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 20, 1984

VOLUME THIRTY-TWO

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INDEX

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Direct Examination by Mr. Self:	pgs. 82-106
Cross Examination by Mr. Pafunda:	pgs. 106-110
Cross Examination by Mr. Thomas:	pgs. 110-111
Cross Examination by Mr. Kirkland:	pgs. 112-117
Cross Examination by Mr. Harwell:	pgs. 117 -122
Redirect Examination by Mr. Self:	pgs. 123-127
Recross Examination by Mr. Thomas:	pgs. 128-129
Recross Examination by Mr. Harwell:	pgs. 129-134

EXHIBITS

Defense Exhibit No. 8	pg. 64
Government Exhibit No. 107	pg. 85
Government Exhibit No. 108	pg. 88
Government Exhibit No. 109	pg. 93
Government Exhibit No. 110	pg. 97
Government Exhibit No. 111	pg. 99

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For the Defendant Eugene Tackett:

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

BERNARD PAFUNDA, ESQ.

For the Defendant Ranny Blankenship:

ELDRED E. ADAMS, JR., ESQ.

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

WILLIAM D. KIRKLAND, ESQ.

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

THE MARSHALL OF THE COURT: Your Honor, all Defendants, all counsel are present. The Jury remains in the Jury Room as instructed.

THE COURT: Thank you.

MR. HARWELL: Good morning, Your Honor, welcome back.

If the Court please, I am Aubrey Harwell and we have some filings consistent with the Court's request be done on the record. I would like, with Your Honor's permission, to proceed with that.

May Your Honor please, we had represented to this Court before we adjourned that we would prepare and provide Your Honor a supplemental Enmons legal memorandum. May the Court please, with your permission at this time, I would like to file an objection by Edgar Jones to the Government's proposed Jury Instruction No. 11.

I would also like to file, Your Honor, a supplemental memorandum of law.

I would also like to file, Your Honor, in that packet, a proposed Jury

instruction regarding Enmons prepared by us. The language coming directly out of Enmons.

I have served copies of all of those on the Government this morning. May I give them to the Marshall, Your Honor?

THE COURT: Yes, sir.

MR. HARWELL: Thank you, Judge.

THE COURT: By the way, gentlemen, I can make available to you, I wrote and got a copy of the indictment in Enmons - - no, not Enmons, but Russo.

I wrote and got a copy of the indictment in Wilford.

I wrote and got a copy of the instructions to the Jury, which each Judge gave in those cases, and I have those.

And if you gentlemen want to make copies of them, you are more than welcome.

MR. HARWELL: May the Court please, I would be very greatful if it could be arranged for us to receive copies of those.

THE COURT: Fine. Gentlemen, something I would appreciate if each of you would give me like the Government's theory of the case, and each of the Defendants give your theory of the defense.

MR. HARWELL: May the Court please, we are in the process of doing that and will tender to Your Honor at the appropriate time a proposed charge of Defendant Edgar Jones titled Defendant's Theory of the Case; and we would try to be more prompt in giving that to you.

THE COURT: Fine. It would be the overall theory of the defense of, of each of the Defendants.

I noticed - - I believe it must have been the Ninth Circuit, was it? Was Wilford the Ninth Circuit?

MR. KEHRLI: Eighth Circuit, Your Honor.

THE COURT: Eighth Circuit. I noticed in the Eighth Circuit where the Judge there read the theory of the case, which each of the attorneys submitted to the Jury prior to the instructions.

This Court hasn't done that. I have been very reluctant to get into the theory of the case. Sometimes I felt that maybe that was the Court getting into the opinion of it. I noticed it used to be a practice in the Eastern District of Kentucky for the Judge to, just from his own statements, I think that they do that now in some of them where the Judge states what the evidence is and the theory of the

case.

MR. HARWELL: I suspect, Your Honor, that that was Enmons in that district. I know I have had some cases there, and generally speaking - -

THE COURT: (Interrupting) I didn't get the Enmons, I got the Russo and Wilford, I sent and got those.

I don't believe - - either it was Wilford that didn't have a separate Enmons instruction and Russo did, one of them did, one of them didn't.

One had a separate instruction, one didn't.

MR. KEHRLI: Your Honor, Wilford did not. It had instructions as to the definition of lawful claim under the Hobbs Act, and it also had an instruction concerning the Defendant's theory of the case, and the Government's theory of the case as I recall.

MR. KIRKLAND: If the Court please, I also have an Enmons memo pursuant to the Court's request of about two weeks ago. I have provided copies to all other counsel.

MR. HARWELL: May Your Honor please, I have a couple more filings, and given the fact that

I would like briefly to discuss them I would to have the Court's permission to approach the podium. May I?

THE COURT: Yes, sir.

MR. HARWELL: If the Court please, at this time comes now the Defendant, Edgar Jones, and moves the Court for an order continuing this matter until counsel for the Defendant has had an opportunity to review certain tape recorded conversations of the Defendants and alleged unindicted coconspirators which contain exculpatory evidence set forth under Brady versus Maryland.

As grounds for this motion, the Defendant states at the disclosure of the tape recorded converations by the prosecutor has been so late in this trial that this Defendant cannot take advantage of the benefits of the evidence contained in those tapes in the absence of the continuance.

Defendant's counsel requests a continuance in this matter of at least fifteen days in order to review the tapes.

As authority for that, may the Court please, we rely on the United States versus Olson, which is an Eighth Circuit case and I have

a xerox copy of that for Your Honor.

Consistent with Your Honor's policies, we have a written motion we would like the Court's permission to file this morning.

THE COURT: Let me ask you this. When were those tapes made available to you?

MR. HARWELL: May the Court please, we got some of those tapes on Monday, February 6th. We got two of those tapes on Thursday, February 9th, I believe is the day. We still lack tape number sixty-four, may the Court please.

In support of this motion, Your Honor, we have served on the Government and would like to file an affidavit that sets forth all of those dates, this Court's instruction concerning Brady material, this Court's instructions concerning coconspirator statements, and what we believe the Government's failure to abide by this Court's Order.

That affidavit, may the Court please, also sets forth the total diligence of the defense counsel in this matter, and defense counsel sat to listen to these tapes.

Your Honor might wonder, given the fact that I think there were some forty-seven additional tapes, the first of which were

delivered on the 6th of February, how it is counsel didn't get through them.

If the Court please, the tapes are unreal in terms of bad quality. We have had to take some of them to a technical facility and have them clarified or clearified, I am not sure which is the proper term.

In addition to that, to hear what is one those tapes you have got to play a little, and then go back; and play again and go back; and go back.

May the Court please, I flew two people in from Nashville on February 6th, and I flew one in on February 5. They didn't come to Court, they were instructed to stay here and listen to tapes. Not to make transcripts, we recognize there wasn't time for that Judge, but to determine if Mr. Self was accurate in regard to his comments concerning those tapes that in his judgement had no Brady material on them.

We went back to Nashville, Your Honor, and continued working to the degree I was capable of bringing up staff a number of people.

Our affidavit filed in support of this motion sets that forth, Judge.

THE COURT: What is the end result?

MR. HARWELL: The end result is, Your Honor, that there is much on those tapes that I have yet to hear - - no, that is not true, that I have yet to understand.

THE COURT: What is it that you heard which would reflect that you were denied something?

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MR. HARWELL: All right, sir, may the Court please, it has been said, Your Honor, and alleged in this lawsuit that my client, Edgar Jones, is the kingpin and responsible for all of these events that took place up at Ray-Mac commencing the week of February 15, 1982. And there has been testimony various times before this Court as to certain defendants or unindicted coconspirators committing certain acts.

Certainly I think that all of us would agree that the prime or star witnesses at least as to my client would be Phillip Booth, Pearl Booth, and Phillip Dale Moore. They appear, one or more of those, on a great number of those tapes.

To answer Your Honor's question, alledgedly one of the defendants blew up equipment including a bulldozer at Ray-Mac on February 22 of 1984. But to give Your Honor just one example in response to your question--

THE COURT: (Interrupting) I am aware of the example.

MR. HARWELL: On the tapes, Your Honor, Phillip Booth says I did it. I did it. I took forty-seven sticks of dynamite and blew the MF up. That is one illustration may the Court please.

There are other illustrations. This is replete with profanity.

THE COURT: What about the other illustrations?

MR. HARWELL: May the Court please, there is--there is talk on the tapes of the fact that Ray-Mac did have--operated automatic weapons by Government witnesses, a point that we have believed throughout this matter and are trying to examine these witnesses on.

In addition to that, Phillip Dale Moore takes credit for being the leader of all of this up there on the hill. I can't cite, YOur Honor, given the short period of time that I've had to hear the tapes, I can't cite you to a tape or page number because I don't have transcripts.

Phillip Dale Moore--

THE COURT: (Interrupting) Well, is what you are saying--you are just speaking of impeachment matters is all.

MR. HARWELL: Judge, that is exactly what Brady addresses, Your Honor. You know as well as I do. If these witnesses are believed--

THE COURT: (Interrupting) It isn't only impeachment matters. It is cumulative.

MR. HARWELL: Exactly.

THE COURT: I take it the record is replete with impeachment material that you have, isn't it?

MR. HARWELL: Your Honor, we haven't been given but very little impeachment material by the United States Government. That is a fact. Yes, we have been given some; but Your Honor, we haven't been given some. And the truth is, Judge, tragic though it may appear--tragic because of the professionalism inherent in the law, we almost--we almost even didn't know that the second batch of tapes existed, Judge. And we have filed, commencing back in August, motions that address themselves to that issue. It was only by fortuitous circumstance that we discovered that they were had. And then we pushed and pushed and pushed. In fact Your Honor made some comment about Mr. Harwell, you motioned me every day, that is true, because I knew that I was entitled to those tapes.

Mr. Self said, in essence, well, I don't think there is any Brady or Giglio on them. And then he later said well, I haven't heard them all, but I will try to do so.

Judge, the Government is

under a due diligence and responsibility that this Court knows as well as I. And we were entitled to that. We were entitled to it in September and October and November and December. And by any stretch--by any stretch of the imagination, we were entitled to it on January 3, because this Court and Mr. Self in a colloquy during a pretrial hearing discussed the last delivery date of Brady material. Mr. Self said Judge, what about January 3. And this Court said okay, January 3 it is. The trial started on January 9. We went on and on and on.

On January 31, in looking at the list of tapes, I noticed that there was a tremendous void, a period of time where there were no tapes. There were tapes, a void, and they picked back up. And I filed a motion. And I said the movant cannot represent to this Court that additional tapes exist; but movant believes that they exist and ask relief from this Honorable Court on these tapes.

And then, of course, Your Honor, we continued to file motions and continued to file motions. And very frankly, Judge, having heard part of what is on part of those tapes, I can understand why we didn't get them. And very frankly, Your Honor, I don't appreciate the prosecutors failing to follow Your Honor's directives on this in letting us get three or four weeks into this trial before we get that. I'm going to address that in a separate motion.

I want to bring it to Your Honor's attention when you advised me to do so.

Judge, we believe the due process of law and the constitutional guarantee of a fair trial, given these tapes is such, that we are as a matter of fact entitled to a continuance. I doubt, given the Jury here - - very candidly, I told my client I doubt if Your Honor is going to give it to us. But I have got an obligation to stand up here and ask for it; and that is what I am doing.

THE COURT: Let Mr. Self - -

MR. HARWELL: (Interrupting) May I - - I beg your pardon? May I - -

THE COURT: (Interrupting) Let's let Mr. Self respond to that.

MR. HARWELL: May I, before he does, Your Honor, with Your Honor's permission file this motion and this affidavit.

THE COURT: Oh, yeah.

MR. HARWELL: Thank you, Judge. Marshall.

May the Court please, the record should reflect I am handing to the Marshall a filing, a motion of Defendant Edgar Jones for a continuance consistent with that which I have said -- excuse me, Marshall.

And, may the Court please, I am also filing, in support of that, an eighteen page affidavit that has probably eighteen pages of exhibits that clearly lay out Your Honor's rulings and our motions and from transcripts my comments, the Court's comments and Mr. Self's comments.

And I know it is lengthy, Judge, and I know Your Honor has been gone. But I implore this Court as earnestly as I can articulate my thoughts before you rule, please look at this affidavit, Judge.

I think that we have so many hearings and so much has been said in this case that

this may serve for Your Honor and certainly serve for me to clarify why we believe, why we know we have not been treated fairly.

Excuse me, sir.

THE COURT: Let me ask the Defendants - -

MR. HARWELL: (Interrupting) Judge, here is the Olson - - here is the Olson case.

THE COURT: Let me ask each of these Defendants if they agree with the motion. Mr. Pafunda.

MR. PAFUNDA: Your Honor, Bernard Pafunda on behalf of Drexil Hall and Austin Moore; and I concur with the motion.

THE COURT: Mr. Thomas.

MR. THOMAS: Your Honor, David Thomas on behalf of Eugene Tackett. And I likewise concur.

MR. ROWLAND: I concur in the thoughts and the reasoning and the argument proposed, that are propounded by Mr. Harwell. I cannot in good conscience move for a continuance in this case. I would like some day to have this case over so I can work on another one.

THE COURT: By the way, this is in there; but we did work something out while I was in Cincinnati.

MR. WALBOURN: Your Honor, quite frankly, I am not prepared to either join or oppose the motion at this time until I have had an opportunity to review the motions, the grounds thereof, and also assess the matter with my clients relative to these tapes.

I will represent to the Court that Mr. Harwell as expeditiously as possible, has furnished some forty-seven hours of tapes to me. I received them on Tuesday. Due to the fact that I have been pot full with every conceivable antibiotic to find out what everybody had, including Your Honor, the week before, it was physically impossible for me to listen to forty-seven hours of tape.

The other attorneys in my office very graciously agreed to listen to them. Unfortunately, they don't know what they are listening for.

So I would reserve to either join or opposing if I may.

THE COURT: All right.

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MR. ROWLAND: Your Honor, based on what Mr. Walbourn said, I think I better confer with my client before I take a firm stand on the matter.

Thank you, sir.

MR. SPENCER: Your Honor, very reluctantly, I would--anything that might help this case or help my client, I would concur in. I haven't read the motion but I would have to-- Although I know that practice says not to, I would have to concur.

MR. ADAMS: Your Honor, Eldred Adams on behalf of Ranny Blankenship. I obviously have not had time to go through forty-seven hours of tape and the motion that Mr. Harwell filed this morning. I hven't had an opportunity to read. But I think--upon reflection, I think if we did have a number of hours of tapes, and if there was possibly any Brady material on it, I would owe it to my client to join Mr. Harwell's motion because you never know what is lurking in that forty-seven hours of tape.

MR. HOLLON: Your Honor, Tom Hollon, representing Pebo Gayheart. I, like Mr. Walbourn and Mr. Adams, have not had a chance to read through the motions or listen to just a very short period of tapes. And based on that, I would like to join with what Mr. Walbourn said and have a chance to review

this stuff before I enter into or did not join in any of the objections.

MR. BRANSON: Hershel Branson representing Donahue Halbert. I likewise would like to join with Mr. Walbourn, Your Honor.

MR. KIRKLAND: May the Court please, Your Honor, in addressing one of your questions to Mr. Harwell, I would like to say this briefly: This is just a for example, a for instance.

Mr. Thomas and I rode down here yesterday together. He is pretty good company, Your Honor. And I willingly allowed him to come with me if he would agree to listen to tapes with me, which he has done.

We listened to what has been called Tape 26. And that was almost a random selection; not quite. We noted about, in all fairness, five important things on that tape that would either constitute Brady material or would constitute something else of real significance to our defense of our clients here.

Consequently, I would have to join with Mr. Harwell in saying that there has been insufficient time to digest this material, to go over it, think about it.

For example, Your Honor, there was admission by Pearl Booth that she had gone to some court somewhere, I assume in Lexington, Fayette District Court I assume. But I don't know. And she had lied twice to the judge about Phillip's DUI case and she went into it to some length where she said well, she just simply had to lie. That was called for under the circumstances.

Now, that is prime Brady material. Of course, Mr. Self had indicated all along that there was no Brady material in these tapes. That is why we hadn't gotten them last year.

Now, I am a little bit like Mr. Rowland. Fortunately, if I ever get through with this case, I hope to have another one someday. And--but if we don't get through here, I can't go on and make a living. That is a personal concern, and that is not a concern at all to affect my clients.

I am a little bit like Mr. Walbourn in that on short notice, and I mean the last ten days is short notice to do all the things you have to do and survive. I really can't say whether fifteen more days would help or hurt me or help my clients or hurt my clients. I don't know.

I do know that I have been

tremendously prejudiced by not having these tapes and by the Government not being candid with what they had and not giving us what they had. They simply haven't done it, Your Honor. It has been a deplorable circumstance.

Now, I suppose you are saying what is Mr. Kirkland saying. I am saying I haven't had time to weigh carefully all the considerations that I have to weigh in responding to Your Honor. I don't want to go back and take fifteen more days and try to go through tapes. I am not sure it is worth that; but I don't know.

My response is, like Mr. Walbourn, I need time to think about it, go over it with my clients who I have not seen personally until this morning for ten days. And I will make a response in a few days, Your Honor.

I will point out that at every opportunity since last Tuesday when I got these copies, I have listened to tapes. I have listened to them in the car. I have listened to them at home. I have listened to them in the office. I have spent tremendous hours listening to tapes. I found some important things.

But as I pointed out ten

days ago, if you have fifty hours of tapes and you have got to listen to each one of them four times on what is being said, that is two hundred hours. There are only a hundred and sixty-eight hours in a week. And I can't listen all the time.

Based on that, Your Honor, I cannot give a meaningful response as to whether or not I agree with Mr. Harwell. I agree with what he said factually, and I agree he needs ten days at a minimum. I don't know whether my clients and I can afford that or not.

MR. HARWELL: Judge, one other thing that I would like to mention. And I know you want to hear Mr. Self.

May the Court please, I have become so concerned about these tapes and the Government's comments or representations about them but I believe that I owe it to my client to see to it that these tapes are part of the record. Now, with the Court's permission, I would like to file this batch of tapes that we were given February 6 with the list and the two given on February 8 noting for the Court's benefit we still don't have Tape No. 64 because I think at some point in time this Court or some other Court possibly is going to want

to say I want to hear, I want to know whether or not there is or is not Brady material. I want to hear the voices and hear what is on them.

With Your Honor's permission, I would like to file this and make it a part of the record. This is the box of tapes, may the Court please, that we were given on the sixth and the last two on the eighth with the accompanying list. May I have the Court's permission to file them?

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THE COURT: You may place them in the file.

MR. HARWELL: I would like them to become a part of the record in this case.

THE COURT: You may place them in the file.

MR. HARWELL: That's what I'm asking if the Court pleases.

Is Your Honor for identification on the record when things such as this are tendered noting it a court exhibit or marking a number to it?

THE COURT: No, the Court's exhibits are marked, this would be your exhibit by way of avowal. I believe this is your second or your third?

MR. HARWELL: Miss England would have to tell me, Your Honor. I don't remember if it's my second avowal or third avowal. I know I had five defense exhibits.

THE COURT: She may just be listing them as Defendants' or she may have them by a way of avowal.

Is that the way you're doing it, Madam Clerk?

THE CLERK OF THE COURT: Yes, Your Honor. I'm marking each one as Defendants' exhibits, not be avowal. This would be filed as Edgar Jones Defense Exhibit No. 7.

MR. HARWELL: No. 7?

THE CLERK OF THE COURT: Yes.

THE COURT: I think in her listing she states without objections or objections made by way of avowal.

MR. HARWELL: Your Honor, I'm not asking that that obviously goes to the jury. I'm merely asking may the Court please, that that box of tapes and that list be part of it because I think that a fact-finder here or may at some point in time say I want to hear and see who made accurate representations. I want to pay some attention and listen to some of these tapes, and for that reason we want to ask that it be filed, Your Honor.

THE COURT: All right, Mr. Self.

MR. SELF: May it please the Court, may I use the podium?

THE COURT: Yes.

MR. SELF: For the record, my name is Tom Self, Assistant United States Attorney.

Your Honor, we received a

bunch of motions from Mr. Harwell this morning and I don't know which ones have been filed and which ones have not, but I will assume that they've all been filed --

THE COURT: (Interrupting) The only one we're speaking of right now is the Brady material with the tapes and the motions for the continuance.

MR. SELF: To begin with, on behalf of the United States, we're opposed to any continuance-- any further continuance of this case, Your Honor.

Let me back up just a little bit as a scenarios or chronology of these infamous tapes, Your Honor. In September, specifically on September the 26th and September the 30th of 1983 in response to the conferences that we had -- pretrial conferences, Your Honor, I supplied to Mr. Harwell copies of the statements, the Rule 16 tapes. Tapes -- the containing statements of any and all of these Defendants that were made by the Bureau of Alcohol, Tobacco and Firearms and the Kentucky State Police that contain the statements of the Defendants. Included in that, and I think Madam Clerk will reflect there's a tape number 63, that tape number 63 is the same as this infamous tape number 64 that Mr. Harwell says he has not

got, Your Honor. And if he'd just pay attention, he got it back in September of 1983. That was furnished to them at that time, it may be listed as another copy of it or in some other inventory that he has, but it's the same conversation.

So, to the extent that he says we're holding back one of the tapes, Your Honor, it's in the record --

THE COURT: (Interrupting) Wait a second, please.

MR. SELF: Yes, Your Honor.

(Whereupon a discussion at the Bench was held between the Court and the Official Court Reporter.)

THE COURT: All right, you may proceed, Mr. Self.

MR. SELF: May I approach the Clerk just for a moment, Your Honor?

THE COURT: Yes.

MR. SELF: The tape I referred to, Your Honor, was a tape provided to them back in September, not the tape provided in February. So it's not in that group that Madam Clerk has.

MR. HARWELL: May I respond?

THE COURT: No, sir. Let him finish.

MR. HARWELL: I'm kind of anxious, when you get ready to let me, Judge, to comment on that. I would like the record to reflect that we don't agree with that.

MR. SELF: I see what Mr. Harwell is referring to.

MR. HARWELL: No, not unless the Court orders me to.

THE COURT: Now, you take your swings at the bat and we'll let him take his swings.

MR. SELF: According to the records we have, there were two copies of that specific conversation, conversation on the 24th of September, 1982 and we gave them one copy, and there is another copy. One was made with a body court reporter and one was made with a transmitter, Your Honor. And we gave them a copy of that conversation in September according to Mr. Harwell's feedback of what we sent them.

Let the record further reflect that -- and it's still our position, Your Honor, that we furnished to them sometime, I think, as Mr. Harwell says, it's February the 6th. I can't agree or disagree until I go through my notes to check it. But we provided them the tapes of

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conversations between Special Agent Kemp and certain unindicted coconspirators, Your Honor. None of them to my knowledge contain any statements of the Defendants in this case. So they were not entitled to them under the Rule 16. They claim they contain Brady material, and the Court specifically requested how they were prejudiced or what, and I think we had two examples. Mr. Harwell cited one and Mr. Kirkland cited one. I had instructed the agents of ATF, you know, if there's something on there Brady, tell me about it, let me know what's on it. I was advised that they were not aware of it. They listened to the tapes, and I realize there are hours and hours and hours and hours and hours of tapes. I had to rely on their representations to me as to what was on them. I still take the position that they're not Brady material, Your Honor, and that we provided them the material they are entitled to.

On February the 9th, we provided them two additional tapes, Your Honor, which was due to an oversight. And as to not furnishing them two of the tapes on February the 6th, we had them expeditiously made and flown here or sent here by express mail and they were furnished to Mr. Harwell and before week break.

Also, Your Honor, on that Thursday, last day of trial, at the request of Mr. Kirkland, who indicated he may not have sufficient time to examine the tape and pursuant to the Court's Order and my agreements, I agreed to make all the original tapes available here in this Courtroom in this Courthouse last week with the material that the Defendants could either copy them, listen to them or whatever they wanted to do with them along with Mr. Snabel.

I advised counsel and with the Court's permission stated that I would wait until noon Friday, I'm not sure of the date, but Friday a week or so ago, the day after the last day of trial. I would wait till noon of that Friday for any defense counsel to advise me of specifically what tapes they wish to listen to and when they wanted to listen to those tapes.

I had notified Mr. Snabel to get on standby to be here Monday with the originals and the equipment to listen to them.

As of noon Friday I had not received any communications from any defense counsel stating that they wish to listen to those tapes.

None of them contacted me

and indicated that they wanted to listen to any of the tapes, Your Honor. It was not until Monday of that week that Mr. Pafunda called me and asked me when Mr. Snabel was going to be up here. I told him he wasn't because no one had contacted me and he didn't specifically request Mr. Snabel, he said something else, but he was not requesting at that time that Mr. Snabel come up.

So, I with all due diligence, Your Honor, attempted to - - had them ready and made them available if defense counsel wanted to listen to any or all tapes during the last week and the week this Court was in recess, which I think the record should reflect.

Mr. Harwell's motion seems to be that he can't spend enough time listening to the tape to make transcripts of them but he can listen to them but he just doesn't have enough time to make transcripts.

That's apparently why he has to listen to - -

MR. HARWELL: (Interrupting) The Government is stating a misstatement of my position, Your Honor.

MR. SELF: (Continuing) That's why he has to listen to them three or four times. Some

of these tapes are of poor quality, Your Honor, one of the reasons based on the Cornett case that we have not chosen at this point in time to enter them as part of our case in chief, it creates an entirely new problem.

As to the allegation and accusation that Mr. Harwell has that we have been attempting to hide material, Your Honor, I state to the Court that we have not. That we have attempted with all due diligence to comply with every order of this Court as I have done in the past to supply material - -

THE COURT: (Interrupting) Just a moment, we're wasting a little time. Weren't you wanting the Jury to see some exhibits?

MR. SELF: Yes, Your Honor.

THE COURT: Couldn't the Jury be looking at those exhibits while they're in the Jury Room?

MR. HARWELL: Yes, Your Honor.

MR. SELF: I would so move, Your Honor.

THE COURT: Any objection to that?

MR. PAFUNDA: No, Your Honor.

MR. HARWELL: May the Court please. Could you call the Jury in and tell them what

they're going to do and send them back out instead of just sending down the exhibits.

THE COURT: Yes. - -

MR. HARWELL: (Interrupting) We would respectfully ask, Your Honor, that you call them in - -

THE COURT: (Interrupting) Call them in and call the roll.

MR. HARWELL: And voir dire them as to whether they followed your not now admonition during the week and then let them go to the Jury Room with the exhibits.

THE COURT: Fine, let's do that. But I think we're wasting a little time.

MR. HARWELL: Thank you, Judge.

THE COURT: Mr. Marshall, could you go get the Jury please.

THE MARSHALL OF THE COURT: Yes.

(Reporter's Note: At this point the jury was called into the courtroom at 9:40 A.M.)

THE COURT: Madam Clerk, would you please call the roll?

THE CLERK OF THE COURT: Yes, Your Honor.

Ladies and gentlemen, please answer present when your name is called.

Eddie L. Ratliff.

MR. RATLIFF: Present.

THE CLERK OF THE COURT: Norma L. Craft.

MS. CRAFT: Present.

THE CLERK OF THE COURT: Dennis Clark.

MR. CLARK: Present.

THE CLERK OF THE COURT: James Flinchum, Jr.

MR. FLINCHUM: Present.

THE CLERK OF THE COURT: Gary W. Damron.

MR. DAMRON: Present.

THE CLERK OF THE COURT: Patricia C. Sparks.

MS. SPARKS: Present.

THE CLERK OF THE COURT: Sharon Tackett.

MS. TACKETT: Present.

THE CLERK OF THE COURT: Anna Lykins.

MS. LYKINS: Present.

THE CLERK OF THE COURT: Loretta Gail May.

MS. MAY: Present.

THE CLERK OF THE COURT: Lorraine Castle.

MILLERS FALLS
GERASE
CUTTING CONTENT

MS. CASTLE: Present.

THE CLERK OF THE COURT: Mary Lee Curry.

MS. CURRY: Present.

THE CLERK OF THE COURT: Jackie Adkins.

MS. ADKINS: Present.

THE CLERK OF THE COURT: Lillie Lee Scott.

MS. SCOTT: Present.

THE CLERK OF THE COURT: Glen Slone.

MR. SLONE: Present.

THE CLERK OF THE COURT: A. J. Snyder.

MR. SNYDER: Present.

THE CLERK OF THE COURT: Michael Freeman.

MR. FREEMAN: Present.

THE CLERK OF THE COURT: Your Honor, all jurors and alternates are present.

THE COURT: Well, I trust you had a nice week.

Let me ask all of you to remember the not now admonition. I assume that all of you have abided by this and remember part of this where you were not to discuss among yourselves or permit anyone to discuss it with you. Did anyone attempt to discuss this in your presence?

I take it by the negative shake of your heads that they did not.

I called you up here if you remember at the close of the last time, there was numerous exhibits -- how many exhibits, Madam Clerk?

THE CLERK OF THE COURT: Your Honor, we now have a hundred and six exhibits on behalf of the United States and that does not include the Defendants'.

THE COURT: How many were going to be viewed by the -- what we called you up for is so you can take these exhibits down to the jury room while we're up here discussing other matters. We didn't want you to just sit down there and not have anything to do. So we're going to give you some exhibits to take back down to the jury room and you can view the exhibits, but you're to understand the not now admonition. You can view the exhibits, but you can't discuss them among yourselves or this case. Do you all understand that?

How many exhibits do we have?

THE CLERK OF THE COURT: Your Honor, the exhibits that were introduced on the 9th were

Government Exhibits 54 up through and including 106.

THE COURT: Is that the exhibits you want them to review?

MR. SELF: Yes, Your Honor, plus after the previous witness, Detective Forsythe and Stumbo, there's certain exhibits 36, 36A and 37 and 37A, and 8 that were testified to by those witnesses. Specifically I would request those also go with them since they didn't have a chance to review those, Your Honor.

THE COURT: Now, what about any exhibits for the Defendants? Has the Defendants introduced any exhibits that the witnesses have not looked at?

MR. HARWELL: I think we might have had a photograph, I'm not clear on what day of the week that would be.

THE COURT: Well, we'll let them have that photograph.

MR. HARWELL: I think it would be Defendant Edgar Jones 5.

THE CLERK OF THE COURT: I believe it's No. 6, and they have seen that previously.

MR. HARWELL: That was our last

numbered exhibit.

MR. THOMAS: Your Honor, David Thomas for Eugene Tackett. I think we have an exhibit, it's the photograph of the union hall.

MR. KEHRLI: Your Honor, I believe that went in after Walker Blackburn's testimony with the other Defendants, so I think they've already seen that.

THE CLERK OF THE COURT: That would be Exhibit No. 7.

MR. THOMAS: All right, thank you.

THE COURT: Madam Clerk, would you give those exhibits to the Marshall and he can take the jury back to the jury room.

