

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

TRANSCRIPT OF TRIAL

BEFORE: THE HONORABLE G. WIX UNTHANK

DATE: FEBRUARY 21, 1984

VOLUME THIRTY-FOUR

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PEARL BOOTH:

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1 REPORTER'S NOTE: The Court
2 was called to order at
3 11:18 A.M., E.S.T.

4 THE MARSHALL OF THE COURT: District Court
5 is again in session. Be seated and come to order,
6 please.

7 Your Honor,
8 all Defendants and all counsel are present. The
9 Jury remains in the Jury Room.

10 THE COURT: All right. Now, gentlemen,
11 on the motion for a continuance, a formal order will
12 be placed in the record and I will note the objection
13 of the parties hereto. The entire matter in a sense
14 is a fishing expedition, and it is stated or contend-
15 ed that by reason of some statements which were found
16 that there is a good possibility that other statements
17 will be found.

18 The Court is going to do
19 this: It is going to continue the case and, of course,
20 the parties will be permitted to keep fishing. And
21 the cross-examination of Mrs. Booth will be made
22 based upon what information you have.

23 The other witnesses will be
24 called, they will be examined and cross-examine, and
25 if upon the conclusion of the proof for the United

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1 States the Defendants so desire, the witnesses may
2 be recalled for purposes of examination on matters
3 which have been discovered.

4 The Defendants, if the
5 Defendants do not desire that they be recalled before
6 they introduce their proof, if they desire to intro-
7 duce any proof, then the Defendants may introduce
8 their proof; and upon the conclusion of their proof,
9 they may request these witnesses be brought back for
10 further examination upon additional matters at that
11 time.

12 If they so desire, they can
13 do that.

14 That will be the ruling of
15 the Court on the matter of the continuance.

16 As I say, an order will be
17 placed in the record in accordance with what I have
18 stated.

19 Now, I guess, Mr. Walbourn,
20 I am directing this specifically to you. The Court
21 is not persuaded that 404B or 404A is an exception
22 to 607 or 609.

23 Now, 404A specifically
24 states character evidence of the witness will be in
25 accordance with 607, 608, and 609. There is a

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1 specific exclusion in 404A.

2 404B, although it states any
3 character evidence which might appear to be - - 404B
4 might appear to be an exception, 41ALR FED. 498 to
5 499 states that it has not seen any cases wherein
6 404B is applying to anyone other than a Defendant.

7 So gentlemen, if you are
8 going to be impeaching, attacking credibility,
9 character such as that of a witness, it will be
10 in accordance with 608, 607 or 609.

11 Mr. Walbourn made the
12 statement for many years he has been on the other
13 side, which is true. Similar acts, circumstances
14 such as that, but I think during that time Mr.
15 Walbourn you were a Public Defender representing
16 Defendants, and 404B - - I mean 404 applies - - of
17 course, it has the exception in there as to victims,
18 but it states that - - and that is 404B.

19 Apparently according to the
20 article in 41ALR FED, it is an application to the
21 Defendants.

22 All right. Gentlemen, are
23 we ready to have the Jury brought up?

24 MR. SELF: Yes, Your Honor.

25 THE COURT: Mr. Harwell, your motion

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1 to dismiss the indictment by reason of prosecutorial
2 misconduct is overruled.

3 MR. HARWELL: Yes, Your Honor.

4 THE COURT: All right. Bring the Jury
5 up.

6 THE MARSHALL OF THE COURT: Yes, Your Honor.
7 The jury is in the courtroom.

8 THE COURT: All right. Gentlemen, do
9 you waive the call of the jury?

10 MR. SELF: Yes, Your Honor.

11 MR. HARWELL: Yes, Your Honor.

12 THE COURT: All right. Please have
13 the witness return to the stand.

14 Mr. Justice and Mr. Harwell
15 and Mr. Self, please.

16 (Reporter's Note: At this time a Bench
17 conference was held; whereupon the follow-
ing was heard:)

18 THE COURT: Gentlemen, how shall we
19 handle Mr. Justice's presence here? The only thing
20 I know we are going to have to somehow or another--
21 we're going to have to tell the court that the witness
22 wants to talk to her attorney. And the only way I
23 know--

24 MR. HARWELL: (Interrupting) There may
25 be an option if Your Honor wants to exercise it and

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007

1 if the Government has no problems with it. If it is
2 a matter of-- We could put a chair by the witness
3 box for the counsel.

4 THE COURT: I I think that would be the
5 best.

6 MR. HARWELL: I would like for him not to
7 have direct eye contact with her if that is agreeable.

8 MR. JUSTICE: I am not asking for that.
9 I think that is proper if Mr. Self desires that. But
10 I am not asking for that.

11 MR. SELF: I don't think it would be
12 appropriate to call more attention to Mr. Justice's
13 presence than absolutely necessary.

14 THE COURT: If she is going to-- Let's
15 do this: He comes up the first time, then sits over
16 there. And thereafter, you remain there. Until the
17 first time, you remain back by Mr. Self.

18 MR. HARWELL: I kind of agree that it may
19 not be necessary. The nature of this would be the
20 agreement of this witness to having total use of
21 immunity. In paragraph 5, it says that if Pearl and
22 Phillip testify for the government, it will not be
23 used against them. Then I think that has to do with
24 the Fifth Amendment. And I think there will be no
25 problem with that maybe.

1 MR. SELF: That applies to Ray-Mac
2 only.

3 MR. HARWELL: Mr. Self, that is your
4 judgment, and I have mine.

5 THE COURT: We will deal with that
6 when it comes up, gentlemen.

7 (Reporter's Note: End of conference at
8 the Bench.)

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

11 THE COURT: Yes, sir.

12 Madam Clerk, would you
13 inquire of the witness if she still recognizes her
14 oath.

15 THE CLERK OF THE COURT: Yes, Your Honor.
16 You were sworn in this trial yesterday. Do you still
17 recognize that you are under a continuing oath?

18 THE WITNESS: Yes, ma'am, I do.

19 MR. HARWELL: I have got a lot of papers.
20 If Your Honor will indulge me for just a minute, I
21 will get kind an organized podium, and if the jury
22 will indulge me a second or two here, I will get
23 everything straightened out I hope.

24
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1 MR. HARWELL: With the Court's permission,
2 may I proceed now.

3 THE COURT: Yes, sir, please.

4
5 CROSS-EXAMINATION

6 BY MR. HARWELL:

7 Q Mrs. Booth, you and I
8 met on a previous occasion in this Courtroom, did
9 we not?

10 A Yes, we did.

11 Q And that was back during
12 another hearing before this Judge. Is that right?

13 A Yes, sir.

14 Q And in that hearing, you,
15 very much like in this hearing, raised your hand and
16 took the oath and swore to tell the truth and got
17 in the witness box. Isn't that right?

18 A Yes, I did.

19 Q All right. Mrs. Booth, have
20 you had any conversations with Mr. Self or Mr. Kehrli
21 or Mr. Dause or any of these Federal Agents in the
22 last week or ten days?

23 A Yes.

24 Q All right. Have any of those
25 people told you anything about the opening statement

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1 that I made to this Court and this Jury back on
2 January whenever it was?

3 A. I don't recall any statement
4 that you might have made about me or anything.

5 Q. Ma'am, I am asking you if
6 any of these men passed on to you any comments
7 concerning my opening statement to this Jury. You
8 weren't here. You didn't hear it. Did any of these
9 people tell you what I said?

10 A. I don't recall. If they
11 did, it is not to my knowledge.

12 Q. All right. Let me ask you
13 this, Mrs. Booth: Who have you talked to in the last
14 two weeks amongst the Agents and the Prosecutors
15 in this case?

16 A. Well, I have talked to Mr.
17 Self. And - - concerning the case you mean, or just
18 talked to?

19 Q. Well, I would suspect that
20 the bulk of the talk you had with them concerned the
21 case. Was there something else that you all talked
22 about?

23 A. I have been in jail. They
24 was checking on me is all. We didn't talk about no
25 case.

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1 Q Mr. Self came over - -
2 A (Interrupting) Now, I'm
3 not saying Mr. Self didn't. Okay, we will get to that.
4 Me and Mr. Self just talked
5 the day before yesterday when I first -- the day before
6 I came in here.
7 Q I see. And that talk had
8 to be with your testifying in this case, didn't it?
9 A We reviewed it.
10 Q What did you review?
11 A I don't know specifics.
12 Q You don't remember the day
13 before yesterday what it is you reviewed?
14 A Well, just my testimony.
15 Q You mean transcripts of
16 prior testimony?
17 A No. What I was going - -
18 what I had said, what I was going to say.
19 Q Did he tell you questions
20 or type of questions that were going to be asked?
21 MR. SELF: I'm going to object and
22 ask the Judge for an admonition to the Jury about
23 there is nothing wrong with witnesses talking to
24 attorneys in this case.
25 THE COURT: Mr. Harwell.

1 MR. HARWELL: May the Court please,
2 I am entitled to question this witness as to any-
3 thing that she reviewed or any conversation she
4 had nonprivileged in nature in anticipation and
5 preparation for her testimony.

6 I know of no rule of law
7 that prohibits it, and I know many rules of law that
8 provide for that, Judge. I'm surprised at the objec-
9 tion.

10 THE COURT: Well, approach the Bench.

11 REPORTER'S NOTE: Whereupon
12 a Bench Conference was held
13 and the following was heard:

14 THE COURT: There is nothing unusual
15 about you showing that she has talked with him and
16 that she reviewed her statement.

17 But now, if you are going
18 to get into the nitty-gritty and talk about that
19 and talk about this, etcetera, etcetera, I will
20 sustain the objection then.

21 MR. HARWELL: May I note an objection.

22 THE COURT: Yes, sir.

23 MR. HARWELL: For the record, sir.

24 THE COURT: We are on the record right
25 now.

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MR. HARWELL: I said in my opening statement with these Prosecutors, Mr. Self and his people, that this woman was a liar. And I said that that would go to the credibility behind her testimony. And that that would have to be determined by the Jury.

*** **

1 MR. HARWELL: Determined by the jury. I
2 I think I have a right to ask her about the fact that
3 some of these gentlemen told you that you would be
4 a star witness or important witness. And isn't it a
5 fact that you sat down there and reviewed that testi-
6 mony.

7 THE COURT: Well, you can ask her those
8 questions.

9 MR. HARWELL: I misunderstood the Court,
10 and I am sorry. I thought you said I can't ask that.

11 THE COURT: I meant if-- I don't mind
12 that. That is attacking credibility.

13 MR. HARWELL: That's right.

14 THE COURT: I am talking about getting
15 down and talking about being at such and such a
16 place and with so and so being present. If you are
17 going back into the specifics of all those things, I
18 will sustain it.

19 MR. HARWELL: I am not going to stand on
20 it that long.

21 One point further, Judge.

22 THE COURT: All right.

23 MR. HARWELL: In my enthusiasm, I may
24 inadvertently go beyond what you are telling me. If
25 you would please call me or signal to me, Judge, I will

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015

1 stop. I won't do it purposely.

2 THE COURT: Okay. I don't deny that
3 you can ask that you talked with him. I understand
4 the implications of that. That is done all the time.
5 That is argument. That is part of it.

