employees did you see Tuesday morning?

A. There were several Ray-Mac employees. The exact number, I do not know.

Q. What time did you get there?

A. On Tuesday the sixteenth?

Q. Yes, sir.

A. Approximately a quarter till nine.

Q. Would you say there were more than ten Ray-Mac employees?

A. Between five and ten.

Q. And where did you see these employees, sir?

A. They were standing there

at the entrance, the entrance road of Ray-Mac Mine.

Q. The access road?

A. Yes, sir.

Q. Okay. One of these men being Danny Blanton?

A. Yes, sir.

Q. Another being Pete Barker?

A. Yes, sir.

Q. And you said you did not see Captain Lykins at the access road. Is that right.

A. You are correct.

Q. Did you see Abner Justice?

A. I have never met Abner Justice until the other day when I saw him down-stairs. I don't recall seeing Abner Justice there.

Q. Okay. Now, did you see any of these men carrying weapons?

A. I did.

Q. Did you see any AR15's?

A. I do not remember seeing an AR15.

Q. Do you know what one is?

A. Yes, sir.

Q. Okay. Did you see anybody carrying an Uzi?

A. No, sir.

Q. Do you know what an Uzi is?

A. Yes, sir.

Q. Okay. What other weapons did you see of these five to ten men down there?

A. The only weapons that I saw I would call them long guns. They were either a rifle or a shotgun.

Q. So on Tuesday, September -- or February 16, 1982, you saw no Uzis or AR15's carried by Ray-Mac employees. Is that correct?

A. No, I did not.

Q. Are you familiar with the parking lot site up there around the Ray-Mac area as you go straight up from the access road?

A. Yes, sir.

Q. Okay. Did you see any men up there that day?

A. I don't think I went up there. I don't remember going up there.

Q. Now, you went up to where

this other so-called hostile fire was and found these cartridges that you brought in here today and have been introduced and are sitting in front of you. Is that right?

A. Not on February 16th.

Q. I'm sorry. That was the eighteenth?

A. Yes, sir.

Q. All right. Okay, on February 16, you say you did not go up to the parking lot area.

A. No, sir.

Q. Did you -- where did you make your investigation on the sixteenth?

A. There at the access road.

Q. Did you make your investigation to this side of it and to the other side of it where the Jeep and the Suburban were?

A. Yes, sir, that area up through that vicinity.

Q. Okay. Did anyone -- did you have any reason to go up to the parking lot site?

A. Say again your question

please.

Q., That morning, February 16, did you have any reason to go up to the parking lot site?

A. Well, on that particular day, I did not go up there.

Q. Did you go up there on the eighteenth?

A. One of the days that I was there, I did go up to that site, either the sixteenth or the seventeenth or the eighteenth.

Q. Were you ever aware that there had been firing from that site in your investigation?

A. On the eighteenth -- correction. The eighteenth, I had been aware that there was firing from that site.

Q. On the eighteenth?

A. Uh-huh.

Q. Were you aware that there had been firing from that site on the sixteenth?

A. No.

Q. Now, did you, on February 16, after talking to the Ray-Mac men ever attempt to talk to any of the UMWA men?

A. Did I contact any of the UMWA people?

Q. That's right.

A. On the morning -- on one of the mornings, I called UMWA office District 30, and I do not recall the officer that I talked to. And I asked him if he was an officer. And I asked him if they had a sanction UMWA strike going on.

MR. WALBOURN: I object to any hearsay.

MR. SELF: He hasn't answered the question. He just answered -- he was just answering the question. He hasn't stated any hearsay.

MR. WALBOURN: Well, if you are talking to an unidentified person, I suppose you are going to get a response.

THE COURT: Yeah, I assume this is where the defendants are going to bring in about, two. Just answer whether or not you contacted someone. Don't tell what they said.

THE WITNESS: I did contact someone affiliated with District 30.

Q. And who was that?

A. I do not know his name.

Q. Now, when did you become

aware that there was shooting on both sides of the sixteenth?