And remember the not now admonition is still in effect.

THE CLERK OF THE COURT: Okay, all exhibits on the table, Your Honor, are 54 up through 74.

THE COURT: You need some help, Mr. Marshall?

THE MARSHALL OF THE COURT: Yes.

THE CLERK OF THE COURT: Plus 36 and 37, is that right, Mr. Self?

MR. SELF: Yes, that's correct.

We'd also like what's been introduced as Government Exhibit A.

MR. THOMAS: I'd volunteer to help, Your Honor, but I might lose a few of them.

THE COURT: If there's no objection, maybe one or two of the jurors can help you carry them down.

THE MARSHALL OF THE COURT: All the jury is out of the courtroom, now.

THE COURT: Thank you, you may proceed, Mr. Self.

MR. SELF: Thank you, Your Honor. One other comment I'd like to make. Mr Harwell in motion quotes me as making a statement in regards to what Mr. -- regards to colloquially that we allegedly had in regards to this statement by Mr. Booth on those tapes. He put it in quotes, Your Honor. I don't know how he's able to quote me so well unless there was some recordings made that I'm not aware of. If there are, I'd like to know if there were any recordings made in this courthouse by counsel, but this was in a conversation we had -- I don't think there were, Your Honor. I think he's trying to quote me as best he can remember it, and that's what

I expect, but I'm just asking -- I don't think Mr. Harwell would do that; I don't think he's that kind of counsel and I'm not accusing him of it. But if there are I'd like to know about it also.

MR. HARWELL: May the Court please, I'm very conscious of Your Honor's orders and I assure Mr. Self that I don't appreciate that cheap shot notwithstanding with him turning around and saying I don't think he did it, but I'd like to know. I have not recorded, but Judge, tragic as it is, I have learned with Mr. Self when I converse with him, it better be recorded contemporaneously with the event. I take one of my associates with me and I make notes, I hate having to say that, Your Honor, but that happens. Does that answer it, sir?

MR. SELF: Yes, thank you, Mr. Harwell.

The tapes contain many, many hours, Your Honor, and as the Court is well aware these were provided -- all these tapes have been provided to the Defendants before any individual that is on any of those tapes that has been put on the stand, Your Honor. They have had at least a week, over a week now to examine those tapes before any of the witness or any of the

individuals speak on those tapes have appeared before this Court.

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MR. SELF: One other thing I would like to state, Your Honor. In regards to the much quoted conversation and the record pertaining to Mr. Kirkland where I have provided or agreed to provide the tapes.

The tapes I agreed to provide and said I would provide all of them, Your Honor, in relation to the material that was required under rule sixteen in the Federal Rules of Criminal Procedure.

My reference therein was to all those tapes that were required to be produced under rule sixteen, and that is what I did provide, Your Honor.

Your Honor, I even provided Mr. Harwell with an index to these tapes which the Court said I didn't have to, but I did to try to be fair with him to show him what I was giving him because some of the tapes, Your Honor, have, as I indicated, there might be two tapes made of the same conversation by different kinds of recording devices.

We provided them with a copy of at least one of them, Your Honor, whichever one I thought would be the best quality tape.

If there is some quality

problems, if they let us know, we will see if the other one has - -is a better tape. They can listen to it here this week at any time they wish to.

But it is our position, Your Honor, I am not trying to play games with Mr. Harwell or with any defense counsel. I am not trying to play games with this Court.

I have made with all due diligence and with all due respect, Your Honor, to comply with every order of this Court.

In regard to furnishing them material, I have attempted to go even farther than that to provide them as soon as I can get it here in certain cases having people work extended hours on behalf of the Government to get those tapes ready, to give them transcripts when the Court said I didn't have to.

I gave them transcripts of the tapes we had in relation to the recently provided tapes.

The Court didn't say that we had to do that, I did that, Your Honor, to attempt to - - and made copies for each and every defense counsel of those transcripts to attempt to expedite and assist them in listening to them.

Yet after having provided them hundreds and hundreds of pages of transcripts, it is still, in response to the Court's question, no indication of any material on those other than one statement that Mr. Harwell said he contends is Brady material.

It is our position, Your Honor, that we have complied with the Court's order; we have complied with Brady; and we oppose any further continuance so they can have further time to listen to the tapes that they have already indicated they listened to, or had the opportunity to listen to, Your Honor, during the ten days this Court has been in recess.

THE COURT: All right.

MR. HARWELL: May it please - -

MR. KEHRLI: (Interrupting) Your Honor, one thing before Mr. Harwell starts.

On behalf of the United States, I would request since defense counsel has asked that copies of the tapes that were provided in February be made part of the record, the Government requests copies of the tapes that were provided in September of 1982 also be made a part of the record in the form of avowal.

MR. HARWELL: We join in the motion, may the Court please, and am prepared for that, because I think it is crucial that this Court is going to have that.

If the Court please, we would like to turn over, for filing now, the tapes that were received September - - there were two packets as I recall - - September 26th.

THE COURT: Let those be placed in the record by way of avowal as an exhibit for the Government.

MR. HARWELL: May I approach the podium at this time?

THE COURT: Yes, sir.

MR. HARWELL: I would like to respond to the Court's position point by point to those comments that Mr. Self has made to Your Honor.

First of all, Your Honor, I saw when Mr. Self was approaching the podium that he had a batch of papers that appear to be labeled at the top Surveillance Tape Log. With the Court's permission, I would respectfully ask that he be directed to turn to page seven of that, the bottom part of the page.

May the Court please, page

seven lists tape sixty-three as a 9-24-82 tape recording telephone - - telephone Pearl Booth and Benny Caudill.

Tape sixty-four, which we don't have, lists a 9-24-82 recording, tape recording Booth residence, Benny Caudill, Pearl Booth and Ed Martin.

May the Court please, that is why we say that those tapes are not the same. But the truth of the matter is, until we have that tape, until we hear that tape, we don't know whether it is or not.

We believe we are entitled to that tape. So much for point A.

Point B, may the Court please, I find it incredible for Tom Self to get up here and say Your Honor we take the position there is no Brady material on the tapes.

I met with Mr. Self on February 7th, and at that time I had been told by one of my staff of this famous Phillip Booth auger statement which is not the only Brady, Judge, but that was what was found early on.

And I said, "Mr. Self, you and I philosophically disagree about what con-

stitutes Brady." And that oftentimes happens between defense counsel and a prosecutor.

"But assuming Phillip Booth made that statement, in that recorded statement, you will agree with me, will you not, sir, that that is Brady."

Mr. Self said, "Well yes, that would be Brady material unless you know Phillip Booth the way we know him. If you know Phillip Booth like we do, then you wouldn't think anything he said was Brady."

Which by inference meant to me, and I think to any reasonably objective human being, that Phillip Booth is a liar, you shouldn't trust him, you can't believe him.

That fact that he is a liar is Brady material, may the Court please.

Your Honor, Mr. Self has made some significant comment about all the time and trouble he has gone to to have these tapes available.

He may or may not be aware of the fact, and may not recall the fact, that when we were talking about tapes during the week of February 6th, Your Honor, at one time was on the verge of ordering me to be here on Monday, February

10, since I had a set of tapes, lacking one or two. And as I recall that conversation with the Court, I committed as I had back in the fall, to make copies of tapes and send them to defense counsel.

May the Court please, on Thursday, the last day we were in Court, which I believe was February 9, I returned to Nashville, commencing on Friday, February 10, we started having copies made of those tapes.

The truth of the matter is that it takes so long to duplicate that I did not send copies to every defendant's attorney. I did send copies, I believe, to every Defendant's attorney who had asked me prior to my leaving Pikeville that they get copies.

So it is irrelevant as to whether somebody was here or not here, because a bunch of these lawyers had tapes.

Now, I understand that even though I had them sent in by Federal Express, or one of these overnight delivery services, they went out of my office Monday, Mr. Pafunda told me that even though I had been guaranteed a delivery at noon Tuesday, he didn't get his until Wednesday.

And I can't address the

MILLERS FALLS
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issue as to when these fellows got them.

But the point of the matter is, Your Honor, it is irrelevant whether the Government had them here or not, because I had followed the Court's suggestion and sent them copies of tapes.

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If the Court please, Mr. Self has said well, Your Honor, they have had over a week to listen to the tapes. We have had over a week to listen to some of the tapes. We got some of them February 6, we got some of them on the 9th of February, we still lack one.

Judge, everything is ready. The Government has had as much as two years to listen and call and pull out what information and statements on those tapes that they want to use. I am prepared, may the Court please, to put Mr. Moore under oath and on that stand and in that witness box, or I will take it myself, and I will represent to this Court that I have made a total good faith effort as have members of my staff, to get these tapes listened to, to get information assimilated. Judge, you just can't do it.

He stood up and said well, Mr. Harwell, a week is a long time. A week is a long time, Judge, but it is not like a year and a half or two years, may the Court please.

Mr. Self has stood up here and said well, now, Judge, I have done what I was supposed to do and I haven't held anything back, I have behaved myself.

May Your Honor please, I

would like to refer the Court to the October 20 pre-trial hearing. Mr. Self said in that, "Judge, Your Honor, if I had the existence of Brady material, I will do my best to turn that material over to the defendants. I am not trying to hide anything, I am trying to expedite, Your Honor."

Your Honor said, "Let me get this on the record, gentlemen. The Court is not going to read the entire matter to determine what is exculpatory. The Court is putting that burden on the Assistant United States Attorney."

On December 15 in this court, I had moved that all notes that had any exculpatory material, and any other exculpatory material, be turned over to us or they be reviewed. May the Court please, as I am sure you recall better than I, Your Honor said, "I don't think the Court has to order them, I am sure if the U.S. Attorney has anything exculpatory, he will turn it over."

Mr. Self said, "Yes, Your Honor." The Court said, "If there is anything else questionable, the Court will consider that in camera."

Then Mr. Self said, "Judge, it is always a standing order of this Court if during the course of the trial the U.S. Attorney

becomes aware of Brady material, the U.S. is subject to sanctions for not turning it over."

Your Honor said, "Mr. Harwell, that is a standing order of this Court."

I took the matter up again, and I might have irritated Your Honor on pushing on December 15, didn't mean to, but I asked again about Brady, and Your Honor said, "Haven't I ruled on the Brady thing?" And Mr. Self said, "You ordered, but you didn't have to order to be provided."

Then the Court said, "I think somewhere in writing there is an order here I have sustained the Brady material. I believe the record will reflect that in response to any initial discovery motion."

Mr. Self said, "We have no objection to the production of Brady."

Then I again talked to the Court about it and said, "Judge, I am concerned about how the U.S. Attorney defines appropriate time in giving this Brady material. Do we have his thoughts on appropriate time? He said he was going to give it to us and I would like to know."

Your Honor said, "Well, I

assume if he has Brady material he will already--already have turned it over."

Then Your Honor said, "While we are discussing this Brady material, let me state this, gentlemen. If any of the defendants are going to use assimilating Brady in his defense, he is entitled about it in time to use it."

And Mr. Self said, "Yes, sir." And then Mr. Self said, "Well, with the pending holidays, I am trying to figure out if the first week of January would be sufficient." Then he said, "Judge, we will turn it over no later than Tuesday before trial. We will start working on it, and we will start searching."

May the Court please, that takes care of that point, I have one other.

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That has to do, Your Honor, with Mr. Self's statements that I apparently have taken out of context - - I have taken out of context that which was said in terms of the tapes.

I think maybe the Court should hear this, and may the Court please, on September 12th, Mr. Kirkland stood up before Your Honor and said, "Your Honor, I have sort of a separate Brady issue. Back to the tapes, I know you think I have sort of a one track mind, but it seems to me if the Government took thirty or forty hours of tapes, or whatever it was, under the various circumstances, various people, various times, different places on the various guidance of friendship or whatever, that the Government has possession of those tapes, the conversation could be exculpatory."

"Like if the guy said 'What do you mean did I do so and so.' Now, we are entitled to those whether or not the Government wants to use them at trial, and I believe they have an affirmative duty to go through them and perhaps offer them to Your Honor for consideration."

Mr. Self says, "Mr. Kirkland has got part of them, and we already discussed we are going to make every single one of the tapes that

MILLERS FALLS
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pertain to this case available. We are going to supply, or somebody is going to supply, a copy to Mr. Harwell, and he is going to give them to everybody that wants them."

And Your Honor, very wisely, very wisely said, "I think Mr. Kirkland is saying, Mr. Self, he doesn't want to accept your word on what pertains to this case. He wants to hear everything and he wants to decide."

And Mr. Self says in that colloquy, "Glad to, Your Honor, we will be glad to let Mr. Kirkland listen to the original of every tape." That is the colloquy that Mr. Self says, "Judge, that statement of mine in that affidavit is out of context. That is what it says."

May the Court please, I appreciate the burden that this Court has carried, along with your staff in this case. I am grateful, Your Honor, for your patience with all of us, especially me, but I think that patience, Your Honor, has been predicated on the desire that there be a fair trial in this matter.

I think what has happened here in regards to these tapes is not a fair trial, it is deprivation of a fair trial of my client.

It is just not fair, Your Honor.

THE COURT: All right. Anything else in this matter, gentlemen?

MR. KIRKLAND: Yes, Your Honor. I have just a couple of additional matters.

THE COURT: Yes, sir.

MR. KIRKLAND: Today, I heard for the first time, that ATF agents are charged with the responsibility of determining what is Brady material and what is not.

I had always thought that was a lawyer's responsibility.

Now, it appears that ATF agents are not only investigative agents, but they are also agents of a Grand Jury which we learned two weeks ago.

And now we are learning that they are agents of the prosecution, agents of the U.S. Attorney's office and that makes them triple agents, Your Honor; all of which are inconsistent roles, in my judgement.

Secondly, I was going to point out as Mr. Harwell did, that this discussion back in September was not Rule Sixteen material, it

was Brady material, and that was specifically cited in the transcript.

Mr. Self was incorrect when he said that he had agreed to turn over Rule 16 materials, it was Brady materials, exculpatory materials.

Your Honor, it seems to me that we have seen an attitude coming out here, and that is do whatever is necessary to convict these men, whatever, and that seems to be coming out more and more and more.

Back to the tapes. If an ATF agent is reviewing the tapes for exculpatory material, doesn't that put the fox in charge of the chicken house?

THE COURT: All right. Is that it, gentlemen?

MR. SELF: May I examine those tapes Mr. Harwell just handed in?

THE COURT: Yes, sir. Absolutely.

THE CLERK OF THE COURT: Your Honor, may I say for the record these last tapes were marked as Government Exhibit 107, placed in by avowal.

THE COURT: Gentlemen, the motion for the continuance is taken under advisement. Who

does the Government have here to testify?

MR. SELF: Excuse me, Your Honor.

MR. KEHRLI: AGent Kemp will be our first witness, Your Honor.

MR. HARWELL: For no other purposes, Your Honor, may I inquire if that is correct?

MR. KEHRLI: That is correct, Your Honor.

THE COURT: Then who do you have after that?

MR. SELF: Pearl Booth.

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RELEASE
EDITION CONTENT

MR. SELF: Pearl Booth.

THE COURT: All right. Let's see, if I am not mistaken, I imagine Miss Booth will take a day, won't she?

MR. SELF: At least, Your Honor.

THE COURT: I mean, before you even get to the cross examination of Miss Booth?

MR. SELF: We would expect the rest of the day for Pearl Booth.

THE COURT: All right. I will take under advisement before the examination starts.

MR. HARWELL: Before you bring the jury in, there is one other thing.

THE COURT: You understand before we get to the cross examination of Miss Booth, at that time I feel that I have a duty to rule on the motion for a continuance at that time. But whether or not there is a continuance wouldn't make any difference on the direct examination of Pearl Booth.

MR. SELF: May the Court please.

THE COURT: Yes, sir.

MR. SELF: The transcript of the index of tapes made that is filed as part of Government's Exhibit 107, Your Honor, let me reflect that this was Mr. Harwell's tender of these documents. I can't

-- he has stated these are the tapes we provided to him. I have no knowledge as to whether they are or not.

THE COURT: Okay.

MR. SELF: Listed as part of the index is tape number 63 which identifies a copy of the TRX which is a transmittal, not a telephone, made on 9-24-82, Booth, Caudill and Martin. That is the same as whatever this tape number 64 is. I don't have mine, but that is Mr. Harwell's copy of it and there is one down in our office. It is the same tape, Your Honor.

MR. HARWELL: Then we are lacking tape 63, and I modify what I said and I want tape 63.

MR. SELF: It is the same tape, one is a transmittal and the other is --

MR. HARWELL: (Interrupting) Judge, you heard me on the telephone versus one, and now with Ed Martin and the others, those tape recordings at the Booth residence with Ed Martin, Pearl Booth, and --

MR. SELF: (Interrupting) 62 and 63 is the same as whatever he is saying is 63 and 64. He has got the tapes, Your Honor.

THE COURT: You have some other matters?

MR. HARWELL: Yes, I do, Judge.

THE COURT: Let me get back to this. What I said was the Government's exhibit by way of avowal. I gather what you said was that the tapes which he had were copies of tapes and therefore you all wanting those to be Defendants' exhibits by way of avowal, or do you agree?

MR. SELF: I can not state to the Court what has been marked for identification as Government Exhibit 107 is the tapes that are provided.

THE COURT: Then we will make them Defendants' exhibits.

MR. HARWELL: Judge, we have no objection if Mr. Self wants to. If he can, he can tender for the purposes of filing all his tapes, too, and that might prove the instance down the road, Judge.

MR. SELF: Doesn't bother me if the Court wants the originals, we will put them in, of all the tapes, Your Honor.

THE CLERK OF THE COURT: This is to be Defendants' exhibit, Your Honor.

THE COURT: Yes, ma'am. All right. You have another matter?

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

THE COURT: Yes, sir.

THE CLERK OF THE COURT: It would be Defendants' exhibit No. 8, Your Honor, placed in by avowal.

(Reporter's Note: Whereupon Defendants' Exhibit No. 8, by avowal, was duly received, marked, and made a part of the record.)

THE COURT: Are you ready to proceed?

MR. HARWELL: Thank you, Your Honor. If the Court please, this is the second time in seventeen years of this honorable profession that I have been in the position that I find myself in at this moment. And I tell Your Honor that I approach this podium with concern, with sorrow that it is necessary for me to bring to the Court's attention that matter that I want to bring to the Court's attention, but I am bound ethically to do so, and I do so totally in good faith.

If the Court please, comes now the Defendant, Edgar Jones, and move the Court to dismiss the indictment of this case. As

grounds for this motion, Defendant states that the Government has been guilty of misconduct in the form of a possible use of perjury testimony to secure the indictment against the Defendants; the intentional concealment of tape recordings containing exculpatory information; a failure to disclose other exculpatory information to the defense counsel concerning statements made by alleged coconspirators; repeated misrepresentations of the Court and defense counsel regarding Brady material; use of prejudicial remarks in the presence of the jury; failure to comply with the Court's orders concerning witness statements; Jencks Act material; exculpatory information.

In addition, the Defendant believes that the Government has violated the Grand Jury secrecy requirements of Rule 6E of the Federal Rules of Criminal Procedure by having Special Agent Dennis McCallister appointed as an agent of the Grand Jury.

We believe the aggregate effect of the prosecution's conduct has been to severely prejudice the Defendants' rights to a fair trial, the affect of the assistance of counsel, and the due process of law.

DALE SOERGEL MOORE SHAW & ASSOCIATES
COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

May the Court please, with Your Honor's permission, I would ask that this motion which has been typed consistent with the Court's requirements be filed; I would also ask, may the Court please, that a lengthy memorandum in support of this motion, some sixty-two pages, also be filed.

I would also ask, may the Court please, at this time, that there be filed an affidavit in support of a motion to dismiss the indictment that sets forth references of pages of transcript in this matter where we contend that is a matter of fact there has been prosecutorial misconduct, the aggregate effect of which is to deprive the Defendants of a fair trial.

May I file those, Your Honor?

THE COURT: Yes, sir.

MR. HARWELL: Thank you, Your Honor. If the Court please, given the hour --

THE COURT: (Interrupting) Let's see if they have a response.

MR.HARWELL: Yes, sir.

THE COURT: Does the Government desire -- do you want time to file a response to

that?

MR. SELF: Yes, Your Honor. We got it at approximately nine o'clock this morning, and I haven't had an opportunity to read it and understand what I am being accused of.

THE COURT: All right. You will be given time to respond.

All right, gentlemen, let's see.

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THE COURT: All right. Gentlemen, let's see.

MR. WALBOURN: Your Honor, in regard to that, I would like to specifically join, and as I have Defendants and those of us who have Defendants named in the count, alleges the destruction of the auger that the withholding of that testimony or the statements by Mr. Phillip Booth that he personally did it is a clear violation of Brady, and a clear withholding of exculpatory, such as to deprive those Defendants specifically named in that count of their right to a fair trial and due process.

MR. SELF: Let the record reflect that that was not testimony, but it was a statement not made under oath, but made in the course of a conversation.

MR. WALBOURN: It wasn't testimony, I corrected that, Your Honor, and I said testimony and then I said rather a statement.

THE COURT: All right, gentlemen. I wonder now how the Jury is coming. I just make an inquiry how are they coming along on viewing the exhibits.

THE MARSHALL OF THE COURT: Yes, sir.

MR. HARWELL: May I be excused, Your

Honor, to go to the men's room?

THE COURT: Yes, sir.

MR. SELF: Let me just inquire. The next witness, we suspect is going to be marking for identification four rifles. How does the Court wish to handle those? Just to bring them up during the course as they come in, hand them to the witness, or what? Leave it up to me?

THE COURT: Is he going to what?

MR. SELF: He is going to be identifying four rifles that he purchased from various - - some of them from Defendants, some of them from witnesses, and some of them from unindicted co-conspirators, Your Honor.

Three of them will be marking for identification through this witness.

THE COURT: This is someone who purchased firearms from some of the Defendants?

MR. SELF: One of them was purchased from one of the Defendants, yes, sir. One of them was purchased from Basil Ray Moore, and two of them were obtained from Wendall Ray Newman, and we contend and we will prove that these were weapons that were actually used in the course of the shootings that went on a Ray-Mac through this witness.

In other words, he cannot state, except for one of them, as to what the Defendants said, but three of them will be marking for identification and moving them in through a later witness, Your Honor who can make them - - who in and of himself can make them relevant.

THE COURT: Let me see what the defense says.

MR. SELF: Your Honor, my purpose is to - - some of these might not be able to say I don't know if that is mine, but I sold one that was used to Special Agent Kemp, and it is necessary that I put them in for markings for purpose of identification three of them through this witness so that they can be accurately stated - - or so that other witnesses can put them in with respect to which guns and what I did with them.

MR. PAFUNDA: Your Honor, if it please the Court in that regard, this is the second, at least the second time the Government has tendered as exhibits weapons.

The Jury is now viewing two Uzis, and we have the Government's representation that at some time later they will make them relevant in this week of February 16th, 1982.

MILLERS FALLS
EZ ERASE
COTTON CONTENT

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Now we are into the second occasion where a number of rifles through Agent Kemp are going to be introduced and marked as exhibits, the Jury will have an opportunity, and again on representation of the Government, that at a later time through another witness these items will be made relevant, and at that time we'll move to introduce them into evidence.

At that time is too late, the Jury has already reviewed these weapons, and in their mind they may in fact be relevant in terms of the Jury. I don't know how we are going to get that impression out of the Jury's mind once we have this pile of weapons here in the Courtroom.

THE COURT: The only problem you have is if they find them relevant.

MR. PAFUNDA: That is my point, Your Honor.

THE COURT: If they later make them relevant, there is no problem.

MR. PAFUNDA: That is correct. But if they fail to do that, Your Honor, then the damage has already been done and again we are back to an admonishment which don't know if you can admonish that kind of thing out of a Jury's mind.

MILLER PAILS
ERASE
COTTON CONTENT

Or as it's been suggested, Your Honor, dismissal.

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MILLER'S FALLS
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MR. BRANSON: Your Honor, I would respectfully suggest to let these other witnesses testify first, and then bring Special Agent Kemp back since you are calling him specially anyway. Why not let them testify, then bring him, and then put them into evidence. This is kind of going backwards.

MR. SELF: This is the way that I choose to put them in. If I don't make them relevant later on, I realize I am running the risk of making a mistrial, Your Honor.

MR. KIRKLAND: Your Honor, I fail to see the purpose of introducing a bunch of firearms that may or may not--

THE COURT: (Interrupting) Let's not Mutt and Jeff this thing. Let's let the defendants get their side in, and the Government makes their side. This isn't a calliope, gentlemen. One side says something, and the other responds, and the other says something and the other responds. Let's get one side in, and then let's get the other side.

All right. Go ahead.

MR. KIRKLAND: I think that these guns and all of this other material that has been piled out here in front of the jury has been done so for prejudicial reasons. I don't think the presence of

these two Uzis proves a Hobbs Act violation in any way whatsoever.

This is not a federal firearms case per se. It is a Hobbs Act case. And what was used during the week of February 16-- They also apparently used vehicles, clothes--they ate food. Would those items be relevant to this case?

They have tried to pick out the most inflammatory items that they can find and introduce them; and they are somehow supposed to be relevant.

What do they prove? They don't prove any part of the Hobbs Act. The mere fact that somebody may have had a gun doesn't prove anything. It's probative value is far outweighed by the prejudicial value. And I object to the continual parade of ammunition and guns and that sort of thing. It is clearly being introduced to prejudice the jury. And the prejudice far outweighs any probative value. I see no probative value whatsoever.

It doesn't establish a conspiracy. It doesn't establish a Hobbs Act violation.

THE COURT: All right.

MR. PAFUNDA: Your Honor, there is one

other point I would like to make. It appears-- And I feel obligated to at least mention this on behalf of my clients, Drexil Hall and Austin Moore. Not only do I have the--should I have the opportunity to listen to the forty-seven tapes which Mr. Harwell has furnished copies to me this past week, but I think also my clients should have the opportunity to at least listen to those tapes. They have listened to the first batch of tapes the Government has provided. And it has been my position throughout this matter that not only myself should listen to the tapes, but my clients as well.

And I just want that to go on the record that my clients haven't finished listening to the tapes yet, the last batch that we received at this present time. And put that in the record for an additional reason for continuance before Mrs. Booth testifies.

THE COURT: All right.

MR. HARWELL: Judge, I think you asked me a question a while ago; and I will be honestwwith you, given Mr. Self's comments, I was infuriated to the point of being upset.

You said Mr. Harwell, what else is there on this tape.

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Mr. Moore has just mentioned to me something that specifically addresses itself to the Court's question.

This Court, at several hearings, where Phillip Booth and Pearl Booth wherein they entered guilty pleas to events that occurred August 20, August 28, or thereabouts, 1982. I read the transcript of that. Since then, as I recall, I don't even know if the Court is aware of the fact that--those guns and that dynamite that they got from that special agent, Judge, they also got in exchange for that sixty-three pounds of marijuana which they took possession of; and they weren't prosecuted for that. I don't think the Court has been made aware of that fact. That is Brady material. That is one more example.

THE COURT: What did the jury say, Mr. Marshal?

THE MARSHAL OF THE COURT: They are ready, Judge.

MR. SELF: Can we have just a five-minute break?

THE COURT: Well, let's do better than that. Let's have five, ten--let's have a fifteen-minute break.

MR. SELF: One thing, Your Honor, just--

THE COURT: (Interrupting) Mr. Marshal, when the jury comes back, we will need those exhibits brought back up so the Clerk can take charge of them.

MR. SELF: May it please the Court, Counts 6 and 7 of the indictment charges certain defendants with possession of firearms during the commission of a felony. These are firearms--firearms that were carried by some of these defendants during the commission of that felony.

THE COURT: All right. You may use your witness for purpose of identification with regard to those exhibits.

MR. SELF: All right. Thank you, Your Honor.

THE COURT: All right. We will be in recess for fifteen minutes, Mr. Marshal.

THE MARSHAL OF THE COURT: All rise. This court will be in recess for fifteen minutes.

(Reporter's Note: Whereupon court recessed at 10:20 a.m.)

(Reporter's Note: Whereupon court reconvened at 10:38 a.m.)

THE MARSHAL OF THE COURT: District Court

is in session. Be seated and come to order.

THE COURT: Mr. Marshal.

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

THE COURT: Are you ready to proceed?

MR. SELF: Yes, Your Honor. We call Richard Kemp.

MR. ROWLAND: Your Honor, before we begin, could we have just a short bench conference?

THE COURT: Yes, sir.

(Reporter's Note: Whereupon a bench conference was held and the following was heard:)

MR. ROWLAND: Judge, I have a real problem from a personal standpoint, and I am making a personal comment about the continuance of this case.

I have talked with my client, and we agree on a professional basis, and we would join Mr. Harwell's motion for a continuance. We feel that if there is anything on those tapes at all that will help anybody, we are each entitled to them if not in September, we are entitled to them now. And I don't think that the motion ought to be denied that long. I think once Pearl Booth takes the stand and testifies, there is going to be two

weeks in-between for this jury to observe what she said and for her to read through everything that was said and prepare for cross-examination.

I don't think she ought to have that kind of an opportunity.

THE COURT: You think--you think you are entitled to it, but that they aren't entitled to it, is what you are saying?

MR. ROWLAND: I think we oguht to have it before Pearl Booth takes the stand.

MR. HARWELL: That is what will happen. May the Court please, she takes the stand-- The Government has said she will be a long witness. She has been characterized as a star witness, a big witness throughout this entire matter. She takes the stand on direct, and there are fourteen or fifteen days, assuming that you grant the motion, everything she says has been planted. We will come back in on cross-examination. And human memory being such, they will have forgotten many specifics of what she said and left for two weeks with her smoking-gun type testimony and that no cross-examination on it.

THE COURT: Anything else?

MR. ADAMS: Yes, Your Honor. I join

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Mr. Harwell's motion to continue the case for the very simple reason that there are forty-seven hours of tape, and I have no idea what is on those tapes--if it be Brady material or it could be a lot of things. And we are sort of left with pulling the rabbit out of the hat. I can't represent my client that way. I have no way of knowing what is on them.

THE COURT: Anything else?

MR. HARWELL: May Your Honor please, Special Agent Kemp was the man that most often carried the tape and taped conversation for a period of months and months. And in that we are entitled to cross-examine him within the scope of the direct and also as to credibility, we would like to register an objection to his testimony in that we have not yet listened to all the tapes; and as to the area of credibility, we are hampered in our cross-examination.

Further, may the Court please, by reason of 26.2 of the federal rules, we believe those tapes were prior tapes made by him, and therefore Jencks material. For that reason, the Court should not allow him to testify.

MR. PAFUNDA: I would join that.

MR. SPENCER: For the benefit of all of

us, if everybody is willing to, I will join in it, too. But also, I would like-- But it is with the Court's discretion for the Court to make a ruling on the continuance before Pearl testifies because like all the other trial advocacy, I don't want that break.

