UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

UNITED STATES OF AMERICA

-vs- CASE NO. 83-8

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

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TRANSCRIPT OF TRIAL

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DEPONENT: THE HONORABLE G. WIX UNTHANK

DATE: FEBRUARY 22, 1984

VOLUME THIRTY-SIX

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PEARL BOOTH

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FEDERAL CONTROL COPY

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WILLIAM D. KIRKLAND, ESQ.

MILLERS FALLS
EZERASE
COTTON CONTENT

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

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

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

THE COURT: Are we ready to proceed, gentlemen?

MR. SELF: Yes, Your Honor.

THE COURT: You may proceed. Mr. Harwell.

MR. HARWELL: Judge, may I go to the podium?

THE COURT: Yes, sir, please do.

MR. HARWELL: Thank you, Your Honor.

THE CLERK OF THE COURT: Ms. Booth, you recall you were previously sworn on Monday this week, Ma'am. Do you still recognize yourself as being under a continuing oath?

THE WITNESS: Yes, Ma'am, I do.

CROSS-EXAMINATION (resumed)

BY MR. HARWELL:

Q Good morning, Mrs. Booth.

Mrs. Booth, prior to our adjournment yesterday, we were talking about Monday, February 15, 1982. And specifically, I was asking you if it wasn't true that you had called Donahue Halbert for guns and ammunition before the second meeting you had with my client, Edgar Jones, on that Monday.

Do you recall my asking you that?

A Before the second meeting on Monday?

Q Yes, Ma'am.

A I couldn't be specific.

Q All right. You had no recollection as to whether or not it was before or after the second meeting with Edgar Jones that you called Donahue Halbert on Monday, is that right?

A I called Donahue Halbert Monday.

Q Yes, Ma'am. That was before there was any violence up there at the picket line, is that right?

A. Yes, it was.

Q. So you are saying it was before violence, but you now don't remember whether it was before the second meeting or after the second meeting you allegedly had with Edgar Jones, is that right?

A. I don't recall at present whether it was before the second meeting; and I didn't recall it yesterday.

Q. All right. Let me ask you this, Ma'am. You called Donahue Halbert because Phillip Booth, your husband, had the guns and the pistols and the rifles, and you wanted to tell Mr. Halbert what kind of shells you all needed, isn't that the purpose of that call?

A. Mr. Booth, Phillip had the guns and stuff.

Q. That was Monday?

A. It was for his guns.

Q. Yes, Ma'am. I am saying the reason you called Donahue Halbert was because Phillip did have the guns and you were trying to acquire ammunition, isn't that correct?

A. Yes, sir.

Q. All right. Now, as a matter

of fact, Phillip Booth had given his guns to the men up on the picket line Monday, hadn't he?

A. Yes.

Q. All right. And so on Monday, even though there wasn't any violence, you had called Donahue Halbert to get the guns and ammunition, if I understand your testimony.

Let me ask you this, Ms. Booth. You did that on your own, didn't you?

A. Yes, sir, I did.

Q. Nobody told you to do that?

A. I said I done it on my own.

Q. All right. Ms. Booth, I understood you to say yesterday that you and Phillip Booth had told your workers at Bryan Coal Mine to go out on strike. Refresh my memory, if you will.

Did you all tell the workers at Bryan, or the workers at Calamity first, to go out on strike?

A. We told both mines, they was both told to go out on strike.

Q. Yes, Ma'am. My question is, which group - - which miners were told first?

A. I went to Bryan.

Q. You went to Bryan?

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A. As I recall I went to Bryan.

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MILLERS FALLS
EZERASE
COTTON CONTENT

Q. All right. And did you later go to Calamity and tell them, or did Phillip Booth tell them?

A. Phillip could have went, but I went to Calamity, too. I called, and then I went.

Q. So you went to Bryan and then after that you went onto Calamity in that order, am I correct?

A. As I recall, sir. It's been two years.

Q. All right. Monday night, February 15, again, Mrs. Booth, a bunch of men got together at your house,isn't that right?

A. Yes, sir.

Q. And as a matter of fact, your house throughout this entire situation was sort of a gathering place for the men -- for the miners, isn't that right?

A. Most of the time Phillip's men didn't know where the mines was from the house.

Q. I'm sorry, ma'am, I didn't hear the last part of your statement. Most of the time the men --

A. (Interrupting) Phillip's

employees a lot of time came to the house.

Q. Yes, ma'am. And when you say Phillip's employees, the fact of the matter is, you are talking about employees of Bryan and Calamity Coal, isn't that right?

A. Yes, sir.

Q. And that was the company that you and your husband jointly owned, isn't that right?

A. Supposedly.

Q. Yes, ma'am, all right. Now, about how many men were out there at your house in the house and in the front yard on Monday night?

A. There was quite a few.

Q. Fifteen or twenty?

A. I really couldn't tell you how many men was there. There was quite a few of them.

Q. Can you approximate for us, ma'am? Give us an approximate number, an about number.

A. Sir, it could have been ten, fifteen.

Q. All right. And the fact

of the matter is, those men were out there talking, and they were out there drinking, weren't they, Mrs. Booth?

A. I think I stated that before.

Q. Yes, ma'am. I just wanted to be sure I understood what you said before.

As a matter of fact, some of them were coming in and out of the house and getting beer and things to drink, weren't they?

A. Yes, sir.

Q. All right. And I think your testimony yesterday, Mrs. Booth, was that you stayed away from the men that night and you really didn't hear anything specific that they were talking about, am I correct?

A. You are correct.

Q. All right. Edgar Jones wasn't at your house on Monday night, was he?

A. No, sir.

Q. As a matter of fact, he wasn't ever at your house, was he?

A. No, sir.

Q. Never came on that property or darkened the door to your house, did he?

A. Not to my knowledge.

Q. All right. And as far as you can recall after that, that is after the men were there on Monday night, nothing else happened that you remember concerning Ray-Mac on that evening, February 15, did it?

A. On February the 15th?

Q. Monday. The men were there that night, and I am saying that that is the last thing of any significance that happened on Monday night, isn't that correct?

A. I suppose.

Q. All right. Mrs. Booth, on Tuesday, February 16, I think your testimony was that the men were out on the picket line, is that right?

A. Yes, sir.

Q. And they took the guns and the ammunition with them, didn't they?

A. Phillip took the guns.

Q. Phillip Booth?

A. And ammunition.

Q. All right. And as a matter of fact, he took a .38 from your house, didn't he?

A. He took a lot of guns from my house.

Q. Do you remember his taking a .38?

A. I said I kept a .38.

Q. Yes, ma'am.

A. And he probably --

Q. (Interrupting) I didn't mean to interrupt you, ma'am. You were saying you kept a .38, and he probably, and I interrupted you.

A. He took a .38.

Q. All right. He took a .357 Magnum, didn't he?

A. Yes, sir.

Q. And he took a .44, didn't he?

A. As I recall, yes.

Q. And he took a 30-30, didn't he?

A. Yes, he did.

Q. And he took a Mini 14, didn't he?

A. Yes, he did.

Q. And those were your

MILLIKEN MILLS
BEDFORD
COTTON CONTENT

all's guns?

A. Yes, they were.

Q. All right. And when he left, or shortly prior to his leaving, he told you he was taking them to go out on strike against Ray-Mac, didn't he?

A. That is right.

Q. All right. Now, you testified, Mrs. Booth, that after your husband left with his guns to take the guns to the men up on the picket line, that you later met on that Tuesday with Edgar Jones and somebody told you that your husband had been shot.

Isn't that a fair recitation of what you said?

A. (No response).

Q. Didn't you later that day meet with Edgar Jones, or go to the JRM office and hear that your husband, Phillip Booth, had been shot?

A. Yes, sir.

Q. All right. And as a matter of fact, it was Mr. Phillip Dale Moore who told you Phillip Booth had been shot, isn't that true?

A. They was all talking.

Q. All right. And when you first went to JRM and heard that Phillip Booth had been shot, you didn't believe it, did you? You thought it was a joke?

A. Yes, sir.

Q. All right. And you made a statement when you walked in that JRM office that day, did you not? Do you remember making a statement?

A. I thought they was joking.

Q. Yes, ma'am. Let me ask you this, ma'am. When you walked in the office, didn't you make a statement you all couldn't fight Ray-Mac with the little guns you had, isn't that what you said?

A. We all made that statement after we realized Ray-Mac -- that Phillip had been shot, we all did.

****

Q. And when you say we all, that includes you, doesn't it?

A. I included myself.

Q. All right. Now, you hadn't been to the picket line on that Tuesday, not at that point?

A. Sir, I never was at no picket line.

Q. I beg your pardon.

A. I never was.at a picket line. I went to one place one time. And I don't think that is anything that you would call a picket line.

Q. All right. You have your characterization, and I have mine. So let's refer to it as the Ray-Mac's site. I am talking about the cut up there where the access road leads off Kentucky 108 to the Ray-Mac mining site. All right?

A. Okay. The one time I went there was when I was looking for the men that was in the hills. And there was nobody around there. I just drove over the hill. There was no line there.

Q. Okay. Let me get you, though, Ms. Booth, to again focus your attention on that Tuesday morning, February 16, 1982, when you told

this jury that you had a meeting with Edgar Jones.

I believe you said that German Stumbo and Edgar Jones stepped out of the room and went into another room for a few minutes. Isn't that correct?

A. That's correct.

Q. You didn't follow them into that other room, did you?

A. No. That wouldn't have been polite.

Q. I beg your pardon?

A. That wouldn't have been polite.

Q. I see. And you didn't hear what German Stumbo said to Edgar Jones or what Edgar Jones said to German Stumbo, did you?

A. No, sir, I didn't.

Q. All right. So you don't know what they talked about, do you?

A. No, sir.

Q. All right. And no one else that was there at that time went into that other room with Mr. Stumbo and Mr. Jones. They went in by themselves. Isn't that correct?

A. That is the way I recall it.

Q. All right. Would you briefly, please, ma'am, describe the JRM office, the office you referred to as Edgar Jones' office so this jury will understand it; not as it is now; but as it was in February, February 15-16, 1982. Can you do that, please, ma'am?

A. He has a trailer.

Q. A trailer?

A. Yes.

Q. All right. And as a matter of fact, that trailer is divided into--was divided into three sections. Isn't that right?

A. Yes, sir, it was.

Q. And the fact of the matter is that being a trailer, the walls are very thin, the walls that divide each of the three sections. Is that right?

A. Sir, that would be opinion. I don't know.

Q. Do you have an opinion?

A. I didn't check the walls out. I don't know.

Q. I see. You don't have an opinion as to whether that was a flimsy wall construction or not. Am I correct? You have no opinion?

A. Sir, it is not in this. I am not supposed to give opinions.

Q. Do you have knowledge, ma'am-- And I have misused the word opinion. Do you have knowledge as to whether or not the walls in that trailer are thin or are not thin.

A. I would have had to measure it to have knowledge. I don't have knowledge.

Q. All right. Jason Moore was at that meeting. Am I correct?

A. Jason Moore was there.

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Q. And if I remember your testimony, he left to see about his son who was injured. Is that the right answer?

A. Yes, sir.

Q. Then I think you said German Stumbo leftfollowed by Phillp Booth and Phillp Dale Moore. Am I correct.

A. That is the way I recall it.

Q. Alright. And that left you there with Edgar Jones. Is that correct?

A. That is correct.

Q. And Angie Elliot was also there in that trailer. Is that right.

A. Yes, in that trailer.

Q. And was Dwayne Little there or anybody else from JRM there at that time?

A. I don't recall.

Q. You have no recollection?

A Not at present.