A. When Danny Blanton advised me he had seen Pete Barker shoot, and when Danny Blanton advised me that he had been shot at himself from the other side.

Q. So did you go down to where Pete Barker's Suburban was and check for cartridges?

A. I did.

Q. Did you find any?

A. No.

Q. Did you inquire as to why the union men left in a hurry that morning?

A. One of the statements I took from one of the people -- the reason they left is because that is when the Ray-Mac people returned fire.

****

Q. Uh-huh. And you assumed that this just meant Pete Barker and the guys with him. Is that correct?

A. Say again.

Q. This return fire -- did you assume that that came just from Pete Barker and the two people with him?

A. Yes, sir.

Q. Did you inquire as to whether anybody else had returned fire?

A. I do not know if anybody else returned fire or not.

Q. The question was did you inquire?

A. I don't specifically remember asking did anybody else fire a shot, no, I do not.

Q. But you knew that there was shooting on both sides?

A. Yes, sir.

Q. And you knew that the union men had left early?

A. I did.

Q. And the only evidence you gathered was the evidence that you brought in here

today. Is that correct?

A. That is all that I found at the scene, and I did look the scene over at the location very well and did not find anything.

Q. All the evidence you gathered was evidence on behalf of the prosecution. Is that correct?

MR. SELF: Objection. There was no prosecution involved at that time.

Q. Excuse me. All the evidence that you gathered and been introduced today was evidence that has been introduced on behalf of the prosecution. Is that correct?

A. Everything I have gathered has been turned over to the Government.

Q. Did you ever find out about any Uzis or AR15's used by Ray-Mac people?

A. No, sir.

MR. THOMAS: Thank you.

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

THE COURT: Yes, sir.

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

MR. PAFUNDA: He didn't take statements other than --

THE COURT: (Interrupting) I think that ought to be returned to the witness, shouldn't it? Is that the statement marked?

MR. PAFUNDA: Can I keep it and look at it?

THE COURT: Just read it and return it to the witness.

What is the relevancy here?

MR. PAFUNDA: I am about ready to request any statements, arresting notes. The Court ordered him to preserve his rough notes. I am requesting that pursuant --

THE COURT: (Interrupting) Have you given him the Jencks material?

MR. SELF: Yes, Your Honor.

MR. PAFUNDA: He has given me this. No, I have never received this until today.

MR. SELF: That is not true, Your Honor. He received a typed version of that following Danny Blanton's or Pete Barker's testimony.

MR. PAFUNDA: I didn't get one.

MR. SELF: It was given out as

Jencks material. I think it was given out as Jencks material.

MR. HARWELL: May I see it?

MR. PAFUNDA: I could be mistaken; but if anybody else had gotten it, I don't know about it. I want his arresting notes, investigator notes. I believe I am entitled to them. I know Trooper Forsythe. I know he made them. He just didn't take field notes. I know him. So I know he took notes on this. He did more than take statements other than Danny Blanton's and Raymond Barker.

MR. SELF: Where is your authority?

MR. PAFUNDA: Where is my authority that I am not entitled to them?

MR. SELF: 18 U.S. C3500 and Rule 20.2 Federal Rules of Criminal Procedure.

MR. PAFUNDA: I can't give you his arresting notes and stuff before he testifies, but I can get it on cross examination especially if he has used that stuff to refresh his memory or recollection.

THE COURT: All right. Ask him questions first.

MR. PAFUNDA: Can I go ahead and ask him, Judge?

THE COURT: Yes, sir.

MR. PAFUNDA: Bob --

THE COURT: No. You ask him questions from the stand.

And Mr. Pafunda --

MR. PAFUNDA: (Interrupting) I am not doing this for delay, but it goes to the suppression hearing we had before and the Court ordered --

THE COURT: (Interrupting) Okay. Go back to the stand.

MR. SELF: Your Honor, if this is flashed around some more, I'm going to have to introduce it.

THE COURT: Okay.

You may proceed, Mr. Pafunda.