THE COURT: All right. Is that it? Let your motions be noted and overruled.

MR. HARWELL: Are you overruling all the motions, one under advisement?

THE COURT: I am overruling all motions except the motion for continuance which is still under advisement.

MR. HARWELL: That you have under advisement?

THE COURT: That's right. I had thought of several options. I mean I can either grant the continuance, or I can let it be cross-examined, and be recalled for further cross-examination. There are several items. I just have to review the motions, and I will have to review your motions and the responses that were made today. I have got several things I have to do.

MR. HARWELL: Thank you very much, Judge.

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THE COURT: Are we ready to proceed?

MR. SELF: Yes, Your Honor.

RICHARD KEMP, called on behalf of the Government, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SELF:

Q. Will you state your full name for the record and spell your last name?

A. Richard H. Kemp, K-E-M-P, Charleston, West Virginia, my duty station, Special Agent of the Bureau for Alcohol, Tobacco, and Firearms, Administrator.

Q. Special Agent Kemp, how long have you been with the Department of the Treasury?

A. Since 1970.

Q. And how long have you been a Special Agent with the Department of the Treasury?

A. Since 1970.

Q. And what do your duties consist of as Special Agent?

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A. We investigate laws that pertain to explosives and various firearm violations. And also elicit liquor and nontaxes paid for distilled spirits.

Q. Special Agent Kemp, were you in some way involved in the matters now on trial in this case?

A. Yes, sir, I was.

Q. And were you involved in an investigative capacity as a Special Agent or in some other capacity or both?

A. Both.

Q. Were you involved in the investigation of this case in an undercover capacity?

A. Yes, sir, I was.

Q. Did you assume an undercover identity in the course of this investigation?

A. Yes, sir, I did.

Q. Special Agent Kemp, on September the 3rd, 1982, did you have occasion to conduct a transaction with any of the individuals involved in this matter?

A. Yes, sir, I did.

Q. And what happened on September 3rd, 1982?

A. Along with Basil Ray Moore and Phillip Dale Moore, I went to Frasure's Branch and purchased a .35 caliber Remington semiautomatic rifle from Basil Ray Moore.

Q. And who is Basil Ray Moore?

A. He's an individual that was involved in this matter that sold me explosives in the past and things like that.

Q. And to your knowledge, is he any relation to an individual by the name of Ed R. or Panhandle Moore?

A. Yes, that's correct. That would be his son, Ed Moore's son, Basil Ray Moore.

Q. And you acquired from Mr. Basil Ray Moore, what?

A. A .35 caliber Remington semiautomatic rifle.

MR. SELF: Mr. Marshall, if you would, please, I ask you to hand the witness what's previously been marked for identification as Government Exhibit HHH. Madam Clerk, I ask that the

tag attached to it be marked the next letter for purposes of identification with the alphabetical designation A.

THE COURT: Please hand it to the Clerk, please.

THE CLERK OF THE COURT: Your Honor, the Government has previously been identified by Government Exhibit in three letters of the alphabet H and now for the purpose of trial it's been marked as Exhibit No. 7. The identification tag has been marked for identification purposes as 107A.

MR. PAFUNDA: Judge, I'd like to look at it -- I'd like to look at the weapon, Your Honor.

THE COURT: All right.

Q Special Agent Kemp, would you examine the two exhibits that have now been handed to you and I'll ask you do you have --

THE COURT: (Interrupting) Just a moment. We didn't get that on the record. Have all of the Defendants -- rather counsel for the Defendants have an opportunity, Mr. Marshall, to examine the exhibit?

THE MARSHALL OF THE COURT: All that wanted to see it, Your Honor.

THE COURT: Thank you, sir.

MR. SELF: May I continue, Your Honor?

THE COURT: Yes.

Q Special Agent Kemp, have you ever seen that rifle before?

A Yes, sir. This rifle that is marked Government Exhibit 107A is the same rifle that I purchased from Basil Ray Moore on September 3rd, 1982.

THE COURT: Wait just a second. I think all of the Defendants' counsel that desired saw the exhibit, is that correct?

MR. HARWELL: Yes, may it please the Court, I think all that desired to.

MR. ROLLAND: We weren't afforded the opportunity, but I don't want to see it.

THE COURT: That's fine. I believe the Marshall said all except one --

THE MARSHALL OF THE COURT: (Interrupting) I said all that wanted to, Your Honor.

THE COURT: Fine, I just wanted the record to be clear on that.

Q Special Agent Kemp, what is the caliber and serial number of that weapon?

A The caliber is .35

Remington, sir. The serial number is 59434. It's a model 8 Remington.

Q And the tag that's attached to it, does it bear your signature?

A That is correct, sir, it is.

Q And the tag was not on it when you bought it, was it?

A No, sir. After purchasing the firearm I placed the tag on it and turned the firearm over to Agent McCallister of ATF.

Q What did you pay for that gun?

A A hundred and fifty dollars.

Q When you purchased that, were you acting in an undercover capacity?

A Yes, sir, I was.

Q And for the purposes of the record, does the firearm have any other identifying data on it?

A Yes, sir, it does have.

Q What does it have on it, Agent Kemp?

A On the left side of the

receiver, etched in the left side of the receiver, it has Ed Ray Moore etched in the metal part of the receiver.

Q And is the firearm in substantially the same condition now as at the time you purchased it on September 3rd, 1982?

A Yes, sir, it appears to be.

Q Thank you, Mr. Kemp.

Mr. Marshall, if you would, I'd ask you to hand to Mr. Kamp what's been marked as identification as Government Exhibit KKK, and ask that it be marked for purposes of introduction as the next trial exhibit with a tag marked as 108A.

THE CLERK OF THE COURT: Your Honor, what's been previously marked for idnetification as Government Exhibit by three letters of the alphabet K has now been marked for purposes of trial as Government Exhibit 108. The evidence tag which is attached to 107 has been identified as 107A -- 108A, I'm sorry, Your Honor.

MR. SELF: Mr. Marshall, would you also hand what has been previously marked for identification as Government Exhibit JJJ.

THE WITNESS: All right, - -

MR. SELF: (Interrupting) Mr. Kemp, could you wait just a moment, please so they can have an opportunity to examine the other one.

I ask again, Madam Clerk, that that be marked as Exhibit 109 and the tag be marked as 109A.

THE CLERK OF THE COURT: Your Honor, the exhibit that's previously been marked as Government exhibit by three letters of the alphabet J now for the purposes of trial have been marked Government Exhibit 109 and the evidence tag attached has been marked as 109A.

THE MARSHALL OF THE COURT: All defense counsel has had an opportunity to examine it Your Honor.

THE COURT: Thank you. That would be 108 and 109, is that correct, sir?

THE MARSHALL OF THE COURT: Yes.

Q Special Agent Kemp, have you ever seen those two rifles before?

A Yes, I have.

Q. And when did you first see them?

A. September the 11th, 1982 at Wendall Ray Moore's residence at Jack's Creek in Floyd County, Kentucky.

Q. Wendall Ray Moore?

A. That's correct, sir - - Wendall Ray Newman.

Q. And how did you acquire those from Mr. Newman?

A. I accompanied Pearl Booth to the residence of Mr. Newman and at that time identified myself as a Special Agent of the Bureau of Alcohol, Tobacco and Firearms and asked him about several firearms and he displayed these two firearms to me and said these were the firearms that he had loaned - -

Q. (Interrupting) Don't say what Mr. Newman said.

Did you obtain those two firearms at that time?

A. Yes, at that time he said he would turn - - he turned the firearms over to Pearl Booth and we then departed with the firearms in my vehicle and met with the cover team and turned

them over to Agent McCallister at that time.

Q. The rifle that's been marked as Government Exhibit 108 for the purposes of identification would you for the record describe that firearm as to caliber, serial number and make, etcetera?

A. Yes, sir, Government Exhibit 108A is a Gamemaster 30.06 caliber pump action Remington model 760-- --

THE OFFICIAL REPORTER: (Interrupting) Sir, would you repeat that starting with identifying it.

A. It is a 30.06 caliber Gamemaster Remington pump action rifle. It displays serial number B6995897. The firearm appears to be in the same order which received from Wendall Newman on the 11th of September, 1982.

Q. Was the plastic on any of those firearms when you acquired them, Special Agent Kemp?

A. No, sir nor was an evidence tag.

Q. Now, the second rifle that's been marked for identification as Government Exhibit 109, would you for the record describe that

GENERAL COTTON CONTENT

weapon?

A. It's a bolt action Remington caliber .243 rifle display serial number 6150830 and has a scope affixed to the top of the rifle.

It appears in the same general condition as when received from Wendall Newman on September the 11th, 1982. The plastic bag nor the tag was on it at that time.

Q. Does the plastic bag have some writing on it on a label, Special Agent Kemp?

A. That is where it was sent to the laboratory, to the Kentucky State Police Laboratory for analysis.

MR. SELF: Your Honor, I ask that the plastic be attached to the tag and made a part of the alphabetical marking of the gun for purposes of identification.

Q. And what did you do with those two guns?

THE CLERK OF THE COURT: Let me - - let that be handed to the Clerk for for marking.

MR. SELF: Your Honor, I think it can just be taken off and attached to the label, or staple it to the tag.

THE COURT: Just take it off.

Q. Which one is that Special Agent Kemp, the one you just handed to the Marshall so we don't get them mixed up. I asked the Clerk to staple that to the tag so we can keep it in order.

THE CLERK OF THE COURT: This is 109, Mr. Self. Are you asking that it be marked as 109B?

MR. SELF: Just make it a part of 109A, Madam Clerk.

I ask the same be done at a later time in a break, Your Honor for regards to 107A and 108A also.

THE COURT: Let's do it right now, please.

MR. SELF: Does Madam Clerk wish to do the same thing with 107 at this time or at a later time, Your Honor?

THE COURT: Let's do it right now.

MR. SELF: Marshall, I ask that you hand the witness what's previously been marked for identification as Government Exhibit LLL and ask that the tag that's attached to it and the bag be marked as Government Exhibit 110A.

THE CLERK OF THE COURT: Your Honor,

what's previously been marked for identification as Government Exhibit by three letters L has now been marked for the purpose of trial as Government Trial Exhibit No. 110 and the exhibit tag and the plastic bag has been marked as Government Exhibit No. 110A.

THE MARSHALL OF THE COURT: All counsel has had an opportunity to review the evidence.

THE COURT: Thank you, Your Honor.

MR. SELF: Your Honor, the plastic bag at this time contains a clip, Your Honor and that should be part of Exhibit 110 rather than 110A for the purpose of security if the Marshall wants to leave it in the bag, I have no objection of doing that.

*** *** ***

THE COURT: In other words, the exhibit 109 ---

MR. SELF: No, Mr. Marshall, will you hand that to the witness?

The clip's what's been marked as identification as part of 110A as part of the weapon. I have no objection in leaving it out.

THE COURT: What about 109?

MR. SELF: I don't believe there's a clip in that bag, Your Honor.

THE CLERK OF THE COURT: Your Honor, there's a clip in 110 but not 109.

Q. Special Agent Kemp, have you ever seen that rifle before?

A. Yes, sir, I have.

Q. When did you first see it?

A. September the 16th, 1982. I purchased this firearm from Jason Moore at the Booth residence in McDowell, Floyd County, Kentucky.

Q. Would you, for the purpose of the record, describe the firearm for the record?

A. It's a M-1 carbine manufactured by Plainfield Machine Company, the model is M-1. It's a .30 caliber semiautomatic. The serial number is 40820.

Q. Special Agent Kemp, who did you acquire this weapon from?

A. A fellow by the name of Jason Moore.

Q. Do you see the individual that you purchased that firearm from in this courtroom at this time?

A. Yes, sir, I do.

Q. Is that the gentleman that's standing right now?

A. Yes, that's the gentleman, Mr. Moore, standing right now in a dark shirt with a lighter patch on the top of it.

MR. SELF: Let the record reflect that he identified the Defendant Jason Moore.

MR. KIRKLAND: No objection, Your Honor.

THE COURT: Let the record so reflect.

Q. And how did you acquire that from Mr. Moore?

A. Mr. Moore brought it to

the Booth residence and sold it to me, and I gave Mr. Moore two hundred -- Jason Moore two hundred dollars in cash for the firearm.

Q. At that time, did Mr. Moore say anything in regards to that firearm?

A. He mentioned that the rear sight was loose and I said something to the effect, I said well, as I understand it's a little warm or a little hot; and he said yeah, That was the only conversation. He took a towel and wiped the firearm off and gave the firearm to me.

Q. At that time were you acting in an undercover capacity?

A. Yes, sir, I was.

MR. SELF: At this time I move for the introduction of what's previously been marked for identification as Exhibit 110 and 110A.

THE COURT: Let that which has previously been identified as Government Exhibit 3L be finally admitted into evidence as Government Trial Exhibit 110.

MR. PAFUNDA: Your Honor, I want my objection noted to relevancy as it concerns Drexil Hall and Austin "Bo" Moore with regards to these, make my objection.

THE COURT: The motion at this time is overruled.

MR. PAFUNDA: In other words, the Court is taking it under advisement, is that correct, Your Honor?

THE COURT: Yes.

MR. PAFUNDA: Thank you, Your Honor.

MR. HARWELL: May the Court please, we'd like to object to 110A being admitted for reasons being stated previously, Your Honor, to all these tags.

MR. SELF: I have no objection, Your Honor. I'll move in 110.

THE COURT: All right.

Q Special Agent Kemp, after you acquired this firearm, what if anything did you do with it?

A Turned it over to Agent McCallister of ATF.

Q And did you place any markings on any of these firearms?

A Not on the firearms itself, I did not, no, sir. I did record the serial numbers but I did not place any mark on the firearm itself.

MR. SELF: Mr. Marshall, if you would, I'll ask you to hand the witness a photograph which has not previously been marked for identification and ask that it be marked for identification, please.

THE CLERK OF THE COURT: Your Honor, a photograph has been identified as NTM No. 21, not previously marked and now being marked for trial as Government Exhibit 111.

THE MARSHALL OF THE COURT: All counsel has reviewed Exhibit 111, sir.

THE COURT: Thank you.

Q. Special Agent Kemp, have you ever seen this photograph before?

A. No, sir, I have not.

Q. Have you ever seen the object that's depicted in that photograph before?

A. Yes, sir.

Q. What is the object that's depicted in the photograph?

A. It's a piece of safety fuse with a nonelectric blasting cap affixed to the end of the safety fuse.

Q. And have you ever seen the blasting cap and safety fuse that's depicted in

that photograph before?

A. Yes, sir, I have.

Q. When did you first see it?

A. I first saw it on the 15th of November, 1983 in Floyd County, Kentucky.

Q. And on that date, at that time, what, if anything, happened in regards to that blasting cap and fuse that's depicted in that photograph?

A. Special Agent Eddy and I received it from Basil Ray Moore at his mother's residence near Frasure's Bottom.

Q. And after you received it what, if anything, did you do with it?

A. I turned it over to Special Agent Robert Farrar --

MR. HARWELL: (Interrupting) Your Honor, may we have that name again?

THE WITNESS: Tim Farrar.

Q. Do you know where the object that's depicted in that photograph is at this time?

A. As late as about 8:30 this morning it was in the trunk of Mr. -- Agent

Farrar's automobile.

Q. Is that a live blasting cap?

A. Yes, sir, it is.

Q. And does the photograph you have in front of you clearly and accurately depict that blasting cap and fuse as it was at the time you acquired it?

A. That is correct, sir.

Q. Was it split up like that when you first saw it?

A. To a certain extent, I don't know how much. Part of the end was frayed, on the end opposite the blasting cap, I can't say how much.

MR. SELF: Your Honor, at this time I move for the introduction of what's previously been marked for identification as Government Exhibit 111.

MR. WALBOURN: Objection, Your Honor, to the relevancy to November the 15th, 1983 blasting cap.

MR. PAFUNDA: Your Honor, I have the same objection I stated earlier with regards to Drexil Hall and Austin Moore.

MR. HARWELL: Same objection, may the Court please.

THE COURT: I still want to take that under advisement subject to the gentlemen, and let it finally be admitted into evidence as Trial Exhibit No. 111.

MR. SELF: Your Honor, may we approach the Bench at this moment?

THE COURT: Yes.

Reporter's Note: At this time all counsel approached the Bench where the following was heard:

MR. SELF: With regards to this photograph I would ask the Court to advise or instruct the jury pursuant to the Court Order why the blasting cap has not been brought into the courtroom and furnished as an exhibit instead why we brought the photograph that purports to be the blasting cap.

MR. HARWELL: I'd like to look at the blasting cap.

THE COURT: All right.

MR. SELF: Secondly, Your Honor, I want to inquire of this witness and advise the Court that before the .30 caliber Remington was

purchased Jason Moore was in the next room and he overheard -- Agent Kemp overheard some of the conversations between Phillip Moore and Jason Moore in regards to the tapes that were furnished back in September to the Defendant. Now I want to inquire of the Court and advise the Court that I would like to reserve my right to recall Agent Kemp at a later time on direct.

THE COURT: I think that is appropriate.

MR. HARWELL: On the first issue, may the Court please, we ask the Court that we be, the blasting cap be admitted to the jury and may the Court please, since the blasting cap is downstairs, we would like to have the opportunity to take the picture and look at the blasting cap and compare the two at the recess hour. Do you see what I'm saying?

THE COURT: Yes, certainly.

MR. SELF: I have no objection to that, Your Honor.

MR. KIRKLAND: Did I understand the Court to say that the picture of the blasting cap was admitted into evidence as opposed to being marked for identification purposes?

THE COURT: Yes. It's admitted subject to the relevancy of it.

MR. KIRKLAND: Which is really in a sense marking it for identification?

THE COURT: No, it's admitted, but it can be taken out if I don't see relevancy.

(Reporter's Note: At this point Mr. Pafunda said something that was inaudible.)

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

THE COURT: Members of the jury --

MR. SELF: (Interrupting) Your Honor, that's all the questions I have of Special Agent Kemp, but I will ask the Court permission to recall Special Agent Kemp as necessary in a later portion of the United States case, again on direct.

THE COURT: You remember in the earlier trial when I said there could be tentative evidence that they may be speaking of, and at that time it was statements of the Defendants. We have here several exhibits such as rifle and things taken from a Defendant and this is also taken into evidence as the Government complied as to tentative exhibits. The objection has been made subject to the

test of relevancy of the document. The Court is conditionally admitting this subject to later being shown that these exhibits are relative as to the testimony taken. You understand this is likewise tentative evidence. If it's not made relevant certainly as to all Defendants, it will certainly be brought to the attention of the Court and the Court will instruct the jury to so admonish. We have also a picture here which the Court is not going to show you at this time. This is a picture of a live blasting cap and I think you all understand the caution and we certainly don't want to admit something in the courtroom which is live which may injure someone. We're not going to do that. This is a picture of a blasting cap. This blasting cap is also tentative evidence in this case as to all the Defendants.

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THE COURT: Do all of you understand the nature of this evidence and the reason for which the picture is being put into evidence rather than the actual thing itself?

All of you understand.

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

MR. SELF: None, Your Honor.

THE COURT: All right. Who wants to be first on cross-examination?

MR. PAFUNDA: I will, if it please the Court.

THE COURT: Mr. Pafunda.

CROSS-EXAMINATION

BY MR. PAFUNDA:

Q. Agent Kemp, my name is Bernard Pafunda and I represent Drexil Hall and Austin Moore. I have just a few questions for you.

You said you were an undercover agent back in September of 1982, is that correct?

A. That is correct, sir.

Q. All right. How many times have you served as an undercover agent, sir?

A. In this case, sir, or

throughout my career?

Q. Throughout your career.

A. On several occasions.

Q. All right. Several meaning ten or more at lease?

A. Yes, sir. That would be a safe statement.

Q. All right. And I take it from your testimony that you are familiar with firearms, is that correct?

A. To a certain extent, sir. I am not an expert.

Q. All right. You are familiar with an Uzi?

A. To a certain extent, yes, sir.

Q. All right. And you are familiar with the AR-15, correct?

A. Yes, sir.

Q. All right. And you are familiar with those weapons' rate of firepower in comparison to the rifle that was demonstrated and the 30.06?

MR. SELF: Objection, I think that goes beyond the scope of the direct examination. I

didn't intend to qualify the witness as an expert in firearms.

MR. PAFUNDA: Your Honor, if I may respond, if it please the Court.

THE COURT: Yes, sir.

MR. PAFUNDA: I believe on direct examination Agent Kemp testified that one of the weapons, and I believe it was Exhibit 107 by the Government, was an automatic weapon. He testified as to automatic or semi-automatic.

THE COURT: I think he said 107--

MR. PAFUNDA: (Interrupting) If that is the rifle, Your Honor, if I recall.

THE COURT: Semi-automatic.

MR. PAFUNDA: All right.

Q. Then I take it you are familiar with the Uzi and the AR-15--

MR. PAFUNDA: May I proceed, Your Honor in this line of questioning?

MR. SELF: YOur Honor, I object, it is beyond the scope of direct examination.

THE COURT: Well, what is the relevancy again?

MR. PAFUNDA: Your Honor, I want to compare the firepower of these weapons with the firepower

of the Uzis and AR-15. The more rapid firepower in the AR-15 and the Uzi, which we maintain were used by Ray-Mac.

MR. SELF: Objection, Your Honor, relevancy and materiality. It is far beyond the scope of any direct examination with regard to this witness.

THE COURT: Well, let him answer. Go ahead.

Q. I think I already asked it, Agent Kemp, and I think you already heard it--

THE COURT: (Interrupting) Let's, you know, let's make our point and let's get out of it.

Q. Agent Kemp, again my question is, the Uzi and the AR-15 have more high power firepower than those three rifles or shotguns that were introduced, is that correct--two rifles, excuse me.

A. Sir, I would have to qualify that. I am not sure of the exhibits, I believe 107 is a .35 Remington. It is a semi-automatic and it is a high-powered rifle.

I don't know the rate of fire for that.

Two of the other exhibits, one is a bolt action and it is not as fast per round per minute naturally, and the pump gun is not as fast.

The carbine, which is a .30 caliber, could have the same rate of fire as one of those other weapons, I am not sure, sir.

Q. But you would agree with me in terms of those weapons, the Uzi and the AR-15 are the more modern weapons, would that be a correct statement?

A. That is a correct statement, yes, sir, it is.

MR. PAFUNDA: Thank you, sir.

MR. THOMAS: Yes, Your Honor, I have a few questions.

CROSS-EXAMINATION

BY MR. THOMAS:

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

Did you acquire any of the guns that Pete Barker used on February 16, against these union men?

A. I don't know that we-- The answer would be no, sir, I don't know Pete Barker.

Q. Did you acquire the gun used by Ken Hurley on that day?

A. No, sir.

Q. Did you acquire the gun of David Stephens or Abner Justice or Blake Johnson or Red Dog of Ray-Mac used against the union men on that day?

A. No, sir, I did not.

Q. Did you obtain any of the Uzis or AR-15s used by Ray-Mac on that day against these men?

A. I didn't acquire any fire-arms as I just previously testified--

Q. (Interrupting) You didn't get anything from Ray-Mac, is that correct?

A. Yes, sir, that is correct.

MR. THOMAS: Thank you.

THE COURT: Anything further?

MR. WALBOURN: I don't have anything, Your Honor.

MR. KIRKLAND: Your Honor, I assume he will be back later since he is being used for a "Special Purpose" I would like to reserve any rights I have to cross-examining him at that later time.

THE COURT: Well, if you have any cross-examination on the subject matter about which he has testified, please do it at this time. When he is called back with something additional, you can get him on that.

MR. KIRKLAND: Of course, he has talked about the guns, that is a general subject matter. Do you want me to - -

THE COURT: (Interrupting) Yes, sir. Do you have some cross-examination? Please do it at this time.

MR. KIRKLAND: All right, Your Honor, thank you.

CROSS-EXAMINATION

BY MR. KIRKLAND:

Q Agent Kemp, I believe you stated that you received this cap and fuse from

Basil Ray Moore on November 15th, 1983?

A. That is correct, sir.

Q. That is last fall?

A. Yes, sir.

Q. That is after this case had been indicted and it was in its pretrial stages?

A. Yes, sir, that is correct.

Q. Is it true that you or someone at your direction told him that if he would go get these items together, that you would see to it that he got his time cut?

A. No, sir, that is not - - I can only speak for myself. That is not correct. I haven't made any statement like that.

Q. Well, what did he do, did he just go out and fabricate these and put these things together for you so you could have an exhibit in this case?

A. No, sir. Special Agent Eddy and myself, and I believe Agent Snabel accompanied Basil Ray Moore to this location in Floyd County at his mother's place where he came from downstairs - - somewhere else, and arrived back into the general living room or dining room and handed myself and Agent Eddy this piece of fusing cap.

Q. So you don't know whether anybody else had led him to believe that it would help his case, which he already pled guilty to, if he produced something that you could use in this trial?

A. The only thing that has ever been said to anybody in this case, including Basil Ray Moore, was that anything he would do would be made known to the U.S. Attorneys, and that is exactly what it was.

Q. And you consider this to be certainly an act of cooperation on the part of Basil Ray Moore to assist you after he had been arrested, indicted, and pled guilty, is that right?

A. There certainly wasn't any proprieties with it, certainly - -

Q. (Interrupting) But it did help him, didn't it, or you thought it did or you wouldn't have asked him to help you to do this task would you?

A. That is correct, sir.

Q. All right. Now, isn't it a fact that Jason Moore merely carried this gun from somebody else over to you at the request of Phillip Dale Moore?

A. I don't know that, sir.

Q. You don't know that. But it could be a fact, is that right?

A. I have no way of knowing, sir. Could be.

Q. Now, you say you paid two hundred dollars for that carbine, is that right?

A. Yes, sir, that is correct.

Q. Do you know who wound up with the two hundred dollars?

A. When I last saw, Mr. Moore had the money in his pocket, or placed the money in his pocket.

Q. I know that, I asked who wound up with it.

A. I have no idea, sir.

Q. Okay. So you don't really know whether it was Jason Moore's gun or somebody else's gun, do you?

A. That is not correct. Mr. Moore said it was his gun.

Q. I know what he said, but do you know who wound up with the money for the gun?

A. No, sir.

Q. All right. Is it your contention that this safety fuse and nonelectric

cap was ever used in February of 1982?

A. That it was used? I have no idea, sir. The fuse was intact along with the nonelectric blasting cap.

Q. As far as you know, it has absolutely nothing to do with this case then, does it?

A. I wouldn't say that, sir. Similar nature.

Q. Similar?

A. Similar, right.

Q. Do you know when it was put together?

A. No, sir.

Q. What is this, a demonstration article or something?

A. It is a piece of fuse and cap that Basil Ray Moore gave to Special Agent Eddy and myself.

Q. Last fall, a few months ago?

A. That is correct, sir.

Q. Not two years ago?

A. I previously testified November 16, '83.

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MR. KIRKLAND: That is all, Your Honor.

THE COURT: All right.

MR. HARWELL: May it please the Court, I have further.

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. HARWELL:

Q. Mr. Kemp.

A. Yes, sir.

Q. My name is Aubrey Harwell. I represent Edgar Jones.

In the course of those things about which you have testified during the limited scope of your examination today, did you make notes as these various events occurred?

A. I used tapes to refresh my memory, things like that, sir.

Q. Yes, sir. But my question is, you have told this Jury, sir, that you did certain things on certain dates. For example, September 3 you said that you bought a .35 caliber Remington from Basil Ray Moore; and you talked about a .243 caliber rifle gotten from Pearl Booth.

As you did these things,

or shortly thereafter, did you memorialize what had transpired what you had done?

A. What I did was reduce these events to a written statement, sir.

Q. To a written statement?

A. That is correct, or a typed statement.

Q. A typed statement?

A. That is correct, sir.

*** *** ***

Q. Did you, between the happening of the event and the reduction to a typed statement, handwrite out any notes or dictate any notes?

A. What I would do would be to - - with my cover team as these events occurred, the information was given to the cover team where I would assume they reduced it to writing.

When I did my typewritten statement, I referred to tapes and things like that. The tapes - -

Q. (Interrupting) Let's talk about the tapes. Are you referring - - when you say, quote, tapes, are you referring to recordings that you surreptitiously made or caused other to make with Defendants and unindicted coconspirators; or are you referring to what Mr. Self, I suspect does in dictating into a tape so you will refresh your memory or recall what happened at some point later in time?

A. I am not talking about dictating reports, sir. I am talking about other tapes; not dictation into a cassette or other means.

Q. All right, sir. And that was the only way that you recorded or memorialized

these events. Is that right? Is that what you are telling this Jury?

A. Well, as I would go back to Charleston, West Virginia, I would try and keep an accurate statement of my participation in this matter.

And when the part of the phase was completed, I would finalize my statement and sign it. And then submit it to Agent McCallister and subsequently to Mr. Self.

Q. Mr. Kemp, I don't want to keep on and on and on with this.

Let me ask you this question: Did you at any time during the course of this investigation make any notes?

A. I probably did, sir. I don't - - I don't remember doing that to be honest with you.

Q. Do you have the ability, sir, through your files or through your recollection or through communicating with others to refresh your recollection to find out if you did or did not as a matter of fact make notes?

A. Well, I have reviewed the files. And I don't have any notes, sir. I have got my statement. My statement is my notes.

Q. Yes, sir. But are you saying, sir, that I didn't make notes, Mr. Harwell, or I don't think I did, but I will have to check? That is what I am trying to determine.

A. What I am trying to say, sir, is I reviewed the file; and there is not any notes in the file. I have already checked that. If I in fact did make any notes, I did them at Charleston.

And the notes would then subsequently be destroyed or shreaded as I did my statement. I try to do somewhat of a running statement on my activities on a week to week or whenever I return to my duty station from this investigation.

Q. Did you prepare any reports on this matter after December 15, 1983, this past Christmastime?

A. No, sir.

Q. All right, sir. The Government has advised that you will be back on the stand at some point later in time for purposes other than your testimony today. I want to be fair and alert you to the fact that I am requesting now that you make a search of your records, whatever

it is in the way of personal effects in Charleston; and I intend to ask you again if, as a matter of fact, you have found in your notes, or, as a matter of fact, you have refreshed your memory and you know that notes exist. All right, sir?

A. Yes, sir.

Q. Would you commit to me and to this Court that you will make that search?

A. Yes, sir, that is correct.

MR. HARWELL: All right, sir. May the Court please, I have nothing further of Mr. Kemp at this time.

*** *** ***

REDIRECT EXAMINATION

BY MR. SELF:

Q. Special Agent Kemp, you said you shredded your notes?

A. Uh-huh.

Q. Is that the normal practice?

A. Yes.

Q. Is that the normal practice for you to destroy your notes after you made your formal report?

A. Yes, that would be normal practice; however, as I previously testified on cross, Mr. Self, there was tapes that I had copies of that I listened to to complete my statement. And if I in fact did make any notes, then I would have just shredded them. They would have been piecemeal notes. But they would have been made from the tapes themselves, and not from--after undercover events that I went back and made some notes.