6 MR. HARWELL: I'm sure they will do it
7 with our witness.

8 THE COURT: Here's what we are getting
9 into. When he talked to her, it was part of his case-
10 load. It is also hearsay.

11 MR. HARWELL: Yes, sir, but my statement
12 is as a matter of fact, he told her to do and say
13 certain things to appear more convincing to the jury.
14 And that is something that creates an aura of credi-
15 bility. And I think it is proper that I ask her
16 about those things and weren't you told to look at
17 the jury frequently.

18 THE COURT: Ask her the question.

19 MR. SELF: If it please the Court,
20 I have asked that you admonish the jury when he is
21 finished and admonish them that it is acceptable to
22 talk to the witness.

23 MR. HARWELL: I object to that. It is
24 not necessarily objectionable. When I get into ques-
25 tions, I think you will better understand that it

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1 might be acceptable. He can rehabilitate her on
2 redirect.

3 THE COURT: Okay. Go ahead, gentlemen.

4 (Reporter's Note: End of conference at
5 the Bench.)
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00 017

1 Q Mrs. Booth, you and I
2 were talking about conversations you had with Mr.
3 Self and these other folks up here when we
4 approached the Bench. Let me get back to that/
5 topic if I may.

6 You said that you reviewed
7 some things the day before yesterday with Mr. Self
8 if I recall your prior statement. Is that right?

9 A Yes.

10 Q All right. Where was
11 that review?

12 A At the County Jail.

13 Q And who was present?

14 A Mr. Self.

15 Q Just you and Mr. Self?
16 Was anyone else present?

17 A There was another --
18 there was another guy with him, let me think who
19 it was.

20 Q Is it this gentleman
21 here, Mr. Farrar, was he there, this agent?

22 Can you see these people?

23 A I can see the people,
24 okay?

25 Q All right.

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1 A. Mr. Self is the one I
2 recall, there was another man with him, but at the
3 present I don't recall which man it was. I was
4 talking to Mr. Self.

5 Q. Do you recall, ma'am,
6 even though you don't recall which specific
7 individual if it was any one of these five gentlemen,
8 three Government lawyers and two agents?

9 A. I think it was none of
10 the -- none of the agents was with Mr. Self, I
11 don't think.

12 Q. Do you think it might
13 have been one of these two lawyers, Mr. Dause or
14 Mr. Kehrli?

15 A. I think the middle
16 gentleman.

17 Q. You think it was Mr.
18 Kehrli?

19 A. Yes.

20 Q. All right, and that was
21 the day before yesterday?

22 A. Yes, sir.

23 Q. How long were they with
24 you down there at the jail talking with you?

25 A. It wasn't very long.

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019

1 Q Yes, ma'am. Can you be
2 a little more precise, was it fifteen minutes,
3 or forty-five minutes?

4 A About thirty minutes to
5 an hour, something like that. I don't really know
6 for sure. I didn't keep track of the time. I was
7 just glad to have some company.

8 Q I see.
9 What is that you
10 reviewed? Did you all talk about the case or did
11 you see something, were you given something physical
12 like a piece of paper or your Grand Jury testimony?

13 A Pardon me?

14 Q In the meeting the day
15 before yesterday with Mr. Self and the other
16 gentleman, maybe Mr. Kehrli, what did you review?

17 Were you given any
18 papers, had you any papers?

19 A Yes.

20 Q Did you have your
21 Grand Jury testimony?

22 A Yes.

23 Q Did you have your
24 testimony from the minihearing?

25 A Yes.

1 Q Did you go over that with
2 these gentlemen?

3 A Yes.

4 Q And you had that for
5 a period of time, had you not? You didn't just
6 get it the day before yesterday, did you?

7 A No , sir, I got it the
8 day before yesterday, I beg your pardon.

9 Q You got it the day
10 before yesterday -- now you're talking about the
11 minihearing and the Grand Jury testimony. Is
12 that right?

13 A That is correct.

14 Q And when they left
15 there, when they left the jail, did you give them
16 back your Grand Jury testimony and the minihearing
17 transcript or did you keep it?

18 A I gave it back.

19 Q You gave it back when
20 they left that day?

21 A Pardon me?

22 Q I'm trying to determine
23 whether you had it just for the meeting or whether
24 as a matter of fact you had it for a period of time
25 after the meeting, Ms. Booth, which is it?

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1 A. I gave it back the next
2 day.

3 Q. The next day which would
4 be yesterday, is that right?

5 A. Yes.

6 Q. I see.

7 And you had it down
8 there at the jail overnight, did you not?

9 A. Yes, sir, I did.

10 Q. And the truth of the
11 matter is, Ms. Booth, you reviewed that, you read
12 through those transcripts, didn't you?

13 A. Well, sir, wouldn't that
14 be the logical --

15 Q. (Interrupting) Ma'am --

16 A. (Interrupting) I think
17 you did too, probably.

18 MR. HARWELL: If the Court please, I
19 respectfully ask that you admonish this witness to
20 respond to the questions and not pose questions to
21 counsel.

22 THE COURT: Just answer the question --

23 THE WITNESS: (Interrupting) I'm sorry,
24 Judge.

25 THE COURT: Just say yes if you did,

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022

1 and no if you didn't.

2 A. Yes, I did.

3 Q. All right.

4 And then you came over
5 yesterday before you began to testify, that's
6 correct, isn't it?

7 A. Yes, sir.

8 Q. Did you have any
9 conversation yesterday with Mr. Self or the
10 gentleman in the middle who is Mr. Kehrli, did you
11 talk to them before you took the stand?

12 A. I may have spoke to
13 them.

14 Q. Did you have any
15 conversation beyond just social greetings yesterday?

16 A. Not that I can recall.

17
18 it social yesterday
19 *****
20 Not

21 it social
22 Not

23
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25 Not

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Q.

All right.

Did you have any conversation with any of them or any of these Agents last night?

A.

None pertaining to the Jury, to the trial.

Q.

You did not discuss anything with them last night at all concerning this lawsuit, is that your testimony?

A.

My testimony is that they came to see how I was last night and tell me I done all right, because I was a nervous person and I'm still a nervous person.

Q.

They told you you done all right?

A.

Holding up-wise, because I was afraid something would happen to me and I couldn't take it.

Q.

Did they ever tell you Ms. Booth that you were a star witness and an important witness in this matter?

A.

Sir, I don't recall that.

Q.

You don't remember that.

All right, did they ever tell you some of the kinds of questions that I or these

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1 other gentlemen might pose while cross-examining
2 you?

3 A. That you might pose?

4 Q. Let me rephrase that Ms.
5 Booth.

6 Did any of these agents or
7 these lawyers or any representatives of the Government
8 tell you anything about what might happen, what
9 questions might be asked during your cross-examina-
10 tion?

11 A. Of today?

12 Q. Ma'am, today, last week,
13 last month. Have any of these people ever told you
14 about what type of questions or what questions might
15 be asked when the defense lawyers, including myself
16 cross-examine you?

17 A. Well, I am aware of what
18 you would ask me because you did before when I was
19 here.

20 Q. Ma'am, that's not my ques-
21 tion. My question is did any of these Government
22 lawyers or agents make any comment to you about what
23 you might expect during the time that you were being
24 cross-examined in this case, yes or no and then you
25 may explain with the Court's permission, did they or

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025

1 did they not?

2 A. Well, it's a possibility
3 that they did.

4 Q All right, do you remember?

5 A. I was - -

6 MR. SELF: (Interrupting) Objection,
7 Your Honor. I can't see the relevancy, this has
8 nothing to do with her testimony at this time.

9 THE COURT: Well, she can state
10 whether or not it was asked however, she can answer
11 whether or not she remembers what she told them.

12 MR. HARWELL: I think she said probably
13 and I think if the Court please, if I understand
14 you really and you're saying I can go into that until
15 she reaches a point where she cuts herself off,
16 is that correct, Judge?

17 THE COURT: Right.

18 Q Ms. Booth, when I asked
19 you about you having been warned or alerted or told
20 about questions or topics that you might face in
21 cross-examination you said probably?

22 A. Sir, - -

23 Q (Interrupting) Did you - -

24 A. (Interrupting) Sir?

25 Q Did you say probably or

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1 possibly.

2 THE COURT: Let her finish.

3 A. Wouldn't it be normal for
4 any witness to be told.

5 MR. HARWELL: I respectfully seek an
6 admonition by the Court please consistent with the
7 procedures and a quorum in the Courtroom.

8 THE COURT: Well, Ms. Booth do this.
9 If they told you you can expect some questions to
10 be asked of you, tell him they did, if they didn't
11 they didn't, if you don't know say you don't know.

12 THE WITNESS: Your Honor, we talked
13 about several things, I can't tell him what all
14 happened, you know, I'm told what happened.

15 THE COURT: Answer his questions.
16 Did he tell you to look out for certain questions
17 which might be asked by the defense and the defense
18 counsel?

19 THE WITNESS: Your Honor, it probably
20 was yes.

21 Q Did they tell you that
22 every chance you got during your testimony you
23 ought to throw out the name of Edgar Jones, my
24 client's name?

25 A. I don't recall anything

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027

1 like that. They told me to tell the truth and
2 nothing but the truth.

3 Q As a matter of fact, Ma'am,
4 they also told you that if I asked that sort of
5 question that you ought to say as your answer I
6 was told to tell the truth, didn't that happen
7 Ms. Booth, you don't deny that, do you?

8 A Sir?

9 Q Did they tell you that or
10 not?

11 A They told me to tell the
12 truth and they did not coach me on how to answer your
13 question.

14 Q Didn't they tell you that
15 if I ask about advice or judgements that they had
16 given you that you are to say yes, sir, Mr. Harwell,
17 they told me to tell the truth or in substance a
18 comment like that, isn't that true?

19 You don't deny that, do you?

20 A Will you rephrase your
21 question, and maybe I'll tell you?

22 Q Didn't Mr. Self or one of
23 the other lawyers or one of the agents say to you
24 before you took the stand this morning, be it yester-
25 day or the day before that if any of the defense

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023

1 lawyers ask you about what the Government had
2 suggested you say or how you handle yourself your
3 response was to be in substance "They just told
4 me to tell the truth", isn't that a fact?

5 A. I would not say it was
6 like that at all.

7
8 *** **

1 A. No, I wouldn't say it was
2 like that at all.

3 Q. Was it like that or was
4 it not?

5 A. Well, no.

6 Q. They didn't tell you
7 that?

8 A. Sir, you're getting it
9 all wrong.

10 Q. Ma'am, all I want to know
11 is --

12 A. (Interrupting) All they
13 ever told me is that they wanted me to tell the
14 truth to the best of my knowledge.

15 Q. I'll try one more time,
16 Ms. Booth, and then I'll move on.

17 THE COURT: Let's approach the Bench.

18 (Reporter's Note: At this
19 time there was a Bench
20 conference between all
21 counsel where the following
22 was heard:

21 MR. HARWELL: Your Honor, may it please
22 the Court, I know I'm hammering away with this, but
23 this witness is being evasive.

24 THE COURT: You're being argumentative.
25 She said that they told her to tell the truth, and

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030

1 she has made that statement and I think any
2 further questioning on this matter is argumentative.