MR. PAFUNDA: Thank you, Your Honor. I am just reading this thing that was just provided to me, and it is the first opportunity I have had to look at it.

CROSS EXAMINATION

BY MR. PAFUNDA:

Q. Sergeant Forsythe, other than the -- apparently what appears to be the statement

of Raymond Barker and the statement of Danny Blanton, did you take any other investigative notes at that scene that morning?

A. No, sir.

Q. Did you take investigative notes with regards to your entire investigation of this matter during the week of February 15th or the subsequent week of February 24th?

A. No, sir.

Q. All right. The only thing you did was take a bunch of pictures, and two handwritten statements. Is that correct?

A. And my case report.

Q. All right. Do you have --

A. (Interrupting) The case report which I have turned over. As far as any blank notes on those particular dates, no.

Q. All right. Have you reviewed your case report before testifying here today just to refresh your recollection?

A. I have.

MR. PAFUNDA: Your Honor, at this time, I haven't seen that case report, and I would like to see it.

MR. SELF: If it please the Court,

it was turned over to defense counsel pursuant to 18 U.S. C3500.

THE COURT: It has been turned over.

MR. PAFUNDA: I don't recall it, Your Honor. I will look. If I have it, I apologize.

THE COURT: Do you want to check your records and see?

MR. PAFUNDA: I certainly do.

****

MR. PAFUNDA: Mr. Marshall - - with the Court's permission, would the Marshall be able to hand that to the witness.

THE COURT: What is it.

MR. PAFUNDA: I think it is the case record. I think it is a typed summary.

I don't know. I want to ask the witness.

THE COURT: Do you have it?

MR. PAFUNDA: That is not his case report, Your Honor.

I think it is his statement. If I may ask the witness.

THE COURT: Yes. Go ahead.

Q. Sergeant Forsythe, is that a statement of yours prepared from your case report?

A. No, sir.

Q. That is not your case report?

A. No, sir.

MR. PAFUNDA: I haven't seen it, Your Honor. That's all I've got. I withdraw my apology.

Has anybody got it?

THE COURT: All right. You will be in recess until tomorrow morning at 9:00 o'clock.

During your adjournment,

you understand the not now admonition is in effect.

You are not to discuss the case among yourselves, or permit anyone to discuss the case in your presence or with you. You are not to finally make up your minds on the issues of this trial until you have heard all the evidence and the Court's instructions.

No radios, no newspapers, no televisions.

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

MR. HARWELL: None, may it please the Court.

THE COURT: Please excuse the Jury until 9:00 o'clock in the morning.

THE MARSHALL OF THE COURT: Yes, Your Honor. Would the Jury members please exit the Courtroom. Be back at 9:00 o'clock tomorrow morning.

(The Jury complies)

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

THE COURT: All right.

Now, gentlemen, this is, in a sense, distressing.

It seems like we get a break down in function and everything else.

Now, let's get back first to this pretrial thing. As I said, the first instance of evidence - - the first link in the chain of evidence is the one who finds it.

The one who finds the evidence, in a pretrial, is the one who is to dispense with that unless the parties agreed to dispense with it.

But that person ought to be the first one to climb on the stand subject to cross-examination, if they desire. If they don't want cross-examination, they can waive it.

But, you know, that is the first primary one in the chain of evidence which should be there.

And the pretrial is in no sense to waive that.

Now, it can waive in the second - - the second in that, but that first chain ought to be there.

And I am telling you that in the presentation of any of your evidence of that first instance, that first person here to start that.

Now, I think I've offered to them the - - going back in any of those which are in contest, which you can bring that first instance person here, and we can establish that.

If it will delay it three weeks, we will do that.

Now, the fact you had two or three members of the S.W.A.T. team, and they were up there, and they found the shells, the fact they can't identify the shells doesn't hurt it a bit.

If they say, "I gave them some shells, and they are substantially in the same condition", then if the second man can verify those were the ones that were handed over, he is satisfied.

But, now, let's get this matter straight.