Q. My point is did you shred these notes to attempt to hide something that were contained therein?

A. No, sir.

Q. And did you shred your

did you acquire any guns from Ray-Mac?

A. Yes, sir.

Q. You did not, did you?

A. No, I did not, sir.

Q. Why didn't you?

A. I was in an undercover capacity attempting to identify individuals and also to obtain firearms that was used in an event that occurred in an event in February, 1982.

Q. Well, why didn't you get some of the Ray-Mac guns?

A. Well, that was not my job as an undercover agent. If in fact the firearms were available or something like that, I am sure the case agent or someone like that would have made and possibly did make inquiries into the Ray-Mac firearms.

Q. Were the firearms at Ray-Mac used in the shooting from the hills and property that wasn't Ray-Mac's?

A. I don't know, sir.

Q. Some pattern of conduct, though, that you felt that you should acquire Ray-Mac's guns in an undercover capacity?

A. That was not my mission

notes normally in the course of your activities once you made a memorandum or put them down in a formal statement?

A. Yes, sir, that is correct.

Q. Now, did you review those--any notes prior to testifying today?

A. No, sir, I did not.

Q. Now, in regard to what has been introduced as the photograph marked for identification as photograph 111, you said it was similar. I don't think you got the chance to finish your answer. Similar to what?

A. Similar to another exhibit previously admitted on another piece of safety fuse and cap that I also had viewed.

Q. Do you know where the other safety fuse cap came from?

A. It came from a bomb. It is called the basketball bomb. It was an unexploded device that I did see with Agent McCallister on I believe February 23, 1982.

Q. And Panhandle Moore's son provided you one similar to it, is that correct?

A. That's correct, sir.

Q. Now, Mr. Thomas asked you

to recover any firearms from RAy-Mac had or didn't have.

Q. Did you have any reason to believe any of the following firearms at Ray-Mac were used in illegal activities?

A. No, sir.

Q. Now, Mr. Pafunda asked you in regard to the firepower or the rapidity of the firing of these four rifles here as compared to AR-15s and Uzis. Tell the ladies and gentlemen of the jury if you know the impact or range of these guns as compared to an AR-15 or an Uzi? Do you know?

A. I can't compare the AR-15 with these weapons. I can the Uzi. The Uzi does not have a greater range. It is 9 millimeter. It does not have the distance range as these other firearms I previously testified to. I cannot testify as to the rate of fire of the carbine and the .35 Remington versus the Uzi; and I assume that we are talking about the semi-automatic Uzi and the AR-15.

Q. What about .35 caliber? Is that a short-range weapon?

A. No, sir, it is a long-range firearm. The 30.06 is a long-range firearm. And the .243 is a long-range firearm. And the .30 caliber is a midrange type firearm.

MR. SELF: No further questions, Your Honor.

THE COURT: We are going to be in recess for lunch till one o'clock. During the recess, the not now admonition is in effect. Do all of you understand?

MR. SELF: Can Mr. Kemp be excused at this time, Your Honor?

THE COURT: Any objections to Mr. Kemp being excused?

MR. HARWELL: I have more questions of this witness, Judge.

THE COURT: Sir?

MR. HARWELL: I have another question or so of this witness given the recross.

MR. THOMAS: So do I, Your Honor.

THE COURT: All right. I hope it is not on the same subject matter, gentlemen. Go ahead.

MR. HARWELL: Your Honor, should we go in the same order as we did earlier, Judge?

THE COURT: Yes, sir.

RECROSS EXAMINATION

BY MR. THOMAS:

Q Mr. Kemp, I believe you testified that it was not your mission to investigate Ray-Mac in this case. Is that correct?

A That is correct, sir.

Q It was never your mission or no one else's mission to investigate the men that started shooting. Is that correct?

A No, sir, that is not correct.

Q Then you do know who started the shooting. Is that correct?

A No, sir. You asked me my mission. My mission was strictly in an undercover capacity. I can not answer for any other agent.

Q For example, Mr. McCallister -- was it his mission to investigate Ray-Mac?

MR. SELF: Objection.

A. I don't know what for, but Mr. McCallister --

THE COURT: (Interrupting) We are getting into argument here. We are getting into argument.

MR. THOMAS: That is all, Your Honor. Thank you.

MR. HARWELL: Just a question or two, Your Honor.

THE COURT: Yes, sir

RECROSS EXAMINATION

BY MR. HARWELL:

Q. Mr. Kemp, when Mr. Self was questioning you on redirect, I understood you to say in reference to Ray-Mac that you have never heard of any violation with Ray-Mac guns. Is that a fair statement of what you said?

A. That is a fair statement.

Q. All right, sir. And I ask you, sir, isn't it a fact that during the course of this investigation when you were operating under cover that you were told during the week of February 15, 1982, that Ray-Mac personnel were using fully automatic weapons? Weren't you told that?

A. I was told not Ray-Mac. But I was told that there was automatic weapons involved in the shooting. And it was not said to me that Ray-Mac, and it was not said to me by other individuals -- that several individuals heard automatic fire, period.

Q. Are you precisely and completely convinced, sir, that you were never told in the course of this investigation by an unindicted coconspirator that Ray-Mac was using fully automatic weapons during the week of February 15th?

A. It could have been told to me.

Q. Could have been told. But if it was told, you didn't pursue that, isn't that correct?

A. I didn't pursue anything other than my undercover part of it, sir.

Q. My point is, sir, that you had said that you never heard of violations with Ray-Mac guns. That is the area I'm trying to talk to you about.

A. Yes, sir.

Q. Weren't you also told, sir, by Mr. Phillip Booth that there was a fully

automatic weapon at Ray-Mac on a tripod? Weren't you told that during the course of this investigation?

A. I heard about a firearm on a tripod, but I didn't believe that it was Ray-Mac. I had heard that there was a fully automatic weapon on the hill, but I am not sure on that, sir.

Q. Let me see if I can't refresh your memory, sir.

MR. SELF: Your Honor, I'm going to object. We're going far beyond redirect examination.

THE COURT: Overruled.

Q. Let me see if I can refresh your memory. Mr. Booth, in the course of conversation to which I am making reference, sir, was talking about a tripod and using piercing or armor piercing slugs. And he said, quote, -- in essence he said, quote, I wiped out that tripod, that gun on that tripod.

And you said in essence who had that up there on the hill.

And he said in substance them other folks, Ray-Mac.

You don't recall anything like that?

A. No, sir. I recall a conversation where a firearm was burned up. And that was said in front of Phillip Booth's presence. And that was Jake Moore. He told me he burned an M-1 carbine up on the hill shooting.

Q. But you are telling this jury today that you have no recollection at this point in time --

A. (Interrupting) Not at this point in time.

Q. (Continuing) -- of being told that Ray-Mac people had fully automatic weapons on that hill. Is that correct, sir?

A. I think I am safe on that. I think I -- to the best of my knowledge. Now, in reviewing tapes like I am doing on a current basis, I would like to be in a position to say that that was said. However, to the best of my knowledge at this time, the only thing I remember about a tripod or a firearm being burned up is what Jake Moore said in Phillip Booth's presence I believe on the 28th of August, 1982.

Q. Do you remember, sir, any reference being made in any of these conversations to which you were a party about Ray-Mac having a .30 caliber and/or a .50 caliber gun?

A. There was reference made to a high caliber gun. It could have been .50. I don't believe them saying .50; however, it could have been. But it was a large caliber firearm.

Q. Was that reference made in connection with Ray-Mac having that large caliber gun?

A. Yes, sir, I believe it was Ray-Mac as far as having a large caliber.

Q. And was that reference made not in regard to Ray-Mac having it, but being an automatic weapon, fully automatic?

A. I don't remember that, sir, not with Ray-Mac.

Q. But if it was said, though you don't recall, you didn't do anything in terms of investigating that. That is a true statement, isn't it?

A. That is a true statement there, yes.

MR. HARWELL: Thank you, sir. Thank you,

Your Honor.

THE COURT: All right. Any objection to this witness being excused, gentlemen, temporarily excused?

MR. HARWELL: No objection temporarily, Your Honor.

THE COURT: You are temporarily excused. The Court will be in recess until 1:00 o'clock. During this recess, the not now admonition is in effect.

Any objections or corrections to the admonition.

MR. SELF: No, Your Honor.

MR. HARWELL: None, Your Honor.

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

The Courtroom will be locked during the noon recess, gentlemen.

THE MARSHALL OF THE COURT: Your Honor, all members of the Jury have departed the Courtroom.

MR. SELF: May it please the Court, I would ask the Court at this time when the Jury comes back now that the Defendants have interjected the tapes, I just think that the Court should admonish the Jury something to the effect whether there are

tapes or not is not for consideration and not for their concern. They are concerned about the evidence that has actually been admitted. Why are or why not something isn't here, is a matter for the Court to determine what is admissible and what is not.

I don't want them inferring one way or the other, Your Honor, as to why tapes are or are not being played.

MR. SPENCER: Your Honor, I would object to that. All that would do - - that was a passing comment there. All that would do is draw attention to it. And we don't need more attention to the tapes because - -

THE COURT: (Interrupting) All right, gentlemen, we will be in recess until 1:00 o'clock.

THE MARSHALL OF THE COURT: All rise, please. This Court will recess until 1:00 P.M.

REPORTER'S NOTE: At this time the Court recessed at 11:52 A.M., E.S.T.

*** *** ***

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 20, 1984

VOLUME THIRTY-THREE

Dale Soergel Moore Shaw & Associates
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INDEX

PEARL BOOTH

Direct Examination by Mr. Self: pgs. 145-324

EXHIBITS

Government Exhibit No. 113 pg. 231

Government Exhibit No. 114 pg. 268

Government Exhibit No. 115 pg. 298

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WILLIAM D. KIRKLAND, ESQ.

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

REPORTER'S NOTE: The Court was called to order at 1:03 P.M., E.S.T.

THE COURT: Mr. Marshall.

THE MARSHALL OF THE COURT: Your Honor, all Defendants, and counsel and members of the Jury are present.

THE COURT: Are you ready to proceed?

MR. SELF: Yes, we're ready, Your Honor. We call as our next witness Ms. Pearl Booth.

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

THE COURT: Yes.

MR. HARWELL: Prior to the witness being brought into the Courtroom.

THE COURT: Yes.

REPORTER'S NOTE: At this point a Bench Conference was held with all defense counsel.

MR. HARWELL: May Your Honor please, we filed in Court an argument this morning to continue this matter for fifteen days. The Court took that matter under advisement and stated that there were

several alternatives available. Your Honor made reference to one alternative in letting Ms. Booth testify on direct and then allow the defense counsel to hear the tapes before cross.

May the Court please, we believe that doing that deprives my client of his Sixth Amendment right to a fair trial. It deprives him of the right to effective cross-examination and that it would - -

THE COURT: (Interrupting) I thought the objection was in as to that.

MR. HARWELL: May the Court please I want to renew my objection and state for more than anything for clarification of my original objection to this lady being able to testify.

THE COURT: I understand that.

MR. HARWELL: And I submit if Your Honor is going to grant a motion any virtue of those tapes - -

THE COURT: (Interrupting) That's the procedure I chose to follow. I'm going to permit her to testify on direct and then I will - - before cross I will rule upon the motion for a continuance.

MR. HARWELL: May the Court please.

The only problem I see now

I think we covered this point but

THE COURT: (Interrupting) We did cover this this morning.

MR. HARWELL: Yes, for the record, Your Honor, -- she said, I will have to either move forward and that will effectively hinder my cross examination without having time to review the tape material or I will have to waive possibly my effective cross examination if Your Honor grants a continuance so I do have time to review the tapes.

Either of those may the Court please we respectfully submit would cause concern. I respectfully ask this Court to note my objection -- obviously --

THE COURT: (Interrupting) Do you want to bring in any additional --

MR. HARWELL: (Interrupting) May the Court please respectfully we bring to Your Honor's attention, Addison 561, Section 508.

THE COURT: What's the effect of it?

MR. HARWELL: May the Court please that states that regularly cross examination must immediately succeed in time direct examination. It goes on to say that modification of the procedure and testimony should follow with no interval of

time elapsing, but it says that examinations may be postponed by the Court and this may not be propounded to the jury --

THE COURT: (Interrupting) This is recapping what Mr. Walbourn said.

MR. HARWELL: Yes, and there's another case. It's an Alabama case -- let my objection be noted.

MR. PAFUNDA: For the record, we have not got a complete listing of the tapes provided by the United States Government which I received copies of in the middle of last week. I would join with Mr. Harwell's remarks not only to the Sixth Amendment affecting my client, but also Drexil Hall's and Austin Moore's Fourteenth Amendment as being violated to the extent that I will not be able to effectively cross examine Ms. Booth.

MR. SELF: May I note for the record, Your Honor, that Mr. Harwell had more than ample time to listen to these tapes and obtain from whatever he needed for cross examination. Let the record reflect that Mr. Harwell had time during this last week to make fourteen motions and I think that would have been sufficient time for him to hear the tape. I'm stating he also had time to do that, and he

also had time to listen to the tapes. A continuance should not be granted in this case and the case should proceed.

MR. HARWELL: All right, let the record reflect that an interpretation of Mr. Self's statement, he wants either a waiver of an effective cross examination which is completely contrary to the law.

MR. WALBOURN: May I say something, Judge?

THE COURT: Yes.

MR. WALBOURN: This morning I did not make an admittance one way or the other in saying I had time to review the tapes with my client. I have not had proper time to listen to the tapes for whatever benefit or detriment they would have served me. However, having no benefit to do this I feel that there's a violation of Federal Rule 611A. I think the Court permitting this to take place is finding my client in a position of not being able to review the matters prior to direct testimony.

MR. SPENCER: May it please the Court, are you still ruling that one objection stands for all?

THE COURT: Yes.

MR. HARWELL: One last thing. May it please the Court, I renew my motion that I be given the last two tapes which I don't have still --

MR. SELF: (Interrupting) May it please the Court he has the last two tapes.

THE COURT: All right, that's all.

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

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PEARL BOOTH, called on behalf of the Government, having been first duly sworn, was examined and testified as follows:

THE CLERK OF THE COURT: Do you solemnly swear the testimony you will now give in this case will be the truth, the whole truth, and nothing but the truth as you shall answer under God?

MS. BOOTH: Yes, I do.

THE MARSHALL OF THE COURT: Ms. Booth, give your name and address to the Court Reporter, please.

REPORTER'S NOTE: Ms. Booth's comments to the Court Reporter was out of the hearing of the Daily Reporter.

REPORTER'S NOTE: At this time the Court had a brief conversation with the witness out of the hearing of the daily reporter.

THE COURT: You may proceed, sir.

DIRECT EXAMINATION

BY MR. SELF:

Q. Ma'am, would you state your full name for the ladies and gentlemen of the Jury,

and spell your last name, and put that microphone up so you can talk into it as best you can. Keep your voice up.

A. My name is Pearl Booth.

Q. Ms. Booth, how old are you?

A. I am thirty-four.

Q. And where do you currently reside, Ms. Booth?

A. At present I am at Pike County Jail.

Q. And how long have you been at the Pike County Jail?

A. Twenty-six days today, I think.

Q. Prior to goint to the Pike County Jail, where did you reside?

A. FCI in Lexington.

Q. Federal Correction Institute in Lexington, Kentucky?

A. Yes, sir.

Q. And how did you become to be in the Federal Criminal Institute in Lexington, Kentucky?

A. I was convicted of a felony.

Q. And were you convicted in

this Court, and sentenced by this - -

A. (Interrupting) By this Court.

Q. (Continuing) By Judge Unthank?

A. This Judge, yes.

Q. And were you convicted of a crime and pled guilty to the crime of conspiracy to engage in the business of dealing in dynamite without a license?

A. Yes, sir.

Q. And were you sentenced to a term of two years in the Federal Correctional Institute?

A. Yes, sir, I was.

Q. And are you currently serving that time for that sentence?

A. Yes, I am.

Q. Ms. Booth, have you ever lived in the McDowell, Floyd County area?

A. Yes, sir, I have.

Yes, sir, I have.

Q. When did you live there?

A. At the time of my arrest, August, '82.

Q. How long did you live there?

A. At least two years before that.

Q. And are you currently married, Ms. Booth?

A. No, I am divorced.

Q. And your former husband's name?

A. Phillip Gene Booth.

Q. And how long were you married to Mr. Booth?

A. Thirteen years.

Q. How old were you when you got married?

A. Nineteen.

Q. Do you have any children at this time?

A. I have two.

Q. And what are their names and ages?

A. My daughter is Eugenia Rene, she is thirteen. My son is Phillip Brian Booth, he is twelve.

Q. And Ms. Booth, calling your attention to the period of Fall of 1981-Winter of 1982, what was your occupation at that time?

A. Me and my husband, we contract mined for Edgar Jones.

Q. What do you mean by contract mining?

A. Well, Mr. Jones had the coal leased, and my husband, he ran the mine. He produced the coal for so much a ton he put out of the ground.

Q. And the name of your mines at that time?

A. Was Bryan Coal Company, and I - - I'm not sure whether we had the Calamity Coal at that time or not.

Q. And do you know where these mines were located at in February of 1982?

A. Bryan Coal Company was located at Ned's Fork, and Calamity is right off of Frasure's Creek on the right-hand side as you go up.

Q. Both of these were in the McDowell area of Floyd County?

A. Yes, sir.

MR. HARWELL: May the Court please, we respectfully ask for clarification on the first one, Bryan Coal.

I understood her to say

it's in a fork.

THE WITNESS: Up on Ned's Fork.

MR. HARWELL: I believe that is unresponsive for the purpose of the Jury understanding where that was, Your Honor.

THE WITNESS: It is at Frasure's Creek on the left-hand side of Frasure's Creek up Ned's Fork.

That is the only way I know it.

THE COURT: Go ahead, Mr. Self.

MR. SELF: Thank you.

Q. At the time, did you live in the community of McDowell, or East McDowell?

A. I lived in the community of McDowell, as far as I know that is what you would call it. It was right below the McDowell Hospital.

Q. And the mines that you and your husband were operating, Bryan and Calamity, were they deep mines or strip mines?

A. Deep mines.

Q. And mining of coal, is that correct?

A. Yes.

Q. And what type of financial

arrangement did you have with the individual by the name of Edgar Jones as to mining that coal?

A. Mr. Jones - -

MR. HARWELL: (Interrupting) May the Court please, I object to that, that is predicated on the facts not in evidence. If the question is rephrased to JRM Coal Company, I withdraw my objection, Your Honor.

THE COURT: Well, restate your question.

*** *** ***

Q. What, if any, relationship or contractural obligation did you have to an individual by the name of Edgar Jones?

A. The kind of contract was-- We didn't have a written contract, it was word of mouth contract through Edgar Jones.

Okay. We was to put out so much coal, and he was to pay us so much a ton for the coal that we put out.

And he was to pay the royalties on that, and all we had to pay was the expense of the equipment and the upkeep of the mine and the men's payroll.

Q. Now, was this contract with Edgar Jones, or with a company by the name of JRM Coal Company?

A. Well, Edgar Jones is the man that made the contract with us. I guess it's-- they are both the same, JRM and Edgar Jones are both the same.

Q. In relation to the person that you had the contract dealings with, did you ever have any dealings with any other individuals in that contract other than Edgar Jones?

A. He is the one we dealt with.

Sometimes occasionally Carson, but it is mainly Edgar. Only Carson if Edgar weren't around and we needed something, and then he went to Edgar to make a decision.

Q. Who is the individual by the name of Carson that you mentioned?

A. He is Edgar's son-in-law.

Q. What is his last name?

A. Akers.

Q. Any other individuals that you dealt with in relation to your contract with the mining of coal?

A. Edgar's son a little, but it wasn't nothing. Edgar was the main one.

Q. The coal that you were mining, what was the type of mining that you were doing in the underground fashion?

You said you were mining, deep mining as opposed to strip mining, is that correct?

A. Yes. The men-- He would have so many men go in there and shoot the coal down and have it brought back out on the belt line.

Q. Is it commonly--what is commonly known in the coalfields as shooting from the

solid?

A. Yes.

Q. You went mining with continuous miners, were you?

A. No, it was too low for anything like that.

Q. How long had you been in-- How long had Bryan and Calamity Coal Company been in existence?

A. Bryan had been in existence for at least two years.

Q. Two years prior to or beginning when?

A. Back in '80 Bryan started, as best of my opinion it's close.

Q. When did it cease or when did your involvement with Bryan Coal Company cease?

A. In '82.

Q. What part of 1982?

A. Well, around August-- around September, October, something like that. I am not sure about the month.

Q. How long had Calamity Coal Company been in business?

A. Edgar had shut Calamity

down, yes.

Q. When?

A. When Edgar had them pull all the equipment, had his son--

Q. (Interrupting) Was this before or after February 15, 1982?

A. It was after that. I don't remember the exact date it was.

Q. When did the mine start in operation, if you know?

A. I am not sure about the date. It was-- We first had Bryan, then after they couldn't make it at Calamity it was a mine that nobody wanted, he handed it over to Phillip to make it.

And Phillip got it to running, him and Hermit Newsome, Hermit helped him. But I don't know what time it started or for sure what time it ended.

Q. After February, 1982, did those mines--did those mines' names change?

A A. Yes, they did.

Q. And what did they--the names change to?

A. Bryan changed to Big-Mac

Coal Company.

Q. What about Calamity?

A. Calamity wasn't changed. Calamity stayed as it was because there was no reason to change Calamity. He hadn't signed no union contract for Calamity anyway.

Q. Now, in February, 1982, was Bryan Coal Company operating under the UMWA and the Coal Operator's Agreement? Was it a union mine?

A. It's supposed to have been union.

Q. Was Calamity a union mine?

A. Well, it should have been union.

Q. Who handled the payroll for Bryan and Calamity in February of 1982?

A. Angie took care of all the payroll records. But we had to furnish the payroll, you know, we had to pay the men.

Q. Who is Angie?

A. That is Edgar's bookkeeper.

Q. Do you know her last name?

A. Elliott.

Q. And to your knowledge, who does she work for?

A. She works for JRM Coal Company.

Q. Do you know where her offices are located?

A. They are with Edgar Jones' at McDowell.

Q. Ms. Booth, when did you first become acquainted with the individual you named as Edgar Jones?

A. Back when Phillip was trying to get the mines off of--the contract mines. I guess it was about '79.

Q. Do you see that individual in this courtroom?

MR. HARWELL: Stand up, Edgar.

A. Yes, I do.

Q. Is that the individual that you have previously described and referred to as Edgar Jones?

A. Yes, it is.

MR. HARWELL: It is so stipulated, Your Honor.

MR. SELF: Let the record so reflect, Your Honor.

THE COURT: All right.

Q. Prior to '79, had you ever had any business dealings with Edgar Jones?

A. Not that I can recall.

Q. Ms. Booth, in February of 1982 did you hold any law enforcement position?

A. Yes,I did.

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Q. What was that?

A. I was a Deputy Sheriff of Floyd County.

Q. And how did you become a Deputy Sheriff of Floyd County?

A. I went and asked Henry.

Q. Henry being who?

A. The Sheriff.

Q. Henry Hale?

A. Yes. My daughter was sick a lot, I had to take her backwards and forwards to Lexington to the hospital, and in the middle of the night, and I was scared.

I asked him if I could be - - could be sworn in as Deputy so I could carry a gun that would be legal.

Q. Were you made a Deputy?

A. Yes, I was.

Q. Did you post a bond?

A. I posted a bond.

Q. Now, you indicated that one of your children was sick at that time?

A. Yes.

Q. Who was that?

A. Eugenia Rene.

Q. And what was wrong with her?

A. She had the illness, it's, you know, there was no cure for it. She is - - it comes and goes.

Q. What is the nature of that illness?

MR. HARWELL: I object to this. This is irrelevant, and it is calculated to be outside the proper examination.

THE COURT: Overruled.

Q. What is the nature of the illness, Ms. Booth?

A. Eugenia has a connective tissue disorder, and it's the same as lupus. It is a blood disease, and it affects your vital organs and your nervous condition brings it on when you get upset, that brings the disease on.

Q. Now, in the Fall of '81-Winter of '82, you and your husband were operating two mines, is that correct?

A. Yes, we was.

Q. Prior to February the 15th, 1982, Ms. Booth, did you ever have a discussion with Edgar Jones in regard to a coal company by the name of Ray-Mac Coal Company or Ray-Mac Mining Company?

A. Prior to the 15th?

Q. Prior to Monday, February 15th, 1982?

A. To tell you the truth, it is possible. I don't know for sure, because I can't recall that far back.

I don't know where this happened, but at one time I remember a discussion about Ray-Mac coming down Hood's Fork, I - -

MR. HARWELL: (Interrupting) May the Court please, I object to this on the basis of Rule 16.

THE COURT: Approach the Bench.

REPORTER'S NOTE: At this time Mr. Self, Mr. Kehrli, Mr. Dause, Mr. Harwell, Mr. Moore, Mr. Patton, Mr. Walbourn, Mr. Hollon, Mr. Bransen, Mr. Spencer, Mr. Adams and Mr. Kirkland approached the Bench and the following was heard:

MR. HARWELL: May the Court please, we object to this in that we were entitled to be given any and all statements made by our clients. We asked for them, the Court ordered them, Mr. Self represented that they had them.

We went through a mini-

hearing with this lady, she never made any reference to this alleged comment that I don't know when it happened, but it was about Ray-Mac, it might have been before.

We object to this.

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

REPORTER'S NOTE: End of Bench Conference.

THE COURT: You may proceed, sir.

MR. SELF: Thank you.

Q. Ms. Booth, this conversation occurred prior to or after February 15th, 1982?

A. I can't recall whether it was prior or what.

Q. And what, if any, statements did Mr. Jones make in relation to Ray-Mac?

A. On the 15th?

Q. No. You started to make reference to something of some place.

A. Ray-Mac was trying to come out of the hollow - - H. F. Bentley's house, right down - - coming down the hollow. I think they call it Hood's Fork, I'm not sure about the name of it, they was just talking about it. But they said they weren't going to let - -

Q. Who said? You have to be specific, ma'am. Who said what? Do you remember?

A. I just remember talking to Edgar, but I don't remember when this happened, whether it was before or after.

Q. And what did Mr. Jones state at that time?

MR. WALBOURN: Well, Your Honor, I would object until we have a time reference.

THE COURT: Well, let's get some approximates. It certainly has to be after '79, because that is when she said she was acquainted with it. But let's get some time frame.

Q. With the Court's permission, Mrs. Booth, was this after all the violence occurred up there or before?

Let me strike that.

Was it before Ray-Mac started their strip mining operation or after it started?

A. After Ray-Mac started. As I recall, it would be after.

Q. Was it before the violence occurred up there at Ray-Mac or after?

A. Before the violence.

Q. Okay. What did Mr. Jones tell you?

A. He said Ray-Mac shouldn't be allowed to come down that hollow. He said -- I am nervous.

Ray-Mac was coming down out behind H.L. Bentley's house in that hollow there. And he said Ray-Mac shouldn't be allowed to come out that hollow. He wouldn't put up with that. I don't know whether he has any property there or anything. That is all I remember.

Q. When he referred to Ray-Mac Coal Company, did he refer to it as Ray-Mac Coal Company?

A. At that time he did.

Q. Did you hear him refer to it at that time prior to the 15th, by any ownership --

MR. HARWELL: (Interrupting) I object to prior to the 15th. He said prior to the violence.

MR. SELF: Okay, prior to the violence. I will rephrase. Thank you, Mr. Harwell.

MR. HARWELL: You're welcome.

Q. Prior to the violence.

A. He often said that Nick

Cooley and Arnold Turner was part of Ray-Mac quite often, but, you know, I don't know this.

Q. This was his statement?

A. Yes. And he said they was all trying to get at them. And you know, he said they was trying to hurt them.

Q. They being -- who did he refer to as they?

A. Nick Cooley and Arnold Turner.

Q. Do you know who Arnold Turner and Nick Cooley are?

A. I know of them, okay, but personally, I don't know them.

Q. The nature of their occupation or advocation?

A. They own coal. They have coal businesses and stuff.

Q. In what area?

A. McDowell. I don't know exactly where he is located or anything.

Q. Now, calling your attention specifically, Mrs. Booth, to Monday, February 15th, 1982, do you remember that day?

A. Yes, I do.

Q. And where were you on that day? Were you in the McDowell area?

A. Yes, I was at home.

Q. Would you tell the ladies and gentlemen of the jury what happened on Monday, February 15th, 1982, beginning with early in the morning?

A. Early in the morning, I started to the mine at Bryan. I got up there, and Phillip said Edgar wanted to see me in the office.

Q. Let me stop you just a moment. Can you bring that microphone either down or over to you and speak into it as best you can, Mrs. Booth?

A. I will bring my chair up. Well, I can't.

Well anyway, I went up to the mines, and I met Phillip.

Q. Which mines did you go to?

A. Bryan Mines. And he said Edgar wanted to see me in the office. And so we went to the office.

Q. Did Mr. Booth make any statement to you at that time?

A. He said something about a strike or other. And that he couldn't give me no details. I went in the office, and Edgar told me that we had to pull a strike.

Q. Okay.

A. He said he had been underbid on his contract, and he couldn't meet the unit train that week. And he said that Ray-Mac had underbid him on his contract three dollars on the ton. He said he had been warned by somebody that worked for John McCall. I don't know who this man was. And he said the only way he could make it legal without losing his contract with John McCall--he had a unit train he had to meet once a week. He had to meet that. To make it legal, there had to be a strike. And it had to be legal.

So we had to bring the union men in. So we agreed. But before I got there, he already had the union men assembled already out on the picket line.

MR. PAFUNDA: Your Honor, I'm going to object. It calls for pure speculation, and it is got to be based on hearsay. And I move to strike that.

THE COURT: All right, let the

objection be noted and overruled.

A. I am sorry.

Q. Did Mr. Jones make any statement to you about what had occurred before you arrived at the meeting?

A. Yes. He said that the men was already out at thehill picketing Ray-Mac.

Q. And what did he say in regard to being underbid?

A. He said he had been underbid on his orders, on his contract that he had with John McCall, John McCall and South Carolina Power, three dollars on the ton.

Q. And did he tell you how he knew this?

A. He said a man had called and warned him that he had been underbid.

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Q. And did he say who had underbid him?

A. He said Ray-Mac Coal Company.

Q. Did he refer to it as Ray-Mac?

A. Well, he said Arnold Turner and Nick Cooley was part of Ray-Mac. He said they was behind it. But as far as - - you know...