Q Alright. You say that Mr. Jones, during that conversation after the other men had left, told you to get the guns and ammunition and give it to the men on the picket line. Is that right?

A Mr. Jones told me to take whatever it took to stop Ray- Mac.

Q Yes, ma'am. But did he specifically say guns and ammunition when he said whatever it took?

A He meant guns and ammuntion We had discussed bigger and better guns if you recall.

Q I recall. The question is, did he mention, did he say the words guns and ammunition, or did he say do whatever it takes according to your testimony?

A If I recall correctly, he said both.

Q You think he said both. Alright. Now, is that the time you are telling this jury that Edgar Jones allegedly said that he would reimburse you for moneys spent on guns and ammunition? Is that the meaning?

A Edgar said that on several occassions sir he said he couldn't afford it being traced back to him in any way and have his name involved

Q Yes, ma'am. You have told us that. But my question is on that meeting, on that Tuesday, after German had left and Jason had

left and Phillip and Phillip Dale had left, was that one of the times Edgar Jones said he would reimburse you all?

A I recall it that way.

Q I see. Mr. JOnes didn't tell you where to get the guns and ammunition, did he?

A Sir, No.

Q And he didn't tell you how to get the guns and ammunition, did he?

A No.

Q And he never told you what types of guns or ammunition to acquire, did he, by your testimony.

A I don't recall him telling me.

Q And later on, you had said t that Jason Moore was the person who brought you the list of ammunition to purchase. Am I correct?

A You are correct.

Q And Jason Moore at that time was an officer for local 5697 of the United Mines Workers there at McDowell,wasn't he?

A I think he was.

Q I see, And it was known by

you and to your knowledge and throughout the community that Jason Moore was a very dedicated and outspoken member of the Mines Worker Union. Isn't that right?

A He was until it come to his job.

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MILLERS FALLS
EZ ERASE
COTTON CONTENT

Q. He was or was not until it come to his job? What did you say?

A. He was.

Q. A dedicated - -

A. (Interrupting) Unless his job was on the line and he was forced to do something.

Q. I see. But he was you are saying - -

A. (Interrupting) He was a dedicated Union member.

Q. All right. And the truth of the matter is in regard to Edgar Jones, as far as you know, you never were reimbursed by him. Is that correct, as far as you know?

A. Not personally, no.

Q. All right. I believe, Mrs. Booth, that it was your testimony previously that you - - strike that, Your Honor. Let me go back for just a moment to that meeting that you had said was had where Mr. German Stumbo and Phillip Dale Moore and Phillip Booth and Edgar Jones were on Tuesday, the 16th.

Was there any conversation by those men about they couldn't get up to Ray-Mac through the road because Ray-Mac could see both

ways. Do you recall that?

A. I recall that.

Q. And the fact of the matter is that those statements were made by your husband Phillip Booth and by Phillip Dale Moore. Isn't that right?

A. The statements was made by all. We was all talking it.

Q. Did Edgar Jones say that?

A. Edgar Jones was in the conversations. We was all talking it.

Q. Yes, Ma'am. But as to that specific comment about the inability to get to Ray-Mac because they could see both ways down the road, did Edgar Jones say that or did he not say that?

A. Sir, I don't realize which one said it first, but we all agreed to send the men in the hills to spot out of place.

Q. Yes, Ma'am. I am not talking about sending men in the hill to get them. I am going to talk about that. But what I am talking about is that meeting and who said what according to your testimony. Okay? And I'm asking you if you have any recollection; and if you don't, as His Honor has earlier advised you, you can say I don't know

or I have no recollection. But if you have any recollection as to whether or not Edgar Jones in that meeting did or did not make any comment regarding inability to get to Ray-Mac because they could see both ways down the road? Do you remember or not remember?

A. Edgar made a comment. We all made comments. We all was in the discussion. I don't know who brought it up first. And I was scared. I really don't know who because Phillip was hurt.

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Q. Edgar Jones you know now and you knew then hadn't been to the picket line, hadn't been up to the Ray-Mac site?

A. Sir, I hadn't either.

Q. Yes, ma'am. But you know that Edgar Jones had not been up there?

A. I don't know that he was. All I know is I wasn't.

Q. Isn't it true, ma'am, that you don't remember specifically who said what at that meeting?

A. Sir, all I remember is we was all discussing going into the hills.

Q. All right. And you indicated, if I remember your testimony, Mrs. Booth, yesterday, that on that Tuesday, Edgar Jones told you to make sure Phillip Booth was out on the picket line and that your men were out on the picket line. Is that right?

A. I remember he called me and he called up and he said to make sure that Phillip was out on the picket line; and that way, the men would follow Phillip Booth out on the picket line. And he said that Tuesday, too.

Q. And he said that Tuesday.

And when hesaid it Tuesday, the fact of the matter is that Phillip and his men had already gone out on the picket line. Isn't that right? They were already there, had been there?

A. Tuesday--Phillip had been out on the picket line Tuesday because he got shot.

Q. That's right. That is my point, ma'am. Now--

A. (Interrupting) But how about my-- Okay. I'm sorry.

Q. I didn't mean to interrupt you. His Honor--

A. (Interrupting) I had no right to-- I am sorry.

Q. All right. Now, after the meeting, the alleged meeting on Tuesday, February 16, you left and went home, didn't you?

A. As I recall.

Q. All right. And just like on Monday night, on Tuesday night there was another meeting at your house. Is that correct? The men that met there on Tuesday night?

A. Yes, there was men there Tuesday night.

Q. I see. And were there about the same number or more men or less men there

on Tuesday night than there had been there on Monday night?

A. I am not sure at present how many was there, but I know the ones that--

Q. (Interrupting) You don't know whether there were more or less men there on Tuesday than on Monday?

A. Sir, at present, I don't recall.

Q. All right. And the men were talking and they were drinking that Tuesday night, weren't they?

A. Yes, sir.

Q. And actually it was somewhat similar to Monday night because they would come in the house and get something to drink and go into the yard. And they were circulating about, weren't they?

A. Probably.

Q. Probably? You are not sure?

A. They went in and got beer and was talking, you are right.

Q. All right. Were they in the front or the back or the side of your house, or

were they all about your house, the men?

A. Sir, I didn't go all the way around the house. I don't know. I just seen the ones out front.

Q. In the front yard?

A. Yeah.

MR. HARWELL: May the Court please, I have a number ofpphotographs, which with the Court's permission, I would like to tender through the Marshal to the Clerk to be noted as a NPM, then noted for identification purposes so that I might pass them to the Government. May I, Judge?

THE COURT: Yes, sir.

MR. HARWELL: Judge, I would respectfully suggest since they are different of the same subject, that they be the next numbered defendant's exhibit, and then A, B, C, D, E, sort of a collective, Your Honor, rather than making them consecutive if that is agreeable with the Court.

THE COURT: All right.

MR. HARWELL: Mr. Marshal, would you hand that to Madam Clerk, please.

THE CLERK OF THE COURT: Your Honor, the exhibits which were marked and previously identified for identification Edgar Jones not previously marked No. 8, have now been identified as Edgar Jones Trial Exhibits 10A through and including 10H for the purposes of trial identification, Your Honor.

(Reporter's Note: Whereupon United States counsel is looking at the photographs.)

MR. HARWELL: Judge, may I walk over to my table a moment?

THE COURT: Yes, sir.

The jury is all looking, what they're doing is counting the chairs, there's fourteen.

MR. HARWELL: Your Honor, for the record, would it be appropriate or necessary to pass those to the other lawyers?

THE COURT: Yes, please show them to the counsel for the Defendants.

THE MARSHALL OF THE COURT: Yes, sir.

Your Honor, all the defense counsel have seen Exhibits 10A through 10H.

THE COURT: Thank you.

Q. Ms. Booth, the Marshall is handing you a group of photographs that have been marked for identification as Defendant Edgar Jones Exhibit 10A through H. I will ask you, ma'am, to look at those if you would.

A. It's sure grown up since I've been gone.

Q. Do those photographs, ma'am, depict the house where you and Phillip Booth left in February of 1982?

A. Yes, it does.

Q. And do they depict that house as to the exterior, they're all exterior shots as to the exterior of the house as placed on the lot the same way it was in February of 1982?

A. I don't think it's been moved.

Q. And except for -- as I understood you, ma'am, except for having growed up, the bushes and the grass having grown up, do those pictures depict that house and lot in the condition that is substantially similar to that as it was in February of 1982?

A. Yes, sir.

Q. All right, now. Look

through those photographs, ma'am, Defendant Edgar Jones Exhibit 10A through 10H and if you will, Mrs. Booth, tell me -- Judge, may I have the witness passed a grease pencil. I think there's one, Your Honor, next to the Marshall on the left, either on the blackboard or on the other board with the paper on it.

THE COURT: Are you first moving for those to be introduced as evidence?

MR. HARWELL: Yes, I was, but I didn't. I move, Your Honor, that they be admitted as Exhibit 10A through H on behalf of Edgar Jones.

MR. SELF: I'd like to voir dire the witness, Your Honor.

THE COURT: All right, let him voir dire the witness.

MR. SELF: Let me do it here, Your Honor, rather than having Mr. Harwell move all his papers and everything.

THE COURT: Fine.

MR. HARWELL: Thank you.

VOIR DIRE EXAMINATION

BY MR. SELF:

Q Ms. Booth, can you hear

me all right from here?

A. Yes, sir.

Q. The photographs you have in front of you, that is the house that you lived in, isn't it?

A. Yes, sir.

Q. Is the outside of the house depicted in those pictures any way resemble the way it was in February of 1982?

A. No.

Q. Does the physical condition of the house in any way resemble the way it was in February of 1982?

A. The structure is the way it was, the structure of the house.

Q. How about the condition of the windows and the doors in the house?

A. They were not that a-way.

Q. Not the way it was depicted in the photograph?

A. No, sir.

Q. How are they in that -- don't answer that.

Was the growth around the

house, the way it is, was it like that in February and January -- January, February, March of '82, the way it's depicted in those photographs, ma'am?

A. No.

MR. SELF: Your Honor, I would object to those.

MR. HARWELL: May the Court please --

THE COURT: (Interrupting) Let him go back on.

MR. HARWELL: Thank you, sir.

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MILLERS FALLS
EZERASE
COTTON CONTENT

FURTHER EXAMINATION

BY MR. HARWELL:

Q. Ma'am, if I understand you're saying that the house is placed on the lot exactly the way it was in February of 1982, is that correct?

A. It's on the lot.

Q. Right. And that house has not had any structural additions added to it or deleted from it since February of '82, has it?

A. Things have been taken from it.

Q. All right. My question may not be clear, Ms. Booth, I'm not talking about appliances and carpets, I'm talking about - - there's no additional room on it or there's no room that's been removed, it is from the exterior as it was structurally in February of '82, is that correct?

Look at those pictures carefully if you would, please Ma'am.

A. The pool is gone - - the pool is gone.

Q. That was the above ground pool?

A. And the deck around it.

Q All right, that's in the back or the front of the house?

A It was on the side of the house towards the back.

Q All right. Would you take a marker with the Court's permission and mark where the pool is gone - -

THE COURT: (Interrupting) I hate to, I'm not trying to - - I'm just wondering if the doors and the windows are the same now.