Now, as to the statement which Mr. Pafunda had no objection to, it is basically, before any statement is admissible by a Defendant, you have got to show that he was advised of his rights and that he waived his rights.

That was contained in the statement. But until that statement is admitted into evidence that he is advised of his rights wasn't in evidence.

So, that is another example we are getting over here.

Now, let's get into this thing, get back to the picture. Now, all of you gentlemen here - - and we have got one, two, three, four, five, six, seven, eight, nine, ten of you; we are supposedly advised by the Government that they had the Jencks Act material stuff, and you could have picked it up.

And I assume some of you picked it up, and I assume some of you haven't picked it up.

But let's make sure, before we get into the discussion or argument about something has been turned over or something hasn't been.

Now, we are getting a little laxity in following the rules here, gentlemen. It doesn't matter that this thing goes six months. We will still follow the rules.

All right. Now, let's get back to the pictures. I think he said he turned over all his pictures to you, and you said you gave those pictures - -

MR. SELF: (Interrupting) Those pic-

tures have been available. Mr. Pafunda has seen them, Your Honor. They have been in our office. If defense counsel doesn't want to look at them, - - THE COURT: (Interrupting) Under the rules, we know they are entitled to see all of them. And if they were there, Mr. Pafunda, and you didn't go look at them, then that is your fault.

MR. PAFUNDA: (Interrupting) I did.

MR. SELF: He did.

MR. PAFUNDA: I did. And the question that has come up, Your Honor, is we recall certain pictures that were there - - or at least we believe to have been there that aren't there now.

That is the question.

MR. SELF: I will state as an officer of the Court that the ones that were there, to my knowledge, that I reviewed, are still there.

THE COURT: All right.

What, specifically, did you say was there that wasn't there, Mr. Pafunda?

MR. PAFUNDA: All right. We specifically - - that I recall. After conferring with my client, it appeared to us - - and I approached Mr. Self and raised the question.

We went back down and looked

at the pictures, and the Government was kind enough to let us, you know, look at the pictures.

We recall certain color photographs of men standing around Danny Blanton's coal truck with weapons - - armed with weapons.

MR. SELF: That's 31.

MR. PAFUNDA: No, not that one.

MR. SELF: That's it. I don't have any more other than those and the other ones he had seen in my office, and Detective Forsythe's, which were black and white's. And they have been available.

MR. PAFUNDA: And since the question was raised by myself and my client - - or by my clients - - and they are here charged with these matters - - I thought it was an area that needed to be probed; and I mentioned it to Mr. Self.

And that is the gist of my little thing that is going to come up about the pictures.

My second point, with regard to his case report, I didn't believe that I had it. And it appears I didn't have it.

THE COURT: Okay.

MR. PAFUNDA: The third thing. I know I never saw Raymond Barker's statement. I know that.

Now, that may have been inadvertence on my part. Maybe they provided it to me. Maybe they laid it on this table, and I didn't get to see it or whatever. But I know I didn't see Mr. Barker's statement. If I had, I sure would have asked him some questions about it.

MR. SELF: If it please the Court, that was provided before Mr. Barker testified, and I think Mr. Harwell will verify that; that they were provided to them pursuant to Jencks.

MR. HARWELL: May the Court please. I can only speak for myself. And, speaking for myself, I got a typed version of Mr. Barker's statement.

I think I gave it back to the Government, Judge. I don't have it here. But it says - - it says - - it says, in substance, what this says.

Here is mine. I gave mine back.

(Mr. Self passing document to Mr. Harwell)

THE COURT: All right.

MR. HARWELL: And it is marked - - yeah, this is mine. And I marked on it, Your Honor. I got that.

Judge, I keep track of these things and usually note the date, and I noted the date on this, and it was received by me on 1/24/84.

I don't have a dog in this fight, except I want to tell Your Honor that I don't have the case report; and I have looked at my files and at my notes, and the case report to which reference has been made, I don't have it either.

THE COURT: If you have a case report of this witness, turn it over to them, and they can examine it tonight and use that as cross-examination in the morning.