Q. Now, you referred to a unit train, Mrs. Booth. What is a unit train?

A. It's a train that he has to fill. You know, he has an obligation to fill. I don't know exactly what you would call a unit train except once a week he had to fill so many cars to meet his orders he had with John McCall.

Q. What did he say about the unit train at this time?

A. He said he didn't have enough coal to meet the orders at that time.

Q. In regard to your mines, Mrs. Booth, do you have any knowledge as to why there was not enough coal to meet the orders?

A. Our mines had been under inspection and been shut down for all and all - - well, all the rockfalls that had happened, and men

been getting killed, the inspectors was on us bad. And we hadn't put out any coal. And we was making a belt setup.

Q. What is a belt setup for purposes of the Jury?

A. That is where your belt is so far back in the mines, and you need to move it on back to get to where the coal is so you can get to the coal quicker and bring it out, you know, more of it.

You have to move it back to save time and money I guess. That is the way I understand it.

Q. Are you aware of the - - not the numbers, but whether the week before the 15th that you all had mined a substantial amount of coal out of your two mines?

A. Before the 15th?

Q. The week before, had to put out a lot of coal on the ground.

A. No, we hadn't, not as I recall because we was down as I had stated before for inspections, and we had rockfalls.

Q. Had there been some - - were you aware of anything that created the inspections

that came down on you?

A. Well, there was a lot of mines having rockfalls at that time. There was men getting killed.

MR. SPENCER: Your Honor, I object. May I approach the Bench.

THE COURT: Yes, sir.

REPORTER'S NOTE: Whereupon a Bench Conference was held where the following was heard:

MR. SPENCER: Your Honor, I object to this. This is the second time - - first time, I thought there was just a passing comment about the men getting killed in the mine. Here the Prosecutor's continuing back and coming right back to this which is irrelevant to the conspiracy and it is not relevant to any counts in this.

All we are going to do is create a bias and prejudicial atmosphere to the Jury and have her give the impression that these people are up there working under substandard conditions in dangerous mines and all of this. I can't see where this is relevant.

MR. SELF: It is relevant to the extent that the Topmost Mine disaster occurred prior

to this. And according to Ms. Booth, it increased Federal Inspections, and they were not able to produce coal normally as they would be able to produce it.

MR. WALBOURN: She hadn't referred to Topmost. She gives the impression that it is her own mines.

MR. SELF: I will clear that up.

MR. WALBOURN: Well, I'm going to object to the leading of this witness by asking her to do it now. She is an experienced witness. She doesn't need to be led.

THE COURT: Okay. Let the objections be noted and overruled. Don't lead the witness.

MR. SELF: Yes, Your Honor.

THE COURT: All rightgentlemen, let's move on.

(Whereupon the Bench Conference was concluded.)

Q. Mrs. Booth, the men getting killed, where did that occur at that you referred to?

A. It happened at different mines. I don't know which mines. There had just been explosions and stuff. I don't recall which

mines or where it happened.

Q. It was not in any of the mines in relation to Edgar Jones, was it?

A. No, none of the mines in relation to Edgar Jones. The inspectors just came down heavy on everybody.

Q. Now, in regard to the unit train, what did Mr. Jones say that had to be done in regard to that unit train?

A. He said we had to pull a strike. He said the only way he could keep from jeopardizing his orders, the only way he could keep from losing them if he didn't keep the unit train is if there was a strike.

Q. Strike being against whom?

A. A union against another union, and make it a legal strike. If it was legal, you know, if the union was involved, then it would be legal. If he didn't meet the orders, it wouldn't jeopardize losing his contract with John McCall.

*** *** ***

Q. And did he say where the strike was going to be at or agains t whom the strike was going to be?

A. Ray-Mac Coal Company.

Q. And what did he state-- Did he state that he had talked to anyone at that time about the strike?

A. This is Monday?

Q. At that time, the first time you met Mr. Jones on Monday.

A. Some of the men was already out at Ray-Mac on the picket line. He said all his contract miners had to pull their men out and go on strike or we wouldn't have the mines or anything. We would lose everything.

Q. What did he say about losing everything?

A. If he lost his order with John McCall, then he would have to close the mines down.

Q. What, if anything, did he tell you or Mr. Booth to do at that time?

A. He told us to get our men out and get them on the picket line.

Q. Did he tell Mr. Booth

anything that you recall?

A. I recollect, I am not real sure. I think he went after Jason. He told him to go get Jason.

Q. Where did you go if anywhere?

A. I went to Bryan.

Q. And what did you do at Bryan? Bryan being Bryan Coal Company?

A. Yes.

Q. What happened at Bryan, and what did you do?

A. All the men-- I told the men that there was going to be a strike. And Elmer RAy was making a belt setup, our mine foreman.

Q. Elmer Ray-- What is his last name?

A. Johnson.

Q. What did you tell Mr. Johnson?

A. To go ahead and make-- you use so many men and make a belt setup. And the rest to go out on the picket line.

Q. At that time, were the miners back in the mine?

A. No.

Q. Prior to going up there, did you run into any of the defendants in this case?

A. I am not sure.

Q. Where did you go from Bryan?

A. I called Tootsie up, and I went to Calamity Coal Company--Morris Ray Hall. I am sorry. He goes by Tootsie.

Q. For the men under the hill when you got there?

A. Yes.

Q. And what happened while you were there?

A. I first called them up, then I went down there. And I told them make sure all the men went out and went on the picket line.

Q. Who did you talk to?

A. Morris Ray.

Q. Okay. Did you talk to the other men that worked for Bryan or for Calamity?

A. Not right then, not that I recall.

Q. Did you talk to any other men other than Morris Ray Hall?

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A. Not at that moment; but later on when they come outside, I went back around the mines.

Q. What did you tell them when you come back around the mines? Was this again on Monday?

A. Yeah. They was all wanting to know why we was going on strike.

Q. What did you tell them?

A. And I told them that we had to go on strike to keep our orders because we wouldn't have the mines or anything if we didn't go on strike.

Q. And did you tell the men to do anything?

A. I told the men to go out on the picket line.

Q. The picket line being where?

A. At Ray-Mac Coal Company.

Q. Then where did you go?

A. After I left there, I went back to the office, and I told Edgar that all of the men was out.

Q. What did Mr. Jones say,

if anything?

A. He said to make sure they was out on the picket line. Phillip was also. In-between that time, I had talked to Jason.

Q. Jason being Jason who?

A. Jason Moore. And I got permission for the men, you know, because some of those men were really union. They just didn't-- You know, they was strong union men. And I had to make sure there wouldn't be no trouble because some of our men worked making a belt setup at Bryan even though they weren't producing coal.

Q. And what did Mr. Moore tell you?

A. He said it would be all right.

Q. Was anyone with you when you talked to him?

A. I am not sure. Possibly Teddy was. I just can't recall right now.

Q. Teddy being who?

A. Teddy Kinney.

Q. Now, when you were at Mr. Jones' office after that, did he tell you to do anything?

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A. On Monday?

Q. Yes.

A. He just said--told me to get the men--they needed to take care of it on the picket line at Ray-Mac, whatever it took. And he would--if it took it to pay the men to go out on the picket line.

Q. And during Monday, did you have any more conversations that you recall with Edgar Jones?

A. At present, I don't recall.

Q. Did you go anywhere and obtain anything on Monday?

A. Yes. I went to Phillip's parents, my in-laws at that time. And I got--Phillip had two guns there. He had a mini 14 and a 30-30. I went and got those.

Q. Why did you go get those guns, Ms. Booth?

A. Well, I was scared and I brought them back to the house. And Edgar told me to take care of everything. So I went and got those. And I just went and got those and brought them to the house that day.

Q. Now, did you have a phone conversation with Edgar Jones that evening?

A. Yes, I did.

Q. And about what time? Do you remember?

A. I don't know exactly what time it was, sir; but he called.

Q. Did you recognize his voice?

A. Yes.

Q. Did he identify himself?

A. Yes.

Q. What if anything did Mr. Jones state?

A. He told me to make sure that Phillip was out on the picket line the next morning because if Phillip went out on the picket line, all of the other men would go and follow him.

Q. Did he say anything else that you remember?

A. That is all I recall right now.

Q. Now, did you send anyone to get anything on Monday?

A. I called -- excuse me.

Monday I called Donahue up.

Q. Donahue being who?

A. Donahue Halbert.

Q. Do you see Mr. Halbert in the courtroom?

A. Yes, I do.

Q. Is that the gentleman standing right now?

A. Yes.

MR. SELF: Let the record reflect she identified the Defendant Donahue Halbert.

MR. BRANSEN: No objection.

THE COURT: Let the record so reflect.

Q. But before I ask you that, you indicated that you talked to an individual by the name of Jason Moore?

A. Yes, I did.

Q. Do you see that individual in the courtroom?

MR. KIRKLAND: Stand up, Jason.

A. Yes, I see Jason.

MR. SELF: Let the record reflect she identified the Defendant Jason Moore, Your Honor.

MR. KIRKLAND: We will stipulate that,

Your Honor.

THE COURT: Let the record so reflect.

Q. You stated that on Monday evening you called Donahue Halbert. Why did you call Mr. Halbert?

A. Well, when the men went out on the picket line Monday, all they had was pistols. And they didn't have but very little shells. And -- and I called Donahue to get some more ammo, shells for our pistols and the guns that I got from Phillip's parents.

Q. And what if anything did you state to Mr. Halbert?

A. I told him what we needed. And I told him what was going on which he was already aware of what was going on.

Q. What did you tell him?

A. I told him that we was picketing Ray-Mac.

Q. Did you tell him why?

A. I just told him union. You know, we was going to stop Ray-Mac because they was nonunion.

Q. What if anything did Mr. Halbert say to you?

A. Edgar said -- Edgar. I am sorry.

Donahue.

Q. What did Mr. Halbert say?

A. Donahue Halbert said he would do anything he could to help us, the union, anything within reason. He said he wouldn't do a thing to help Edgar Jones. He said he had nothing for the man.

Q. And did you send anybody down to Donahue's that day to get any guns and ammunition on Monday?

A. I recall sending Tootsie Hall, Morris Ray Hall. I am sorry.

Q. Sending him where?

A. To Donahue Halbert's.

Q. Was this Monday or Tuesday?

A. That is what I was going to get at. I don't know whether he went Monday evening or Tuesday morning.

Q. What did you send him to get?

A. To get the ammunition I had ordered and Donahue told me he had.

Q. The kind of ammunition that you got -- that Mr. Hall acquired?

A. Pardon me?

Q. What kind of ammunition did you send Mr. Hall after?

A. As I recall, it would be .38's and .357's, and the shells that fits your Mini 15's and 30-30's and possibly .44's.

Q. Mrs. Booth, would you explain to the ladies and gentlemen of the jury while you were getting guns and ammunition on Monday.

A. Because they was picketing Ray-Mac, and I really -- I guess I really wasn't expecting violence, but...

Q. But what?

A. I was told to take care of anything, to make sure they had everything they needed. And this is just what I was doing.

Q. Were you told by Mr. Jones to purchase guns and ammunition on Monday?

A. I don't recall him telling me to purchase guns and ammunition on Monday morning. I do not recall that.

Q. So this was your own act

to acquire some ammunition for your weapons?

A. Yes.

Q. What if anything happened on Monday evening, Mrs. Booth?

A. On Monday evening?

Q. Yes.

A. The guys started coming in around the house.

Q. What guys?

A. Some of the men that worked for us and was on the picket line.

Q. Was this a normal occurrence for men to gather around your house?

A. It was normal for some, you know, but not as many that had gathered around.

Q. And where did this gathering occur? Inside your house?

A. Outside.

Q. And where were you?

A. Pardon me?

Q. And could you overhear the conversation that was taking place among the men?

A. Not all of it, no.

Q. Did you overhear some of

it?

A. Some I overheard.

Q. And what did you overhear?

A. Well see, I don't know who was saying what because there was talking about going out on the picket line and who all was going because I was in the house most of the time. They was out. And they would just come in and out and get beer.

Q. Anything else that you overheard other than just going out on the picket line? Did they state why they were going out on the picket line?

A. They knew why they was going out on the picket line. They knew they had to or they wouldn't have no way to eat or anything else. They knew they would be without a job if they didn't go out on the picket line.

Q. How do you know they knew that, Mrs. Booth?

A. Because I told them. Edgar had told me, and I told them.

Q. And when did you tell them and who did you tell?

A. I told all of my

employees.

Q. What specifically did you tell them?

A. I told them the reason we had to go on the strike was to keep the mines going and keep our jobs and have a way to live, or it would be shut down if we didn't go on strike because Edgar would lose his orders. And he had told us we had to go on a strike.

****

Q. Now, of these Defendants over there, who did you tell that to?

A. I told it to - - do you want me to name off everyone of them?

Q. The ones you've told that to, yes.

A. Okay, Ranny Blankenship knew this, Eugene knew it.

MR. ROWLAND: Your Honor, I can hardly hear.

THE COURT: Ranny Blankenship.

A. Eugene knew it, Eugene Tackett. Tim Milan, Hermit knew it, Carl Moore knew it.

MR. SELF: May we ask the back row of Defendants to stand, Your Honor?

THE COURT: All right.

Q. The men in the back row Ms. Booth beginning from left to right, what men did you tell that - -what you've just stated.

A. Okay. Austin Moore - - I'm not sure whether he worked for us right then or not, I don't recall him for sure now. But Eugene and Tim and Hermit was told. That's on the back row, that's the only ones.

Q. Would you identify the individual you referred to as Eugene?

A. He's in the green shirt back there, in the back.

Q. Is that the gentleman you identified as Eugene?

A. Yes, sir.

Q. And - - this is Eugene Tackett?

A. Yes.

Q. Does he have a nickname, that you know of?

A. He has one, I can't remember - - Blue, Blue.

Q. And the individual you identified as Tim, would you describe where he's seated and what he has on ?

A. He has on a plaid shirt with a mustache and dark hair, beside Eugene.

Q. On which side, you're facing him, right or left?

A. He's on the right side.

Q. The gentleman that's now standing?

A. Yes.

MR. SELF: Let the record reflect he identified the gentleman Tim Milan.

Q. And you said Hermit?

A. Yes. Who is Hermit?

MR. WALBOURN: Stand up Hermit, that's Hermit Newsome, Your Honor.

Q. Is that the Hermit you were referring to?

A. Yes, it is.

MR. SELF: Let the record reflect she identified the Defendant Hermit Newsome.

THE COURT: Let the record so reflect.

MR. ROWLAND: Your Honor, I don't have any objection to the identification, but I am confused about what Mrs. Booth has said. First she's said she told all of her men now she is saying they were told, I'm confused about what she's saying.

Q. Ms. Booth, did you tell them - - what did you tell them again, repeat what you've told these gentlemen, the ones you've just identified and the other ones that work for you that are Defendants in this case?

A. I told the men - - I told the men what Mr. Jones had told me.

Q. That being what?

A. That we had to pull a strike and we had to go out against Ray-Mac and make it legal because he was losing his orders. They had underbid him on his contract and if he did not meet the unit train that week, he would lose his orders anyway and we had to pull that strike. And if we didn't we would lose the mine and if we lost the mine they lost their jobs and there'd be no jobs, no nothing.

Q. And did Mr. Jones tell you, or did you tell the men the purpose of a strike?

A. No - -

MR. KIRKLAND: That's the fourth time, Your Honor. I object to the repetition. This is like a stuck record.

THE COURT: All right, let the objection be overruled.

MR. THOMAS: Your Honor, I did not hear her answer to that.

THE COURT: Well, we have one saying we don't hear what she is saying, we have an objection to repetition. So, go ahead and continue.

Q. Did you state to them what the purpose of going out on strike was?

A. Yes, I did.

Q. What was that purpose?

A. Was to shut down Ray-Mac.

Q. Could I ask the first row of Defendants to please stand, Your Honor?

THE COURT: All right.

Q. Of those individuals now standing, Ms. Booth, which one of them did you tell what you just said?

A. Ranny knew, and Harold Moore and Edgar told me and Benny knew it, but the ones that worked for me - -

MR. PAFUNDA: (Interrupting) Your Honor, I'm going to ask at this time that the witness be responsive to the question, I'm hearing one thing and the question was who did she tell it to. If I'm understanding - -

THE WITNESS: (Interrupting) I was going to correct myself - -

THE COURT: (Interrupting) Just a moment. Take the Jury back to the Jury Room and while you are in the Jury Room the not now admonition is in effect, you understand that?

Mr. Marshall take the Jury out, please.

THE MARSHALL OF THE COURT: The Jury is out

of the Courtroom, Your Honor.

THE COURT: Fine, now take the witness out.

THE MARSHALL OF THE COURT: All right.

*** *** ***

THE COURT: Now, gentlemen, let me state this. I realize there's a ton of you. I realize that you all have your objections. And I noticed at first the objections appeared to be in a methodical manner, starting someone and then the next one down. There was no purpose to that.

However, we are getting one objection and then someone stands and then we have another objection about repetition and you're making it very difficult for the Government to get this witness on by way of your interspacing of your objections.

Now, this witness is going to have to testify and you're going to make this longer however you work it.

MR. ROWLAND: Your Honor, what bothered me about this testimony and it still bothers me because she is not responsive to the questions. She says--

THE COURT: (Interrupting) Then object and say that the answers are not responsive. Gentlemen, you all know this. You make an objection and then you make a speech to the jury when you do that. Let's don't do that.

MR. ROWLAND: Well, what's happening,

Your Honor, it's obvious from the record that not only is she not responsive to the questions but she gets asked as to what she was not responsive to and she says it three or four times and she still has not stated specifically she knows who was told. She says--she says that she told them and then she says he knew, he knew, he knew, but she does not say she told them.

THE COURT: I thought the question that he asked her was who did she tell.

MR. ROWLAND: That's right, and she says he knew, he knew but she doesn't say I told this person.

THE COURT: Then on cross-examination you can clear that up.

MR.THOMAS: Your Honor, mine was not an objection, mine was a clarification. I wanted to know what her answer was to something and I don't see--

THE COURT: (Interrupting) When you get to cross-examination you ask that.

MR. PAFUNDA: Does, if I have a question on cross-examination did you in fact tell Eugene Tackett or did you in fact tell this person to go through it. I think it's belaboring the point, she

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didn't answer the question. My question was she was unresponsive.

THE COURT: Then say unresponsive. Don't make a speech for the jury.

MR. HARWELL: I would just like to assure Judge Unthank that to my knowledge there was no systematic way of objection, it would be impossible to do it not knowing how she is going to testify. I objected first and I remember what I think Your Honor was referring to and I was a little surprised at the objections going on down the line. But I want to assure the Court that there was nothing planned or organized by ourselves in regard to the objections. I would ask YOur Honor to ask her to speak up. She tends to start out at a high volume when she first makes a statement and then drops her voice for the end, and I don't want to stand up and say, Judge, ask her to speak up. If you could ask her to try to keep her volume pretty straight all the way through, Your Honor.

THE COURT: All right. Gentlemen, let's be candid, let the record reflect that I'm quite sure that this witness could have a better education. She's testifying here and she's got fifteen lawyers in front of her. Fifteen lawyers who

have heard her testify before who are sitting and waiting for every chance that they can. This young lady is nervous, she's more nervous than any of us.

MR. HARWELL: Judge, she can't be more nervous than I am respectfully.

THE COURT: Well, I know you have a job to do, but let's do it according to the rules.

MR. SELF: May it please the Court, is there someway they can turn the volume up on that thing?

THE COURT: Well, that's not the problem, they need a stand. This one's too high.

MR. ROWLAND: Well, I think if you have someone test it I could find it and turn it up and it might help us.

MR. THOMAS: Your Honor, this is for the record and I want to make it clear. I was not making an objection for the pleasure of other attorneys. I'm making my objection to protect my clients. I'm not going to sit here and wait for my turn to make an objection.

THE COURT: Mr. Thomas, make your valid objection when you want to, mind you I said valid.

MR. THOMAS: Yes, Your Honor.

THE COURT: Let's be succinct at what your objection is. After you get that done, you sat down.

MR. THOMAS: Yes, that's why I said I did not hear her answer to the question. I did notmake an objection.

THE COURT: All right, let's bring in the witness and the jury.

THE MARSHALL OF THE COURT: All present, Your Honor.

THE COURT: You may proceed, Mr. Self.

Q Ms. Booth, you indicated that an individual by the name of Ranny, do you see that individual in this courtroom, and if you do, let's please identify him and what he has on.

A He's standing up there.

MR. SELF: Let the record reflect she's identifying Ranny Blankenship, Your Honor.

THE COURT: Let the record so reflect.

Q Did you tell Ranny?

A Yes, I have told Ranny.

Q And you identified an individual by the name of Harold Moore, do you see that individual in this courtroom, would you

describe where he's sitting?

A. Yes, I do.

Q. Is that the individual now standing?

A. Yes.

MR. SELF: Let the record reflect that she's identified the Defendant Harold Moore.

THE COURT: Let the record so reflect.

Q. You identified an individual by the name of Benny Caudill. Do you see that individual in this courtroom?

A. Yes, he's standing.

Q. Is that him standing?

A. Yes.

Q. Is that the individual we referred to as Benny Caudill?

A. Yes, sir.

MR. SELF: Let the record reflect she's identified Defendant Benny Caudill.

THE COURT: Let the record so reflect.

Q. Did you personally tell Ranny Blankenship, Harold Moore and Benny Caudill what you stated?

A. Yes.

Q. This was on Monday?

A. Yes.

Q. Was this on Monday?

A. As I recall it.

Q. Is there anyone else in the front row that you made that statement to or told the nature of what was going on?

A. At present, I'm not sure.

Q. To your knowledge on Monday, February the 15th, 1982, personally how many men were down at your house?

A. I guess quite a few.

Q. And the other men talking, were they doing anything else?

A. They were drinking and talking about, you know, I really don't know what all was talked about except some of them were discussing about going out on the picket line but I don't know who discussed what.

Q. Did they state the purpose of going out on the picket line?

A. They were going to shut Ray-Mac down.

Q. Now, the guns and the ammunition that you acquired on Monday, what if anything did you do with those?

A. They were -- excuse me. They were taken out on the picket line Tuesday morning.

Q. By whom were they taken out?

A. They were taken out to the picket line Tuesday morning.

Q. Who took them out there?

A. Phillip.

Q. And how did he take them out there?

A. In one of his vehicles.

Q. How do you know that he put them in his vehicle?

A. Well, he went out the door with them. I just assumed it was to his vehicle.

Q. What weapons and what ammunition did he take?

A. He took his guns, his pistols, and he took his carbine and he had a Mini 14, not a carbine --

THE REPORTER: Please repeat that, ma'am.

THE WITNESS: I don't think it was a carbine, it was a Mini 14 and a 30-30.

A. An 30-30.

Q. What pistols did he take or did you see him leave with?

A. Well, he left me the .38 and all the others were gone. We had about three .38's.

Q. Three .38's?

A. Yes, I have a snub-nose that I carry.

Q. Do you know what other types of weapons he took other than those you just described?

A. That's all I know of.

Q. When he left, did he state where he was going?

A. He said he was taking it to the men that was going out on the picket line.

Q. Did you go with him?

A. No, I did not.

Q. You don't know where he went?

A. No, I don't.

Q. What if anything did you do that morning?

A. Later on that morning I

went to Edgar's office.

Q. Edgar being Edgar Jones?

A. Yes, Edgar Jones.

Q. Who did you see there?

A. When I walked in there was Phillip Booth, and Phillip Dale Moore and Jason Moore and German Stumbo and Edgar.

Q. At the time you walked in, Ms. Booth, will you tell us who said what?

A. Well, when I walked in they were joking, I thought they were joking, but they said Phillip had been shot. I didn't see no blood or anything so I passed it off as a joke. But after they kept on talking, he had been shot, him and Phillip Dale both had been shot and Jason's son was shot in the eye with buckshot.

Q. With if any -- who said what at that time?

A. Well, Edgar and all agreed, you know, that we didn't go for a fight like that, they didn't expect Ray-Mac to have guns like that, big guns. They had bigger and better guns than what they even thought of. And when they got there they got more than they bargained for and so they agreed to get more guns and ammunition and whatever

it took, they were going to do.

Q. Did they state, whatever it took for what?

A. To stop Ray-Mac.

Q. Stop Ray-Mac from doing what, did they state?

A. Well, the purpose of it was to stop Ray-Mac, because Ray-Mac had bid so they wanted to shut Ray-Mac down. And he wanted Ray-Mac shut down.

Q. He being whom?

A. Edgar Jones.

Q. The individuals that you described, plus yourself, did you come to a formal agreement at that time?

A. We all agreed.

Q. What did you all agree?

A. To get more guns and ammunition and whatever it took.

Q. What if any of the individuals or the Defendants of Mr. Booth or Mr. Moore, what did any of them state specifically at that time?

A. All I know is that at that time they were shot and I was scared, I didn't know how

bad they were hurt, and I was scared real bad. But, we agreed we were going to get more guns and we were not going to send the men back out there right in the open like that because when they were in that gap where Ray-Mac is there's two hills on each side and if you're in the road, if Ray-Mac got on the hill they could have shot you and you would not have had a chance. Everybody agreed that we would send men up in the hill.

Q. Up in the hill, what hill?

A. To spot a place to take the men the next day.

Q. Now, during this conversation were all the people that you named still there?

A. Jason, I believe Jason left and went to see his son, his son's eye, he had something in his eye.

Q. Did he leave before or after you agreed to do whatever you were going to do?

A. I'm not sure about that.

Q. But before he left was there any discussion that took place?

A. Yes, we were discussing all of this, I'm not sure whether he agreed before

he left or what.

Q. Now, during this discussion, Ms. Booth, was there any discussion as to attempts by the men to unionize Ray-Mac?

A. Attempt to unionize them?

Q. Yes, force them to sign a contract with the union.

A. I know once I heard them talking about signing a union contract, but they said they were going to make them go union or they weren't going to work, but I never heard them say anything about getting Ray-Mac to sign a contract.

Q. Now, did all of you remain there together for a period of time, or what?

A. German left -- let's see, Jason left first and went to see about his son. Then German left and Edgar followed German into the next room, and they stood there and talked for a while, I don't know what they said, then German left. Edgar came back to his office and Phillip and Phillip Dale stayed there a few minutes and then they left, and Edgar told me.

Q. Was anyone else present at this time when you talked to Edgar?

A. No.

Q. What did Mr. Jones tell you?

A. He told me to get guns and ammunition, whatever it took to see that the men had them. He said that Ray-Mac had to be got.

Q. What if anything else did he tell you?

A. He said most -- he said the only way to get at Ray-Mac was through their equipment. That was Tuesday, but they didn't go for the equipment. When they went to the hills, in my opinion, I don't think they --

Q. (Interrupting) Just what did Mr. Jones tell you at that time, though, Ms. Booth?

A. Well, he told me that we had to stop Ray-Mac and we'd get the guns and ammunition and he said to get whatever it took and he would reimburse me for the money. He would see that I would get the money back.

Q. Anything else he state to you about the guns and ammunition?

A. He just said the guns and the ammunition -- he said why he didn't get them

himself. He said he could not afford for these guns and ammunition to be traced back to him in any way. He said he could not afford to have his name in it.

Q And what did you tell him?

A Well, I told him that I would go ahead and get them and I had called Donahue Halbert up and I would get them.

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Q. When he referred to Ray-Mac, did he refer to it as Ray-Mac?

A. He referred to Ray-Mac, but along with that he would say Con Turner or Arnold Turner, Jr., which I don't know whether that means anything or not.

Q. Did he refer to them both as being the same owners?

A. He said they was one and the same.

Q. Did Mr. Jones tell you the reason he was doing this was so that Ray-Mac - -

MR. HARWELL: (Interrupting) Object to the leading nature of this.

THE COURT: Sustain the leading - - sustained the objection to the leading.

Q. Did Mr. Jones mention anything about the union at the time?

A. At this time?

Q. Yes.

A. Edgar - - was that when he was at the first time?

Q. The time you were there on Tuesday after the shooting?

A. Edgar stated it wasn't

fair for Ray-Mac to be operating nonunion when the union forced him to pay union dues to his contract miners, to pay union dues and royalties, and his trucks had to sign up to the union, and that big an operation get by and not go union. That is all I can recall.

Q. Now, where did you go after you talked with Mr. Jones?

A. I went back to the house.

Q. Okay. Did you talk with anyone, or do anything, while you were at the house?

A. Okay. I called my brother up, and I got some guns from him.

Q. Your brother's name?

A. Wendall Newman.

Q. And what did you obtain from your brother?

A. Excuse me. Carbine and a .30 - - let's see, a 30-30, .243 - - no, 30.06 and a .243, I'm sorry.

Q. Any other guns?

A. That is all I recall.

Q. And how did you get those guns?

A. I was - - that day, they

had been shooting around the back of the house there, and since all this shooting had happened at Ray-Mac, and Phillip was involved, I was afraid to leave the house.

So I called him and he brought it to me.

Q. And what did you do with the guns after he brought them to you?

A. Well, they stayed there at the house that day.

Q. Did you send after any guns or ammunition that day, other than those guns that Wendall Ray brought you?

A. Yes, I did. Jason brought a list to me, Jason Moore, and he told me what all they needed.

Q. Prior to your meeting with Mr. Moore in Mr. Jones's offices, had you talked with him prior to him bringing a list down?

A. The more I think, I think maybe I had seen him prior to that, and that he was going - - he mentioned something about it.

But I can't really say for sure that he did. I do know that he brought it to me.

Q. What did Mr. Jason Moore bring you?

A. He brought me a list of what all he needed, the shells and ammunitions.

Q. When he gave it - - did he give it to you?

A. Yes, he gave it to me.

Q. What, if anything, did he say when he gave it to you?

A. He said that is what all the men needed. He said that is what ammunition they needed.

Q. Did he state why they needed that ammunition?

A. To take out on the picket line.

Q. And what did you do with that list?

A. I - - excuse me, I gave it to Phillip Dale.

Q. Phillip Dale Moore?

A. Yes. To take to Donahue and get the ammo with.

And I - - first of all, I called Donahue up, and I asked Donahue Halbert if

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he had the ammunition and stuff. And he did. And he told me send them over to get it.

Q. And did you send Mr. Moore over to get it?

A. Yes, I did. I did send Mr. Moore over.

Q. What did you give Mr. Moore?

A. I gave him a check.

Q. What kind of a check?

A. It is one on Calamity Coal Company.

Q. In addition to the check, what, if anything, else did you give him?

A. A list of what all I needed.

Q. Going back, you said you had sent Morris Ray Hall to get some ammunition the day before?

A. Morris Ray had either went Monday or Tuesday. If he didn't go Monday, he went Tuesday morning to get the ammunition.

Q. And did you give him a check?

A. I gave him cash.

Q. But you gave Mr. Moore a

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check, correct?

A. Yes, I did.

Q. Who was that check drawn on?

A. Calamity Coal Company.

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

THE CLERK OF THE COURT: your Honor, the exhibit which was previously identified by the Government as alphabet Exhibit No. Z is now, for purposes of the trial, marked as Government Exhibit No. 112.