MR. HARWELL: I'm going to ask her that Judge. I know - - Your Honor, I'm not trying to get it in except to show the location in order to place some other things. And I will - -

THE COURT: (Interrupting) Please continue.

MR. HARWELL: I will tell this Jury and this Court that I agree that the doors and the windows are different and the brush has grown up, or the grass has grown up and the pool is gone.

Q Ma'am, one of those photographs or maybe two of them depict the side of the house clearly where the above ground pool was, can you find those amonst 10A thru H?

A How many was there?

Q. You'll have to look through them and tell me Ma'am.

A. I thought you said two?

Q. I said there's one and there may be two.

A. There is three sir.

Q. Three, all right.

Would you please, Ma'am, identify those three, what letters and numbers are marked on them by Madam Clerk?

A. 10D.

Q. All right, and the other two?

A. Pardon me?

Q. Didn't you say there was three pictures?

A. Yes, 10H.

Q. And what's the other one, the third one?

A. 10F.

Q. 10F. Okay.

So the Court and the Jury can understand, would you mark with a circle, Ma'am, with one of those wax pencils, let's do it with a yellow one where that pool was on the side of that

house, as it was in February of 1982?

A. You want me to draw the pool?

Q. Ma'am, just draw the circle, it was an above ground pool, wasn't it?

A. There was a deck around it too, sir, it was not just a pool.

Q. Yes, Ma'am. If you will just show where it was with a circle or a square or however you want to depict it and tell us how you depicted it, for the purposes of the record.

REPORTER'S NOTE: Show that the withess is marking a picture.

Q. Did you just mark 10D?

A. Yes, sir.

Q. With a yellow felt - - with a yellow wax pen?

A. Yes, maybe I didn't do it the way you wanted it, I don't know.

Q. Would you now mark the other two also showing - -

A. (Interrupting) You want it with yellow too?

Q. Please, Ma'am, where the pool was in February of 1982.

A. Wait, February of '82?

Q. Yes, Ma'am.

Have you got that marked Ma'am?

A. Just a moment.

Q. Let me see if I can help you Ms. Booth. Could it be that you're thinking that the pool had not been put in February of '82?

A. That is what has just occurred to me. I'm not sure if the pool was in at that time.

Q. I suggest to you Ma'am, in order to refresh your memory that the pool was put in later in 1982 after February.

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Q. After February.

Do you have any clear recollection whether that's accurate or not?

A. After the trouble with Ray-Mac when the money started coming in?

Q. After February of 1982, after the trouble at Ray-Mac.

A. That's a good possibility.

Q. You don't remember?

A. See, prior to this, I had -- as I recall, we didn't have no money.

Q. Okay. Let me go back to the pictures, ma'am, because what I'm attempting to do is to distinguish any differences in the visuals as to that house and lot in February of '82 as compared to those photographs. Now, there are differences to which Mr. Self made reference in regards to doors and windows. Tell this jury how the house and the lot depicted in the photograph differs from the way it was in February of '82?

A. February of '82, it was not in this kind of shape.

Q. All right, tell us how it was not in this kind of shape.

A. The house was in good

shape in 1982.

Q. Wouldn't it be fair to say that the windows were not broken, that they were intact?

A. The windows were intact and the doors were intact.

Q. The doors were up and intact, is that right?

A. As I recall it, sir.

Q. Now, I think you've mentioned and I've mentioned two or three times that the grass and the bushes has grown up, is there anything else other than that which you've told us about that is different from the house and the lot as depicted in the photograph versus the way it was in February of '82?

A. Around my house?

Q. Beg your pardon, ma'am?

A. Around my house?

Q. In those pictures, yes, ma'am, as compared to how it really was in February of 1982.

A. Sir, I don't know what you're getting at, but it's the house and it's the lot.

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MR. HARWELL: Okay.

May the Court please, I move to admit Defendants' exhibits marked for identification 10A through 10H.

MR. SPENCER: We have no objection, Your Honor.

MR. SELF: We object and I'd like to approach the Bench, please.

THE COURT: All right.

Reporter's Note: At this time a Bench conference was held with all counsel present where the following was heard:

MR. SELF: Your Honor, I'm going to object for one reason because as the witness has said this is showing the physical location of the house on the lot but this does not represent the outside conditions, the physical condition of the house as it was at a relevant time.

Secondly --

THE COURT: (Interrupting) Wait a second, what is the difference.

MR. SELF: The condition is what's different.

The second objection is based on relevancy, how do all these photographs --

how are they relevant?

MR. HARWELL: Her testimony, may the Court please, is that on Monday night and Tuesday night men gathered there, they were drinking and talking about the situation at Ray-Mac. Secondly, Your Honor, I've tried to be totally open and candid with the jury that there are differences with the house and the lot, because I don't have the benefit of photographs in February of '82. But I need these for her just to say this is where this was and this is where that was.

THE COURT: Well, apparently she stated that these fellows was there at the house.

MR. SELF: Well, my objection goes to the fact that he's attempting to influence this jury by showing them how Mr. Booth has --

MR. HARWELL: Your Honor, if it pleases--

MR. SELF: (Interrupting) May I finish, Mr. Harwell?

THE COURT: Let him finish.

MR. HARWELL: I'm sorry, Your Honor.

MR. SELF: He's showing the character of Mr. Booth by how he let the house run down.

MR. HARWELL: Your Honor, if I could --

MR. SELF: (Interrupting) Your Honor, I'm objecting secondly on the grounds that Exhibit 10E, I think Mr. Harwell is trying to use these for something else, Your Honor.

THE COURT: I assume that he's going to use these to show the surroundings of the house and to show where things were around the house.

MR. SELF: Well, I think he can do that with aerial photographs, Your Honor.

MR. HARWELL: Can I get something from the podium, Your Honor, and bring it back while you hold this Bench conference? I'd like to show Your Honor one thing if I may in response to Mr. Self's --

THE COURT: Gentlemen, we're wasting time.

MR. ADAMS: I agree with the Court.

MR. SELF: I object, Your Honor, because these photographs are not consistent with the events as they occur.

MR. HARWELL: For the purpose of the record, may it please the Court, I hand you a number of photographs which I would have liked to have introduced, but I think they would possibly prejudice this jury. You understand that I firmly

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think there is nothing prejudicial about those that Your Honor has got.

THE COURT: It's my understanding the purpose of these pictures is to show the layout of the house.

MR. HARWELL: Exactly, exactly. And I've told the jury and the Court that there are differences.

THE COURT: Well, that's what the Court will explain to the jury.

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

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THE COURT: All right. Let the objection be noted and overruled; and that which has been marked as Defendant Jones' Trial Exhibit 10A through H are finally admitted into evidence as Jones' Trial Exhibit 10A through H.

Ladies and gentlemen of the jury, you have been told, seeing these pictures, there is told there is a difference between the house at that time and this time, a lot has grown, the grass has grown up, and I don't know whether the house is vacant now, I assume-- That has nothing-- Is it vacant now, ma'am?

THE WITNESS: It is vacant.

THE COURT: The house is vacant now, but the purpose of these is to aid the jury in understanding the location of the house on the lot, and the structure of the house. You understand that, this is merely location, where the windows and doors are, and where the house is seen on the lot.

You may proceed.

MR. HARWELL: Thank you, Your Honor. Judge, might I have the Marshal pass these back? I need to give them to the witness for further questioning if I might. Mr. Marshal.

(Reporter's Note: At this time the Marshal

handed the photographs referred to to the witness.)

Q. Ma'am, the Marshal is handing you those photographs that the Court has admitted as Defendant Edgar Jones' Exhibit 10A through H. You have got them before you, do you not?

A. Pardon me?

Q. You have the photographs before you, they just have been handed to you?

A. Yes, I do.

Q. Let me ask you to pick them up, if I might, please, ma'am, so I might ask you some questions about them.

A. Okay.

Q. And I think the Marshal gave you a red pen a moment ago, did he not?

A. Sir, just a minute.

Judge, might I speak to my attorney a minute?

THE COURT: What?

THE WITNESS: My attorney a minute?

THE COURT: Oh, yes, yes.

MR. HARWELL: I didn't hear, Judge.

THE COURT: Let Mr. Justice talk to her.

MR. HARWELL: All right.

(Reporter's Note: At this time the witness conferred with Mr. Justice.)

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

THE COURT: Yes, sir.

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

MR. HARWELL: May the Court please, I would appreciate your advising this jury for their benefit and for purposes of the record who Mr. Justice is; that he is not some defense lawyer, he is not a trial counsel for the Justice Department, he is her counsel and it's perfectly proper for there to be discussions and nothing untoward or different about it.

THE COURT: All right.

MR. SELF: Her personal counsel.

THE COURT: Just a moment. I want to get in this record, I have been asked this two times, but this Court has not--this Court has no authority as far as I know to hold any witness incommunicado.

MR. HARWELL: You are absolutely right, but, Your Honor, I believe the law is that you have the right to tell me I can't talk to this person, you have power over me and power over Mr. Self, but not

over the witness.

THE COURT: I just wanted it understood, Mr. Harwell.

MR. HARWELL: I agree, Your Honor. You can't do that with the witness, but you can to Mr. Self and to me and the Government agents.

Do you agree, Mr. Self?

MR. SELF: I am going to see what the Court tells me.

MR. HARWELL: Me too, Judge.

THE COURT: All right.

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

THE COURT: This is Mr. Justice, and he is the attorney for Mrs. Booth. He represented Mrs. Booth, I think he has represented her at all times throughout this proceeding, isn't that correct, Mr. Justice?

MR. JUSTICE: That is correct, Your Honor.

THE COURT: He was with her at the time of her arraignment, and all of the proceedings with respect to her. Here is her attorney. She requested permission to talk to him, which is proper.

He is not a member of the defense. He is not--Mr. Justice is not a member of

the prosecution. He is her own individual attorney. She has the right to an attorney just like anyone. She requested to talk to him, and that was the purpose of that.

Do you understand? All right.

MR. JUSTICE: Thank you, Your Honor.

MR. HARWELL: Thank you, Your Honor.

Q. Ms. Booth, you have a red wax or pencil there before you, do you not?

A. Yes, I do.

Q. Okay. Now, the pictures which have been introduced, 10A through H, are exterior outside shots of the house, is that correct?

A. Yes, sir. I want to clarify something, can I?

Q. Yes, ma'am, with the Court's permission.

THE COURT: Yes, ma'am.

THE WITNESS: Well, prior to this, the pool was there, as I recall. The deck wasn't, but the pool was.

Q. All right. I appreciate your clarifying that.

Any other clarifications

you want to make at this time?

A. I just recalled it a while ago.

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MR. KEHRLI: Excuse me, Your Honor, we are getting feedback from one or more of these microphones, and it is interfering with our ability to hear.

MR. ROWLAND: Mrs. Booth's mike got moved during the conference, and I think maybe there might be some problems.

MR. JUSTICE: Your Honor, if I may, if someone could raise the microphone and put it about six inches from Pearl, it would be a lot easier.

THE COURT: What if Mrs. Booth just held that in her hand?

MR. HARWELL: It would be fine with us, Judge, whatever is most convenient for her.

THE COURT: Would you like to try that?

THE WITNESS: If that is what you want.

THE COURT: No, it is what is going to be convenient with you.