3 MR. SPENCER: May I be heard, Your
4 Honor?

5 THE COURT: Yes.

6 MR. SPENCER: May the Court please,
7 my position is, she's been asked three times did
8 they tell you what you were to say to that jury
9 and I think that she is being very evasive. I
10 don't think she has answered the question.

11 THE COURT: She has answered the
12 question. I think any further questioning is
13 argumentative.

14 MR. HARWELL: If I may, Your Honor,
15 this witness said she was probably talking to
16 them, she didn't come out and say she talked to
17 them.

18 THE COURT: Well, I think we're
19 being argumentative.

20 MR. HARWELL: Judge, I'm going to
21 follow your instructions, sir, but I would strongly
22 note an objection for the record.

23 THE COURT: Let your objection be
24 noted.

25 MR. HARWELL: Thank you, Your Honor.

1 (Reporter's Note: At this
2 point the Bench conference
was concluded.)

3 THE COURT: You may proceed, Mr.
4 Harwell.

5 MR. HARWELL: Thank you.

6 Q Mrs. Booth, you have
7 told the ladies and gentlemen of the jury and
8 this Court that you met the day before yesterday with
9 Mr. Self and somebody else. You've also said that
10 you at that time received a copy of the transcript
11 from the minihearing and a copy of the transcript
12 from your Grand Jury testimony, is that right?

13 A Yes, sir.

14 Q All right. Have you,
15 Mrs. Booth, reviewed any other documents, piece of
16 paper, or tangible item in anticipation of your
17 taking the stand here in this case?

18 A I reviewed my testimony
19 yesterday.

20 Q Yes, ma'am. Have you
21 reviewed things other than your testimony?

22 A Sir, I don't know what
23 you mean, that's all I know of.

24 Q Ma'am, I'm trying very
25 diligently to make myself as clear as I can. When

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1 you read your prior testimony, you had something
2 physical, something you could hold and you
3 could feel, right?

4 A. Yes.

5 Q. Now, I'm asking you other
6 than your prior testimony, have you reviewed any-
7 thing tangible, anything you could hold or feel
8 be it letters or documents or transcript of testi-
9 monies of other witnesses or anything physical?
10 Have you reviewed anything physical other than what
11 you've told us about?

12 Do you understand me?

13 A. I really don't know
14 what you're getting at.

15 Q. I very frankly, Ms.
16 Booth, don't know how I can make myself much more
17 clear. Let me try one more time.

18 You told this jury that
19 you reviewed testimony, all right? Now, have
20 you looked at any other papers concerning this
21 matter in anticipation of you testifying in this
22 case other than the transcripts of your testimony
23 in previous hearings?

24 A. I'm sorry, but I still
25 don't know what you're saying.

1 Q Mrs. Booth, you have
2 been in Lexington at the FCI there for a period
3 of time, haven't you?

4 A Yes, sir, I have.

5 Q Okay. And then you had
6 twenty-six or twenty-seven days temporarily in the
7 Pike County Jail, have you not?

8 A Yes, sir, I have.

9 Q Okay. Now, have you
10 looked at anything, preparatory to your testimony
11 while in Lexington or while in the Pike County
12 Jail other than your testimony from the minihearing
13 and your testimony from Grand Jury appearances?

14 Do you understand that
15 question?

16 A Yes, I understand that
17 question.

18 Q Now, have you looked at
19 anything?

20 A Something of mine?

21 Q No, ma'am, anything.
22 Be it yours, be it a gift from the Government or
23 be it --

24 A (Interrupting) I have
25 had no gifts from the Government or anybody.

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034

1	Q.	Whatever, Ms. Booth.
2		Anything, have you looked at anything physical.
3		I don't know how to be more clear with you.
4	A.	I looked at paper.
5	Q.	What paper?
6	A.	Pencil, I have wrote.
7	Q.	What have you written?
8	A.	Reminders.
9	Q.	Reminders for what?
10	A.	Of what happened.
11	Q.	Reminders of what
12		happened?
13	A.	Yes, sir.
14	Q.	Did you show those to
15		the Government?
16	A.	No, sir.
17	Q.	I see. Do you have
18		them here in Pike County?
19	A.	Possibly.
20	Q.	You don't know whether
21		you have them or not?
22	A.	I don't know whether I
23		have all or not.
24	Q.	Do you have some of them?
25	A.	Yes, I do.

1 Q All right, I see. And
2 if I understand you, you wrote these things so that
3 you could kind of get yourself mentally in a state
4 to testify about the Ray-Mac situation, is that
5 right?

6 A Let me tell you, I've
7 been through a trying time.

8 MR. HARWELL: May the Court please, I
9 respectfully request an admonition. The question
10 calls for a year or no, may the Court please.

11 THE COURT: Well, I believe you can
12 ask questions, but you can't tell a witness how to
13 answer.

14 MR. HARWELL: I believe that I can't,
15 but Your Honor can, that's what I'm asking for,
16 Judge.

17 THE COURT: Ma'am, if you will do
18 this. When he asks the question, if you can answer
19 yes or no, answer it and then explain the yes or
20 the no.

21 THE WITNESS: Well, will I be allowed
22 to explain it?

23 THE COURT: Yes.

24 A Yes, I did.

25 Q Now, as the Court said

1 you may explain it.

2 A. Okay, I've been through
3 a trying time and amongst this I've lost everything
4 I've had, my kids, I was took to prison --

5 MR. HARWELL: (Interrupting) May the
6 Court --

7 A. (Continuing) -- I went
8 through a divorce and I had a bad way of remembering
9 things because everything hit me too hard. Prison
10 I could not adjust to.

11 MR. HARWELL: May the Court please I
12 move to strike as nonresponsive to the question
13 for clarifications or other reasons.

14 THE COURT: Overruled.

15 MR. HARWELL: All right, sir.

16 THE COURT: She has explained the
17 reason why she wrote it down.

18 Q Let me ask you this,
19 Ms. Booth. How many pages did you write about
20 all of this?

21 A. To be honest I couldn't
22 tell you how many pages to be sure.

23 Q Can you approximate it,
24 was it one or was it ten or was it a notebook full?

25 A. It was not a notebook

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037

1 full. I keep in my notebook things that happened
2 at prison, daily things, the bad things I had to
3 do.

4 Q Yes, ma'am. But I'm
5 addressing myself to your writings in that
6 notebook in regards to --

7 A (Interrupting) I have no
8 notebook.

9 Q Did you just write on
10 paper, ma'am?

11 Ms. Booth, I don't want
12 to upset you, if I do, I apologize, but I've got
13 an ethical obligation to my client.

14 May the Court please, I
15 ask the Court for a recess for the witness to
16 regain her composure, Judge. It's almost noon.

17 THE COURT: All right, we will be in
18 recess for lunch. We'll be in recess till one
19 o'clock. And remember you're not to discuss this
20 case amongst yourselves or permit anyone to discuss
21 the case with you.

22 In short, you understand
23 that the not now admonition is in effect.

24 Do you have any
25 objections to that?

1 MR. HARWELL: No, sir.
2 THE COURT: You may excuse the witness
3 and the jury, Mr. Marshall.
4 THE MARSHALL OF THE COURT: The jury is
5 out of the courtroom, Your Honor.
6 THE COURT: Thank you. We will be
7 in recess till one o'clock.
8 THE MARSHALL OF THE COURT: All rise.
9 (Reporter's Note: The Court
10 was called to recess at
11 11:55 A.M.)
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

UNITED STATES OF AMERICA

-vs-

CASE NO. 83-8

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

TRANSCRIPT OF TRIAL

BEFORE: THE HONORABLE G. WIX UNTHANK

DATE: FEBRUARY 21, 1984

VOLUME THIRTY-FIVE

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Hermit Newsome and Mose Mead:

E. J. WALBOURN, III, ESQ.

For the Defendant Tim Milan:

DAN ROWLAND, ESQ.

For the Defendant Eugene Tackett:

DAVID THOMAS, ESQ.

For the Defendant Pebo Gayheart:

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For the Defendant Linville Mosley:

LOWELL E. SPENCER, ESQ.

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

BERNARD PAFUNDA, ESQ.

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041

1 For the Defendant Ranny Blankenship:

2 ELDRED E. ADAMS, JR., ESQ.

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

5 WILLIAM D. KIRKLAND, ESQ.
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042

1 REPORTER'S NOTE: The Court
2 was called to order at 1:01 P.M.

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

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

9 THE COURT: All right. Ladies and
10 gentlemen of the Jury, the Court is stating to you
11 an abstract principle of the law and procedure.

12 All witnesses, whether
13 prosecution or defense, are normally or usually call-
14 ed, notified, interviewed, and produced as witnesses
15 in the case. The Court is permitting the question-
16 ing of the witness upon the manner in which the
17 witness has been called, interviewed, and introduced
18 as a witness in this trial as relevant to the matter
19 of credibility of the witness.

20 The Jury has been instruct-
21 ed and will be continually reminded that it is the
22 sole judge of the credibility of a witness. In
23 weighing the testimony of a witness, you should
24 consider his or her relationship to the Government,
25 or the Defendant or Defendants; his or her interest,

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1 if any, in the outcome of the case; his or her
2 opportunity to observe and acquire knowledge concern-
3 ing the facts about which he or she testifies; his or
4 her candor, fairness, and intelligence, and the
5 extent to which he or she has been supported or con-
6 tradicted by other credible evidence.

7 It is the inclusive pro-
8 vince of the Jury to give the testimony of the
9 witness such credibility or weight, if any, as the
10 Jury may think it deserves.

11 Now, Mrs. Booth, let me
12 do this; let me state this, Ma'am: The Attorney will
13 ask you questions. You respond - - pay particular
14 attention to his question, and you respond, if you
15 know the answer say yes, explain it if it is necess-
16 ary; no, explain it if it is necessary, or you don't
17 know. Just state succinctly you don't know.

18 Now, sometimes we perceive
19 a purpose for which a question is being asked. In
20 other words, listen to the question, and we see down
21 the road or we think its purpose for asking that
22 down the road it's going to be a different purpose.

23 And by doing that, we
24 sometimes answer the purpose rather than answering
25 the question itself.

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1 After this witness gets
2 through - - the attorney gets through cross-examining
3 you, the United States will be given the opportunity
4 to examine you on redirect. But don't answer as to
5 the purpose, just pay particular attention to the
6 question, and answer the question. That is all.

7 Do you understand that?

8 THE WITNESS: Okay. Does it still go
9 if I say yes and there is a reason, do I say why?
10 Or do I wait?

11 THE COURT: No. If there is a yes - -
12 but here is what I don't - - the attorney is not to
13 argue with you.

14 THE WITNESS: Okay.

15 THE COURT: You are not to argue with
16 him.

17 THE WITNESS: I don't really mean to,
18 Your Honor.

19 THE COURT: I understand that, Ma'am.
20 I understand that you are nervous, all of us - -
21 we all understand.

22 But pay particular atten-
23 tion to the question, and just be responsive to the
24 question.

25 THE WITNESS: Your Honor, I'm sorry.

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1 THE COURT: Thank you, Ma'am.
2 Ready to proceed, gentlemen?
3 MR. HARWELL: Ready to proceed, Your
4 Honor.