THE MARSHALL OF THE COURT: (Handing document to all defense attorneys).

THE COURT: While they are examining that, we will be in recess until 2:30. During this recess, the not now admonition is in effect.

Any objections or corrections?

MR. ROWLAND: No, sir.

MR. HARWELL: None, may the Court, please.

THE COURT: All right. Please excuse the Jury until 2:30.

REPORTER'S NOTE: At this time all members of the Jury left the Courtroom.

THE COURT: All right. The Court will be in recess until 2:30.

REPORTER'S NOTE: The Court recessed at 2:20 P.M. and reconvened at 2:33 P.M.

THE MARSHALL OF THE COURT: The District Court is in session. Be seated and some to order, please.

THE COURT: Are you ready to proceed, sir?

MR. SELF: Yes, Your Honor.

THE COURT: Just a moment. Mr. Marshall?

THE MARSHALL OF THE COURT: All Defendants, all counsel, and all members of the Jury are present.

THE COURT: Thank you, sir. Please continue.

MR. SELF: Mr. Marshall will you hand the check, or what has been marked for identification as Government's Exhibit 112, to the witness, please.

THE MARSHALL OF THE COURT: All counsel have reviewed Exhibit No. 112.

THE COURT: Thank you, sir.

REPORTER'S NOTE: The Marshall of the Court handed the witness Exhibit 112.

Q. Ms. Booth, do you recognize that document?

A. Yes, I do.

Q. And without getting into it, is that a check on Calamity Coal Company?

A. Yes, it is.

Q. And when did you first see that check?

A. Well, I filled it out and gave it to Phillip Dale, but when it was brought back? What do you mean first seen it? What do you mean?

Q. When you first saw it filled in, or partially filled in, when was that?

A. Okay. I partially filled in Donahue's name, signed mine and Phillip's name to it, and gave it to Phillip Dale.

But when I got it back, somebody had filled in the amount, you know. I had left the amount blank.

Q. And from whom did you get it back?

A. The bank.

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Q. Come back in your monthly statement from the bank?

A. Yes.

Q. And the date on that check, Ms. Booth?

A. The second, the sixteenth in '82.

MR. SELF: Your Honor, at this time I move for the introduction of what has previously been marked for identification as Government's Exhibit 112.

MR. HARWELL: Without objection, Your Honor. In fact, we join the motion.

THE COURT: There being no objection, let what has been previously marked as Government's Exhibit Z is finally admitted into evidence as Government's Trial Exhibit 112.

(Whereupon Government's Exhibit No. 112 was duly received, marked, and made a part of the record herein.)

*** *** ***

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Q. Ms. Booth, to whom did you give that check?

A. Phillip Dale Moore.

Q. And this was on the 16th of February, 1982?

A. Yes, it was.

Q. And you filled in what portions of that check?

A. I filled in the name and the date and the signatures.

Q. The date being February 16, 1982. Who was it made payable to?

A. Donahue Halbert.

Q. And the amount of that check?

A. Five hundred and fifty dollars.

Q. It bears whose signature on the front of it?

A. At the bottom?

Q. Yes.

A. Phillip Booth and Pearl Booth.

Q. And is that a check--or drawn on Calamity Coal Company?

A. Yes.

Q. And that is one of your coal companies at that time?

A. Yes, it was.

Q. And does it bear a stamp on the back, an endorsement stamp?

A. Yes, it does.

Q. What does that say?

A. Donahue's Gunsmithing, P. O. Box 223, Lackey, Kentucky, 41645.

Q. Now, Ms. Booth, did you know who operates Donahue's Gunsmithing?

A. As far as I know, Donahue.

Q. Donahue Halbert?

A. Yes, Donahue Halbert.

Q. Prior to sending Phillip Dale Moore down there, did you call Donahue Halbert?

A. Yes, I did.

Q. Why did you call Mr. Halbert?

A. Well, this was Tuesday, Jason had brought a list for me to get ammunitions, you know, the kind that he needed and how much.

So I called Donahue and told him what all we needed, and Donahue said he had

it. I sent Phillip Dale over to get it.

Q. And why did you call Doanhue Halbert as opposed to someone else?

A. Donahue used to work for Edgar, but the main reason I did it is because before I had heard all the men talk--

Q. (Interrupting) I'm sorry, don't go into that, please.

A. Okay.

Q. Had you had prior business dealings with Donahue?

A. Just that he worked for Edgar, and I had sent to Morris Ray to get guns--pardon me, to get shells when I paid cash for it before.

Q. On Tuesday, who went with Phillip Dale Moore, if anyone, do you know?

A. Well, as I recall, it was Eugene.

Q. Eugene who?

A. Eugene Tackett.

Q. The defendant in this case as you previously identified?

A. Yes.

Q. What did you tell

Mr. Moore when you sent him to Donahue's, if anything?

A. I just told him what I wanted, what was on the list.

Q. And while Mr. Moore was gone, did anything occur at your house?

A. This was Tuesday?

Q. Was there anyone there besides you?

A. Phillip was there and more around, but I don't know-- They was some guys that came by.

Q. Did you overhear anything these guys were saying?

MR. WALBOURN: Objection, Your Honor, unless they identify who the individuals were.

MR. SELF: I am not asking her at this time whatthey said, I am just asking her if she overheard what they said, Your Honor.

THE COURT: Well, she can answer whether she overheard, and then if we are going to get any farther than that--

MR. SELF: (Interrupting) Yes, I totally understand.

Q. Without stating what they

said, did you overhear the nature of their conversation of what was going on among these men?

A. Well--

Q. (Interrupting) Don't say what they said, did you overhear what they were talking about?

A. Maybe some of it.

Q. Who was there that you overheard that is a defendant in this case?

A. This was Tuesday night. Ranny was there--

THE COURT: (Interrupting) Who?

THE WITNESS: Ranny Blankenship was there.

THE COURT: All right.

A. (Continuing) And Hermit was there, Hermit Newsome I mean. And I can't recall every one of the names that was there. But they was all discussions about going out on the picket line and going, you know, they--

Q. (Interrupting) Continue if you would, please.

A. They was discussing--

MR. WALBOURN: (Interrupting) Objection, Your Honor, until we know who were there, who was

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saying it.

Q. Did you overhear Mr. Blankenship or Mr. Newsome make any statements, Ms. Booth?

A. I couldn't specifically say that they had made statements, you know, that they was the ones that made the statements. Okay?

Q. Were these statements made in their presence?

A. They was statements made, but I don't know if they made them or who.

Q. In general, were they talking about baseball games or about Ray-Mac?

MR. WALBOURN: Objection, Your Honor.

Q. Without going into what they said.

A. The talk was Ray-Mac, because--

THE COURT: (Interrupting) Wait just a moment. I sustain the leading. It is leading. Go ahead and rephrase your question.

Q. What was these men talking about, YOur Honor--excuse me, Ms. Booth.

MR. WALBOURN: My objection is until they identify who was present, who overheard what,

and who said it, I object.

THE COURT: Sustained.

MR. SELF: Your Honor, it is a statement a coconspirator made in the course of and in the furtherance of a conspiracy.

MR. WALBOURN: Your Honor, even if it is a coconspirator, we have to know who said it to determine whether it's a coconspirator's statement.

THE COURT: All right. Gentlemen, I sustain the objection.

MR. SELF: Yes, Your Honor.

****

Q. Approximately how many men were at your house, Ms. Booth?

A. Maybe about -- there wasn't -- they wasn't all in the house, because it was outside. And they came in and out and got beer, but German was there at the house -- as I recall, one night and I can't recall whether it's Monday night or Tuesday night, okay, German was there; and so was Raymond, Kenneth was there, Jason was there.

Q. Did you talk with Mr. -- the individual you said was German, did you talk to him?

A. I didn't really talk to German. German was just around.

Q. That individual that you identified by German, do you know his last name?

A. German Stumbo.

Q. Do you see him in this courtroom?

A. Yes, I do.

Q. Is that the man standing now?

A. Yes, it is.

MR. KIRKLAND: We stipulate that she knows most of these men, they are her neighbors, and she knows them, and she can identify them. We stipulate that they are the persons that she would identify as her neighbors.

MR. SELF: Let the record reflect she identified the Defendant German Stumbo, Your Honor.

THE COURT: Let the record so reflect.

Q. Did you overhear anything that Mr. Stumbo said at that time?

A. As I would say before, I didn't pay that much attention to who was saying what. But Hermit Newsome was also there.

Q. Same Hermit Newsome you already previously identified?

A. Yes, sir.

Q. Raymond being who?

A. Raymond Hall.

Q. Is that the Raymond Hall who is standing now?

A. Yes.

MR. KIRKLAND: We will stipulate that, Your Honor.

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THE COURT: The record may so reflect.

Q. And you said Kenneth was there?

A. Kenneth was there.

Q. Who is Kenneth?

A. He is standing up back there (indicating).

Q. Kenneth Rolland?

A. Kenneth Rolland.

Q. Was he there on those nights?

A. He was there. I recall seeing him there.

Q. Does Kenneth have another name besides Kenneth?

A. Postman.

THE COURT: Approach the Bench, gentlemen. One from each side.

Reporter's Note: At this time Mr. Walbourn and Mr. Self approached the Bench and the following was heard:

THE COURT: You are going to get into making statements of what was said. I mean, just say that you've got a crowd and somebody is talking, that isn't named.

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MR. SELF: Also it could also show their knowledge even if they didn't make the statement.

THE COURT: You don't show their knowledge.

MR. WALBOURN: Exactly right. If I am in the house and someone is talking outdoors, it doesn't show my state of mind.

THE COURT: Okay, good enough.

MR. SELF: I'm going to get specific responses.

THE COURT: Be fine, be fine.

MR. WALBOURN: My only request is Mr. Self say what did they say, and that calls for a generic response.

THE COURT: All right, all right.

(Reporter's Note: End of Bench conference.)

Q. Ms. Booth, as specifically as you can, can you remember any of the statements that any of these gentlemen made to you at that time, or made in your presence that you overheard?

A. I can't specifically say which ones said what.

Q. Was it the person that stated that one of the Defendants?

A. One of the Defendants was the one that would have made it. They was there, and they was talking about going into the hills. Because Tuesday is when they had got shot, and they were talking --

MR. WALBOURN: (Interrupting) Your Honor, same objection, please.

THE COURT: Well, sustain the objection. We are going to have to be specific.

Q. Can you be specific, Ms. Booth, as to who said what?

A. I could not be specific about that, what was said there right then. I don't recall it right now. I know what was said, I just don't know who said what. I know they was discussing it, because they had to go into the hill, but I don't know who said it.

MR. SELF: Your Honor, I submit it is an admissible statement of the Defendant.

THE COURT: Sustain the the objection.

MR. SELF: All right, sir.

Q. Did the men stay there all evening, Ms. Booth?

A. They stayed there pretty a while, but they wasn't there in the night.

Q. Was there a point in time when all of them left and went somewhere and then came back?

A. It's possible, because they was there and then they were gone and they was back, I don't know.

Q. Now, did you see Phillip Dale Moore later on that evening?

A. Yes. Phillip Dale brought the ammunitions and stuff back.

Q. Who was with him when he came back?

A. It was Phillip Dale and Eugene.

Q. And what, if anything, did Phillip Dale Moore bring back?

A. He brought back some shells and stuff that we had ordered. As I recall, it was -- he brought back a 9 millimeter, was it? At one time he brought back a 9 millimeter gun, but -- and a slip.

Q. What do you mean by a slip?

A. He brought back a slip for the gun, plus a slip that the ammo was on, how much we had gotten, what it cost, and where it came from.

Q. In regards to the shells, what -- can you -- do you remember what types of quantities of shells that Mr. Moore brought back?

A. I just know -- I don't know what every type was. I know the type of guns we keep getting for.

Q. What type were they?

A. .243's and .35's and 9 millimeters. And we got some .38 shells, and a few 12 gauge shells, but I'm not sure about them all.

Q. Approximately how many different calibers, if you know, did he bring back?

A. Sir, I'm not really sure.

Q. Did you inventory them when he brought them back?

A. Oh, I checked and see if he brought back what he was supposed to, and he did.

Q. What did you compare it against?

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A. The list.

Q. Which list?

A. That Jason had brought me.

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Q. And were there - - approximately how many different type caliber were there? Do you remember?

A. There was quite a few. Maybe about ten or so. I don't know.

Q. And you stated that he brought back a slip for the ammo?

A. Yes, he did.

MR. SELF: Mr. Marshall, would you hand me what has previously been introduced into evidence as Government's Exhibits 75 and 76.

Mr. Marshall, would you hand this yellow sheet of paper to the Clerk for marking for identification, please.

Your Honor, let the record reflect that that document was contained inside what was previously introduced into evidence as Government's Exhibit No. 75, Your Honor.

THE CLERK OF THE COURT: Your Honor, the exhibit which was not previously marked before has been identified NPM Government Exhibit No. 22 has now been marked for purposes of trial as Government's Trial Exhibit No. 113.

THE MARSHALL OF THE COURT: Your Honor, Government's Exhibit 113 has been shown to all

counsel.

Q. Mrs. Booth, have you ever seen a slip of paper like that before?

A. Yes, I have.

Q. And where did you see it?

A. Phillip Dale brought it back.

Q. Was it in any way similar to the document that you have in front of you?

A. Yes, it was similar to this. It is the same thing as this as a matter of fact except it was filled in with what I had thought.

MR. SELF: Your Honor, at this time I move the introduction of what has previously been marked for identification for introduction as Government's Exhibit 113.

MR. BRANSEN: I have to object, Your Honor.

THE COURT: Yes, sir.

MR. BRANSEN: This is just a standard piece of paper from Mr. Halbert's shop. I don't see what that has to do with this case. It might be similar to something she saw, but it is not what she saw.

THE COURT: Let the objection be noted and overruled. Let it be finally admitted into evidence as Government's Trial Exhibit 113.

Q. Mr. Booth, the yellow slip of paper that you have in front of you, does it have some preprinted information on top of it?

A. It has Donahue's Gunsmithing. And then it has gun repair, guns and ammo, Post Office Box 223, Lackey, Kentucky, 41645.

Q. Is it your testimony that Mr. Phillip Dale Moore brought a slip similar to that back with him on Tuesday?

A. Yes, sir, he did.

Q. And what portions of that invoice were filled out?

A. The bottom portion, these; but this was not.

Q. What was not for purposes of the record?

A. The top part was blank, but the bottom part was filled out.

Q. And what was contained in the bottom part?

A. This ammunition I had ordered and the amount. It was totaled up.

Q. Do you remember how much the total was?

A. Well, not really, unless

it was the amount of this check here, you know, what I sent on the 16th.

Q. Now, you indicated that Mr. Moore brought a slip for the gun back. What was it that Mr. Moore brought back?

A. He brought back a yellow slip. He said that Donahue had registered it. But he didn't - - he said he stole it for the fact is that the gun could not be traced without that slip. And he brought it back and gave it to me.

Q. And what did you do with it?

A. I kept it. And then when I found it - - I thought it was lost. I turned it over to you guys.

MR. SELF: Mr. Marshall, would you hand the witness what has previously been introduced into evidence as Government's Exhibit 91.

THE MARSHALL OF THE COURT: Your Honor, the attorneys have viewed Exhibit 91.

Q. Mrs. Booth, have you ever seen that document before?

A. Yes, this is what he brought back.

Q. What Phillip Dale Moore

brought back?

A. Yes, I was.

Q. Specifically what did he say in relation to that form 4473?

A. He said that since he took that slip, he said the gun could not be traced no matter what was done.

You know, couldn't be traced. So he just gave me the slip.

Q. Did he say anything about what Donahue Halbert knew about that slip?

A. I don't recall him saying Donahue knew he had kept the slip. I think he stole the slip from Donahue. I don't remember Donahue saying anything to him about this, now.

MR. HARWELL: If the Court, please, I hate to interrupt. But I am having trouble on one word - - cut the slip. May I ask Mr. Self - - Mr. Self to ask the witness. Cut the slip - - you used that expression twice, or stub the slip.

Q. What did he do with that slip?

What did Phillip Dale say he did with the slip, with that sheet of paper?

THE COURT: I think she said got.

MR. HARWELL: Got the slip.

THE COURT: Wasn't that what you said, Ma'am?

THE WITNESS: I said Phillip Dale had got the stick - -

THE COURT: (Interrupting) Got the slip. She is saying got. You're thinking when she says got that it sounds like cut.

MR. HARWELL: I appreciate your clarification, Your Honor. I am sorry for interrupting.

THE COURT: Maybe I am wrong.

THE WITNESS: No, you are right. I said that Phillip Dale Moore had stolen the slip from Donahue Halbert. I will rephrase that.

Q. Now, did he - - in addition to the ammunition, did he bring any guns back with him?

A. He brought the 9 millimeter back.

*** *** ***

Q. Now, the slip that you have in front of you, for what type of pistol was that?

A. A 9 millimeter.

Q. And the date on it at the bottom?

A. At the bottom, the second and the sixteenth in '82.

Q. Now, what did Mr. Moore do with the 9 millimeter pistol?

A. First of all, he wanted to keep it, but he turned it over to Phillip.

Q. Phillip Booth?

A. Yes.

Q. Do you know what Mr. Booth did with it that evening?

A. They used it up in the-- that evening?

Q. Do you know what he did with it that evening, Mr. Booth?

A. All I know is he gave it to Phillip, and they kept it there.

Q. Now, what did you-- After Mr. Moore brought the ammunition back, what did he do with the ammunition that evening?

A. He left it there at the house.

Q. What was it in?

A. In a box. As I recall, in a box now.

Q. Where was it--where was it placed that evening? Do you know?

A. In the living room.

Q. Anything else happen that evening, Mrs. Booth?

A. I don't recall anything particular happening.

Q. Now, in regard to the shells that Mr. Booth--or excuse me, Mr. Phillip Dale Moore brought back, were there any pistol shells in it?

A. Yes, there was.

Q. Do you remember specifically what caliber of pistol shells?

A. I don't know for sure which caliber. But everytime we went to get rifle shells, there was pistol shells, too.

Q. Now, you said that there was a yellow slip of paper like the one you have in front of you filled in from Donahue's Gunsmith. Is

that correct?

A. Yes, it is.

Q. What happened to that invoice? Do you know?

A. Well, to be honest with you, I done away with it.

Q. What do you mean done away with it?

A. I tore it up.

Q. Did you tear it up?

A. When he would bring it back to me, I waited so they would--the ammunition wouldn't--it was stupid because I gave them a check. But I didn't want it to trace back to me. But that was stupid as I said.

Q. Why didn't you want it traced back to you?

A. I didn't want to wind up in prison where I am at now.

Q. What, if anything, occurred the next day on Wednesday, the 17th of February, 1982?

A. About three in the morning, Morris Joe Hall and Glen Thornsbury came to the house. They heard about Phillip getting shot. And

around four-thirty or five, I am not sure exact about the time, they left to take the guns and the ammunition to the men.

Q. Who left?

A. Phillip and Morris Joe and Glen Thornsbury.

Q. And when they left, what were they-- Excuse me. What were they driving? Do you remember?

A. They left in one of Phillip's trucks.

Q. And what, if anything, did they have with them?

A. I know they had guns I got from my brother and all of the other guns they brought back from the day before from Tuesday. And they took the shells with them, also.

Q. What guns were brought back Tuesday? Do you know?

A. I am not sure.

Q. And did Mr. Booth or Mr.--you said Glen?

A. Glen Thornsbury and Morris Joe Hall.

Q. Did they state to you

before they left where they were going?

A. They just went along with Phillip. And Phillip told them he was going to take the guns and ammunition to the men where they went up in the hills. They was leaving real early.

Q. Approximately how many weapons did he take? Do you know?

A. I would be guessing. I know it was three from my brother plus more than that from us. So approximately about eight or nine.

Q. Did your husband state specifically where he was going to?

A. He said he was meeting the men that was going up in the hills and taking the guns and stuff to them.

Q. Did he say where he was going to?

A. I am not sure, but, you know, something about a barn is familiar to him but I don't know. Something about Stumbo or-- I don't know.

Q. Now, after he left, what, if anything, did you do or go? Where did you go?

A. Later on that morning--

Q. (Interruping) What

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happened later on that morning?

A. That morning is when they had been shooting up in the hills. Edgar had called me wanting me to see what was going on.

Q. Okay. Edgar being Edgar Jones?

A. Edgar Jones. I am sorry.

Q. What did Mr. Jones state to you over the phone?

A. He was wanting me to go and see what was going on because there was police around. They had Drexil--was supposedly be under arrest.

Q. What did he tell you to do?

A. He told me to go and check and see what was going on. And if Drexil wasn't under arrest, I was supposed to got Drexil and brought him back to the office.

Q. What, if anything, did you then do after you talked to Mr. Booth--or Jones on the phone?

A. I went up to the tipple.

Q. The tipple being what tipple?

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A. JRM's tipple. The men was there. At that time, the state police was not there the first time that I went.

Q. Okay. Who was there when you got there?

A. There was Smitty. As I recall, it was Smitty Joe and Danny Gayheart, Harry Wallen, and a few others. But it seemed like as I recall Danny Gayheart was the one that put the guns-- They had guns at the tipple. And they put them in the trunk of my car because the police was coming.

So I then took the guns to Edgar's office and left them in my car. And I went-- I asked him could I borrow his truck and drive it instead of my car.

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Q. Why did you ask to borrow his truck?

A. I didn't want to drive the car around with guns in it. I was afraid somebody would tell or they would stop and search it.

Q. Anything else he stated at that time when you borrowed the truck?

A. Well, he told me I could use the truck. And so then I left. And I went down to the house, and someone shot at me there by the house. And I went back.

And I called my brother, and told him to come and help me get the guns out of the car because I needed the car.

Q. What did you do?

A. Well, I got the guns, and took them to Ranny Blankenship's sister's house where Ranny was staying. And I got my car empty. Then I went back up there.

Drexil was -- as I recall this, now, Drexil was -- the police --

Q. (Interrupting) You went back up to where now?

A. Up to the tipple.

Q. What happened at that

A. The police was there with Drexil, but they told me they didn't have Drexil under arrest, but they wouldn't let him leave. So I went back to Edgar's office. And I told Edgar he wasn't under arrest, but the police had him. He had to stay there until they brought a warrant or something they was bringing to them.

Q. What did Mr. Jones tell you?

A. Well, he told me they couldn't keep Drexil unless they had a warrant. To go get them.

So I called and talked to this guy I know. And he told me unless they had a warrant, they couldn't keep him. And for me to go back up there and get him.

So I went and tried to get and let Drexil come to the office with me.

Q. Why did you try to go get him to come to the office?

A. Edgar told me to because Edgar was afraid that if Drexil was arrested -- he had told me that if Drexil was arrested, he would tell everything he knew; and we would all be in trouble. He would hurt everyone of us.

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Q. When did he tell you this?

MR. HARWELL: If the Court please, may we approach the Bench?

THE COURT: Yes, sir.

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

MR. HARWELL: May Your Honor please, I object to that line of testimony and move that it be stricken and the jury admonished in that that is the second time that my client allegedly made this statement. And that that statement was not provided at the minihearing and not provided according to Rule 16. We have never been told that before.

May the Court please, I would say once maybe understandable. But this is the second time, Judge. And it isn't right.

I also move the Court Order directing the Prosecutor to immediately give us any other statements that our clients allegedly made not heretofore provided us in this matter. She is coming to us cold.

MR. SELF: This is not under Rule 16 that those statements be provided.

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MR. MOORE: Statements have to be given to the Defendants that were made according to Rule 16. I have read it.

MR. SELF: They have to be statements of Government agents.

MR. WALBOURN: It doesn't have to be. I invite the Court to read the rule. I think it speaks to our position on that. Oral statements need not be made to Government agents. Any statements, period.

THE COURT: Let the objection be noted and overruled.

MR. SELF: Thank you, Your Honor.

MR. HARWELL: How about my motion and any other comments that were made that we haven't been notified as to those two -- can I have an Order on that? Do you have --

THE COURT: (Interrupting) Do you have any written statements?

MR. SELF: No.

MR. HARWELL: Oral statements, may the Court please, applies to Rule 16, notwithstanding Mr. Self's comments. Rule 16 is very clear about it. Mr. Walbourn has got the Court's --

MR. WALBOURN: (Interrupting) I am

getting it for you, Judge.

THE COURT: All right. Okay.

MR. WALBOURN: Any statement. It doesn't have to be made to a government agent.

THE COURT: Any recorded or written statement.

MR. SELF: It is not written and it is not recorded.

MR. WALBOURN: I dare say it probably has been at this point. But it doesn't have to be made to a government agent. So where do you see that requirement?

THE COURT: Okay. Well, if you have any written or recorded statement of a defendant in your possession, custody, or control, turn it over to them.

MR. SELF: The only thing I have are interview notes from talking to witnesses, Your Honor. As far as this witness. It is my work product, Your Honor, and it is not discoverable under Rule 16.

MR. WALBOURN: Your Honor, if he took it and it is written, it is written statement and becomes pretty much a written or recorded statement of that witness.

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MR. SELF: Not in the Sixth Circuit, Your Honor.

THE COURT: Let it be noted and overruled.

MR. HARWELL: May the Court please, could I call Your Honor's attention to one other thing that you didn't see under Rule 16 but it was handed to you. This section right here, may the Court please, of Rule 16, the substance of any oral statement which the Government intends to offer in evidence at the trial made by the defendant. That is the section under which I am saying, may the Court please, that we are entitled to get that.

MR. SELF: Read further, Mr. Harwell.

MR. KEHRLI: It has to be in response to interrogation by the Government agent. That is not the case.

THE COURT: Let it be noted and overruled.

MR. PAFUNDA: I want to object on two grounds. Number one, the witness, Pearl Booth, has made several references to statements Drexil Hall made. While doing some reviewing again for the umpteenth time that Edgar said about Drexil. She never mentioned it in the hearing.

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Number two, at this time I am going to object that it is hearsay. If it is not hearsay, under the Sixth Amendment, the right to cross-examine, I do not know at this time whether Edgar Jones is going to take that or whether I can cross-examine.

THE COURT: Okay. Gentlemen, let's proceed.

(Reporter's Note: End of conference at the Bench.)

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THE COURT: Please proceed.

MR. SELF: Thank you, Your Honor.

Q. Mrs. Booth, what if anything did Mr. Jones state to you about Drexil Hall at that time?

A. He said that Drexil was the first one to turn over his gun. This is what he had said. He said he would be the first one to tell everything he knew and get us all in trouble.

Q. And did he ask you to go do something in relation to Drexil Hall?

A. At what time? While he was at the tipple?

Q. Yes.

A. He told me to go get Drexil and bring him to the office before he was put under arrest.

Q. And did you go up to the tipple and attempt to do that?

A. I attempted to, yes.

Q. And what did you do when you went up to the tipple?

A. I went to the tipple, and I asked the police if he was under arrest. And they said no, not at that time. But they said that he

couldn't leave because they was on their way as I recall with a warrant. And he would be under arrest. This is as I recall it.

Q. And how were you attempting to effectuate his arrest?

A. Well, if he would have came with me, I would have took him.

Q. And how could you take him?

A. Because I was a Deputy Sheriff.

Q. Did you have your badge on?

A. Yes, I did.

Q. Did you have a weapon with you ?

A. Yes, I did.

Q. Did you threaten anybody with that weapon?

A. No, I did not.

Q. Did you bring Drexil back to Mr. Jones's office?

A. No, I did not.

Q. What did you do?

A. After I couldn't get Drexil, I went back to Edgar's office.

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Q. And what occurred at that time?

A. I told Edgar what had happened, that I couldn't get Drexil. That the police was holding him. That he would be under arrest.

He told us to go get Danny with a warrant.

Q. Now, who was with you at the time?

A. Phillip was there at the office.

Q. Was anyone else there besides you and Phillip?

A. I don't recall anyone else at that time.

Q. Was Mr. Jones there?

A. Yeah, Mr. Jones was.

Q. What did he say in relation to somebody named Danny?

A. He want Danny, got with a warrant.

Q. What did Mr. Jones say?

A. He said to go and get Danny Blanton with a warrant. He was the one who shot Phillip and Phillip Dale. That was one way to

- - Q. (Interrupting) What did he say? What did he say?

A. I don't know how to word it. It was one way to get back at Ray-Mac if it is a small thing.

Q. And did you talk with Mr. Jones anymore at that time about anything else?

A. Well, this is Wednesday. He hadn't said. I don't know whether it was at that time or later on.

Q. Later on being when?

A. That afternoon after we had got back from Prestonsburg. See, we went on to Prestonsburg and got Danny with a warrant. And Drexil already had someone to get him out. He didn't need nobody to go his bond. We was going to go the bond.

Q. And did you take a warrant, or you and your husband take a warrant out for Danny Blanton?

A. Phillip took a warrant out for Danny Blanton.

Q. And did you talk to Mr. Hall while he was down in Prestonsburg?

A. Well, probably; but I don't

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recall what we talked about.

Q. After you went to Prestonsburg, what if anything - - did you obtain a warrant for Mr. Blanton?

A. We obtained a warrant for Danny Blanton.

Q. And what did you do with that warrant?

A. We gave it to Terry Hall.

Q. Who is Terry Hall?

A. He is a State Trooper.

Q. Does he have any connection to any of the Defendants in this case?

A. He is the one that - - Edgar forced us. Well, he demanded for us to give him six thousand dollars on a coal truck. And Edgar done the same. He gave him six thousand and we gave him six to pay down on a coal truck.

Q. And you gave the warrant to Trooper Hall?

A. I gave it to Trooper Hall.

Q. After you did that, what, if anything did you or your husband do that you know of?

A. Well, after that we went

back and was talking to Edgar.

Q. Okay. We anybody there when you was talking to Edgar?

A. I don't recall whether anyone else was there or not. Edgar wasn't one to talk in front of crowds. He kept everything private. When he talked, it was just one or two persons, no more than two hardly unless - - very seldom did he talk in crowds.

Q. What did Mr. Jones, if anything, tell you at that time?

A. Well, he said the only way was to get to Ray-Mac was through their equipment. And I don't recall exactly how he said or what was said at that time.

Q. On Wednesday?

A. On Wednesday we went back. After we took Danny with a warrant - - I just can't recall.

Q. Did you discuss with him anything that you had done the previous day?

A. I told him about the gun - - oh, I had ordered some Uzis, also, from Donahue. I had called Donahue and told him I wanted some Uzis and carbines and stuff.

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Q. When did you call Mr. Halbert?

A. I called him Tuesday and told him what I needed. And I discussed this with Edgar. I told Edgar what I had done.

Q. What did you tell Edgar?

A. I told Edgar I had ordered Uzis and carbines from Donahue Halbert and ammo so we would have enough if it kept on.

Edgar said that was good. He said that he would see that I got my money back. He said it had to be in a way where it could not be traced back to him. He said he would reimburse me for the money.