THE WITNESS: If they could hear me, I would rather it be there, but if it would help you all I will hold it.

THE COURT: Well, a lot of times when you do that, you have a tendency to put it too close.

Let's do it this way, let's move it around there to the side where it would be

better. Move it to the side, then when she steps down - - all right, that is good.

Q. Mrs. Booth, would you say one, two, three into that microphone so we can see if that helped or hurt?

A. One, two, three.

Q. Thank you, Ma'am. Now, Ms. Booth, I will try again with your help to go through those pictures and ask you some questions.

If you would, it might be most appropriate for you to spread those pictures out in front of you so you don't have to dig through them each and every time.

(Witness complying)

Q. Now, have you got them spread out, Ma'am?

A. I think so.

Q. All right. Mrs. Booth, I would like you to mark on whichever of those pictures that depicts the bedroom window, your bedroom window, in that house. The bedroom that you had in February of 1982, I would like you to mark a one.

A. With the red pencil?

Q. With the red pencil.

A. On each one of them?

THE COURT: Now, let's do this, Ma'am, if you put that - - if that is 10D or something, which one you are marking on.

MR. HARWELL: I was going to get her to do that, Judge.

Q. Which pictures did you mark the one on?

A. Okay. It is on 10C and 10B.

Q. Are there any other pictures that depict the window of the bedroom that you had in February of '82 in those amongst you or before you?

A. That is it.

Q. All right. I will ask you, Ma'am, to look at those photographs and see which, if any, depict from the exterior, the window of the living room of that house; and on those photographs, I will ask that you mark with that red pencil a two and tell us which ones, if any, you marked?

A. The window in the living room?

Q. Uh-huh.

A. (Marking photograph) 10B.

Q. All right. Just put a two on 10B.

A. 10A. (Marking photograph)

Q. 10A, you marked a two on 10A?

A. Do you want on the window or on the blue part?

Q. I want it on the window, Ma'am.

A. That is what I thought.

Q. The blue part is Madam Clerk's property, that is the tag.

A. I just wanted to make sure I was right.

Q. All right. Any others?

A. I am looking.

Q. I don't mean to rush you, Ma'am.

A. That is all.

Q. All right. Now, I will ask you to look at the photographs again, and I will ask you to use the number three to be marked with a red pen on any of those exterior shots that show the window for the kitchen.

A. 10G.

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Q. I didn't hear you, Ma'am.

A. 10G. (Marking photographs)

Q. 10G. That shows the kitchen, is that right?

Now, Ms. Booth, do you agree with me that the kitchen was on the back side of the house?

A. Yes, sir.

Q. Will you agree with me that the living room was on the front side of the house?

A. Yes, sir.

Q. All right. And there was also a den or a family room or whatever you call it, an informal - - what we call in Tennessee a parlor.

Do you know what I am talking about?

A. It is a family room, sir.

Q. Family room, all right.

I will ask you to take the pencil and mark a four in red on all the windows, if any, depicted in those photographs of that family room?

A. Okay. On 10F, there was

also a kitchen window.

Q. Beg your pardon? I didn't hear you, Ma'am.

A. The kitchen window was 10F, too. That is number three.

Q. All right.

A. And 10F was a family room where the doors are, or whatever.

Q. All right.

A. Do you want number four put on that?

Q. Please, on the windows of that room, of that particular room.

A. Yes, sir.

Q. Are there any others of the family room?

A. There is a partial one here on 10G, a partial one.

Q. Would you mark it too, please, Ma'am?

A. (Marking photograph) It looks like that is it.

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Q. Ms. Booth, some of those pictures depict, from the exterior, the front door of that house, isn't that right?

A. Yes, sir.

Q. I would ask you to use that red pencil and mark a five on the front door as depicted in each of those.

A. 10A (marking photograph).

Q. If you will, ma'am, tell us which ones you are marking, according to the exhibits numbers for the purpose of the record.

A. I did, I said 10A.

Q. I'm sorry, Ms. Booth, I didn't hear you. You marked a five on 10A?

A. Yes, I did.

Q. All right.

A. And 10B.

Q. All right.

A. 10E, 10D. Did you say -- was I supposed to put a five or E?

Q. Supposed to put a five.

A. Okay. I have to go back over. Okay.

Q. All right. Now, some of those pictures depict, from the exterior, the back

door, don't they?

A. Let me get to it.

Q. Okay. Would you use the number six, put it down with that red pen on the back door as depicted in any of those photographs, Defendant Edgar Jones Exhibits 10A through H.

A. 10G.

Q. All right.

A. Do you want a six on it?

Q. Please, ma'am.

A. That is all I see.

Q. All right. Mrs. Booth, you have testified that there was a meeting with a group of men at your house, the house set forth in those photographs on Monday night.

Likewise there was one on Tuesday night.

Now, were those men primarily in the front yard, the back yard, side yard right, or side yard left?

A. Sir, I recall them being in the front.

Q. In the front yard?

A. They could have been other places.

Q. On that Tuesday night, you saw some of those men with your own eyes in front of that house, didn't you?

A. I seen some of the men.

Q. All right. Look at the pictures if you will, ma'am, and see if you see the area in front of the house where they were on that Tuesday night.

A. Sir, they was in front of the house next to the garage there, and in front of the door and window, and probably all the way out to the back of the driveway.

Q. Is there a picture that shows that area where the men were that Tuesday night, February 16th, 1982?

A. Yes, sir.

Q. Would you take a red pen and just mark a circle in that area and in the middle of the circle put a seven.

A. Why don't I put a complete circle? I will make sure I get it right that way. I don't know where every man was standing.

Q. I am saying you said there was a picture to show where those men were in

front of that garage, and I'm asking you --

A. (Interrupting) I said the garage and around the front door and stuff.

Q. All right. Then mark whatever area it is in that yard where you saw those men on Tuesday night, February 16. If it is a big circle, fine, whatever it is. And if you would, ma'am, put a seven in that circle so for the record we will know what that means.

A. This is the way I recall it.

Q. I understand.

A. Put a seven? (marking photographs)

Q. Ms. Booth, will you tell us so the record will reflect the number of each of the exhibits where you drew a circle and put a seven, please, ma'am.

A. I drew a circle on 10A, but it's so close to the house, but I put a circle there, seven. That don't mean it was that close.

Q. What other exhibits have you marked with a circle and seven in red?

A. 10B.

Q. All right.

A. 10E and 10D.

Q. All right. Now, you have testified, ma'am, that on Tuesday night someone came to you and brought you a list of ammunition, is that correct?

A. That is correct.

Q. As a matter of fact, that person was Jason Moore, is that right?

A. That is correct.

Q. And he is the same Jason Moore that we talked about a minute ago that was a member of the United Mine Workers, 5967, am I right?

A. Yes, sir.

Q. All right. Now, where was it he gave you that list? You said at your house. I am asking you do you remember more specifically was it out in the yard or in the -- I think you said the playroom or rec room or -- what do you call it?

A. Sir, I know you know what it is -- I'm sorry. I'm sorry, I shouldn't say that.

Q. Ma'am, tell me what you call that room, please, ma'am.

A. It was a family room.

Q. Family room. Where was it that you are telling this jury that Jason Moore allegedly brought you this list on Tuesday night, if you recall?

A. If I recall. I am not sure whether he brought it in the house or I went outside where he was at.

Q. When he brought you that list, Edgar Jones wasn't there, was he?

A. No, Mr. Jones was not there.

Q. All right. That was a written list of ammunition, is that correct?

A. Yes, sir.

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Q. And after that list was given you, then you called Donahue Halbert again, didn't you?

A. Yes, sir.

Q. And you called him to see if he had the shells that were on that list, isn't that correct?

A. Yes, sir.

Q. And nobody told you that you should call Donahue Halbert? You did that on your own, didn't you?

A. Yes, sir.

Q. All right. And when you talked to Mr. Halbert, you told him what you needed and asked him if he had that ammunition, is that right?

A. Yes, sir.

Q. And he told you that he did, is that correct?

A. Yes, sir.

Q. And after you talked to Mr. Halbert, you then directed that somebody go and pick up that ammunition, didn't you?

A. Yes, sir.

Q. And I am correct, am I not,

Mrs. Booth, that you called Donahue Halbert from your home, isn't that correct?

A. Yes, sir.

Q. And it was also from your home, was it not, that you directed someone to go pick up that ammunition, isn't that correct?

A. Yes, sir.

Q. All right. And just like you called Donahue Halbert, you sent somebody on your own to pick it up? Nobody told you to send this individual to pick that ammunition up, did they?

A. No, sir.

Q. All right. When you talked to Donahue Halbert that night, it is your testimony that you told him you needed the ammunition because of problems with Ray-Mac, is that correct?

A. That is correct.

Q. And did you also mention to him the name of my client? Is it your testimony that you mentioned to Donahue Halbert the name of Edgar Jones, or his company, JRM in that Tuesday night conversation?

A. Yes, sir.

Q. And as a matter of fact, in that conversation Donahue Halbert said that he

hated Edgar Jones, didn't he?

A. He couldn't stand Edgar Jones.

Q. And he said it to you that night, didn't he?

A. He said he wouldn't do nothing to help Edgar Jones, he would help us.

Q. That is right. Didn't he say, Ma'am, that he wouldn't do anything at all to benefit Edgar Jones because he despised him?

A. He didn't say benefit Edgar, he said for us.

Q. And for us meant you, isn't that right? You were talking to him?

A. I was the one, yes.

Q. All right. And your husband was another, wasn't he?

A. (No response)

Q. Are you all right, Ma'am?

A. I will be all right. Yeah.

Q. All right. After you talked to Donahue Halbert about that list, you sent Phillip Dale Moore to get that ammunition, didn't you?

A. Excuse me, yeah.

Q. And Phillip Dale Moore was

one of your all's employees, wasn't he?

A. Yes, sir.

THE COURT: I guess maybe we need to have a recess for twelve minutes. All right. During the twelve minute recess, you understand the not now admonition is in effect? You understand that?

Gentlemen, is there any objection to the form of the admonition?

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

THE COURT: You may excuse the Jury, Mr. Marshall.

THE MARSHALL OF THE COURT: All right.

THE COURT: You may excuse the remainder of the Court for twelve minutes.

THE MARSHALL OF THE COURT: All rise. This Court is recessed for twelve minutes.

REPORTER'S NOTE: The Court recessed at 10:09 A.M.

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THE MARSHALL OF THE COURT: District court is now in session. Please be seated and come to order, please. Your Honor, all Defendants, all counsel, and all members of the Jury are present.

THE COURT: All right.

Mr. HARWELL: Judge Unthank may I go back to the podium to stand?

THE COURT: Yes, sir. You may proceed.

MR. HARWELL: Thank you, your Honor.

Q Miss Booth, prior to the recess, we were talking about Tuesday night. And as I recall specifically, we were talking about Phillip Dale Moore, and I was asking you some questions about Phillip Dale Moore.

On Tuesday, February 16, 1982, Phillip Dale Moore was one of the employees you and your husband, Phillip Booth, isn't that right?

A Yes, sir.

Q As a matter of fact, Phillip Dale Moore was a good friend at that time of Phillip Booth, wasn't he?

A I reckon.

Q He was aroung with your

husband frequently and they went to Winchester together, and he was there during hours when he wasn't working with some frequency, wasn't he?

A Yes, sir.