5 May I approach the podium?
6 THE COURT: Yes, sir.
7

8 CROSS EXAMINATION

9 BY MR. HARWELL:

10 Q. Mrs. Booth, it always
11 bothers me when I see a woman cry, and I'm sorry
12 for the tears that you had before we recessed for
13 lunch.

14
15 *** **

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1 I want you to understand,
2 Ma'am, my purpose here is to try to speak the truth,
3 and I am going to ask you some questions and I
4 hope those questions will not cause you to be
5 emotional.

6 My obligation ethically
7 to my client is such that I have an obligation to
8 ask questions and probe the truth, do you under-
9 stand that?

10 A. Yes, I know you have.

11 Q. All right.

12 Mrs. Booth, I believe
13 you testified earlier - - excuse me - -
14 I believe you testified earlier that for some
15 twenty-six or twenty-seven days you have been
16 staying in the Pike County Jail here, is that
17 correct?

18 A. Yes, sir.

19 Q. That is a temporary stay,
20 is it not, Ma'am?

21 A. Yes, it is temporary.

22 Q. All right. And the
23 truth of the matter is that since back in October
24
25

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047

1 of 1983 you have been incarcerated, isn't that
2 right?

3 A. Yes, sir.

4 Q. As a matter of fact,
5 except for the temporary stay in the Pike County
6 Jail, you have been over to the Federal Correctional
7 Institute at Lexington, haven't you?

8 A. Yes, sir.

9 Q. All right. The fact of
10 the matter is, Mrs. Booth, you have been there
11 because you pled guilty in this Court before this
12 Honorable Judge back on August 22 of 1983, isn't
13 that right?

14 A. August the what?

15 Q. 22.

16 A. 22?

17 Q. Yes, ma'am.

18 A. I am not sure about the
19 date; but I pleaded guilty.

20 Q. It was sometime in
21 August, you recall that, don't you?

22 A. It seems like it.

23 Q. All right. And the fact
24 of the matter is, Ms. Booth, that you pled guilty
25 to a charge of violating a Federal Criminal Statute

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048

1 which prohibits conspiring to commit an offense
2 against the United States, or to defraud the
3 United States? Isn't that what you pled guilty to?

4 A. As I recall, it was a
5 conspiracy dealing with explosives.

6 Q. Ma'am, I am having
7 trouble hearing you.

8 A. As I recall, I pleaded
9 guilty to conspiracy dealing with explosives, or
10 what that is, you know.

11 THE COURT: Let's do this, gentlemen.
12 This stand isn't the right height. The witness has
13 to adjust every time she speaks.

14 MR. HARWELL: Thank you, Your Honor.
15 It is a problem, Judge. She has to bounce back and
16 forth and could we move it forward, Judge? Ask
17 Mr. Marshall to move it forward and dip it downward?

18 THE COURT: Does that take care of
19 it? Speak into that.

20 THE WITNESS: Yes -- no.

21 MR. HARWELL: Judge, she is still
22 having to move forward. I wonder if the wire is
23 long enough that we can push the stand into --
24 Mr. Marshall, I wonder if you could push the stand
25 close to the closest edge to the witness.

1 THE COURT: Let's see how that does.

2 MR. HARWELL: Will you say a few words,
3 Ms. Booth, just one, two, three, and let's see how
4 it sounds.

5 THE WITNESS: One, two, three.

6 THE COURT: I believe that is better.
7 Let's try it a while.

8 MR. HARWELL: All right, Your Honor.

9 Q Ms. Booth, when we were
10 talking a moment ago, before adjusting the micro-
11 phone, you said you committed -- you had pled
12 guilty to committing an offense here in this Court,
13 and you thought it was back in August; and you were
14 beginning to tell me about that.

15 The fact of the matter
16 is, Mrs. Booth, that you and your husband, Phillip
17 Booth, conspired to sell dynamite and blasting
18 caps and fuse to an undercover agent without a
19 license, isn't that correct?

20 A I pleaded guilty to it,
21 yes, sir.

22 Q Yes, ma'am. And as
23 part of that guilty plea, Ms. Booth, you admitted
24 to certain facts under oath to this Judge, didn't
25 you?

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050

1 A. Well, I pleaded guilty,
2 I had to.

3 Q Yes, ma'am. And you
4 admitted certain facts in the course of that
5 hearing before Judge Unthank back in August, didn't
6 you?

7 A. I admitted I was guilty
8 of Ray-Mac.

9 Q You weren't charged with
10 Ray-Mac, were you, Mrs. Booth?

11 A. And I was guilty of this,
12 too.

13 Q Yes, ma'am.

14 A. I admitted both.

15 Q And didn't you admit,
16 as a matter of fact to be candid, didn't you admit
17 on August 20, 1982, and continuing until August 28
18 of 1982, that you and your husband had conspired
19 in Floyd County, Kentucky to unlawfully engage
20 in the business of dealing in explosives? You pled
21 guilty to that and admitted it, didn't you?

22 A. Will you please restate
23 that?

24 Q Yes, ma'am.

25 A. Or, you know, just say it

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051

1 again.

2 Q All right. You admitted
3 that from August 20, 1982 until August 28, 1982,
4 you and your husband, Phillip Booth, in Floyd County,
5 Kentucky conspired to unlawfully engage in the
6 business of dealing in explosives, that is true,
7 is it not?

8 A Well, sir, I pleaded
9 guilty to it.

10 Q You pleaded guilty to
11 it, thank you, ma'am.

12 And when you admitted
13 certain facts to His Honor, Judge Unthank, you
14 admitted that you and Phillip Booth had furnished
15 Special Agent Richard Kemp twenty-six nonelectric
16 blasting caps, didn't you?

17 A I was with my husband.

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1 Q. Yes, ma'am. But didn't
2 you admit when this Judge questioned you during that
3 hearing that you had, as a matter of fact, with
4 Phillip, provided Special Agent Kemp twenty-six--

5 A. (Interrupting) I was with
6 Phillip, and I was guilty for being with him. I was
7 guilty.

8 Q. And you also admitted that
9 you and your husband provided those caps, didn't you?

10 A. Sir, I was with my husband,
11 and I was guilty as he was because I was with him.

12 MR. HARWELL: Yes, ma'am.

13 Judge, if you will remember,
14 yesterday we had a conference in regard to notifica-
15 tion amongst counsel where we were going to make
16 references to specific recorded statements.

17 THE COURT: Yes.

18 MR. HARWELL: And Your Honor said
19 Mr. Harwell, I would like you all to do that. I know
20 Your Honor's rule about staying at the podium, but may
21 I approach the prosecution table to alert them to
22 pages?

23 THE COURT: Yes, sir, please do.

24 MR. HARWELL: And may I continue as need
25 be in an effort to comply to do that?

1 THE COURT: Yes, sir.
2 MR. HARWELL: All right, sir.
3 Q. Let me ask you this,
4 Ms. Booth: On August 22 of 1982, in this very court-
5 room, you raised your right hand and swore to tell the
6 truth at the time you entered a guilty plea, didn't
7 you?
8 A. Yes, sir, I did.
9 Q. All right.
10 MR. SELF: Objection, Your Honor. I
11 think he said August of 1982.
12 MR. HARWELL: Judge, I misstated, and
13 Mr. Self is correct. I should have said August 22
14 of 1983. I amend my question to affect August, '83.
15 THE COURT: All right.
16 THE WITNESS: Then I answered wrong.
17 Q. I asked wrong, Mrs. Booth.
18 The truth is that you raised your hand in August of
19 1983, before this Court, and swore to tell the truth,
20 didn't you?
21 A. Everytime I have been before
22 the Court, I have raised my hand and swore to tell the
23 truth.
24 Q. All right. Thank you,
25 ma'am.

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1 And there was then an offer
2 of proof in regard to that matter made by this gentle-
3 man right here, Mr. Dause. In that offer of proof,
4 he stated that Pearl Newman Booth conspired and agreed
5 with Phillip Gene Booth and others to deal in explo-
6 sives.

7 MR. SELF: I don't mean to interrupt
8 Mr. Harwell, Your Honor. I would like to object to
9 this line of questioning as not proper under the rul-
10 ing.

11 MR. HARWELL: May the Court please, it
12 shows bias.

13 MR. SELF: I didn't mean to interrupt.

14 MR. HARWELL: It is not a collateral
15 matter. It directly goes to bias, may the Court
16 please, in this testimony.

17 THE COURT: Go ahead.

18 MR. HARWELL: All right, sir. Thank you.

19
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21 *****
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25

1 Q Going ahead as the Court
2 suggests, Mr. Dause made an offer of proof. And
3 he said in that offer of proof that Pearl Newman
4 Booth conspired and agreed with Phillip Gene Booth
5 and others to deal in explosive matters and weapons.
6 And that Mrs. Booth - - quote, Mrs. Booth, along with
7 Mr. Booth furnished to Special Agent Kemp twenty-
8 six nonelectric blasting caps and three lengths of
9 detonating cord.

10 Do you recall that being
11 said in the offer of proof back in '83?

12 A Okay, sir, I am guilty.
13 Okay.

14 Q All right.

15 A I told the Judge I was
16 guilty.

17 Q All right. Thank you,
18 Ma'am.

19 And in the course of that
20 same hearing before Judge Unthank, didn't you also
21 admit that you and Phillip Booth had furnished thirty
22 sticks of dynamite back in August of 1982, to Kemp?

23 You admitted that as part
24 of the plea, did you not?

25 A If it is in the plea, I

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1 admitted it.

2 Q I make the representation
3 it is in the plea.

4 A I was so scared that day.
5 I pleaded guilty. And that is it.

6 Q Are you trying to tell this
7 Jury, Ma'am - -

8 A (Interrupting) I am guilty
9 of what I was charged with. Okay.

10 Q You were guilty. And
11 included in those charges was giving this agent
12 thirty sticks of dynamite. Is that right?

13 A I was with my husband
14 when it was gave. So I am guilty of doing that.

15 Q All right. And didn't you
16 also admit that on August 28 of 1982, that you and
17 Phillip Booth bartered fifty pounds of dynamite, an
18 additional fifty pounds of dynamite to Special Agent
19 Richard Kemp?

20 Didn't you admit that before
21 Judge Unthank?

22 A I don't know how much was
23 gave. Just what he took. I was with him, and I
24 needed it. If it was gave him or how much - -

25 Q (Interrupting) All right.

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1 Isn't the truth of the matter, Mrs. Booth, that
2 on August 21, 1982, you and your husband met Special
3 Agent Richard Kemp. You negotiated with him to
4 swap dynamite and guns for two bales of marijuana?

5 A. That is correct.

6 MR. SELF: I renew my objection on
7 the rule.

8 THE COURT: Overruled.

9 Q Isn't that true, Ma'am?

10 A. Yes, that is correct.

11 Q And you were involved in
12 the negotiations, weren't you?

13 A. Sir, I don't see what it
14 has to do with it, but not really directly.

15 Q Let me ask you this:
16 Didn't you tell Special Agent Kemp on August 21 of
17 1982, that you all were getting a pretty good price,
18 and that marijuana was going high?