MR. SELF: As it pertains to his testimony, we will, Your Honor.

MR. PAFUNDA: And, Your Honor, at this point, it is not a matter of me having a dog in the fight; I just want to make sure I have everything before I begin cross-examination.

THE COURT: Well, let's - - everybody - - we are sitting here, and - - let's see, one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve attorneys over on the Defendant's side, and we are sitting in the Courtroom with three attorneys on the other side.

Now, you gentlemen are individuals, and you are collective. And, in all fairness, you consult back in the corner and huddle and discuss the case among yourselves.

And, in a way, you don't have a dog in the fight, but in a way, you do have a dog in the fight.

In the same way with the three over on the other side. Those three on the Government's side, they get together, and they converse, and they decide.

So, this is so someone else can understand it.

Yes, sir, Mr. Walbourn.

MR. WALBOURN: Judge, if we had some colloquy during this concerning some Jencks pictures.

The Government's Exhibit 31, I have absolutely seen those. Agent Forsythe or - - excuse me - - Mr. Forsythe said that he took some other ones. I haven't seen them. And that is what - - and Mr. Self said I had, and I would like to see them.

THE COURT: Well, - - all right. I think they were down there. Have you gone down

to look at them?

MR. WALBOURN: I have been down there, and there weren't any down there that I have seen.

And I even went to look - - and I think Agent Flower will confirm. I went to look at them up in Ashland and got a preview showing of all the materials in this case.

MR. PAFUNDA: Your Honor, with regard to what Mr. Walbourn has said, I think I was down there one time when he was going through the photos, and I was going through the photos at the same time.

And there were photos of a Jeep in a body shop or something like that, and I haven't seen - -

MR. WALBOURN: (Interrupting) Or an impoundment lot or whatever was photoed, and I would like to see them. And that is all I am asking.

MR. SELF: He's gone to get them, Your Honor.

THE COURT: All right. You all do this. We are going to be - - we are going to be in adjournment until 9:00 o'clock tomorrow morning. You fellows take care of this, and let's quit wasting time, gentlemen.

MR. WALBOURN: That's fine. And I'm

sure Mr. Self, if it is appropriate, would have no objections to me conducting a further cross-examination of Mr. Forsythe regarding those pictures.

MR. SELF: None whatsoever, Your Honor.

MR. WALBOURN: That's all I ask.

MR. PAFUNDA: Your Honor, I would like to return this to the witness.

MR. FORSYTHE: Thank you.

MR. THOMAS: I'll make sure he gets this one.

*** *** ***

MR. DAUSE: Judge, there is a matter that concerns only Mr. Thomas and his client.

THE COURT: Oh. Well, no. We did that at the Bench, I thought.

I sustained the motion, but it is my understanding that was by agreement.

Have you made arrangements with yourselves that he is going to be available next week.

MR. DAUSE: Your Honor, I have prepared an order for the Federal Corrections Institute, and I very much would like to have Your Honor tender an order.

MR. THOMAS: I need to sign it, too. I forgot.

MR. SELF: Your Honor, could we possibly meet with you in Chambers in the morning before we get started, and that way as soon as everybody gets hold of--

THE COURT: (Interrupting) We will meet at a quarter till nine in my Chambers on this. You are talking about the Jencks Act material?

MR. SELF: No. No, on the Mr. Tackett matter, Your Honor.

THE COURT: Oh, Mr. Tackett. Why

do we need that in the morning? Can't we do that tonight?

MR. SELF: I just don't want to take everybody's time with it. It is just concerning a few people.

THE COURT: Well, we can--

MR. SELF: (Interrupting) He needs an order to have it done rather than-- They can't do it on an out-patient basis.

MR. DAUSE: May Mr. Thomas and I approach the Bench on this, Your Honor?

THE COURT: No. If they want to leave, they can leave. We will take this matter up.

That is Mr. Tackett--that is an examination of Mr. Tackett by a doctor, that's all.

MR. PAFUNDA: Judge, thank you.