Q All right. Now, you memtioned a moment ago that Jason Moore has given you a list that night. You were aware back in February of 82, that Jason Moore and Edgar Jones didn't get along with each other, weren't you?

A On several occasions.

Q And you knew it, among those occasions, in February of 1982, didn't you?

A Yes, but I also knew he worked for Edgar, and he done what Edgar said.

Q He worked for Edgar in February of 82? Is that what you are saying?

A Jason had his truck. I just don't recall right now exactly how his positon was with JRM.

Q All right. This list of ammunition that you told this Jury that Jason Moore brought you, you don't know where he got it, whether he wrote it up, or whether somebody else wrote it up, or where it came from, do you?

A I don't know where it came

from.

Q All right. And I think you said, Mrs. Booth, that you gave Phillip Dale Moore a check to pay for the ammunition. Am I right?

A Pardon me?

Q I think you said, ma'am, that that Tuesday night, you gave the check to Phillip Dale Moore to pay for the ammunition that he was going over to get for you at Donahue Halbert's. Am I correct?

A Yes, sir.

Q All right. And that check was drawn on Calamity Coal Company, wasn't it?

A Yes, sir.

Q All right. And after you gave him the check or when you gave him the check, you gave him that list, didn't you?

A Yes, sir.

Q All right. And then Mr. Phillip Dale Moore left, and he went to pick up ammunition. Is that correct?

A As I recall, yeah.

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Q. All right. And he came back on that Tuesday night, didn't he?

A. Yes, sir.

Q. And he brought the ammunition you had ordered back with you, didn't he?

A. Yes, sir.

Q. All right. And he also brought back a 9 millimeter pistol, didn't he, Ms. Booth?

A. Yes, sir.

Q. He brought you some papers, didn't he?

A. Yes, sir.

MR. HARWELL: All right. May the Court please, I would ask Your Honor's permission to have the Marshal pass to the witness that which has been admitted as Government's Exhibit 91. Ms. Brenda, it is in the second pile-- I looked during the recess-- The pile that you are at now, ma'am. It is an ATF form.

Q. Ms. Booth, the Marshal has just handed you Government's Exhibit 91, and I ask you, ma'am, if you recognize that?

A. Yes, sir.

Q. And as a matter of fact,

that is one of those papers that Phillip Dale Moore brought back to you that Tuesday night when he returned with the 9 millimeter pistol and the ammunition. Isn't that correct?

A. Yes, sir.

Q. All right. And as a matter of fact, he had stolen that form from Donahue Halbert, hadn't he?

A. Well, that is what he told me.

Q. All right. At that time, you took the form, Exhibit 91, didn't you?

A. He gave it to me.

Q. Oh, I didn't mean to imply took forcibly, ma'am. You got from him that form, Government's Exhibit 91, didn't you?

A. Yes, sir.

Q. All right. Ms. Booth, in addition to sending Phillip Dale Moore to pick up ammunition for you on that Tuesday night, you sent someone else out on that evening to pick up some things for you, didn't you?

A. On Tuesday earlier, I had sent Morris Ray Hall.

Q. You sent him to pick up

the guns that you had ordered from Donahue Halbert. Isn't that right?

A. Sir, that is not right.

Q. That is not right. What did you send Morris Ray Hall to pick up on Tuesday night, ma'am?

A. Not Tuesday night. I had called Donahue Monday.

Do you want me to go into this?

THE COURT: (Shrugging his shoulders.)

Q. I would like, ma'am, if you would, with the Court's permission, for you to answer my question which was what did you ask him to pick up for you on Tuesday night. And then you can explain if His Honor--

A. (Interrupting) It wasn't Tuesday night.

Q. It wasn't Tuesday night?

A. Not as I recall, sir.

Q. Was it Monday?

A. It was either MOnday afternoon or Tuesday morning. I can't recall it specific which time.

Q. Let's get that cleared up

for the purpose of this jury. You did either Monday afternoon or Tuesday morning send Morris Ray Hall out, didn't you?

A. Yes, sir.

Q. And you are not sure which it is, Monday or Tuesday morning? Right?

A. I am not sure whether it was Monday night, Monday evening I mean or Tuesday morning.

Q. All right. And what did you send him to pick up--Morris Ray Hall I mean?

A. Some shells.

Q. Some shells. And where did you send him to pick up those shells?

A. Donahue Halbert's.

Q. All right. And you sent him with some cash, did you not?

A. Yes, sir.

****

Q. All right. And Morris Ray Hall is the fellow that you first knew earlier as Tootsie?

A. Yes, sir.

Q. All right. He was an employee of yours and your husband's, wasn't he?

A. Yes, sir.

Q. And he was one of those men who during these meetings on Monday night and Tuesday night was over at your house, wasn't he?

A. Morris Ray?

Q. Do you recall whether he was or wasn't.

A. I don't recall Morris Ray being there at night.

Q. All right. Now, when you sent Morris Ray Hall over there, you didn't tell him why he was going to get that which you wanted brought back, did you?

A. I just told Morris Ray I wanted him to go pick it up for me.

Q. Let me ask you this, ma'am, and I know it has been a year or two ago. But recall as best you can the words you used when you told Morris Ray Hall to do what it was you

wanted him to do.

A. I just -- as I recall, I told Morris Ray I wanted him to go over there and pick up the stuff for me.

Q. Did you say ammunition or guns or what the stuff was?

A. Go over at Donahue Halbert's and pick up ammunitions for me.

Q. All right. In any event, he went and he came back and he brought you ammunition. Isn't that right?

A. That's right.

Q. Okay. And likewise I think you said that Phillip Dale Moore on Tuesday night went, came back, brought ammunition and a 9 millimeter pistol. Am I right?

A. That's right.

Q. And on that Tuesday night, when Phillip Dale Moore got back, there were still men, a number of men out around your house. Isn't that correct?

A. Yes, sir.

Q. All right. Those men were drinking, weren't they?

A. Yes, sir.

MILLER PAGE COPYRIGHT CONTENT

Q. Were any of those men, ma'am -- men, ma'am using drugs?

A. Sir, I don't know.

Q. You have no knowledge?

A. If I do, I don't recall it. I don't know whether anybody was using drugs.

Q. Specifically --

MR. SELF: (Interrupting) Objection, Your Honor, and move to strike.

THE COURT: Sustained.

MR. SELF: And move to strike.

THE COURT: The jury will not consider that.

MR. HARWELL: May we approach the Bench, Judge?

THE COURT: Yes, sir.

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

THE COURT: Yes, sir.

MR. HARWELL: May Your Honor please, it has been the position of the Defendant Edgar Jones, in this matter that it was at the Booth's house that all of these activities were ongoing.

We have information indicating that on Tuesday night, in addition to drinking which had taken place on Monday night, that Phillip Dale Moore was also using drugs; and that Ms. Booth knew about it.

It is our position, Your Honor, that all of this violence emanated from that house. That Ms. Booth was very well aware of it, was herself a ringleader, and was herself involved in it, Judge.

For that reason, we believe that that is admissible.

THE COURT: All right. Anything further, gentlemen? All right, do you have a response you wanted to make?

MR. SELF: It is the position of the United States that pursuant to the Rules of Criminal Procedure that such inquiry on behalf of counsel does not go to the truthfulness of the witness; therefore, it is impermissible inquiry as the only inquiry that is permissible under the Rules is going to the truthfulness of the witness.

MR. HARWELL: If she has knowledge of that happening, Your Honor, and that that did happen, and she testifies, I am not probing her as to the credibility of it. I am probing her as to

the substantive facts. They were drinking, and was anybody using drugs?

And my next question would be and wasn't Phillip Dale Moore, an alleged coconspirator?

THE COURT: All right. Now, I sustain the motion for this reason: I permitted you to ask her about the trade for the marijuana, and that they did attempt to get the coccaine. Now, as to specific criminal conduct, this witness is not on trial for any crime which she did. She is up here as a witness testifying on the matter which is contained in the indictment. I permitted you to make reference to specific acts of criminal conduct --

MR. HARWELL: (Interrupting) I am sorry, Judge. I didn't hear you.

THE COURT: I permitted your reference to the criminal acts.

MR. HARWELL: Specific criminal conduct.

THE COURT: Specific criminal conduct as bearing upon the truthfulness or untruthfulness of this witness which would be her credibility. Now, I feel that any further reference to criminal

activity would be prejudicial because it would mislead the jury.

MR. HARWELL: Unless it similarly goes to dishonesty. You all are saying as to specific points. You're not cutting me off on other things down the road, are you now, Your Honor?

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MILLERS FALLS
EZERASE

THE COURT: I am very close to it. I am very close to it. And this goes to all other Defendants. I don't want you to get into other criminal conduct. It is just repetitious.

MR. HARWELL: Judge, may I be heard before you rule on that on my other questions down the road?

THE COURT: Yes, sir. Approach the Bench.

MR. HARWELL: I am going to. I have a note to myself. I am not going to get into that - -

THE COURT: (Interrupting) We are not trying this thing on any other criminal acts outside of the indictment.

MR. HARWELL: Judge, that's right. May the Court please, when it comes to bias - - when it comes to bias and anything she told the Government, she is immunized on. Rule five, Judge - -

THE COURT: (Interrupting) Get it in the record.

MR. HARWELL: Judge, I am because you're going to strip me of my cross-examination, Your Honor, if you follow your tentative judgement.

THE COURT: Well, I'm just telling you we are not going to try this on 5011 other criminal

acts under the pretense of bias because that is prejudicial.

MR. HARWELL: Judge, may the Court please, this woman is an outlaw. She has committed fraud. She has lied under oath. And I can prove that. And I intend to approach the Court on that right.

THE COURT: You prove it. But now, we are not going to get out here and bring in 4011 instances of other criminal conduct. Now, if you want to impeach this witness which is what you are trying, then go to the impeachment. Let's do it according to 607, 608, and 609. Let's don't do it under the guise of bias.

*** *** ***

MR. HARWELL: If the Court please, this is no guise. She would, in my opinion, in any jurisdiction have been convicted by any sovereign on some of these other acts if it were not for the fact that the Government gave her immunity on anything that she and Phillip--

THE COURT: (Interrupting) That is not a part of this trial.

MR. HARWELL: Yes, sir, it is. It goes to bias, Judge. I will approach the Bench.

THE COURT: Okay.

MR. HARWELL: I will respectfully ask Your Honor not to rule on that until I have had a full opportunity to preserve it.

MR. KEHRLI: He has had an opportunity already and has examined her before about the promises made by the Government. There haven't been any promises given. He cannot, because he believes she may have been promised immunity for prior criminal activities-- He has already gone into the promises that the Government gave.

THE COURT: Let's proceed, gentlemen.

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

Q. Let's talk about Wednesday, Mrs. Booth, February 17th, 1982, your husband left that morning, Phillip Booth left the house that morning and he took the guns and the ammunition and he went someplace, didn't he?

A. Yes, sir.

Q. And that was the day that you have said that the men got trapped, the men up on the picket line got trapped, is that right?

MR. SELF: Objection, Your Honor.

THE COURT: Overruled.

MR. HARWELL: If the Court please I'll make a good faith representation - -

THE COURT: (Interrupting) Let's let the witness answer.

Do you recall whether or not that was your testimony?

THE WITNESS: Let me tell you. I can clarify this. On my testimony I may have said Wednesday that they were trapped, they were in the hills, but they were trapped Thursday.