19 Didn't you tell him that?

20 A. It is a possibility. If
21 it was stated, I did.

22 Q You don't recall whether
23 you did or didn't do that?

24 A. Sir, I have having trouble
25 at home with my husband. He was giving me a rough

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1 way to go. So I probably said that.

2 Q Yes, Ma'am. But I under-
3 stood you to say that you had been with your husband,
4 and the implications that I heard was that you hadn't
5 been involved in this. That is what I am trying
6 to get at in my search for the truth.

7 Didn't you negotiate with
8 Mr. Kemp as to the price that that marijuana would
9 be valued at?

10 A. Oh, I was brought into
11 the conversation.

12 MR. SELF: Your Honor, I would like
13 to object to the 404B to this line of questioning.

14 THE COURT: The Court doesn't inter-
15 pret it as being 404B. The Court interprets it as
16 being 608, as bearing upon the issue of truthfulness
17 or untruthfulness of the witness.

18 MR. SELF: Thank you, Your Honor.
19
20

21 *** **

1 Q. Let me ask you this, ma'am.
2 And I don't mean to be repetitious. I know it is an
3 irritant to the folks in the courtroom including the
4 jury.

5 Are you telling me that
6 you do or do not recall back on August 21 of 1982,
7 telling Kemp that he was giving you a pretty good
8 price on the marijuana and that it was going high?
9 Do you remember that or not?

10 A. It seems like I do. I am
11 not sure. It seems like I told him that.

12 Q. Okay.

13 A. So I am involved in this.

14 Q. All right.

15 A. I don't deny being involved.

16 Q. And in that conversation on
17 August 21, you and Mr. Kemp--

18 THE COURT: (Interrupting) Just a
19 moment.

20 MR. HARWELL: I am sorry, Judge.

21 THE COURT: Now, the jury understands
22 the reason I am letting this go to the jury. This is
23 concerning evidence of another contact. This is per-
24 mitted solely for the purpose of aiding the jury in
25 interpreting the credibility which would be you make

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1 a determination as to the truthfulness or the untruth-
2 fulness of this testimony. Do you understand that is
3 the sole reason this is done?

4 Continue.

5 MR. HARWELL: Thank you, Judge.

6 Q. Ma'am, directing your
7 attention again to August 21 of 1982, when you and
8 your husband, Phillip, were meeting with Agent Kemp,
9 in that conversation, you discussed guns, did you
10 not? Do you recall that?

11 A. Where was this meeting
12 taking place at?

13 Q. Ma'am, my understanding is
14 that it was taking place at the Cricket.

15 A. Well, that is all I needed
16 to know. Yeah.

17 Q. So at that conversation or
18 at the Cricket Motel during that conversation, you
19 and Mr. Kemp and your husband discussed guns, didn't
20 you?

21 A. Yes, I think he was even
22 given a gun there.

23 Q. I see. And in the course
24 of that conversation, you told him you had some guns,
25 didn't you, ma'am?

1 A. Possibly.

2 Q. Well, you talked about a

3 Model .36 Smith & Wesson Fireshot, didn't you?

4 A. I probably had one with me

5 like that. That is probably the one I had.

6 Q. Yes, ma'am. And isn't the

7 truth of the matter that you told Special Agent Kemp

8 in the presence of your husband on August 21, that

9 you had one with you, and you had other guns, and none

10 of your guns could be traced because they never had

11 been registered? Didn't you say that, ma'am?

12 A. Probably. I think so.

13 Q. And was that a true state-

14 ment?

15 A. To my knowledge, it was

16 the truth. And that is what I had been told when the

17 guns was purchased. Okay.

18 Q. I see. Now, I am going to

19 leave August 21, the Cricket, ma'am; and direct your

20 attention, if I may, to August 28 of 1982. On

21 August 28 of 1982, you and your husband went to the

22 Jenny Wiley Park, didn't you?

23 A. Yes, we did.

24 Q. And you took some people

25 with you, didn't you?

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1 A. Yes, we did.
2 Q. Tell the jury the names of
3 those people you took with you.
4 MR. SELF: Your Honor, even under
5 608, I would have to object to that. How does this
6 go to the truthfulness of the witness. That is
7 specific under the rule.
8 THE COURT: Overruled.
9 Q. Yes, ma'am. The Judge is
10 saying you can answer.
11 THE COURT: He is talking about another
12 meeting as to who was there and present at the meet-
13 ing.
14 A. Okay.
15 Q. Who went?
16 A. Ricky Johnson. He was
17 driving the Toronado.
18 Q. Was he an employee of yours
19 and Phillip's?
20 A. He was. He was Phillip's
21 buddy.
22 Q. All right.
23 A. And then Phillip and Glen
24 were in the Corvette.
25 Q. Excuse me for interrupting,

1 ma'am. I need the last names, please.

2 A. Phillip Booth and Glen
3 Thornsburg went in the Corvette.

4 Q. Glen Thornsburg an employee?

5 A. At that time I think so.

6 Q. Of yours and Phillip's I
7 mean?

8 A. Well, that is what I am
9 talking about. I think so. I am just not sure at
10 the present time. He was on and off.

11 Q. Who else?

12 A. And me.

13 Q. All right. And you went
14 over to Cabin 122 at the Jenny Wiley Park over here
15 at Prestonsburg, didn't you?

16 A. I think that was the cabin
17 number.

18 Q. And while you were there,
19 or better said when you got there, you met with a
20 fellow named Kemp who was operating as an undercover
21 agent, didn't you?

22 A. I think it was Kemp and
23 Sandy Shaunager.

24 Q. And Sandy Shaunager you
25 learned later on was also an undercover agent. Isn't

1 that true?

2 A. That is true.

3 Q. All right. And you and
4 your husband took some things with you when you went
5 over there, didn't you?

6 A. Okay, we will get this
7 straight. My husband took stuff in the Toronado.
8 Ricky Johnson was driving the Toronado.

9 Q. And what stuff did he take?

10 A. I think he took some guns.

11 Q. Did he take some Uzis?

12 A. I think so.

13 Q. As a matter of fact--

14 A. (Interrupting) I don't
15 know exactly what guns was taken. Okay.

16 Q. You don't know that he took
17 the two Uzis that you had bought from Donahue Halbert?

18 A. I don't recall which guns
19 was taken. I know there was guns taken. Plus he
20 took--he had taken some dynamite.

21 Q. He took dynamite. A case
22 of dynamite?

23 A. It seems like it.

24 Q. I see. Would you find it
25 refreshing to your memory if you looked at these

1 Government exhibits, these two Uzis to know if they
2 were there?

3 A. I seen the Uzis.

4 Q. Yes, ma'am. But I am ask-
5 ing you if it would refresh your memory as to whether
6 you and your husband took the Uzis if Mr. Marshal
7 showed those to you? Would that refresh your memory?

8 A. I know what the Uzis look
9 like. Okay.

10 Q. Let me go at it this way,
11 ma'am, do you have a memory or recollection as to
12 whather or not that which you and Phillip Booth took
13 over to trade included Uzis?

14 A. Sir, I am going to answer
15 this. I really don't know, but I am going to explain
16 why. Because at the time of my arrest--it was right
17 after that--I went into complete shock. I almost--
18 I come from a hair of having a nervous breakdown.

19 Q. All right, ma'am. I under-
20 stand.

21 Now, on August 28, when you
22 and Phillip and the other people that you mentioned
23 went to Jenny Wiley, at that point in time, you didn't
24 know that Agent Kemp was a Government agent, did you?

25 A. No, I did not.

1 Q As a matter of fact, you
2 thought he was a hit man, a hired killer, didn't
3 you?

4 A My husband said he was.

5 Q And you believed him,
6 didn't you?

7 A I had no reason not to.

8 Q All right. And isn't it
9 also a fact that you believed that Kemp was going
10 to blow up something or somebody with the dynamite
11 you all were trading?

12 A Well, I hadn't really
13 thought about it that much because nobody talked
14 that much, but yeah.

15 Q As a matter of fact,
16 weren't you a party to a conversation a week or two
17 earlier when Mr. Kemp was saying he was going to
18 make some garbage trucks like helicopters?

19 A I remember that, but I
20 didn't even believe it when it was said, but I
21 remember it.

22 Q I see. In making
23 garbage trucks like helicopters you understood
24 meant blowing them up, didn't you?

25 A Well, I didn't think

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1 about it that much, but you're right.

2 Q All right.

3 At that same meeting,
4 ma'am, at Jenny Wiley Park back on August 28th,
5 you and your husband, before you were arrested on
6 that date, you and your husband were asking Mr.
7 Kemp for cocaine, weren't you?

8 A My husband was, I don't
9 believe I was.

10 Q You don't believe you
11 were?

12 A If I was I can't recall
13 it. Maybe I did, but I don't -- I know my husband
14 was talking about cocaine, but I can't -- I
15 couldn't really be sure in saying about that.

16 Q All right.

17 While you were there
18 before the time of the arrest, Ms. Booth, you and
19 Sandy Shaunager talked, you recall talking to her
20 at Cabin 22 at Jenny Wiley?

21 A Yes, I do.

22 Q Let me ask you, ma'am,
23 in the course of the conversation that you and
24 Sandy had, isn't it true that you were talking about
25 dynamite and you said "you have to take the papers

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1 off the dynamite, it's traceable, you've got to make
2 sure they take all the evidence off of it before
3 they use it. I know he must have got it out of the
4 mine. That's what worries me. It's a federal
5 offense, you be careful and don't get caught."

6 A. Okay, I don't think that
7 was said directly to Sandy. That was said outside --
8 I remember that.

9 Q. Did you say it?

10 A. Yes, I said that.

11 Q. All right.

12 Let me ask you this,
13 ma'am. When you and your husband walked in that
14 cabin over there at that state park, there was some
15 talk about what the trade consisted of, what you
16 all were getting and what you all were giving in
17 barter, in trade, isn't that right?

18 A. Yes.

19 Q. And isn't it a fact,
20 ma'am, that you said in substance "these Uzis are
21 the same ones used at the shooting up at Ray-Mac".
22 Didn't you say that?

23 A. Those Uzis were not used
24 in the shooting at Ray-Mac.

25 Q. I'm aware of that, ma'am.

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1 I'm asking you what you said, if I recall they
2 were purchased after Ray-Mac, but --

3 A. (Interrupting) Well just
4 maybe I misspoke it. You know, maybe I didn't mean
5 to say that, because they were not used in the
6 shooting at Ray-Mac.

7 Q. You're saying I may have
8 said that, but if I did I may have misspoke myself?

9 A. Well, I'm noticing a
10 lot of things that I may have misspoke stuff. When
11 I'm nervous, I do. And that don't mean that's the
12 way it is sometimes.

13 Q. Say that again, ma'am,
14 your voice drops off, Ms. Booth.

15 A. When I get nervous
16 sometimes I mean to say a word and it comes out
17 different, okay?

18 Q. Yes.

19 A. My speech is not the
20 best or was.

21 Q. Okay. Let's get back,
22 ma'am, to -- back in August of 1983, when you
23 appeared before Judge Unthank. In the course of
24 that hearing you were under oath and you admitted
25 to this Court, did you not, that the explosives that

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1 was traded to Agent Kemp had been stored at your
2 house with your knowledge and with the knowledge
3 that they would be illegally sold to a person
4 without a license, isn't that what you admitted to
5 this Court?