THE COURT: But we--

THE MARSHAL OF THE COURT: (Interrupting) Let's have order, please.

THE COURT: Let's get this thing over with here now. Come on up.

(Reporter's Note: At this time Mr. Self, Mr. Dause and Mr. Thomas approached the Bench; whereupon the following was heard:)

MR. DAUSE: I want to approach-- There are a considerable number of lines there that have

to be filled in.

THE COURT: I understand that. When is he going to surrender himself?

MR. THOMAS: Tuesday, Your Honor. He said he could drive up there by himself.

THE COURT: Tuesday. What day is that?

MR. THOMAS: February 14, I think, Your Honor.

THE COURT: The fourteenth. What time?

MR. THOMAS: Ten-thirty.

THE COURT: All right. Okay. They will deliver him out there on the same date; is that right?

MR. THOMAS: Yes.

THE COURT: The 14th of February. Okay.

MR. THOMAS: Is it--

THE COURT: (Interrupting) And let's see. No later than-- What would be Sunday morning? What is Sunday morning?

THE CLERK OF THE COURT: The 19th, Judge.

THE COURT: In other words, they are

not going--but they will complete their tests before Sunday.

All right. Now, let's see. They can complete their tests by Saturday, can't they?

MR. DAUSE: They say they can do it in two days, Judge.

THE COURT: Okay.

That will be the 18th. And the Marshal will release him from custody at Lexington no later than the afternoon of February 18.

MR. THOMAS: Okay. Your Honor, am I under the impression he can just drive into the United States Attorney's parking lot?

THE COURT: Yes. If he wants to, he can drive down there and turn himself in to the Marshal.

MR. THOMAS: Okay.

THE COURT: The Marshal will take him over--take him over and bring him back. And then when the Marshal releases him, he can drive back here.

MR. THOMAS: All right. I will sign that.

THE COURT: Okay. Sign this thing.

(Reporter's Note: Mr. Thomas complied.)

THE CLERK OF THE COURT: Is the Marshal's Office in on Saturday and Sunday?

THE COURT: They will have to come back on Saturday, whoever the Marshal is.

THE CLERK OF THE COURT: I said that, because I was thinking of overtime.

MR. THOMAS: No. He is going to drive, Your Honor.

THE COURT: The Marshal has to pick him up on Saturday. Some Marshal is going to have to pick him up, see.

MR. THOMAS: Okay.

THE COURT: See, this is where he's getting turned loose. This means some Marshal on Saturday is going to have to go out and pick him up.

MR. THOMAS: All right.

THE CLERK OF THE COURT: Because it says, "Upon completion" and--

MR. THOMAS: (Interrupting) Off the record.

THE COURT: All right.

MR. THOMAS: Thank you, Your Honor.

(Reporter's Note: End of conference at the Bench.)

THE COURT: All right, gentlemen, we will be in adjournment until tomorrow morning at nine

o'clock.

THE MARSHAL OF THE COURT: Court is in adjournment until 9 a.m. tomorrow.

(Reporter's Note: Court adjourned at 5:03 p.m.)

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STATE OF KENTUCKY)
)
) SS.
COUNTY OF JEFFERSON)

We, WILLIAM J. KALBFLEISCH, RICHARD L. COULTER & GEORGE R. CAMERON, Notary Publics, within and for the State at Large, do hereby certify that the foregoing proceedings were taken before us at the time and place and for the purpose in the caption stated; that the witnesses were first duly sworn to tell the truth, the whole truth, and nothing but the truth; that the proceedings were reduced to short-hand writing by us in the presence of the Court; that the foregoing is a full, true and correct transcript of the said proceeding so given; that the appearances were as stated in the caption.

We further certify that we are neither of counsel nor of kin to either of the parties to this action, and are in no wise interested in the outcome of said action.

WITNESS OUR SIGNATURES this 8th day of February, 1984.

George R. Cameron
Notary Public

William J. Kalbfleisch
Notary Public

Richard L. Coulter
Notary Public

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