Q. All right.

A. It was just a mistake.

Q. All right. They were trapped on Thursday in the hills, is that what you are

saying?

A. Yes.

Q. And you have previously testified that it was Wednesday they were trapped in the hills, is that correct?

A. It was just an honest mistake.

Q. Right.

On Wednesday morning I believe your testimony was Ms. Booth that you went to the JRM tipple and the men were standing around, is that correct?

A. On Wednesday ?

Q. Yes, Ma'am. Or was it on Thursday, I'm talking about the day you put the guns in the back of your car, which day was that?

A. That was Wednesday.

Q. All right. So it was on Wednesday that you went up there and you told the men there to put guns in the trunk of your automobile?

A. Edgar said the police were coming and I told them before the cops got there to put the guns in the trunk of the car.

Q. All right.

Edgar Jones didn't tell you before that that the police were coming, did he?

A. Yes, sir.

Q. Edgar Jones told you that?

A. As I recall it right now, Edgar told me the police were coming.

Q. And when had he told you that?

A. Edgar had called me Wednesday.

Q. He told you by telephone they were coming?

A. He told me to go check on Drexil, okay?

Q. Was that in the morning?

A. That was in the morning as I recall.

Q. Were you at your house?

A. Yes.

Q. And that was when you went up to the tipple, is that right?

A. I think I testified to that.

Q. Yes, Ma'am. I'm asking you though if that's when you went on up there?

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A. Yes.

Q. All right.

Now, I think you said that after the men had put the guns in the back of your car you went down to the JRM offices, is that right, to Edgar Jones's office?

A. That is right.

Q. And you borrowed a car there, didn't you or a truck?

A. I borrowed his truck.

Q. When you say his, as a matter of fact - -

A. (Interrupting) JRM truck, or whatever.

Q. The JRM truck that was used by Dwayne Little, that was the one you borrowed, isn't that right?

A. Yes, sir.

Q. All right. And when you went to the JRM office then completely on your own, Edgar hadn't told you to come down there and bring those guns, had he?

A. He didn't tell me to bring the guns there, no.

He knew he didn't want

them there - - I'm sorry.

Q. And after you went down there and you borrowed that truck that Dwayne Little had been using you went back up to the tipple, didn't you?

A. Yes, sir.

Q. And that was after Drexil Hall had been arrested, isn't it?

Hadn't Drexil been arrested at that point?

A. Drexil, when I went up there to get Drexil there was cops there, but he was not under arrest, but they would not release him.

Q. But you tried to convince those police officers to let you arrest Drexil Hall, isn't that right?

A. I was given orders to do that and I done it.

I tried to get him and I could not get Drexil.

Q. And you had some kind of a Deputy's commission at that time, didn't you testify you were carrying a badge at that time?

A. Yes, sir.

Q. And you were talking to the

police officers up there in an effort to get Drexil as a law enforcement officer, weren't you; not just as a private citizen?

A. Sir, I don't know what you're getting at.

Q. All right, you were saying to them I'm a Deputy Sheriff and therefore I'll take this man, is that what you were saying?

A. I don't know if I said them exact words or not.

Q. But in any event you let those police officers know that you were a Deputy Sheriff, didn't you?

A. I'm quite sure they seen the badge.

Q. You showed them that badge, didn't you?

A. The badge was pinned on me.

Q. I see.

And then you went back down to the JRM offices after you were unsuccessful in getting Drexil, is that what your testimony is?

A. I told Edgar I couldn't get Drexil.

Q. All right.

And at that office, that is the time, is it not, that you and Phillip Booth allegedly talked to Edgar Jones about a warrant for Danny Blanton being sworn out?

A. Possibly, maybe it was when they planned on getting Drexil, I'm not sure on that.

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MILLERS FALLS
EZ ERASE

Q. You know which time, do you know which day?

A. Well, a warrant for Danny, yeah, but see they were also talking about doing away with Drexil at one point.

Q. Let's talk about that because I have not heard that before. Who was talking about getting rid of Drexil?

A. Sometimes it was brought up about-- Edgar and them were talking about Drexil was the first one to turn in his gun, he'd be the first one to tell somebody.

Q. Let's tell this jury when you heard that, who was there and what it was.

A. I don't know if it was exactly that day or not but they were talking there would be rock fall on him.

Q. Yes, ma'am. I want to know who they is.

A. Well, it may not be that specific time.

Q. Yes, ma'am. I want to know not the time but who they is, you said they were talking, who is they. You said Edgar Jones, who was they in addition to Edgar Jones that was talking?

THE WITNESS: Should I go ahead and tell them?

MR. HARWELL: May the Court please, I respectfully suggest the Court admonish the witness to say who they is or say she didn't know who they is or whatever the answer is.

THE WITNESS: It came out before I realized it.

THE COURT: Be responsive to the question if you can.

Q. Who is they?

A. As I recall, it was Benny Caudill.

Q. Benny CAudill?

A. And also Edgar.

Q. And Edgar Jones and Phillip.

Q. Phillip Booth?

A. Yes.

Q. Your husband Phillip Booth, right?

A. As I recall it.

Q. All right. Now, we'll talk about times, do you remember which day it was that you recall that allegedly took place?

A. No, sir, I'm not sure--

I shouldn't even have said that to start with.

Q. Why?

A. Well, should not even have been said.

Q. Why is that you should not have said it, ma'am, is it because you are not sure it happened or why?

A. It happened.

Q. Then why are you not sure that it shouldn't have been said?

A. Because those people are mean and they don't care who they kill. He is just lucky he didn't get killed and I'm lucky-- I'll be lucky if I live after this and I know it.

MR. HARWELL: May the Court please, I move to strike that last part about her luck, I don't move to strike that part concerning Drexil Hall.

THE COURT: Overruled.

MR. HARWELL: All right, sir.

Q. Let's talk abcut Danny Blanton for a minute. You said that you and your husband discussed with Edgar Jones an arrest warrant for Danny Blanton, haven't you?

A. Yes.

Q. And the truth of the matter

is that your husband said that the Ray-Mac people including Danny Blanton had fired and he hit him, isn't that right, isn't that what Phillip Booth told Edgar Jones?

A. Repeat the question again.

Q. In that conversation didn't Phillip Booth tell Edgar Jones that Danny Blanton and the other Ray-Mac people had shot at him and that Danny Blanton had hit him with one of those shots, isn't that what was told Edgar Jones?

A. It was told that Danny had shot Phillip.

Q. Yes, ma'am.

In other words you all told Edgar Jones that Danny Blanton had shot your husband?

A. Phillip told Edgar, I was not there when the shooting took place, I wasn't even there.

Q. Phillip told him. And didn't he say in response to that well, if that happened why don't you all take out a warrant, isn't that basically what he said?

A. He told us Tuesday to go get a warrant and it wasn't gotten. Wednesday when Drexil was arrested, he told us to go get a warrant

for Drexil.

Q. Well, you are not trying to tell this jury that there's anything wrong with a person getting out a warrant for another person that shoots him, are you?

A. Well, there's nothing wrong with getting a warrant for that, but they also said they were mad because they shot at Danny's truck also and they were mad because this guy was fixing it. I don't even recall the man fixing it but they were furious with that man.

Q. They shot at Danny Blanton's truck?

A. That's what they told.

Q. Who told it?

A. Benny and all of them sitting around the house and talking that day, Tuesday.

Q. Did they tell you how badly that truck was shot up?

A. They were just talking, I'm a woman, I didn't pay much attention. I know they even suspicioned about going up and shooting Danny's house even.

Q. Mrs. Booth, you and your husband did as a matter of fact go to Prestonsburg

and you obtained a warrant for Danny Blanton's arrest, isn't that right?

A. That is right, sir.

Q. All right.

And then you all came back, did you not, to Prestonsburg, you and Phillip Booth?

A. That is right, sir.

Q. All right.

And at that time did you come back to JRM after the trip to Prestonsburg?

A. Yes.

Q. All right, did you meet with Edgar Jones?

A. Yes.

Q. And at that point in time you told him that you ordered some guns and the ammunition from Donahue Halbert, didn't you?

A. Yes, sir.

Q. As a matter of fact, you had at that point ordered two Uzis and two carbines, hadn't you?

A. That is right.

Q. All right.

And nobody told you to order the Uzis or the carbines, you did that on your

own, didn't you?

A. Edgar just told me prior to take care of everything, get what was necessary.

Q. And you have told me and this jury half a dozen times that and that is not responsive to my question, may the Court please. I'm addressing myself to the carbines and to the Uzis and I respectfully ask the Court to ask the witness to respond to the question.

MR. SELF: Your Honor, I object to the statement being made before the jury. I think it can be responsive to the Court without making a speech.

THE COURT: Well, let's do this, ma'am. You be responsive to the questions and let's confine our remarks to just being responsive.

Please approach the Bench.

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

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Reporter's Note: Whereupon a Bench conference was held with all counsel present where the following was heard:

THE COURT: Well, I guess you're saying this witness wasn't responsive but I noticed a while ago you made the remark that's the first time you ever said that to me.

MR. HARWELL: Judge, I started to get into the transcript on that because that was what my memory was.

THE COURT: Yes, you're stating that was the first time. You should ask her is this the first time.

MR. HARWELL: Yes, you're right, Your Honor. I was leading up to a question, but when I went for the transcript, Your Honor, in good faith I did not think it was crystalized and I didn't know how I should proceed -- I was buying time to get my transcript to go into it because I had just remembered just slightly the precise comment that she previously made in the minihearing.

THE COURT: Well, I guess what I don't want, I don't want the witness to get the attorneys bantering, that's what I'm after.

MR. WALBOURN: Judge, when Mr. Self gives

his reply speeches I'm still going to ask him to speak up.

MR. SELF: I apologize.

THE COURT: Well, it's Mr. Self speaking up saying the witness has not heard that before. Let's do that, Mr. Self.

MR. SELF: All right.

THE COURT: All right, let's proceed.

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

THE COURT: Let's proceed, sir.

MR. HARWELL: Thank you, Your Honor.

Q Ms. Booth, before we approach the Bench we were talking about your ordering Uzis and carbines from Donahue Halbert and I was asking you if it was not true that you had done that, ordered the Uzis and the carbines on your own, without any specific directions, you remember that?

A. I was given no orders to order Uzis and carbines just to get what was necessary.

Q All right. Now, throughout this period of time you carried a gun, did you not?

MILLERS FALLS EZ-ERASE

A. Yes, sir.

Q. As a matter of fact, for a significant period of time before this you carried a gun regularly, didn't you?

A. I always had a gun in the car.

MR. HARWELL: All right. May the Court please, this is one of the areas that I need to get into where Your Honor said I should seek your counsel and directives.

THE COURT: Ladies and gentlemen, the jury will be in recess for five or ten or fifteen minutes. During this recess the not now admonition is in effect, any objections or questions?

MR. HARWELL: No, sir.

MR. SELF: No, sir.

THE MARSHALL OF THE COURT: All right.

THE COURT: You may take the witness now.

THE MARSHALL OF THE COURT: Yes.

THE COURT: All right, you may proceed.

MR. HARWELL: May the Court please --

THE COURT: (Interrupting) Just a moment, I think, Mr. Marshall, the record should

reflect that the jury is out.

THE MARSHALL OF THE COURT: The jury is out of the room, Your Honor.

THE COURT: All right.

MR. HARWELL: May the Court please --

THE COURT: (Interrupting) You tell me --

MR. HARWELL: (Interrupting) Pardon me?