6 You don't deny that,
7 do you?

8 A. If I admitted it, I don't
9 deny it, I'm guilty.

10 Q. Didn't you also admit,
11 didn't you also admit while under oath before this
12 very Honorable Judge that on at least one occasion
13 while that dynamite was in your home you handled it
14 yourself, didn't you admit that?

15 A. Did I handle the dynamite?

16 Q. Yes, ma'am. Didn't you
17 admit that under oath to this Judge?

18 A. I pleaded guilty to
19 everything that they had charged me with.

20 MR. HARWELL: Judge, may I approach
21 counsel consistent with your Orders yesterday?

22 THE COURT: Yes.

23 Reporter's Note: At this
24 time Mr. Self and Mr. Harwell,
25 Harwell are conferring.)

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1 Q Let me ask you this, Ma'am,
2 in an effort to refresh your memory.

3 Back in August when you
4 pled guilty before Judge Unthank, Mr. Dause said
5 quote - - in his proffer commencing at 10:05 A.M.
6 on that day. Mr. Dause said, "On occasion at the
7 home Mrs. Booth was at least on one occasion handling
8 the material there." Making reference to the dynamite.
9 He went on and continued his proffer and then the
10 Judge asked you if as a matter of fact you understood
11 and then he said is that what you did in this case
12 and you said yes, it was. Do you recall that?

13 A. I was so scared I don't
14 know whether I recall that or not. But I am guilty
15 with everything I'm charged with.

16 Q All right. Did you or did
17 you not handle that dynamite at your home?

18 A. I pleaded guilty, I had to
19 have handled the dynamite. As I said before I was
20 scared and I'm still scared and I'm tore all to
21 pieces and I can't recall everything that happened,
22 not with everything.

23 Q Yes, Ma'am. But you did
24 handle the dynamite, didn't you, Ma'am? Did I under-
25 stand you, you did handle it?

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1 A. I handled it some, yes.
2 Q. Thank you, Ma'am.
3 And didn't you also before
4 His Honor Judge Unthank in your guilty plea hearing
5 tell the Court that you knew that Phillip Booth
6 was violating the law and you assisted him in violat-
7 ing the law, didn't you say that to him?
8 A. I pleaded guilty to it.
9 Q. And you admitted that,
10 didn't you?
11 A. I had to, I pleaded guilty.
12 Q. And you pled guilty because
13 you were guilty, isn't that a fact?
14 A. I am guilty.
15 Q. All right.
16 A. I know that I've been
17 guilty by either one.
18 Q. All right.
19 Now, Ms. Booth, those things
20 to which you pled guilty before Judge Unthank, they
21 had nothing to do with what occurred at Ray-Mac
22 in February of '82, did they?
23 A. No, they didn't, but when
24 I pleaded guilty I also told the Judge I was guilty
25 of that with Ray-Mac.

1 Q I see. But if I understand
2 what you just told this Jury and what you have just
3 told me, that to which you entered your guilty plea
4 was not involved in any fashion with Ray-Mac back in
5 February, was it, a totally different transaction,
6 isn't that true?

7 A. It had to be.

8 Q That's right. And the
9 truth of the matter is, Mr. Edgar Jones over here,
10 my client, was not involved in any of those things
11 to which you entered a guilty plea, of trading
12 dynamite for marijuana, he was not involved, was he?

13 A. No, I never said he was.

14 Q All right.

15 If I understand Ma'am, on
16 August 28th, 1982 over at Jenny Wiley, you and your
17 husband were in cabin 22 - - 122 with the Special
18 Agents undercover and there was a transfer, that is
19 the marijuana you all got and the dynamite and
20 blasting caps and guns they got, the undercover
21 agents, that's true, isn't it?

22 A. I did not see the transfer
23 but it's true.

24 Q All right. And as a matter
25 of fact, you are aware, are you not, that there were

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1 two separate bales of marijuana each weighing a
2 thirty, thirty-one or thirty-two pounds?

3 A. There was supposed to be,
4 yeah.

5 Q. And wasn't the plan that you
6 and your husband had that you all were going to sell
7 that marijuana on the street, isn't that true?

8 A. The plan was that Phillip
9 was going to sell it. I talked with him, that's true,
10 but I intended to divorce my husband and I was going
11 to leave.

12 Q. But you also had told Mr.
13 Kemp and your husband, Mr. Booth that you and Mr.
14 Booth, you and your husband intended to sell that
15 marijuana on the street, hadn't you?

16 MR. SELF: I'd like to renew my
17 objection.

18 THE COURT: Sustained.

19 MR. SELF: Just a continuing objection.

20 THE COURT: The same objection.

21 MR. HARWELL: Is it the form of the
22 question or substance?

23 THE COURT: Substance.

24 MR. HARWELL: All right, sir.

25 Q. Let's talk about the

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1 events back in February of 1982, Ms. Booth.

2 Isn't it true Ma'am, that
3 before all the problems up there at Ray-Mac started
4 that you were told that there was a union meeting
5 on Saturday, February 13th, 1982 at the local at
6 McDowell, hadn't you been told that?

7 A. It seems like I overheard
8 it and I could have been told it, but I didn't pay
9 any attention until - -

10 Q. Are you saying that it
11 seems like you had heard it or are you saying you
12 did hear it?

13 A. I'm saying it seems like
14 I recall something about it, but I don't know.

15 MR. HARWELL: May I Judge?

16 THE COURT: Yes, sir.

17 REPORTER'S NOTE: At this
18 point Mr. Harwell and Mr.
19 Self are conferring.

20 Q. Mrs. Booth, you testified
21 in the mini-hearing in regards to this matter and
22 you were asked if you had seen any of these five
23 gentlemen or met certain gentlemen on Saturday,
24 February 13th, 1982 or Sunday, February 14th, 1982,
25 and the transcript reflects you said "I'm not

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076

1 sure I was told there was a union meeting on the
2 13th."

3 Do you remember that ques-
4 tion and do you remember giving that answer?

5 A. Isn't that what I just
6 said, it seems like I recall.

7 Q. All right. And then the
8 next question was, you were told there was a union
9 meeting; Answer: "Was it the 13th, yes, it was
10 talked at the house but I don't know exactly who talk-
11 ed it."

12 Didn't you give that answer
13 to that question during the mini-hearing?

14 A. Yes, sir.

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1 THE COURT: Approach the Bench,
2 please.

3 Reporter's Note: At this
4 point a Bench conference
5 was held with all counsel
6 present where the following
7 was heard:

8 THE COURT: Now, please, Mr. Harwell,
9 you're asking some of the questions like do you
10 recall this question he asked and this sort of
11 thing. Do you recall making this answer. I'm
12 requesting that you do this and when the witness
13 appears to be in doubt, I think you should ask the
14 witness if she desires to see the transcript.

15 MR. HARWELL: I didn't hear that last
16 sentence, Your Honor.

17 THE COURT: You're asking this
18 witness if she recalls making this statement or
19 making this answer, and when you do that I think
20 she should be able to look at the transcript. I'm
21 suggesting that you do that when she seems to be
22 in doubt.

23 MR. HARWELL: To respond to that,
24 Your Honor, number one, I respectfully will object
25 to that on the grounds of procedure and the rules.
And number two, I will follow the Court's
instructions, obviously, like I've been doing.

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1 MR. SELF: Your Honor, I would
2 object to this line of questioning. It's
3 inconsistent to anything previously testified to.

4 THE COURT: Well, I'll overrule
5 the objection. If he's asking anything that is
6 inconsistent or irrelevant --

7 MR. HARWELL: (Interrupting) Well, I'm
8 cutting my own throat.

9 THE COURT: Well, it's like he's
10 reading the transcript.

11 MR. SELF: Well, that is what I'm
12 objecting to.

13 MR. HARWELL: Well, Your Honor, to be
14 truthful about it, I was a little surprised by
15 her last answer and I wasn't prepared. I know
16 what you're referring to.

17 THE COURT: All right.

18 (Reporter's Note: At this
19 point the Bench conference
was concluded.)

20 THE COURT: You may proceed, sir.

21 MR. HARWELL: Thank you, Your Honor.

22 Q Ma'am, I was asking you
23 when we approached the Bench about your having
24 heard that there had been a union meeting at the
25 local in McDowell on Saturday, February 13, 1982,

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1 and you have responded to my question.

2 Haven't you also heard,
3 ma'am, that that union meeting on Saturday the
4 13th of February, that the union had discussed
5 setting up a picket line at Ray-Mac. You had heard
6 that, had you not?

7 A. I probably did, when I
8 really got involved was Monday. d heard

9 Q. All right.

10 Now, Ms. Booth, you
11 testified during the course of direct about
12 Calamity Coal and about Bryan Coal. Let me ask
13 you a few questions about them if I might.

14 Calamity Coal and
15 Bryan Coal were names that were used for coal
16 mining operations you and your husband had, is that
17 correct?

18 A. That we had contracted
19 from Mr. Jones.

20 Q. With Edgar Jones, yes.

21 But those were names
22 you all used, isn't that correct? Bryan Coal and
23 Calamity Coal?

24 A. Yes, sir.

25 Q. And if I understand, it

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1 was the duty and responsibility, if you will, of
2 your husband, Phillip Booth, primarily for him to
3 handle the men and the manual labor and that sort
4 of thing as compared to your handling office and
5 bookkeeping and clerical sort of functions for Bryan
6 and Calamity, am I right?

7 A. I wouldn't say that was a
8 hundred percent right, no.

9 Q Well, let's tell the jury
10 what is a hundred percent right. What did you
11 handle and what was handled by your husband with
12 Bryan and Calamity?

13 A. We both handled the mines.
14 When he was not there, I was at the mines.

15 Q Did he also handle the
16 books?

17 A. Angie handled most of the
18 payroll records, okay, the checks that were wrote
19 out for other things like getting supplies -- Edgar
20 usually got supplies through his company. The
21 others, I'd write a check and get the stuff.

22 Q I see. And you would
23 frequently go by the JRM office to see Angie who
24 worked for JRM and worked for Edgar and have her
25 do certain things concerning the books and records of

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1 Calamity and Bryan, wouldn't you?

2 A. When I'd go see Angie
3 it was when she wasn't doing the things she was
4 supposed to do, that I thought she was supposed to do.
5 I really don't know nothing about her hardly.

6 Q. You didn't know nothing
7 about what, ma'am?

8 A. About keeping books,
9 I had never done that. I didn't know that much
10 about it.

11 Q. You had not kept books
12 prior to this time for your brother in his mining
13 operation?

14 A. Not that much.

15 Q. But you had kept books for
16 him, hadn't you?

17 A. Not enough to say I was
18 experienced at it, because there was always someone
19 around helping.

20 Q. All right.

21 A. And that was family.

22 Q. Mrs. Booth, you have
23 earlier testified that you first met Edgar Jones
24 sometime Monday morning, February 18th, 1982 after
25 your husband had come and gotten you from one of

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1 the mines, isn't that right?