*** *** ***

Q. Now, when you -- strike that.

Do you remember anything else that Mr. Jones stated at that time? Did you go back up to the tipple or go anyplace else, or do you remember?

A. At the present I can't recall right offhand.

Q. Did you have occasion on Wednesday to see Morris Ray Hall again?

A. Morris Ray, he was working up there at Bryan. Of course I seen Morris Ray because I went back up to the mines.

Q. Did you send him to get anything for you on Wednesday or do you remember?

A. On Wednesday I recall sending Phillip Dale to get guns and ammo from Donahue. But I sent Morris Ray on a Wednesday later on to get guns and ammo.

Q. Now, on Wednesday evening did you have an occasion to see any of these Defendants?

A. I seen all the Defendants--well, not all, I am sorry. I did not see all.

Q. Did you have occasion

specifically to see Jason Moore?

A. Yes, I did.

Q. How did you come to see Jason?

A. He came to the house.

Q. What happened when he came to the house?

A. He brought a list of ammunition and stuff that he needed.

Q. What if anything did he state to you at that time?

A. He told me what he wanted.

Q. What did he tell you?

What did Mr. Moore, Jason Moore state to you?

A. Jason said that they needed the guns and ammunition but --

Q. (Interrupting) Did he say what he needed the guns and ammunition for?

A. Yes, to fight Ray-Mac. We needed to stop Ray-Mac because we didn't have everything it took and they had more. And in -- before Jason came to the house, can I go back to that?

Q. Yes, ma'am.

A. Okay, I have come back -- I went back in Edgar's office and German was there it seems liked and they were talking -- they were talking about going into the hills.

Q. They being Jason Moore -- Edgar Jones and German Stumbo?

A. Yes.

Q. What did either of them say or he said what?

A. They were talking about the way to get to Ray-Mac was through their equipment and going up in the hills and shooting at it, but they -- I don't know exactly, that was just part of the conversation. I don't know if German was up there or not.

Q. This was earlier in the day on Wednesday?

A. Yeah.

Q. Do you see Jason -- you said Jason came down to your house on Wednesday evening?

A. Yes, he did.

Q. And he brought the list of something?

A. He brought me a list of

ammo that he needed. He said --

Q. (Interrupting) Go ahead, what did he say?

A. He said that's what all the men needed, the ammo that he had.

Q. Did he make any statements to you at that time as to what if anything he had done that day?

A. He had been -- I'm jumping to Thursday when I start to repeat that. I don't recall.

Q. What if anything did you do after you obtained the list from Mr. Jason Moore?

A. I called Donahue Halbert.

Q. What did you tell Donahue Halbert and what did he say to you?

A. I told Donahue what we needed.

Q. That being what?

A. Ammunition. And he said he'd have it. And he told me to send someone over there to get it.

Q. Did you tell Mr. Halbert what the ammunition was for at that time?

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A. He knew what it was for.

Q. Did you tell him what it was for at that time?

A. Yes, I did.

Q. Did he make any statements to you at that time in regards to what it was for?

A. Donahue was really talking to me about it, he was talking about it because there had been more people coming to get ammunition from him besides us.

Q. Did he state that?

A. Yes.

Q. What did he state?

A. He said German had been over to get some and others.

Q. Now, did you send someone down to Donahue's?

A. Yes.

Q. Who did you send?

A. As I recall it was Phillip Dale.

Q. Phillip Dale Moore?

A. Phillip Dale Moore.

Q. What if anything did you give Phillip Dale Moore?

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A. I gave Phillip Dale a check and a list.

Q. The same list that you got from Jason?

A. Yes, sir, it was.

Q. The check was what kind of check?

A. Calamity Coal Company.

MR. SELF: Mr. Marshall, I ask you to hand the witness what's previously beenmarked for identification as Government Exhibit AA.

THE CLERK OF THE COURT: Your Honor, the exhibit which has previously been identified as Government Exhibit two letters of the alphabet A has now been marked for purposes of trial as Government Trial Exhibit 114.

THE COURT: While that's being done we'll be in recess for ten minutes till 3:30. The jury's recessed and the not now admonition is in effect, you understand that? Is there any objections?

MR. SELF: No objection.

THE COURT: Please leave the courtroom.

THE WITNESS: May I go?

THE COURT: Yes.

(Reporter's Note: The Court was called to recess at 3:22 P.M.)

THE COURT: You may excuse the remainder of the Court for ten minutes.

THE MARSHALL OF THE COURT: This Court is in recess for ten minutes.

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REPORTER'S NOTE: The Court reconvened at 3:35 P.M.

THE MARSHALL OF THE COURT: District Court is again in session. Please be seated and come to order.

All Defendants, all counsel, and all members of the Jury are present in the Courtroom.

THE COURT: Thank you, sir. Are we ready to proceed?

MR. SELF: Yes, Your Honor. Mr. Marshall, please hand what is now marked for identification as Exhibit 114 to the witness, please.

THE MARSHALL OF THE COURT: All attorneys have viewed Exhibit 114.

THE COURT: Thank you.

REPORTER'S NOTE: At this time the Marshall of the Court handed the witness Exhibit 114.

Q. Ms. Booth, have you ever seen that document before?

A. Yes, I have.

Q. And when did you first see it?

A. Well, first time I sent

it out, I gave it to Phillip Dale, and I had signed everything except filling in for the amount, and sent to Donahue.

MR. SELF: At this time I move for the introduction of what has previously been marked for identification as Government's Exhibit 114.

THE COURT: Let that which is marked as Government's Trial Exhibit 114 is finally admitted into evidence as Government's Trial Exhibit 114.

(Whereupon Government's Exhibit 114 was duly received, marked, and made a part of the record.)

MR. SELF: Thank you, Your Honor.

Q. Ms. Booth, the check that you have in front of you, what number is it?

A. 111.

Q. On what account is it drawn?

A. Calamity Coal Company.

Q. And the date of it?

A. The 2nd, the 18th, in '82.

Q. And who is it made payable to?

A. Donahue Halbert.

Q. Did you fill in the date

and who it's made payable to?

A. Yes, I did.

Q. And the amount of that check?

A. Two hundred sixty fifty.

Q. Did you fill in that amount?

A. No, sir, I didn't.

Q. Did you fill in the written amount, two hundred and sixty dollars and fifty cents?

A. No, sir, I didn't.

Q. Did you sign your name and your husband's name to that check?

A. I think I did.

Q. Does it look like your writing?

A. My signature looks the same, but mine and Phillip's is so much similar that it is hard to tell.

I probably did.

Q. And is it endorsed on the back?

A. Yes, it is.

Q. What name is written on the back of it?

A. Donahue Halbert.

Q. And is that the check you gave to Phillip Dale Moore on Wednesday evening?

A. Yes, sir.

Q. Explain why it's dated Thursday?

A. To make sure that there was money in there to cover it. It was postdated.

Q. For the next day?

A. Yes.

Q. Now, Ms. Booth, when you gave that - - did you give that check to Phillip Dale Moore?

A. As I recall I did.

Q. And what else did you give him besides the check?

A. I gave him the list of what we needed of the ammunitions.

Q. And prior to - - did you have any conversation with Donahue Halbert before you sent him down there again?

A. Yes. I called Donahue up on the phone and asked him if he had all this, and he said yes.

At one point in time, I don't specifically know which time when I talked to

him, I think it was this time. I asked him about other guns besides the Uzis and the carbines. He had something, but Phillip Dale had called back from his place, and he didn't have it and they wanted to substitute another gun or something. But I don't recall exactly which gun it was.

Q. Do you remember anything either you said to Mr. Halbert or he said to you on Wednesday evening?

A. On Wednesday evening? Just about the ammunition, and he is talking about the fighting up on the - - you know, about fighting with Ray-Mac and stuff. But he kept repeating it, he won't do anything to help Edgar, he couldn't stand Edgar, but.

Q. He was doing it to help - - did he state who he was doing it to help?

A. He was doing it to help us pertaining - - well, to us. But I think Donahue - - this is my opinion, I may be wrong.

Q. Don't give your opinion.

A. Okay.

Q. Just what Mr. Halbert stated to you?

A. He was helping us.

Q. Now, did anyone go with Mr. Phillip Dale Moore on Wednesday evening?

A. As I recall it was Lee Jones that went with him.

Q. Who is Lee Jones?

A. He was Phillip Booth's cousin.

Q. Did he work for you or was he employed by you in any of your mines?

A. Yes, he worked for us.

Q. Now, on the previous evening, you had stated that Eugene Tackett went with Phillip Dale Moore?

A. Eugene did go with Phillip Dale.

Q. Do you know an individual by the name of Ed Tackett?

A. Yes, I do.

Q. Was it Eugene Tackett or Ed Tackett that went with Phillip Dale?

A. They could have both went. I recall Eugene going, but the way those guys go, if you know the way they are in McDowell, when one goes somewhere a whole crew of men goes. And if Ed Tackett did go, it doesn't mean Eugene didn't

go.

Q. Now, this time that you sent Mr. Moore, was there a group of men at your house again?

A. There was always a lot around. There was a lot of men there when he went.

Q. Approximately how many?

A. Maybe about fifteen or maybe even more. A lot of them was the employees and others.

Q. In regard to these Defendants over here, Ms. Booth, do you recall any statements that any of these gentlemen made on Wednesday evening?

A. I can't really say, they was talking, but I can't be strict and say which one said what. It had been two years, and that there was men out there, and I stayed away from the men. Except Raymond was the only one that came in the house.

Q. Raymond who?

A. Raymond Hall.

*** *** ***

Q. And did you talk with Mr. Hall?

A. See, he talked more or less to Phillip. He might have spoke a few words to me, but both of the men respected me.

Q. And what did he say to Phillip?

A. They was just talking about going up in the hills the next morning. As I recall, Wednesday, after Phillip Dale-- Okay. I am getting ahead of myself.

Q. Did you have discussion with some of the defendants after Phillip Dale left, or after he come back?

A. After he came back.

Q. Who was the discussions with?

A. They was all sitting around the kitchen table.

Q. Who is they?

A. As I recall, it was Phillip DAle and Phillip--I'm not sure about Hermit. Ranny, they was talking about going in the hills, and Phillip Dale had made a remark that he didn't want to go back in the hills and get killed.

Q. What did any of the other gentlemen that you just stated say back to him?

A. They was all just laughing about it. They all just-- I don't think they really thought about getting hurt. They was making a joke about it, that is all.

Q. Okay. Mr. Moore come back to your house that evening, Phillip Dale Moore?

A. Yeah, he brought the ammo and stuff back.

Q. What did he bring back?

A. He brought back the list that I had sent after. He brought the ammunition back. And he brought back the slip from Donahue, and they brought back also a .25 automatic, I think it was that day. As I recall on one occasion he brought back a .25 automatic.

Q. Did he bring back a 9 millimeter on another occasion?

A. Yes, he did.

Q. What happened to the ammunition that he brought back?

A. He left it at the house right then.

Q. Was there any other

ammunition there, other than what Mr. Moore had brought back?

A. Well, there was some left, but they hadn't took all completely out that day.

Q. And what happened to the .25 automatic?

A. Lee Jones kept the .25 automatic. He said he was going to give it to his girl friend.

Q. And the invoice that Mr. Phillip Dale Moore brought back, is it similar to the ones you have in front of you, or that you had in front of you?

A. The one that Lee brought that night on the .25?

Q. No. The invoice from Donahue Halbert?

A. That is the invoice that Phillip Dale brought back on the 9 millimeter.

Q. And was it filled out?

A. Yes--oh, I'm sorry, sir. It's-- You keep talking about the invoice that Doanhue where we bought ammunition and stuff.

Q. The one on Wednesday, did Mr. Moore bring back another invoice?

A. Yes, he did. He brought it back.

Q. Was it filled out?

A. Yes, it was, but it was still blank up at the top.

Q. Okay. What did you do with that invoice?

A. Well, I put it away right then. Then after I thought about it for a while, I done away with it, too.

Q. Done away with it being--

A. (Interrupting) Tore it up.

Q. What did do with the ammunition that Mr. Phillip Dale Moore brought back?

A. Well, it remained there at the house until the next morning.

Q. What happened the next morning?

A. Phillip and Glen took the ammunition and guns out to the men that was going back up in the hills that day.

Q. Prior to leaving, or as he was leaving, did Mr. Booth or Mr. Glen Thornsbury make any statement to you as to where they were going?

A. They didn't say exactly which place. If they did, I didn't pay any attention, but--

Q. (Interrupting) Who said what?

A. Prior to that, before Thursday morning came in, Eugene was going--was worried.

Q. Eugene Tackett?

A. Yes. Eugene went home early. He was there, and he was going into the hills the next morning.

Q. What did he state to you?

A. Huh?

Q. What did Eugene say to you?

A. He said he was going home early so he could get some sleep and get out and get and go back out in the hills the next morning.

Q. Did anyone else make any other statements that you can recall at this time?

A. Seems like there was more made, but as I recall them--but Eugene, I distinctly remember, he went home early.

Q. Eugene worked for you all

at that time, didn't he?

A. Yes. And he was Phillip's cousin.

Q. And how was he employed by you all?

A. He was, at that time, I dont' know whether he was a foreman or just a worker. I think he was just working.

Q. Now, what happened on Thursday? Did Mr.-- When they left Thursday morning, did Mr. Booth state where he was going?

A. He said he was taking the guns and ammunition to the men that was going into the hills.

Q. And what, if anything, did he take with him or did you see him take with him?

A. He took the ammunition and stuff that Phillip had brought, and all the guns he brought back that night. He took those out, too.

Q. Did you see some guns that he brought back the evening before?

A. I seen him bring guns in, but knowing what type of guns, I don't.

Q. After they left, what, if

anything, did you do?

A. Well, after they took that out, it was-- The shooting had started early, evidently. I went up to the office, to Edgar Jones' office, and there is helicopters and state polices all around. And they said that some of the men--

Q. (Interrupting) Wait a minute, who did you talk to?

A. I talked to Edgar Jones.

****

Q. What did Mr. Jones say to you?

A. He did then say they -- the men was trapped in the hills.

Q. Anything else?

A. German had made it -- German's side had made it.

Q. What did Mr. Jones tell you? Was there someone else besides Mr. Jones?

A. Mr. Jones was there, possibly Angie. I was so scared -- there wasn't nobody besides Angie and Edgar, because Dwayne was out running around trying to see what was going on, too.

Q. Who is Dwayne?

A. He worked for Edgar.

Q. Dwayne Little?

A. Dwayne Little.

Q. Now, what did Mr. Jones state to you at that time? Did he make some statement to you? You indicated something about German.

A. He said that German was an old hand at it, and he could take care of everything.

He also -- he also said that -- not to worry about Panhandle because they was used to these hills. You know, they was timber rats that were practically raised in the hills.

And he said the only way they could get at Ray-Mac was through the equipment.

Q. Was this Thursday morning?

A. Yes.

Q. What all did he say at that time in regard to the equipment?

A. Okay. He also -- he said the equipment had to be done away with, that people like that the only way you could fight them was doing away with the equipment, he said hitting them where it hurt.

And we also was discussing either Wednesday or Thursday, one of these occasions, where I met with them, brought up about a tipple.

The tipple was under lease, Ray-Mac had -- Edgar had tried to get a tipple at Simpson Branch under lease and Arnold Turner or somebody -- but Ray-Mac had got it, and he

was furious over that.

Q. What did he say?

A. He said that -- said Ray-Mac couldn't get by with running -- operating that close nonunion, he will have to pay royalties and everything. Said he wasn't going to allow that, and he was going to have something done to his tipple. He was going to have it done away with.

Q. And this was either Wednesday or Thursday that Mr. Jones made this statement?

A. Yes, sir, it was.

MR. HARWELL: If the Court please, for the purpose of the record I would like to note an objection on the same basis as we approached the Bench on previously.

THE COURT: All right.

MR. HARWELL: Thank you, Judge.

THE COURT: Let it be noted and be overruled.

MR. SELF: Thank you.

Q. Now, when you talked with Mr. Jones on Thursday morning, did he direct you to do anything? Or did you go do something on your own?

A. He wanted me to go check and see about -- see if I could hear anything about the men. I went and I checked, and I couldn't hear anything except that German's side had got up --

Q. (Interrupting) Don't, don't. Who did you hear this from?

A. Well, I don't even recall who I heard German's side got out.

Q. Where all did you go, Ms. Booth?

A. I went up to the tipple and back at Frasure's Creek and around. And Jason came by the house, and Jason said that German's side had got out, too, but said Panhandle's side was still trapped.

Q. Now, you referred to an individual by the name of Panhandle.

A. Ed Moore.

Q. Panhandle is a nickname?

A. Yes, it is a nickname.

Q. Okay. And was this day the first day you heard Mr. Jones mention Panhandle?

A. No, no. On several occasions he had referred to the timber rat and said Panhandle and German Stumbo when we were going

to send men in the hills to find out where to send the men where they wouldn't get shot at on the highway.

Q. Did you have occasion to go back to Mr. Jones' office on Thursday afternoon?

A. Several times I was in and out, because they was -- was worried about the men, and I was checking to see if anybody heard anything. I didn't know whether they was dead or alive, and I was scared. I was really worried over them.

Q. Was there a point in time that you and your husband met with Edgar Jones on Thursday evening?

A. Well, Edgar had told us --

Q. (Interrupting) Did you meet with Edgar Jones on Thursday afternoon and Thursday evening, you and your husband, Phillip Booth?

A. Yes, we did.

****

Q. Who else was present other than the three of you?

A. As I recall, Phillip Dale was present.

Q. What, if anything did anyone state during that meeting?

A. Edgar had told Phillip for him to take a vacation and to have proof where his whereabouts was, and make sure he had proof of it because there was things was going to happen that he would get the blame for.

I asked Edgar what do you mean, and he said, "Pearl, the shit is going to hit the fan this weekend." He said, "They was going to do away with the equipment."

Q. Did he say who was going to do away with the equipment?

A. He said the timber rats would take care of that.

MR. HARWELL: May the Court please, the record reflects the same objection.

THE COURT: All right.

Q. After this, do you remember anything else Mr. Jones said or that you said in reply to it?

A. Well, at this moment I don't.

Q. What, if anything, did you do at that time?

A. After that, we - - I left. I went and I - - I didn't quit going looking for the men. After I got back home, Phillip was afraid to go up over across the hill there at Ray-Mac and check on the men. He asked me to go.

So I went across the hill into Pike County and seen if I could see the men anywheres, but I couldn't see them.

But I went back home after - - I went and told Edgar they weren't across the hill, and then I went on to the house.

Q. And you met Mr. Jason Moore, you said he came down to your house?

A. Yes, he did.

Q. Did he mention anything to you about looking for a coon dog or a dog?

A. He said that is what he had told the S.W.A.T. team, or some of the guys that stopped him, and asked him what he was doing out - - when he was out looking for those guys. He said he lost a coon dog or something. And he was out looking for

those guys at that time, he said.

That is when he - - he said German was all right, he was out, but the other men he didn't know whether they was dead or alive. He didn't know.

Q. Did you go anywhere on Thursday?

A. Later on that night.

Q. Where did you go?

A. I went to Winchester.

Q. Who went with you?

A. Me and the kids. As I recall, Ms. Mosley was with me.

Q. Was your husband with you?

A. He went separate.

Q. When did you come back to McDowell?

A. Sunday.

Q. What time Sunday?

A. Well, it was Sunday afternoon.

Q. What, if anything, happened Sunday afternoon?

A. Well, when we got there, my brother was there. He came up there, and Benny

came up after that.

Q. Benny who?

A. Benny Caudill.

Q. What, if anything, did Mr. Caudill state to you?

A. Benny did say that the equipment was being blowed up or had been blowed up, and my brother said there had been an explosion.

Q. What, if anything else, did Mr. Caudill state? Did he state where the equipment had been blowed up?

A. Ray-Mac's equipment, and he said that German and Panhandle had taken care of it, yes.

Q. What, if anything, did you do after that?

A. Well, I just stayed there around the house.

*** *** ***

Q. Did you have an occasion on the next day, on Monday the 22nd to see any of these Defendants?

A. Yes, I did.

Q. Who did you see and where was it at?

A. At Em Pack Restaurant at McDowell.

Q. Where is that in relation to the hospital at McDowell?

A. It's just right -- it's a few hundred feet from the hospital.

Q. And how did you come to go to the Em Pack Restaurant?

A. I was getting ready to go to the hearing and Phillip had left me there and he told me to come over to the restaurant where he would be at. So, I went on up there.

Q. Okay, when you got there, who was there?

A. Well, all the men that had to go for the hearing and Edgar and Phillip.

Q. Did you have a conversation with any of these men?

A. Well, I walked in and

Phillip was sitting alone with Edgar and I went over and sat down. And Phillip left us. He talked for a little while and then he just couldn't sit still. Anyway, I was talking to Edgar. Edgar said it was not over with yet. He said he's just like J. R. Ewing sitting back at South Fork while everything else was getting done.

Q. Did he make any other statements at that time, Ms. Booth?

A. Just that -- as I said a while ago it wasn't over.

Q. Did you leave from there and go to Prestonsburg?

A. Beg your pardon, he did make another statement.

Q. What did he say?

A. He said that he was mad at Cobb Turner and Junior Hamilton.

Junior Hamilton had just talked --

Q. (Interrupting) What did he say, what did Mr. Jones state to you?

A. He said Junior Hamilton is not going to get by talking about him over whiskey to -- to Cobb -- Cobb Turner was joking

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Phillip and going on over at the restaurant, Pack's Restaurant, and he got mad over that. And he said there's no way that Junior Hamilton was getting by about talking about him with Cobb Turner.

MR. HARWELL: May it please the Court, I ask the record to reflect an objection on the same basis as heretofore articulated for the record.

Q. Did you and Mr. Booth and Mr. Jones then go to Prestonsburg?

A. Well, we sat around and talked for a while.

Q. Was Phillip there too, did he come back?

A. Phillip -- Phillip didn't leave the restaurant, I don't know where he went. I was sitting there talking to Edgar and Edgar was talking to me. Okay, then we left and went to Prestonsburg.

Q. Okay, after you come back from Prestonsburg did you have a meeting with Edgar Jones?

A. After we came back?

Q. Yes.

A. Yes.

Q. And what, if anything, did Mr. Jones tell you at that time?

A. He told me there was nothing else we could do at that time except getting in more trouble and put our men back to work. He said right now we had to let it die down but it was not over.

Q. And make reference to what it was, you said it wasn't over?

A. He said -- he just said it wasn't over with Ray-Mac, you know, that's all he said, it was not over with Ray-Mac.

Q. And based on his instructions, what if anything did you do?

A. I told the men to go back to work.

Q. How did you get in touch with the men?

A. They were around the house.

Q. And had your men worked in Calamity Mines -- had the men in Calamity Mines worked since the Monday of the previous week?

A. They had not worked none.

Q. Had the men at Bryan

worked?

A. They had worked -- excuse me. They had worked moving up a belt line.

Q. Ms. Booth, why was it necessary for Mr. Jones to tell you to put your men back to work?

A. He said because they couldn't do anything else right now, if they did, they'd run up in more trouble than they already had.

Q. Well, you were -- you were one of the owners of Calamity and Bryan Mines, wasn't it your decision to put the men back to work or not?

A. No, it was his decision.

Q. Why is this?

A. He told us everything to do.

Q. In relation to what?

A. In relationship to work or anything else.

Q. What did he -- strike that.

Would you explain what you mean by that?

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A. What I mean, Edgar, we done as Edgar told us to do. If he told us to go dig a ditch we dug a ditch. Anything he wanted done we done or we'd lose the men, he kept a tight string on us.

Q. During the week of February the 22nd, did you have an occasion to send Morris Ray Hall to run some errands for you?

A. Yes sir, I did.

Q. And where did you send him?

A. I sent him to Donahue Halbert's.

Q. Prior to sending him to Donahue Halbert's had you talked to Mr. Halbert about any matters other than what you've already testified about?

A. I talked to him about the Uzis and the carbines which I testified about. And there's nothing I can recall at the present.

Q. How did you come to send Morris Ray down there on the date that you sent him down there?

A. Well, Donahue had called me and said they were in.

Q. What did he tell you?

A. He said that the Uzis I ordered was in and the carbines. And I got ahold of Morris Ray at the mines and I told him to go pick up the guns and stuff for me.

Q. And what if anything did you give Mr. Hall?

A. I gave him a check.

Q. Who was this check drawn on?

A. Calamity Coal Company.

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

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THE CLERK OF THE COURT: Your Honor, the Exhibit which has previously been identified as Government Exhibit alphabet letter 2B is now being marked for the purposes of the trial as Government's Trial Exhibit 115.

THE MARSHALL OF THE COURT: The Exhibit has been seen by all counsel, Your Honor.

THE COURT: Thank you.

You may proceed, Mr. Self.

Q. Ms. Booth, have you ever seen that check before?

A. Yes, I have.

Q. And how did you come to see it?

A. I gave it to Morris Ray to take to Donahue.

Q. And when was that?

A. On the 24th.

Q. The 24th of when?

A. February 24th, 1982.

MR. SELF: Your Honor, at this time I move for introduction which has previously been marked as Government Exhibit 115.

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

THE COURT: All right, let that which has been marked as Government Exhibit 115 be finally admitted into evidence as Government Trial Exhibit 115.

Q. Ms. Booth, Government Exhibit 115 in front of you, who is it made payable to?

A. It's made payable to cash for Donahue Halbert.

Q. And what portion of that check did you fill in?

A. The signature and the date.

Q. Did you fill in the payee?

A. No, I did not.

Q. It's made payable to whom?

A. It's made payable to cash and at the bottom it says for Donahue Halbert.

Q. And the amount of that check?

A. One thousand seven hundred and sixty-two dollars and nine cents.

Q. And is it endorsed on the back?

A. Yes.

Q. And the name that appears on the back of it?

A. Donahue Halbert.

Q. Mrs. Booth, what did Mr. Halbert bring back from - - what did he bring back to you?

A. He brought back two Uzis, two carbines and a crate of 9 millimeter shells.

MR. SELF: Mr. Marshall if you would, I ask you to hand the witness what's previously been introduced into evidence as Government Exhibits 71 and 72.

Q. Ms. Booth, have you ever seen those before?

A. Yes, I have.

Q. Where did you see them?

A. Those were ours - - or it looks like ours anyway.

Q. Is that the type of weapon that Morris Ray Hall brought back from Donahue Halbert?

A. Yes, sir. It was.

Q. You did not examine the serial numbers at the time?

A. No, sir.

Q. Did he bring back any yellow sheets with them, any 4473's?

A. I don't recall whether he brought back the papers - - I think he brought back everything he was supposed to bring back with them.

Q. In addition to those two weapons, what else did he bring back?

A. Two carbines, .30-30 caliber - - .30 calibers.

Q. And some ammunition?

A. Yes, I don't know - - I don't recall exactly how much ammunition was brought back for that.

Q. And did you keep those two Uzis in your possession for a while?

A. Yes.

Q. After you got them back from Mr. Hall on the 20th - - was that the 24th of February?

A. As I recall it was, yes.

Q. What if anything did you do with them at that time?

A. I took them to the office. I took one to the office and showed it to Edgar. And Edgar said this is what we needed.

MR. HARWELL: May the Court please. Note an objection for the record.

THE COURT: All right.

Q. Did he state anything else about it?

A. He said that we'd get the money back for them because if anything else happened we'd be prepared.

Q. Now, the two Uzis that Mr. Hall brought back, when did you last see them prior to today?

A. I think it was around August the 28th or 29th.

Q. And what happened to them at that time?

A. The Government seized them.

Q. Mr. McCallister, Government Agent seized them at that time?

A. Yes, sir.

MR. SELF: Mr. Marshall, that's all of those two at this time.

Q. Ms. Booth, after the Wednesday or Thursday of that week was there any additional guns or ammunition that was other than these and the .30 calibers that were brought back to your house?

A. Not as I recall, no.

Q. Was any of the ammunition

returned to you?

A. Oh, yeah. I think - - now, as I recall Jason was to bring back some guns that were used in the hills.

Q. Did you see Mr. Moore with the firearms?

A. He brought some back to the house, they was supposedly be my brother's.

Q. Did you talk to Mr. Moore before he brought them back?

A. Yes, I kept trying to get them from him all the time but he kept saying he couldn't get them at that time.

Q. And did he have occasion to know to bring some weapons back to your house?

A. Yes, he brought them back.

Q. What did he bring back?

A. He brought back two guns, I don't really know what kind he brought back. I think one was a .243 but the other one I am not sure of.

Q. Did you examine the serial numbers on them or anything?

A. No, sir.

MR. SELF: Mr. Marshall if you would,

would you hand the witness what's been previously marked for identification as Government Exhibit 109. It's the one with the scope, Mr. Marshall.

Q. Ms. Booth, have you ever seen that rifle before?

A. It seems like I have.

Q. When did you see it?

A. During all that trouble, I'm not sure where it come from, it looks familiar though.

I'm not that familiar with anything - - I know the automatic - - I know the carbines and the 30-30's, and the Uzis I don't know this gun. The only way I know a 30-30 is my little boy has a bicentennial one.

Q. Have you ever seen one like that before?

A. Yes, I have, but.

Q. Do you remember where you first saw it or last saw it?

A. When it was taken in the hills?

Q. I'm asking you Ma'am.

A. Yeah.

Q. Did you ever have a gun like that around the house during this period of time?

A. I had - - it was not mine, it seemed like there was one around the house.

Q. Do you know what happened to the one that was around the house that was like that?

A. Sir, I couldn't be sure unless - - everything I got, we got quite a bit, but everything got gone during that strike when it was pulling.

MR. SELF: Thank you, Mr. Marshall.

Q. The two guns that Jason Moore bought back with him - - brought back to you, do you know what happened to them?

A. Well, the two - - I had called my brother, they were supposed to be his.

Q. What did you do with them?

A. Well, first off when he brought them back I went and got a blanket and wrapped them up in it and put them on the fence - - on the other side of the fence in the neighbor's house. But then I called my brother and told him to come and get the guns that Jason had brought his guns back.

Q. Did your brother come down to your house?

A. He came to get them.

Q. Did he take them with him?

A. Yes.

Q. And how many guns did he take with him?

A. As I recall it was two.

Q. Did you have an occasion to later go back up to your brother's in regards to those guns?

A. Yes, I did.

Q. And who did you go with?

A. Richard Kemp.

Q. And at that time what happened?

A. I had told Richard about the gun and my brother, he gave them to Richard.

Q. And was the guns your brother gave to Richard the same guns that Jason Moore had brought back?

A. As far as I know they was.

Q. Did they appear to be the

same guns just from outside observation of them?