THE COURT: You tell me where you're going.

MR. HARWELL: May the Court please as to the next, we contend that the Government opened the door on the next area about which I would like to question this witness. They attempted through their questions and the witness' answers to portray her as a loving mother of a child who was ill, a Deputy Sheriff with some legitimate law enforcement authority. And I intend to ask this witness next if it's not true as a matter of fact while she was married to Phillip Booth she shot him. And I intend to ask her isn't it also true that on a number of occasions she pulled guns on people and I'm going to list the specific occasions. They're relatively close in time to February of '82, but I understand they predate 1982.

I intend to ask her if it isn't a fact that she shot the finger off her husband Phillip Booth.

I think Your Honor's given what the Court said to me earlier this morning that I should get the Court's directives.

I believe, Judge, that that's admissible for the following reasons. Number one, the Government has attempted to paint this picture of this lady as a demur and loving wife and clerk with some law enforcement authority.

Secondly, may the Court please, I believe that -- that under 404B this is admissible by virtue of the intent and plan and the knowledge of this lady as it pertains to ballast.

THE COURT: Are you finished?

MR. HARWELL: Yes, Your Honor.

MR. SELF: May it please the Court I did not attempt to portray her as a loving mother. I've simply listed the names and ages of her children.

As to the admissibility of such evidence the Court already said in 404B apprised only to the Defendants, Your Honor, that

leaves us with the admissibility under 608 and 609. 609 deals with the conviction of a crime. To my knowledge no such conviction in regards to the questions that he's asked this witness. Back under 608, Your Honor, 608B provides a specific instance of the conduct may be inquired of the witness on cross examination, but only specific rule, comment on the case to follow, it says that cross examination has to go to the character and truthfulness or untruthfulness, not the general character or reputation or attitude, but has to concern her character, truthfulness or untruthfulness. And it specifically talks about that it may be inquired as to the witness' credibility of the truthfulness or untruthfulness and not remote to the time.

MR. HARWELL: May I cite a case or two for Your Honor?

THE COURT: Yes, sir.

MR. HARWELL: May the Court please, with all due respect to Your Honor in regards to the implicability of 404B I would like to refer the Court to Johnson versus Brewer 521 Federal Second 556, that's 1975 --

THE COURT: 5 what?

MILLER FALLS EZERASE COTTON CONTENT

MR. HARWELL: 521 F. Second 556. That's a 1975 Eighth Circuit case which basically says that the second part of Rule 404B is not confined to evidence offered by a prosecutor. A defense lawyer who claims that other crimes committed by a Government witness establishes a pattern of fabrication should be able to take advantage of this part of the rule. For a good example, see Johnson versus Brewer. In that case, the Court held exclusion of evidence for prior perjury offered to show the bias of a prosecutor's witness denied the Defendant a fair trial. In addition to that, may the Court please, the United States versus Cutler, at 676 F. Second 1245, which is a Ninth Circuit '82 case and the United States versus Puckett at 692 F. Second 663 Tenth Circuit case stand for the proposition of that Rule can be used by a Defendant, may Your Honor please --

MR. SELF: (Interrupting) May it please the Court.

MR. HARWELL: Wait.

MR. SELF: I'm sorry.

MR. HARWELL: Also may the Court please, Your Honor, -- I'll strike that, I don't

think that is implicable here, what I was getting ready to say, not what I have said.

MR. SELF: Your Honor, specifically the first case of Mr. Harwell was concerning perjury which goes to the truthfulness of the witness. I think he inquire into matters concerning the truthfulness of the witness, not the general acts.

I call the Court's attention specifically to the book the Court has on the desk there in numerous case of C-O-T-C-H-E, Cotche Federal Courtroom Evidence on Page 85, Your Honor, talks about the present rule, it's talking about 608B. The present rule generally bars the specific evidence of concept of the witness for the purpose of discrediting the credibility. And following that I cite the cases from the Ninth, Fifth, Federal cases, Your Honor, specifically saying that you can not attack the witness' credibility through specific acts of conduct unless they go to the truthfulness of the witness' testimony and that is a specific exception. And I submit that these do not go to the truthfulness.

MILLERS FALLS
EZERASE
COTTON CONTENT

THE COURT: Let me ask you this. You said that this would strip you of your cross examination, and you want to go at it each time.

I assume you have many instances of criminal conduct which you are going to seek to bring out before this Jury about this witness upon the grounds of bias and such as that, is that correct?

MR. HARWELL: You are right, yes, sir, it is. But they are all significantly different and that, Your Honor - - those more blatant instances I have not yet gotten to. This is just the first one, and given Your Honor's comments earlier, I want to bring out - -

THE COURT: (Interrupting) You want to state now for purposes of the record what you have?

MR. HARWELL: Is Your Honor asking me to do that? Is the Court asking that I do that, Your Honor? Well, I was just thinking of being expeditious in the matter. I can wait if you want me to.

MR. HARWELL: Judge, I will certainly follow your wishes. I believe that - -

THE COURT: (Interrupting) No, we will do it on the case, but now here is what I have done

is this: As I have stated, previously permitted you to elicit from her about prior specific conduct. Now, I did that on the - - it would have been 608B.

MR. HARWELL: The truthfulness, Your Honor?

THE COURT: Yes, sir, that is right. Now, I understand that also cross-examination is permissible; however towards establishing bias, I get that. But however, this is something which is within a wide discretion of the Court.

MR. HARWELL: I agree with that, Judge.

THE COURT: And I feel this way: I feel that although it may be justified under the basis of bias, that the effect of it would be more prejudicial to this Jury than it would be beneficial; therefore I am not going to allow it.

MR. HARWELL: I understand. Might I at this point in time make an avowal?

THE COURT: Yes, sir, you sure may.

MR. HARWELL: May the Court please - -

THE COURT: (Interrupting) Do you think - - I think possibly we ought to bring the witness back.

MR. HARWELL: Judge, may I respectfully

suggest an alternative process? If it is all right with Your Honor in that there are other areas of cross-examination on which the Court has yet to rule, would it not be appropriate, Your Honor, for me to go through my cross-examination, and as to those areas where you prohibit my crossing, at the end I can do it in a single avowal and maybe save the Court some time.

THE COURT: I think it would be good. But rather than you representing what the witness would say, let's let the witness say it.

MR. HARWELL: Okay. I would prefer that, Judge.

THE COURT: We will do that at the conclusion.

MR. HARWELL: At the conclusion.

THE COURT: After they finish their cross-examination.

MR. HARWELL: Yes, sir, out of the presence of the Jury.

THE COURT: Yes, sir.

MR. WALBOURN: Your Honor, I am assuming the ruling regarding Mr. Harwell's tendered questions in certain areas would likewise apply to other counsel?

THE COURT: Yes, sir.

MR. WALBOURN: I would like to get on the record that I would ask the Court to read the criminal case of Davis versus Alaska.

THE COURT: I have read Davis v. Alaska.

MR. WALBOURN: And the Court discusses there the permissible basis of inquiring on cross-examination, the function of cross-examination, and additionally, Your Honor - -

THE COURT: (Interrupting) I think Davis v. Alaska brings out the Sixth Circuit also.

MR. WALBOURN: I believe it does, Your Honor.

THE COURT: That is where they held that striking - - refusing to strike the rights of counsel or something - -

MR. WALBOURN: (Interrupting) Of course, it has an excellent recitation there of the historical function and purpose and development of cross-examination.

THE COURT: Yes, sir.

MR. WALBOURN: Additionally, Your Honor, regarding this propensity for violence or whatever, Mr. Self's questions which went over that, and in by the way over the objection of defense counsel,

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and the Court specifically permitted this witness to testify as to why she carried the gun, why she had been made a Deputy, the nature of her child's illness. We got to what the symptoms were, how she got them treated, Your Honor, you can't open the door partway and let the illness and all that be discussed and then say all right we are not going at that anymore. That is airing prejudice to my client, Your Honor.

If this information is brought out through this witness, I believe the Court is confusing damaging and prejudicial. It may be damaging to this Jury because of what they will learn about Mrs. Booth, but it's not prejudicial to this Jury.

MR. SELF: I would like to state, Your Honor, I will keep my voice up, that during the course of the opening statements, and realizing opening statements were not part of the evidence, Your Honor, certainly the defense counsel made it a point to characterize the Defendants as family men with so many number of children, and honest coal miners.

And I think I had the obligation and right to set forth for the Jury this witness's specific familiarity with the situation.

THE COURT: All right.

MR. PAFUNDA: Your Honor, I am in a different situation, I think. Since the witness has testified that threats or a plot was made to kill Drexil Hall. I think I can go into specific instances that this witness may know of herself, or her former husband's involvement, of any shootings so that she would have at the time the statements were made a reasonable belief that either herself or Phillip Booth, or whoever, would kill Drexil Hall.

THE COURT: Gentlemen, this trial - - when was this indictment?

MR. KEHRLI: June 7th, 1983.

THE COURT: All right. And the record will reflect, counsel for the Defendant has paid investigators.

The Court assumes that you have gone all the way back in the life of this witness, and you are prepared to show that she stole from the collection plate when she went to Sunday School.

Now, these are specific acts of things, and these are a collateral matter. The Court has permitted some of them in there, as

bearing on the truthfulness, I feel that any further matter is prejudicial to the trial of this case.

This case is on trial for the indictment, the acts which were caused, and the indictment. And the only thing that you all have is bearing on the credibility of this witness.

And there is certainly a much matter already out regarding the credibility of this witness, and I assume there will be much more.

But I am not going to permit in evidence specific acts of criminal conduct.

MR. PAFUNDA: Your Honor, just in response to that - -

THE COURT: (Interrupting) No, no. You have your objection, that is fine.

MR. THOMAS: Your Honor - -

THE COURT: (Interrupting) Do you have an objection to it, fine.

MR. THOMAS: Yes, it's a little different, Your Honor. It is necessary in the presentation of my case to go into the specific instances.

THE COURT: All right. I assume it is necessary in the presentation of all of them, gentlemen.

Your objection is preserved in the record. We will permit this at the end of it. We will permit you to put it in by avowal through this witness, but we are wasting time, gentlemen, to deal with it any further.

MR. SELF: For the purpose of the record, Your Honor, is the Court specifically referring to Rule 403 exclusion of the evidence because of prejudicial - -

THE COURT: (Interrupting) Yes, I certainly am, yes.

MR. HARWELL: Judge Unthank, might I - - I am not arguing with the Court, but I would like to refer you to one other case which you are probably well aware. If the Court please, it is U.S. versus Brown, 546F 2nd.

THE COURT: Yes, sir. I have read U.S. versus Brown.

MR. HARWELL: I assume too, Your Honor, also Boone versus Paderick.

THE COURT: I think U.S. versus Brown was - -

MR. HARWELL: (Interrupting) That is the case, as Your Honor probably remembers, where the Court held that a witness is an accomplice or co-

conspirator in his strike of plea bargain is subject to more rigorous cross-examination than another witness.

THE COURT: Yes. I was thinking Brown was on Brady matter.

MR. HARWELL: Your Honor, I am not aware of Brown on Brady matter. Mr. Self and some of these other gentlemen may be, but I don't think there is a Sixth Circuit Brown - -

THE COURT: (Interrupting) No, the Brown case was another circuit. But I - - the one I am familiar with is concerning Brady material.