2 MR. SELF: Objection, it was not
3 February 17th, it was the 15th.

4 MR. HARWELL: Judge, if I said that,
5 I've misstated myself for the second time and I
6 apologize to the witness, the Court, and the jury
7 and even Mr. Self. February 15th.

8 MR. SELF: I want the record to be
9 clear.

10 MR. HARWELL: I want it to be clear too,
11 Judge.

12 Q Let me start over, Ms. Booth.
13 Booth.

14 February 15th -- February
15 13th was a Saturday, 1982, and February 14th was
16 Sunday and Monday was the 15th, Tuesday was the
17 16th and Wednesday was the 17th and so on. I may
18 misstate the date putting on the day of the week.
19 If I do, I'm sure Mr. Self will advise me and I'll
20 attempt not to do that, okay?

21 A. I hope you don't.

22 Q You hope what, ma'am?

23 A. I hope you don't make a
24 mistake like that.

25 Q Thank you, ma'am.

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1 Let me get you to direct
2 your attention to February 15, Monday. You
3 testified that you first met with Edgar Jones after
4 your husband had come and gotten you from one of
5 your mines, is that right?

6 A. That is right.

7 Q. You've also testified
8 that Edgar Jones allegedly made certain statements
9 to you during that meeting about the Ray-Mac Coal
10 Company, isn't that correct?

11 A. That is correct.

12 Q. All right. Now, Ms.
13 Booth, in that first alleged meeting with Edgar
14 Jones on Monday morning, February 15th, there was
15 no discussion about guns or ammunition, was there?

16 A. Edgar said we had to
17 pull a strike. I don't remember -- at present I
18 don't recall any guns on the first day being
19 mentioned.

20 Q. You don't recall any
21 mention of guns with the first meeting with Edgar
22 that day, do you?

23 A. Not at present.

24 Q. Are you saying you have
25 no memory or are you saying there was no mention

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1 of guns at the first meeting you allegedly had with
2 Edgar that Monday?

3 A. I remember -- you want me
4 to tell you what I remember?

5 Q. No, ma'am. I want you
6 to tell me if there were or weren't any mention of
7 guns according to your recollection?

8 A. I don't recall.

9 Q. All right. Let's move
10 on.

11 After that first meeting,
12 you testified that you went up to your coal mine
13 with Phillip Booth, isn't that right?

14 A. I went up to the mines
15 and as I recall --

16 Q. (Interrupting) And then
17 you said you went back down to Edgar's office, is
18 that right?

19 A. After I went to the
20 mines and told the men there was a strike.

21 Q. All right. You went back
22 down --

23 A. (Interrupting) I went
24 back down to Calamity to the other mines and then I
25 went back.

1 Q Then you went back to the
2 JRM office, didn't you?

3 A Yes.

4 Q All right. And at the
5 second alleged meeting you had with Edgar Jones on
6 that Monday, you told him then that you had called
7 Donahue Halbert and told Mr. Halbert what kind of
8 shells you needed for guns, isn't that right?

9 A On Monday?

10 Q Yes, ma'am, the second
11 meeting.

12 A I told him that I had
13 the men out and I told the men to come out on the
14 picket line. Are you sure it wasn't Tuesday?

15 MR. HARWELL: May I, Your Honor?

16 THE COURT: Yes.

17 (Reporter's Note: At this
18 time Mr. Harwell and Mr.
19 Self conferred with each
20 other.)
21

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1 Q Ma'am, do you recall - -
2 A. (Interrupting) Okay. I do
3 recall.
4 Q You do recall?
5 A. I did call Donahue about
6 shells and ammunitions for our guns.
7 Q I see. That was before the
8 second meeting you allegedly had with Edgar, isn't
9 it?
10 A. I don't know whether it
11 was before or when I called Donahue, but I did call
12 Donahue Monday.
13 Q All right. Do you remember
14 testifying in the mini-hearing that it was before the
15 second meeting?
16 MR. SELF: Objection, Your Honor.
17 THE COURT: Sustained.
18 MR. HARWELL: Judge, may counsel approach
19 the Bench?
20 THE COURT: Yes, sir.
21 REPORTER'S NOTE: At this time
22 Mr. Self, Mr. Kehrli, Mr.
23 Dause, Mr. Harwell, Mr. Justice,
24 Mr. Moore and Mr. Patton approached
25 the Bench, whereupon the following
was heard:

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1 MR. HARWELL: Judge, as I understand
2 your instructions, I can refer to specific testimony.

3 THE COURT: Right.

4 MR. HARWELL: Comments made. But my under-
5 standing of the rule was that I am entitled to various
6 credibility to say do you recall and state the
7 substantive facts, but not a specific quote; but did
8 you testify about that at the mini-hearing, and did
9 you say that it was - - but not a specific quote.

10 Okay. And she can say yes
11 or she can say no. If she says no, then I can go
12 to the specific line of the transcript and ask her
13 do you recall this question, this answer, to refresh
14 your memory, but I don't need to refresh her recol-
15 lection if she remembers independently.

16 THE COURT: If she recalled it, you
17 don't need to rephrase it.

18 MR. HARWELL: That is right. That is
19 the point I was making, Judge.

20 THE COURT: Here is what I don't want,
21 Mr. Harwell. Let's don't do it in such a matter
22 that it appears that you are reading or you are
23 putting this transcript into evidence, because that
24 transcript isn't in evidence.

25 MR. HARWELL: I know it isn't, Judge.

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1 I am trying to be discrete. I do have Mr. Moore
2 sitting directly behind me, and I don't turn around,
3 I reach my hand back so it is not obvious that
4 I have got a whole two boxes of files.

5 THE COURT: No, it's all right. They
6 know you have got that there, let's don't do this
7 in a manner that you are going to be reading this
8 transcript into evidence.

9 MR. HARWELL: As has been discussed
10 at our last Bench Conference, the suggestion of the
11 last Bench Conference about the specific question.

12 MR. SELF: My objection is, he is
13 stating to her did you testify at the mini-hearing
14 about this.

15 MR. HARWELL: I asked her if she recalled.

16 MR. SELF: My objection is that if you
17 ask her did she testify on direct as to this manner,
18 and then trying to impeach her from the mini-hearing.

19 MR. HARWELL: It is not an impeachment
20 matter.

21 THE COURT: Well, the daily copy will
22 reflect whether or not you stated you recall testify-
23 ing in a mini-hearing or did you testify in the
24 mini-hearing.

25 But when I sustained the

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1 objection - -

2 MR. HARWELL: (Interrupting) That is
3 what I asked as to form or substance, Judge.

4 THE COURT: I think it is just a matter
5 of a statement that you give, did you testify at the
6 mini-hearing, maybe I didn't hear the recall, but
7 it appears to be like you, you know, you were
8 doing that, but let's go, note the objection, let's
9 go back into it.

10 MR. HARWELL: Thank you, Judge.

11 MR. SELF: My objection is - -

12 MR. HARWELL: (Interrupting) I can't
13 hear you.

14 MR. SELF: If Mr. Harwell is allowed
15 to cross-examine her in this manner about the mini-
16 hearing, I am saying didn't you state it in the
17 mini-hearing such and such, then we will not be
18 entitled to go into rehabilitate her, or to go over
19 the entire testimony of the mini-hearing.

20 MR. HARWELL: No, sir, Your Honor.

21 MR. SELF: My objection goes to the
22 propriety as I have been instructed as to the proper
23 form of the question, didn't you testify on direct
24 examination this, and then - -

25 MR. HARWELL: (Interrupting) Don't have

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1 to ask that, if I can seek to quote - -

2 MR. SELF: (Interrupting) You are
3 phrasing the Direct Examination.

4 MR. HARWELL: If I can seek to quote
5 verbatim, then I have to follow the Court's directive
6 on that. If, however, I am questioning her as do you
7 recall and I did not quote the transcript, then I
8 am entitled to do it - -

9 MR. SELF: (Interrupting) That is a
10 hearsay statement then.

11 MR. HARWELL: It's words out of her
12 mouth.

13 THE COURT: Let's go back.

14 MR. HARWELL: All right, Judge.

15 REPORTER'S NOTE: End of Bench
16 Conference.

17 THE COURT: Let's move along, gentlemen.

18 MR. HARWELL: Yes, sir.

19 Q Let me ask you this, Ma'am.

20 Do you recall during the mini-hearing testifying
21 about having called Donahue Halbert before your second
22 trip to the JRM office on Monday the 15th of February?

23 A. Before the second trip?

24 I called Donahue Halbert and I ordered ammunitions.

25 Q My question is, Ma'am, do you

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1 recall that call that was made to Mr. Halbert over
2 here, was, as a matter of fact, made before your
3 second trip to JRM office on that Monday?

4 A. At present I am not sure
5 where I even recall it.

6 Q All right.

7 THE WITNESS: Your Honor, I am sick.

8 THE COURT: What?

9 THE WITNESS: I am sick to my stomach.

10 Q And at that point in time,
11 Ma'am - - excuse me, Your Honor.

12 THE COURT: Let's have a recess here
13 for five - - ten - - fifteen minutes.

14 MR. HARWELL: How many minutes, Judge?

15 THE COURT: Fifteen minutes.

16 MR. HARWELL: Thank you, Judge.

17 THE COURT: During this recess, the
18 not now admonition is in effect. Do you understand?
19 You shake your head one way or the other - - all right.

20 Any objections or correc-
21 tions?

22 MR. HARWELL: No objection, may the Court
23 please.

24 THE COURT: Please excuse the Jury.
25 If you will, Ms. Booth,

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1 just go on back.

2 THE WITNESS: Thank you.

3 REPORTER'S NOTE: At this
4 time the witness left the
Courtroom.

5
6 THE MARSHALL OF THE COURT: The Jury is
7 out of the room.

8 THE COURT: All right. The witness
9 requested a recess. All right.

10 THE MARSHALL OF THE COURT: All rise.

11 THE COURT: Be in recess fifteen
12 minutes.

13 THE MARSHALL OF THE COURT: District Court
14 will be in recess for fifteen minutes.

15 REPORTER'S NOTE: The Court
16 recessed at 1:55 P.M.

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1 THE MARSHAL OF THE COURT: All rise. This
2 court is again in session. Be seated and come to
3 order.

4 THE COURT: Approach the Bench, gentle-
5 men.

6 (Reporter's Note: At this time a Bench
7 conference was held; whereupon the follow-
8 was heard:)

9 THE COURT: The witness has gastro-
10 digestive problem. Mr. Marshal, how is she?

11 THE MARSHAL OF THE COURT: She is down-
12 stairs. We have given her some medicine to see if
13 she can get back in order shortly.

14 MR. HARWELL: May the Court please, on
15 behalf of the defendant, Edgar Jones, notwithstanding
16 the benefit of a cross-examination to immediately
17 succeed direct, given the physical appearance of this
18 lady towards the end of the recess before Your Honor
19 reconvened, we respectfully suggest, Your Honor--we
20 don't move, we suggest this matter be adjourned until
21 nine o'clock tomorrow morning.

22 May the Court please, the
23 witness had a handkerchief. She appeared to be
24 vomiting, Your Honor, and then swallowing back. She
25 was very pale in color. And I would rather lose
whatever benefit I would have of examining her today

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1 rather than having her sick during the trial. I feared
2 she was going to throw up.