A. Yes, they did.

Q. Was one of them similar to the one you have just been shown?

A. Yes, it had the scope.

Q. What was the other one like?

A. I'm not really sure.

Q. Do you know the caliber of it?

A. It was just a big gun.

MR. SELF: Mr. Marshall, would you hand the witness what's been marked for identification as Government Exhibit 108.

Q. Have you seen that gun before, Ms. Booth?

A. I think -- I think this is one that come from my brother's house that Richard Kemp got.

Q. Does it appear to be the same or a similar-looking weapon?

A. Yes, it does.

Q. And the weapon that you got from your brother, was that the same weapon that Mr. Jason Moore had brought back to you?

A. I don't believe -- I don't recall.

MR. SELF: Thank you, Mr. Marshall.

Q. Other than talking with Mr. Jason Moore at that time did you have an occasion during this same week, the week of the 22nd of February to have further conversations with Edgar Jones?

A. Did I have more conversations with Edgar?

Q. Yes.

A. I don't know what you mean.

Q. Did Mr. Jones ever mention a tipple to you, Ms. Booth?

A. Oh, yeah, he mentioned that several times. Edgar says that the tipple had to be taken care of.

Q. Did he describe where the tipple was or by name or location or ownership or any other matter?

A. The tipple was at Simpsons Branch, but he didn't -- somehow Cobb Turner or Cobb Turner or Arnold Turner and Nick Cooley had owned the property and he had wanted to

lease it and they would not lease it to him but they had leased it to Ray-Mac and it had to be done away with.

Q. Did he say why it had to be done away with?

A. Because --

MR. HARWELL: (Interrupting) May the Court please I'd like the record to show an objection as to that question and answer and to the question and the answer that's about to come.

THE COURT: All right.

Q. Did he say -- did he make any statements as to why it had to be done away with?

A. Because he was not going to put up with that bigger company running nonunion while he had to run union plus Nick Cooley and Arnold Turner had all the time trying to hurt him.

Q. Did he say anything -- what if any other statements did he make in relation to that tipple?

A. He just said that the tipple had to be destroyed.

Q. Now, did you have any further discussions with any of the Defendants in

regards to this tipple?

A. I have talked to Benny Caudill several times about it.

Q. Specifically when did you first talk to him about it?

A. I think it was first brought up during the trouble with Ray-Mac on one of those occasions.

Q. What did Mr. Caudill say then?

A. He said that Ray-Mac had it under lease and something would have to be done about it.

Q. Did you have an occasion to talk with him there around the weekend of the 26th?

A. I talked to him on Friday and he told me that they were planning on burning the tipple.

Q. That would have been the 25th of February?

A. Well, I don't really know exactly what the date is. His anniversary was supposed to fall on Saturday is what he told me. So it's the day before his anniversary.

Q. What did Mr. Caudill tell you at that time?

A. He told me he was making arrangements to have the tipple burned. He said we might have to put money in on it. And he said he was going to get Panhandle and Basil Ray to take care of the tipple. I think he told me that later on, I don't think he said that right then. He said the tipple was being taken care of and we would not have to put money in on it. He said he was going to use me as an alibi and Phillip. He said it was his anniversary and he was going to his brother's and to the Pizza Hut and then he came back to my house on Saturday night and he said the tipple was being burned and that's when he told me that I would not have to put no money in on the tipple being burned which I never agreed to put any money in to start with. That--that German and Teddy had paid to have the tipple burned.

Q. This was Saturday night?

A. That was Saturday night.

Q. Did he state to you who had burned the tipple?

A. He said Panhandle and Basil Ray.

Q. Now, during this same week, the week of the 22nd, did you have occasion to talk with -- other than ordering guns, did you have occasion to see Donahue Halbert?

A. Donahue Halbert came down to the house, I think it was on the 24th or something like that. I don't remember the exact date, but it was that week. But ATF had been by his house --

Q. (Interrupting) What did Mr. Halbert say to you?

A. He told me he needed a pack of 35 millimeter shells to make up for what he should have in his office and at his shop. He said he got a box from German and if he'd get a box from me it would make up for what he needed because the ATF had been around checking him out and to cover his books and stuff he had to have another box of 35 millimeter shells which I so happened to have and gave to him.

Q. Did he state anything else that you can recall, Mrs. Booth?

A. He said that way it would cover us both.

Q. Did he make any statements in relation to the violent activities that occurred up at Ray-Mac?

A. Just that it couldn't be traced back to him. I can't recall any other statement because he was drinking a lot.

Q. Mrs. Booth, what happened to the two .30 caliber carbines that you had that you had purchased from Donahue Halbert?

A. What happened to them?

Q. Do you know?

A. I am at a loss. I really don't-- I don't recall what happened to them.

Q. Do you know what happened to any of the other weapons that you had up there at your house?

A. No, I don't, not all of them. I couldn't tell you where anything is.

Q. Do you know what happened to any of the ammunition that you had up at your house?

A. Oh, okay. The ammunition that was left, the Government seized. And I think they seized the carbines. I am not sure. See, I was in jail at that time when the guns was taken. No, I am wrong. It was all seized by the Government to the best of my opinion.

Q. Are you still--or prior to your incarceration, were you still involved in the mining business?

A. No, sir, I am not.

Q. And when did you cease becoming involved in the mining business?

A. After I was arrested.

Q. And prior to that, that was August 29, 1983?

A. Yes, it was.

Q. Now, prior to that, were you still operating Bryan and Calamity Coal Company?

A. Yes, we was. We was operating Bryan. I am not no sure about Calamity. I seem to remember Edgar closing Calamity down.

Q. How could Edgar Jones close your mines down?

A. Because he wanted to.

Q. Were you still operating

as Bryan Coal Company?

A. We was operating under Calamity. And he just started pulling equipment.

Q. Who owned the equipment?

A. Well, Edgar did.

Q. Were you leasing it?

A. All he was--all Phillip had was his batteries he put in and the money he put in on roof bolts and everything, the upkeep of the mines. Edgar owned the equipment.

Q. Who hauled the coal out of your mine or from the mine?

A. Some of Edgar's trucks that hauled for JRM.

Q. And were you responsible for paying the truckdrivers?

A. No, he paid the truck-drivers.

Q. Were you responsible--were you all responsible then for paying the men?

A. Yes, we had to pay the men.

Q. And as the employer, did you have the authority to hire and fire men who worked for you?

A. It is according. If Edgar had a grudge against them, no. But if-- Most of the time, we had to check with him before we could hire anybody.

Q. Did there come a point in time that the name of Bryan Coal Company was changed to something else?

A. Yes, it was.

Q. Do you know when that occurred?

A. After the trouble with Ray-Mac.

Q. And what name had it changed to?

A. Edgar had asked his miners, his contract miners to change their mines over to something resembling Ray-Mac. So Phillip called his Big-Mac.

Q. Did Mr. Jones state why it was necessary to change names?

A. WEll, that way, they wouldn't be obligated to the union. The union couldn't force them to pay anything.

Q. And did the union status of your mine change at that time?

A. As far as I know, yes. Well, it was never a run union anyway.

Q. Which wasn't?

A. Well, the mines was not operated as a union mine.

Q. What do you mean?

A. Well, nobody went by the rules of the union.

Q. In what respect, Mrs. Booth?

A. Well, the men--usually when they are union, they go with seniority and stuff on the rate of pay and everything. It was never that way.

Q. Who determined how much they were going to get paid?

A. Well, a lot of times we did. But Edgar--Edgar determined who the men was we hired. And it was just not a run union.

Q. Were union dues withheld from your employees?

A. The union dues--union royalty was paid by Edgar. It was a contract--what was paid. At the end, he gave us a two dollar a ton raise on the ton.

Q. Did he state why he was

giving you a two dollar a ton raise?

A. It was after the trouble with Ray-Mac.

Q. Did he state why he was giving you a two dollar a ton raise?

A. He was quit paying the royalties.

Q. To whom?

A. To the union.

Q. Mrs. Booth, how much education to you have?

A. I graduated from high school.

Q. Any education beyond that?

A. No.

Q. Where did you go to high school?

A. Wheelwright. And I wasn't very smart in school.

Q. Where did you go to high school?

A. At Wheelwright High School.

Q. Okay. I am sorry.

Mrs. Booth, did you enter into a plea agreement with the United States in return

for your testimony here?

A. Yes, sir, I did.

Q. Was that agreement that you would not be charged with any crimes in relation to Ray-Mac if you pled guilty to the charge which you are previously serving right now?

A. Yes, sir.

Q. Was any promises made to you as to what you would be sentenced?

A. I wasn't-- The Government agreed that I would get no more than six months in prison; but when I was sentenced, I got two years.

Q. Did the Government agree that you would not get six months or agree to recommend--

A. (Interrupting) You agreed that you would--the Government would--

Q. (Interrupting) Recommend?

A. Recommend.

Q. As part of the plea agreement you were not guaranteed that you would be sentenced to any amount?

A. That is right, sir.

Q. Was part of that agreement that you testify truthfully in this case?

A. That is right, sir.

MR. SELF: Just a moment, please, Your Honor. Just a moment, please, Your Honor.

Q. Mrs. Booth, at the time your mine changed names, did any of the other mines that were working for Edgar Jones change their names, also?

A. I think also, as I recall, I think Earl and Phillip Adkins changed their names. And maybe some of the others. I don't really know.

Q. You're presently involved in litigation in regard to that matter at this time, are you not?

A. Pardon me?

Q. Are you engaged in litigation, civil litigation in regard to that matter at this time?

A. Yeah.

MR. SELF: Just a moment, please, Your Honor.

Q. Mrs. Booth, were you ever repaid by Edgar Jones for any of the money that you spent?

A. I was never paid directly. If I was paid, it was through a phony coal company that

was made up through B & B Coal Company where they sold the coal from Junior Hamilton.

MR. WALBOURN: I object. May I approach the Bench, please?

THE COURT: Yes, sir.
(Bench conference as follows:)
MR. WALBOURN: Your Honor, I simply object to anything going into the-- She doesn't know that she was repaid or if it was a phony company that involved stolen coal as I understand here, I object to this entire line of questioning. It is nothing but prejudicial and not relative or probative of anything regarding allegations of this Hobbs Act conspiracy.

MR. HARWELL: May it please the Court, I likewise would object to it. It is highly prejudicial. Her answer was I don't know. And why we go into the rest--

MR. SELF: (Interrupting) I will go no further with it.

MR. PAFUNDA: I would like to question the witness out of the presence of the jury. This is the third time this has happened. And Judge, I would like to see this not go any further.

MR. WALBOURN: He has gotten the point he wanted. And now he says I am not going to go any

further. He has gotten in about a phony coal company and stolen coal in front of the jury. And he says we will close the door.

MR. SELF: I can go into it, Your Honor, but it is going to point to Mr. Jones and Mr. Benny Caudill directly. I can if they want me to. If you want, you can advise the jury to strike the last answer and disregard it. I have no objections to that.

MR. SPENCER: It's hard to strike once it is in the minds and once it has been heard.

THE COURT: Do you object to it or not?

MR. SPENCER: I object.

THE COURT: I sustain the objection.

MR. PAFUNDA: At this time, in view of the Court's sustaining the objection, I move for a mistrial on the basis it appears the answer has already been heard by the jury.

THE COURT: Let your motion for mistrial be noted and overruled.

MR. WALBOURN: Another matter I think that is probably appropriate at this time, I would like to make a motion concerning this witness's testimony as to what-- And I didn't raise everytime

Someone said something because I know the Court is going to make a determination sometime whether the Government has proved--

THE COURT: (Interrupting) Right.

MR. WALBOURN: However, in all honesty, I heard no statement uttered by this witness other than admissions by some further party. There is no statement whatever saying Mr. So and So told me they were going to do this. There was never anything that was during the course of or furtherance of a conspiracy. All for admissions of someone else. And I would like to advise the jury that statements made by any of the defendants that they be used solely as admissions against that person and not against any of the other coconspirators.

MR. SELF: Statements of conconspirators are furtherance of the conspiracy.

MR. WALBOURN: I thought we had a Court to make that determination. I didn't think we had a determination. Edgar Jones says get the timber rats out. I don't know whether that is a furtherance against these defendants.

THE COURT: Let your objection be noted at this point. At this point, they are overruled, but you can bring it up later.

(Reporter's Note: End of conference at the Bench.)

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THE COURT: Ladies and gentlemen of the Jury, I believe the question was asked has Edgar Jones ever paid her. She said she didn't know. And then she made some additional statements. The additional statements - - when she said she didn't know, any additional statements would be incompetent.

You won't consider those. You will remove those from your mind. She just said she didn't know whether Mr. Jones had paid her back or not.

Do you understand? All right.

MR. SELF: Just one moment, please.

THE COURT: Yes, sir.

MR. SELF: No further questions.

THE COURT: The Jury will be in recess until tomorrow at 11:00 o'clock.

Now, between now and that time, you understand you are under the not now admonition. It means you are not to discuss the case among yourselves or permit anyone to discuss the case with you nor to discuss the case in your presence.

Remember no newspapers, no radios, no television regarding this matter. Do you understand you are not to make up your minds

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finally upon the issues of this matter until you have heard all of the evidence. That is the evidence here in the Courtroom togehter with the Court's instructions.

Are there any objections or corrections?

MR. SELF: Your Honor, may we approach the Bench just a moment before the Jury is excused.

THE COURT: Yes, sir.

REPORTER'S NOTE: Whereupon a Bench Conference was held and the following was heard:

MR. SELF: Just a point of clarification. Are you thinking those arraignments are tomorrow?

THE COURT: No, sir.

MR. SELF: I was thinking you were thinking they were tomorrow and that is why the Jury was coming back.

THE COURT: No, sir. 11:00 o'clock.

MR. WALBOURN: Your Honor, I missed the point of clarification by counsel here.

THE COURT: 11:00 o'clock.

MR. HARWELL: Judge, after you excuse the Jury, there is another brief, new matter which I

would like to bring to the Court's attention and make an oral motion on if I might after the Jury goes out. It will only take three or four minutes, Your Honor. It pertains to this witness. It is new.

THE COURT: Okay. We will see.

MR. HARWELL: Thanks, Judge.

(Whereupon the Bench Conference was concluded)

THE COURT: Mr. Marshall, you may excuse the Jury until 11:00 o'clock tomorrow morning.

THE MARSHALL OF THE COURT: The Jury has left the Courtroom.

THE COURT: You may excuse the witness until 11:00 o'clock tomorrow morning.

WITNESS: Okay. Thank you.

THE COURT: Gentlemen, my secretary is typing up the thing with regard to the appointed counsel. It is an order which you must read in order to make your applications for refunds of expenses and also some partial compensation. If you will wait after this is finished, Mrs. Mayfield has got that prepared. Then you can use that tonight. You have to submit a voucher or something or claim.

I first put on the order.

Then you submit a voucher and claim. Then you get an order from that. That ought to be done first.

Mr. Self, are you through?

MR. SELF: I have just a motion in limine to make, Your Honor.

THE COURT: All right.

MR. SELF: Your Honor, at this time I would like to move in limine that prior to cross examination that - - two matters:

One, that before Mrs. Booth is asked in regard to specific statements that counsel be advised of where those can be found before the question is asked. If they are talking about the mini-hearing, I am just asking if counsel would just lean over and say, you know, page so and so and so and so.

If they propose to go ask in regard to any kind of a transcript or anything like that, Your Honor, I would ask them to advise the Court beforehand and approach the Bench before they try to impeach them by a prior inconsistent statement where it has been reduced to writing.

I would also move the Court in limine, Your Honor, that prior to inquiring of this witness as to any matters covered by either Rule

404Bor 404 or 609, that we approach the Court and advise the Court of the nature of the questions that they intend to ask the witness before they are asked in front of the Jury.

That has to do with any type of impeachment by either a crime or other bad acts. I just move in limine that those be brought to the Court's attention before the question is asked and before the cat gets out of the box.

**** *** ****

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MR. HARWELL: May I respond, Your Honor?

THE COURT: Yes, sir.

MR. HARWELL: May Your Honor please, as this Court occasionally reminds us, we are all professionals here. I think we all know how to cross examine now. I object vehemently to what the Government wants done. What they want to do is to strip cross examination down and have us constantly break, giving this witness an opportunity to analyze and so forth and so on. Judge, cross examination is about as --

THE COURT: (Interrupting) Well, I think it is proper if you are going to cross examine someone about written statements.

MR. HARWELL: A written statement, Judge?

THE COURT: Yes, sir, or statements that they might have made before the Grand Jury or a minihearing. I think when it has been reduced to writing, or a page number or question number, then I think you're entitled to a page number and question number.

MR. SELF: Rule 613A so provides, Your Honor.

MR. HARWELL: Well, for purposes of

the record, I am well aware of the loss.

Would it be agreeable with Your Honor if I deliver them a letter tomorrow and set forth those pages or question numbers on which I intend to rely so as not to have to be constantly breaking and interrupting and running over and whispering to them and handing them a note during the course of cross examination.

MR. SELF: No problem with that, Your Honor. That would be fine. He doesn't have to give me a letter. Just write them down so we will be able to flip through them accurately.

THE COURT: Well, I think this, gentlemen: When you are talking to the witness and you are going -- and it is about a subject matter which everybody has a transcript, they are entitled to know what you're talking about, to look at that page and see that you're asking the question properly. And I think if the witness -- if the witness requests -- even before the witness answers, they can request to read that back themselves.

MR. HARWELL: May the Court please, I believe that rule says that it is necessary to advise adversary counsel, and the basic provision as to 613 is -- it has to do with the disclosure of

counsel designed to protect against unwarranted insinuations of statements made when the fact is to the contrary.

And Your Honor, I am sure Your Honor in his days as a trial lawyer and Prosecutor recalls it used to be trial technique to say Mr. Witness, isn't it a fact that you are an S.O.B., and so and so said it when there is no good faith basis for that.

And I think that is what this rule is designed to get around.

THE COURT: I am saying this: The Government -- or a person on the other side -- if the Government was doing it, you would be entitled. If the Government is going to impeach someone with something in writing, you are entitled to it when they talk about it. Now, get back to the original statement, let's assume a witness is sitting up here and you said the witness didn't say so and so. The witness can say may I see that before the witness answers.

MR. HARWELL: 613A says, Judge, in examining a witness concerning prior statements made by him whether written or not, the statement need not be shown nor its contents disclosed to him at

that time.

But on request, the same shall be shown or disclosed to opposing counsel.

That is what I am saying, Judge.

THE COURT: I am saying this: If the witness requests to see it, we will let the witness see it.

MR. HARWELL: On a prior written statement?

THE COURT: Right.

MR. HARWELL: All right.

THE COURT: This isn't cat and mouse.

MR. HARWELL: I didn't think it was either, very frankly, Judge, until this past week. Now I respectfully don't agree with the cat and mouse statement.

THE COURT: It might be cat and mouse between you gentlemen, it is not cat and mouse between you and this Court.

MR. HARWELL: Well, I agree with that. I didn't mean to imply to the contrary, Judge.

Judge, the second thing is, I object -- I object to the necessity of having to approach the Bench as to certain impeachment

questions to get the Court's clearance. I have, on occasions, if you will recall earlier in this trial, I believe approached the Bench when I felt like I might be on tenuous ground.

THE COURT: Well, if you think you are on tenuous grounds, approach the Bench.

MR. HARWELL: That's right.

THE COURT: If you don't think you are, you stay there.

MR. HARWELL: Thank you, Your Honor. Judge, when Mr. Self finishes with his matter, I mentioned I want to address the Court very briefly.

MR. SELF: Your Honor, in regard to the latter, I have asked the Court for a prior ruling on any impeachment under 404B that prior to asking or inquiring of the witness on many matters covered by Rule 404B that those be cleared by the Court.

THE COURT: What is 404B?

MR. SELF: Any prior bad acts, Your Honor.

MR. HARWELL: I thought Your Honor just ruled on that laying the burden on us to make that judgement.

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MR. SELF: Your Honor, I think the Court has to make a determination under the Rule as to whether they are covered by Rule 404B. If the cat is out of the bag, it doesn't do any good for the Court to rule on it.

THE COURT: As to this, gentlemen, if they make a mistake, I will tell the jury. These fellows are professionals. They know when they can walk. They know when they foul. And that is a foul that we have right there. So they are doing it at their own risk.

MR. SELF: Your Honor, I don't want to face the Court with a problem of asking --

THE COURT: (Interrupting) I don't worry about what you want. I mean I am not being demeaning or anything like that.

MR. SELF: I know that, Your Honor.

THE COURT: I understand the thrust of it, and I want to do this, you know. But let them-- the cat is on their backs. If they make a mistake, let them do it.

MR. SELF: My statement was I would hesitate to come to the Court to ask for a mistrial, also; but if that situation is necessary, it is manifest necessity. I will so do.

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THE COURT: Well, we have been in this same block.

If we have a mistrial, it will be tried in Lexington.

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

MR. HARWELL: Judge, I just have one other thing on 404B. I guess I wouldn't feel so strongly as I do in opposition with Mr. Self except sauce for the goose is sauce for the gander.

THE COURT: Yes, sir.

MR. HARWELL: He didn't give us the benefit of that sauce on other acts.

THE COURT: We have got this right here, gentlemen. You gentlemen know the rules and you abide by them.

MR. SELF: Your Honor, let me make one other statement for the record. In regard to --

THE COURT: (Interrupting) Let me get back to this. I do not want to see this tried in Lexington. I think any of these gentlemen are entitled to be tried before home folks. That is the way I feel.

And I -- just like I felt in the minihearing, I felt they were entitled in the minihearing to hear what was being said. You

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are entitled to advanced notice, and we have got this gentlemen.

MR. SELF: Your Honor, I totally agree with the Court.

THE COURT: Well, we are covered. So let's go on.

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MR. SELF: The other matter is one group of tapes Mr. Harwell represented to the Court, the copies of the tapes that we provided to him, that was the group of tapes which were provided back in September, Your Honor.

I have examined those. Those appear to be copies that Mr. Harwell made from my copies, and they are not copies that we gave him. They appear to contain the same lettering, but just physically examining the tapes, they don't appear to be the tapes or the copies which were provided, but as he states, copies from those copies and I can't take issue one way or the other from them.

I am sure - - I know he had them copied for all counsel, but I think the record indicated that those were the actual ones we gave him when they were in fact not.

THE COURT: Gentlemen, I understand you and Mr. Harwell don't see eye to eye on the tapes. I think it's you've got plenty on both sides on the tapes, and there is no need to.

MR. HARWELL: I have one matter, Your Honor, which I would like to approach the podium on.

THE COURT: Yes, sir.

MR. HARWELL: I don't have it in writing

yet, but if Your Honor wishes after I have been heard I will get it in writing tomorrow morning.

May the Court please, comes now the Defendant, Edgar Jones, and moves this Honorable Court for an order prohibiting any communication between the witness, Pearl Booth, who has now taken the stand, begun to testify, with any lawyer, any parties, any Federal Agent, or any representative of either the Prosecution or Defendant in this cause.

May the Court please, in support of this motion, I cite the Court to Geders versus United States. That case was decided on March 30th of 19 hundred and 76. The cite on it is 425US80.

THE COURT: Geders versus U.S.?

MR. HARWELL: Yes, sir. Geders, Your Honor, I may be mispronouncing. It is spelled (Spelling) G - E - D - E - R - S.

THE COURT: Oh, not (spelling) G - E - T - T?

MR. HARWELL: No, sir. And specifically, I direct Your Honor's attention to page eighty-seven as to that opinion where in the Supreme Court says it is the Judge's power to control the progress,

and within the limits of the adversary system, the shape of the trial includes broad power to sequester witnesses before, during and after their testimony.

Sequestering a witness over a recess called before testimony is completed, serves another purpose. With any improper attempts to influence the testimony in light of that testimony that has previously been given.

May Your Honor please, I do not think that given the fact that this woman has begun to testify, given the fact that her testimony is critical, that it would be proper for me or the Government, or its agents, or any defense lawyers, to talk to her. She should now be left along to testify without anybody helping or rehearsing or assisting, but rather let her testify all the way through on direct and on cross.

Judge, I don't think I need - - it is a factual predicate for this in this very case. I cite Your Honor to the testimony of the mini-hearing of Mr. Phillip Booth before lunch versus after lunch.

His testimony where before lunch this was union activity, and after lunch, Mr. Self went back two or three days as I recall in

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time, and started saying now wait a minute let's talk again about Monday, and a number of highly incriminating statements were made.

Nobody is hurt, Your Honor, if you will issue this order, and we respectfully ask for it.

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

MR. PAFUNDA: Judge, does that mean I can talk to her tonight? I am not being smart, but does it really?

MR. SELF: Your Honor, the Court is well aware that David Justice, counsel for Pearl Booth is here, and has been here during the course of her testimony.

There may be certain matters that come up during the course of the testimony, and we may wish to approach the Bench and ask permission if that does happen that rather than having him come out of the Courtroom that we have a Bench Conference in chambers here, and the Jury be taken out.

THE COURT: I don't know. What are we talking about, bad acts?

MR. SELF: I don't know, Your Honor.

I just - - that is what I don't know. I have got a feeling they are going to try to bring up matters that I have never heard of, don't know anything about - - THE COURT: (Interrupting) What is her attorney going to do unless something is used incriminating under the Fifth Amendment? That is the only thing he can protect her against.

MR. SELF: That is exactly right, Your Honor.

MR. JUSTICE: May I address the Court, Your Honor?

THE COURT: Yes, sir.

MR. JUSTICE: David Justice with Creech and Curtis in Ashland, Kentucky, and I represent Pearl Booth.

That is the only reason for that motion. I only want to approach the Bench in case defense counsel wants to bring up a specific prior bad act.

Only something that might incriminate her which - - and I am only wanting to approach the Bench for that very reason.

THE COURT: She can refuse to answer on the grounds of self-incrimination.

MR. JUSTICE: Your Honor, I may want to

be able to advise her of that, or ask the Court to advise her of that.

MR. SELF: My comment is if we go to the Bench, and it becomes likely that it could pertain to that, rather than me turning around and the Court saying Mr. Justice come up here, we could let the Jury go back and have it. That was my only point, Your Honor.

I am not Ms. Booth's attorney, Your Honor. And that is where it comes down to.

MR. HARWELL: I guess it's like a lot of things, Your Honor, we might be getting to the bridge before it's time to cross it.

But as a matter of fact, I want to put the Government on notice, given our right to have broad cross-examination, subject to Your Honor's judgement, we are going to be knocking on this door and asking to strike her testimony if there is a lot of taking of the Fifth Amendment during the Cross-Examination.

THE COURT: What are the grounds for impeachment, gentlemen? I didn't know you could go into specific acts for impeachment.

MR. SELF: That is what my motion

limiting is all about, Your Honor.

MR. HARWELL: Judge, we have got a brief on that, and with the Court's permission, I will bring it tomorrow morning. It is not in here in these boxes, but I will bring it to the Court.

THE COURT: Yes.

MR. WALBOURN: Your Honor, I try an awful lot of cases down here, and I have had the Government come bearing bringing evidence in and then saying oh we are not showing this, this is a bad actor, Judge. We think the Jury is entitled to show under intent and all that. It is a two-way street.

We can show her knowledge, intent, motive, plan and all that, as well as the Government can.

THE COURT: You gentlemen do it at your risk. I think the Federal is a little more liberal than the State on impeachment.

MR. WALBOURN: It is.

MR. SPENCER: A lot more.

When you keep saying doing it at your own risk, there is some attorneys here that don't, specifically don't want a mistrial here because of the circumstances.

Mr. Rowland, Mr. Hollon, myself, we don't want to go through another trial like this, because this would - - I am - - some people may not, some may say they want to, I don't want a mistrial.

THE COURT: I will say this, it's like going in swimming.

MR. SPENCER: Your Honor, you have thirteen attorneys here, and we have - - I have no control over what Mr. Harwell asks, what - - we will say Mr. Kirkland asks, or one of these others, I can't control it.

I am sitting here not objecting to some things just because I think they want it in, I'm trying to be cooperative. I don't want to be cooperative to a mistrial.

THE COURT: No. But I think if I am not mistaken in Federal - - well, on State it's only - - it's only the felony, which must be some relation or something like that.

MR. WALBOURN: There is a difference between impeachment and prior criminal record and impeachment, or showing other acts of the witness.

There is - - the Federal Rule, of course, says that it has to be - - it

could be any crime going to truth or honesty. But the Court still has to conduct a balancing test on a conviction. There are ways to impeach other than with just a felony conviction.

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THE COURT: Right. The Court is aware of that, but as you say, it is a two-way street. There is ways of getting around that. When you start using it just at liberty to get around it, I am going to tell the jury.

MR. WALBOURN: That is your function, Your Honor.

THE COURT: Right. I am going to say hey that little fellow is doing this, trying to influence you.

MR. SPENCER: I have had that done in the State Court. I don't think -- that is kind of harsh. You can put it in there so it stands, you know that, I know that, and the rest of them here. And when you start putting it in there, we have got eighteen defendants and nine more attorneys, and we don't know -- have no control over someone else. That is the only thing I know, Your Honor.

THE COURT: Well, if you are doing something under the guise of a rule, knowing darn well it is wrong, why shouldn't they know what you are doing?

MR. SPENCER: I wouldn't do it, number one. I have got to have good faith, but there is nine other people here I have no control over.

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THE COURT: Right, I understand. Is this all, gentlemen?

MR. SELF: I think just the matter of the opinion of the Court on the motion for the continuance.

THE COURT: What?

MR. SELF: The matter of the Defendants that moved to continue this trial after her cross examination, the Court took it under advisement.

THE COURT: You will know tomorrow at eleven o'clock, won't you?

MR. PAFUNDA: If it please the Court, on the jury instruction, I mentioned those to the attorneys for the Government as well as passed them around to the other defense counsel, and I will run copies of these off tonight.

THE COURT: I apologize, gentlemen, for not making the copies. I just thought Mr. Pafunda had said he would make the facility of his office available, and I thought I would give him a chance to do that.

MR. PAFUNDA: At a dollar a page.

THE COURT: Mr. Marshall, we will be in recess until tomorrow morning at eleven o'clock.

THE MARSHALL OF THE COURT: All rise, please. This Court is in recess until eleven A.M.

(Reporter's Note: Court recessed at 4:55 P.M.)

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STATE OF KENTUCKY)
)
) SS.
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COUNTY OF JEFFERSON)

We, BRUCE D. HANDY, WILLIAM J. KALBFLEISCH, & JAMES E. EDMONDSON, Notary Publics, within and for the State at Large, do hereby certify that the foregoing proceedings were taken before us at the time and place and for the purpose in the caption stated; that the witnesses were first duly sworn to tell the truth, the whole truth, and nothing but the truth; that the proceedings were reduced to shorthand writing by us in the 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 20th day of February, 1984.

Bruce D. Handy
Notary Public

William J. Kalbfleisch
Notary Public

James E. Edmondson
Notary Public