3 THE COURT: I think she has two or three
4 times, isn't that right?

5 THE MARSHAL OF THE COURT: I think so in
6 the last halfhour.

7 MR. HARWELL: May the Court please, in
8 doing my job, if she does become ill on the stand,
9 there is a sympathy factor for the jury, especially
10 with nine ladies. I respectfully suggest that we
11 continue this at 9 a.m. tomorrow.

12 I further suggest, may the
13 Court please, that the marshal be directed to take
14 her to a physician and let's determine if there is a
15 problem, Judge. I had one case where a witness had
16 a heart attack. That case was not as young as this
17 woman, I would comment, but if she has a medical
18 problem, I think we should find out. I know something
19 about her past medical history. I say this as a human
20 being. Forget about me being a lawyer.

21 MR. SELF: Judge, she was apparently
22 in some discomfort.

23 THE COURT: All right. We will adjourn
24 until nine o'clock tomorrow morning.

25 MR. SELF: We had another matter

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1 tomorrow at nine in the morning.

2 THE COURT: I have called the magistrate
3 to come down here.

4 MR. HARWELL: May the Court please, comes
5 now the defendant, Edgar Jones, and again under the
6 ruling set forth of the Supreme Court of Geders which
7 I cited yesterday, we move the Court for an order on
8 prohibiting any conversation between any counsel or
9 Government agents as to this witness until such time
10 as her examination, direct and cross, is completed.

11 THE COURT: Well, I am not going to
12 bar the United States Attorney from talking to his
13 witness.

14 MR. HARWELL: Then you aren't barring us
15 either?

16 THE COURT: I don't bar anyone from
17 talking to her.

18 MR. HARWELL: We tried unsuccessfully.

19 THE COURT: That is up to her.

20 MR. HARWELL: We respectfully renew our
21 motion.

22 THE COURT: All that I can say is I
23 am not barring her from talking to anyone except
24 this: I bar her from talking to any other witnesses
25 who are excluded under the rule. But you attorneys

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1 are officers of the Court.

2 MR. HARWELL: Will you request the
3 United States Marshall to advise her of that barring
4 as to talking to any potential witness? You don't
5 want to do it with the Jury in.

6 MR. SELF: Her attorney can tell
7 her.

8 MR. JUSTICE: I have advised her. She
9 has been advised. I will renew it.

10 THE COURT: She can't talk to any
11 other witnesses.

12 MR. JUSTICE: She knows that, Your Honor.

13 THE COURT: She is not barred from
14 talking to you or the United States or any other
15 attorneys if she wants to. I can't make her talk
16 to anybody. I can't tell her not to talk to them.
17 It is up to her.

18 MR. HARWELL: May Your Honor please,
19 Your Honor is going to direct that there be some
20 kind of medical evaluation before tomorrow morning?
21 I suggest that strongly.

22 THE COURT: An evaluation?

23 MR. HARWELL: Judge, I don't know what her
24 problem is. I think she should be seen by a physician
25 before coming her tomorrow and having symptoms like

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1 now. It will save time if she had been with a
2 physician this afternoon who could have prescribed
3 or diagnosed and prescribed. And I say I am merely
4 suggesting that given the fact that she is in cus-
5 tody. That is difficult to do without Your Honor's
6 approval.

7 MR. JUSTICE: I don't think that is a
8 matter of this Court. I think that is a matter for
9 me. I won't hesitate to come to the Court if I need
10 some help.

11 THE COURT: She has her lawyer that is
12 fine. Thank you.

13 THE MARSHALL OF THE COURT: If needed,
14 medical attention can be given. We can go ahead
15 and provide medical attention without the Court.

16 THE COURT: Her attorney is here. You
17 can take care of that, can't you?

18 MR. JUSTICE: Yes.

19 MR. SELF: There is a matter outside
20 of the Jury's presence with regard to an alleged
21 missing tape number sixty-four that Mr. Harwell has
22 accused.

23 I've got the person who
24 turned the tapes in and has custody of them. And
25 he can testify he turned them over to Mr. Harwell.

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1 MR. WALBOURN: Your Honor, I don't know
2 what it is. Mr. Self seemed to have a case of
3 mumbles today. I can't understand a word he says.

4 THE COURT: Let's see. John Stephens,
5 Bernie Pafunda - - where is Bernie. He ought to hear
6 this.

7 Okay, gentlemen.

8 REPORTER'S NOTE: Whereupon
9 The Bench Conference was
10 concluded.

11 THE COURT: Due to matters beyond
12 our control, we are going to recess until 9:00
13 o'clock tomorrow morning. This is just something
14 I imagine will further help the trial later on.

15 You aren't to concern
16 yourself with it.

17 Remember, I have always
18 said this case is tried on what happens in this
19 Courtroom. When I say what happens, it is what the
20 witnesses have said and the exhibits.

21 You are not to speculate
22 about anything which we discuss up here. And I think
23 the biggest thing we discussed up here is someone
24 talked about somebody mumbling. They couldn't
25 understand what they said.

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1 But do all of you
2 understand this? I apologize for the recess, but
3 we will proceed.

4 During this adjournment,
5 over the evening, you understand you are not to
6 discuss the case among yourselves nor with anyone
7 else or permit anyone to discuss the case in your
8 presence.

9 You are not to finally
10 make up your minds upon the issues of this trial
11 until you have heard all the evidence together
12 with the Court's instructions.

13 No radio, no television,
14 no news of any kind.

15 Any objections or correct-
16 ions, gentlemen?

17 MR. HARWELL: No objection, may Your
18 Honor please.

19 THE COURT: Mr. Marshall, you may
20 excuse the Jury until 9:00 o'clock.

21 THE MARSHALL OF THE COURT: Your Honor,
22 the Jury has left the Courtroom.

23 *** **

24 *** **

25 *** **

1 THE COURT: Gentlemen, is there
2 anything else?

3 MR. SELF: Yes, Your Honor. I'd
4 like to make as part of the record as the Court has
5 previously instructed us the surveillance log of
6 the United States pertaining in regards to the
7 tape recordings. The Court asked us to make it a
8 part of the record and included with it are two
9 additional lists. The list that Mr. Harwell
10 provided to us and the tapes we provided him.

11 Let the record reflect
12 the last one I'll have on here is a conversation
13 of September the 24th, 1982, a transmittal copy
14 between Booth, Caudill, and Martin. That is the
15 last tape recording conversation that we have in the
16 course of this investigation --

17 MR. HARWELL: (Interrupting) May I
18 look at that, please?

19 MR. SELF: Yes.

20 I have examined the two
21 boxes of tapes that Mr. Harwell introduced and
22 those are -- they may contain the conversations that
23 were previously provided, but as far as the physical
24 tapes themselves, Your Honor, they may be copies
25 but those are not the copies we provided -- the

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1 official copies that we provided to Mr. Harwell.
2 They may be the copies that he made in Nashville,
3 but as far as physically those are not the ones that
4 we provided to him.

5 MR. HARWELL: And may the Court
6 please, in order to keep the record clear I state
7 as an officer of this Court, I want to file a
8 surveillance log that was given me by representatives
9 of the United States Government. This surveillance
10 log is different from that surveillance log,
11 specifically, Mr. Self's surveillance logs list
12 11A -- 11A-3-13-82 copy of phone pick-up 3-15-82.
13 Copy something one tape on page one.

14 Secondly, handwritten on
15 the last page of my tape list which was given to me
16 by the Government and not prepared by my staff, I
17 have handwritten page 62, handwritten 63 and
18 handwritten 64. And I think at some point it might
19 be necessary to compare the lists. So, for the
20 record, and with the Court's permission, I'd like
21 to put this and make it as part of the record and
22 file it if I could, Judge. But I'd have to xerox
23 it because this is the only one I've got.

24 THE COURT: That's fine.

25 MR. HARWELL: Thank you, Your Honor.

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1 MR. SELF: I guess mark this as
2 the next Government exhibit. This will be an
3 exhibit for the Court but not to go to the jury.

4 MR. HARWELL: Mine likewise will be
5 the next exhibit for the Defendant Edgar Jones not
6 to go to the jury but with the Government's
7 permission I would like to hand this to the Clerk
8 with the understanding that as soon as Your Honor
9 adjourns, I can go get my copy made because this
10 is the only one I have.

11 THE CLERK OF THE COURT: Mr. Self, are
12 these the logs that were entered as Court exhibits
13 on February 6th and were sealed?

14 MR. SELF: I don't know what was
15 sealed.

16 THE COURT: Just enter them as
17 duplicates.

18 THE CLERK OF THE COURT: Yes, Your
19 Honor.

20 You want this as one
21 exhibit, Mr. Self, or three exhibits?

22 MR. SELF: Your Honor, if the Court
23 would prefer I can prepare to put the agent on
24 that has custody and he can testify as -- that this
25 is the last tape that was made. He's here and

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1 available if needed.

2 THE COURT: Why not put the
3 affidavit of the agent in and file it with it?

4 MR. SELF: We'll do that, Your
5 Honor.

6 THE COURT: Is there anything else?

7 MR. SELF: Your Honor, may I talk
8 to the Court in chambers about the proceedings in
9 the morning dealing with other matters of this
10 Court?

11 THE COURT: Yes. What he's talking
12 about, gentlemen, there are some arraignments set
13 in Court for in the morning, but I have directed
14 that Magistrate could come down and handle those.
15 We've had enough delays in this case without taking
16 up arraignments.

17 MR. SELF: Where will they be heard,
18 Your Honor?

19 MR. HARWELL: Your Honor, the
20 conference room that Your Honor has occasionally
21 sent the jury to on the second floor is large enough
22 and has tables and chairs.

23 THE COURT: I think Judge Hood has
24 used that court before. The arraignments shouldn't
25 last too long.

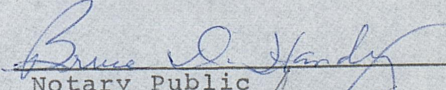
1 Anything else?
2 MR. HARWELL: Nothing else, Your
3 Honor, if you please.
4 MR. SELF: Nothing else.
5 THE COURT: I'd like to see Mr.
6 Thomas and Mr. Rowland in chambers after we're
7 finished here.
8 MR. THOMAS: All right.
9 THE COURT: Please adjourn the
10 Court, Mr. Marshall.
11 THE MARSHALL OF THE COURT: All rise.
12 (Reporter's Note: Whereupon
13 the Court was adjourned at
14 2:50 P.M.)
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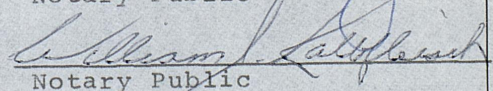
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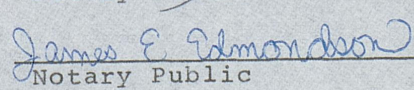
We, BRUCE D. HANDY, WILLIAM J. KALBFLEISCH,
& JAMES E. EDMONDSON, Notary Publics, within and
for the State at Large, do hereby certify that
the foregoing proceedings were taken before us at the
time and place and for the purpose in the caption
stated; that the witnesses were first duly sworn
to tell 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 21st day of February, 1984.


Notary Public


Notary Public


Notary Public