MR. HARWELL: Yes, sir. No, sir, I am referring to cross-examination, the scope of it on a - -

THE COURT: (Interrupting) That is what number?

MR. HARWELL: If the Court please, that is 546F 2nd 170.

THE COURT: All right.

MR. HARWELL: U.S. versus Brown.

THE COURT: Now, I imagine, gentlemen, this witness will be rigorously cross-examined.

MR. HARWELL: To the degree Your Honor lets us.

THE COURT: But she is not going to be rigorously cross-examined as to collateral matter when in the opinion of the Court it is going to be prejudicial.

MR. SELF: The Court may reflect the matter that the Court let Mr. Harwell go into yesterday as to specific acts concerning the crime in which she pled guilty.

The Court overruled my objection, and I objected going into it, and I think the Court allowed to go into it in regard to the plea agreement to show what she had pled guilty to.

THE COURT: All right. Let's do this, gentlemen: I think we are wasting time - - not wasting, but we have used up - - are we ready to have the Jury in?

MR. HARWELL: We are.

THE COURT: All right. What about the Reporter? Do you need five minutes?

THE REPORTER: (Nodding head affirmative)

THE COURT: All right. Let's give her a five minute recess.

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

REPORTER'S NOTE: The Court recessed at 11:05 A.M., and reconvened at 11:18 A.M.

THE COURT: Mr. Marshall.

THE MARSHALL OF THE COURT: All Defendants, attorneys, and all the Jurors are in place, Your Honor.

THE COURT: Thank you. You may proceed.

MR. HARWELL: May I proceed, Judge?

THE COURT: Yes, sir.

CROSS-EXAMINATION (Resumed)

BY MR. HARWELL:

Q Ms. Booth, let's talk about Wednesday night, February 17, 1982. There was a meeting at your home on that night, was there not?

A There was one there, yes.

Q And like it happened the previous two nights, those men were standing out around the house, in and around the house drinking and talking, weren't they?

A As I recall.

Q All right. You didn't overhear any specific comments, or you don't recall any specific comments that any of those men made that

night, do you?

A. That some of the men made?

Q. On Wednesday night. If I recall your testimony, didn't you tell us yesterday Ma'am, that you do not recall any specific comments that any men made on Wednesday night at your house?

A. No specific ones.

Q. All right. And on Wednesday night, you've got another list of ammunition, did you not?

A. That is right, sir.

Q. All right. And you called Donahue Halbert again, isn't that right?

A. Yes, sir.

Q. You did that on your own, did you not?

A. Of course.

Q. All right. And after you talked to him and Mr. Halbert, you gave the list of ammunition to Phillip Dale Moore, didn't you?

A. Yes, sir.

Q. And you gave him another check drawn on your coal company, and asked him to pick up ammunition, is that right?

A. Yes, sir.

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Q. Mr. Moore left, Mr. Phillip Dale Moore left, and then he left and came back and brought the ammunition, is that right?

A. Yes, sir.

Q. And he also brought with him a .25 caliber pistol, a little automatic pistol, didn't he?

A. Yes, sir.

Q. All right.

A. Sir, Lee Jones brought back that.

Q. Lee Jones, who went with Phillip Dale Moore, is that right?

A. Right.

Q. The Lee Jones you are talking about went in the presence of Phillip Dale Moore and brought the pistol back, is that what you are telling us?

A. Well, it was brought back with the ammunition and stuff. Lee Jones had the pistol.

Q. My question is, did Lee Jones go with Phillip Dale Moore to get that stuff?

A. As I recall.

Q. All right. And Lee Jones

was an employee of yours and your husband's, is that right?

A. Yes, plus a cousin.

Q. Plus a cousin of your husband's, not of yours?

A. Not of mine.

*** *** ***

MILLERS FALLS
EZ-2-E-CASE
COTTON CONTENT

Q. All right. Now, I believe, ma'am, that you have stated -- strike that, Your Honor.

Let me direct your attention to February 18, Thursday. You went down to the JRM offices that day, and you say you had a conversation with Edgar Jones, is that right? On Thursday.

A. Yes.

Q. All right. And that is the conversation where you say that Edgar Jones allegedly told you to go to the tipple to see if you can find out anything about the men on the picket line, is that correct?

A. He told me to see if I could find out anything about the men.

Q. All right. So it is your story that you left there and went up to the tipple, am I right? You left JRM and went to the tipple.

A. Where else was I supposed to go?

THE COURT: Just answer his question.

A. Yeah. I'm sorry, Your Honor.

Q. And then where did you go from the tipple after you left there?

A. I was looking for the men. I had went around trying to find out something. I went up Frasure's Creek and around, and I couldn't find out anything. And then I met Jason, Jason came to the house --

Q. (Interrupting) Let me stop you just a minute while you are going around to clarify that if I may.

Did you go around to the Pike County side when you were looking for the men?

A. Not right then, not at that particular time.

Q. All right. Did you later that day go around to the Pike County side?

A. Yes, sir, I did.

Q. Looking for the men?

A. Yes, sir.

Q. All right. And then I think your testimony was, was it not, ma'am, that you had another meeting with Edgar Jones on Thursday, February 18th, is that correct?

A. Yes, sir.

MILLERS FALLS
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COTTON CONTENT

As I recall it, I did.

Q. All right. At that meeting you are saying that Phillip Booth and you, and Phillip Dale Moore, were present, is that correct?

A. The best as I recall. I recall it that a-way.

Q. All right. That meeting was at JRM at that trailer office that you told us about earlier, is that right?

A. Yes, sir.

Q. All right. And it's your testimony that at that time Mr. Jones told your husband to take a vacation, is that correct?

A. That is correct.

Q. All right. Then after that second meeting on Thursday, the one that you told us about with Edgar Jones, you are saying you went home, is that right?

A. Yes. Now --

Q. (Interrupting) Was it that -- I beg your pardon?

A. I beg your pardon, go ahead.

Q. And was it on Thursday

afternoon, or Friday, or when was it that you and Phillip Booth went to Winchester?

A. I went Thursday night -- as I recall, I left Thursday night. Now, this has been two years ago.

Q. I understand that.

A. If there is a little bit of difference, then I'm sorry. But that is the way I recall it.

Q. You recall leaving Thursday night?

A. That is the way I recall it.

Q. Do you recall what car you took?

A. I am not sure whether I drove the van or the -- I don't know which car I drove, to be honest with you.

Q. Do you recall who, if anyone, went with you?

A. I think that's Ruth Mosley went with me, and my two kids.

Q. And your two kids or her two kids?

A. Mine certainly went.

Q. All right. Did hers go, or do you remember?

A. I don't recall Ruth's going, but they could have went. I was so upset that I don't really know for sure.

Q. All right. There came a time when you returned to Floyd County after having gone to Winchester, is that right?

A. Yes, sir.

Q. When was that?

A. Sunday.

Q. Sunday?

A. Yes.

Q. And did you return in the same vehicle that you had taken over there to Winchester, or another car?

A. I really don't know. We had different vehicles. We drove different ones. I could have told you I did or didn't, because I don't know, because it didn't mean anything to me at the time.

Q. Do you know who it was that came back from Winchester with you?

A. Sir, I don't recall who came -- I know my kids came back, and I imagine

Ruth probably did, but I'm not sure.

Q. All right. And do you remember what the time of day it was on Sunday that you returned from Winchester?

A. It was in the afternoon.

Q. Okay. When you got back, was there anyone at your house?

A. Sir, my brother came up there.

Q. Was he there when you got back, ma'am, at the house?

A. I can't recollect for a fact that he was there. He just pulled up or -- he probably was there. At present, I just --

Q. (Interrupting) Was that your brother, Wendell Ray Newman?

A. Yes.

Q. All right. I think you said, did you not, that Hermit Newsome and Ranny Blankenship and Benny Caudill was there, isn't that right?

A. They came there while we was there. I don't know whether they was all there at the same time or not, but they was there.

Q When did Phillip Booth get there, your husband? Was he there before you arrived, or did he come in after you?

A I really don't know, sir.

Q Had he been in Winchester with you that weekend?

A He had been to Winchester and to Lexington.

Q With Phillip Dale Moore?

A Yes.

Q I see. Had he stayed -- did you all stay at the same place together in Winchester or Lexington?

A Maybe on and off. He was at the Continential Inn or something. I really don't know where Phillip was at all times.

Q All right. In any event you got back on Sunday, and those men you and I talked about were there, and Phillip Booth was there. And there was some conversation then about equipment having been blown up, wasn't there. isn't that what you said?

A Yes.

Q And as a matter of fact,

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you heard then that Phillip Booth had had that equipment blown up, didn't you?

A Phillip didn't have it blown up.

Q Ma'am, that is not my question. Did you hear when you got to your house, that Phillip Booth had had it blown up?

A I don't recall any such statements. I don't recall it.

Q But it is a fact, is it not, that you have heard Phillip Booth on one or more occasions admit that he had that equipment blown up?

A Phillip Booth was all the time bragging I knew he didn't do half the stuff he would say he would do. OK

Q Yes, ma'am.

A I don't know whether he said that specific or not. I don't recall it. But I am not going to say it is not true.

Q Let me ask you this, Ma'am: that on August 20, 1982, that Phillip Booth had a conversation with you and Agent Kemp, or better said, was Agent Kemp where you were present, and he said, Quote, I believe it was 47 sticks of powder that was

stole from the mines. So we went up there on the hill. The $400,000 auger sitting there. I put 40 sticks in under it, and I blowed -- Your Honor, I am going to use the initials in leu of her word. May I?

THE COURT: Yes.

Q I blowed the MF up. Ddidn't you hear your husband say that to Kemp --

THE WITNESS: Do you want to know the truth about it?

Q I want to know --

A (Interrupting) I was there. But him bragging --

THE COURT: (Interrupting) Do you recall hearing that first?

A I recall them talking, your Honor. But the specific thing, you know, I didn't pay any attention to what my husband said. Half the time I did not pay just as I am sorry. Please forgive me. I didn't pay that much attention to what my husband had to say half the time becasue I know. I have lived with him for 13 years. I know when he is telling the truth or when he is lying.

Q Did he lie alot?

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A When he gets drinking, he likes to boast like alot of men do when they are drinking.

Q Boast about things like blowing up $400,000 worth of equipment, just like that kind of boasting?

A In that area, alot of people does it, sir. I don't say it is right, but they do it.

Q Let me ask you this, ma'am: right after that auger was blown up on that Sunday afternoon, you and those other folks were there at your house that you told us about, and Phillip Dale Moore was there that Sunday, too. Do you recall that, Mrs. Booth? That Sunday you returned from Winchester -- do you remember that?

A Phillip Dale was all the around, sir.

Q All right. Including that Sunday. Is that right?

A It is a good possibility.

Q Let me ask you this, ma'am: Isn't it a fact that your husband and Phillip Dale Moore were talking, and you were there at the time in their presence. And they were talking about the

damaged equipment. And Phillip Dale Moore said to Phillip Booth in substance, you sure fixed them up this time, Buddy.

Didn't you overhear Phillip Dale say that on that Sunday afternoon?

A. Even if I didn't, I didn't pay any attention because Phillip Dale -- he would believe anything Phillip said, too, at that time. They was all drinking and going on. They all wanted to play big shot which they weren't no big shot. They wanted to be as mean as the other guys was. Well, they weren't that mean.

Q. Did you hear that said, ma'am, on that Sunday afternoon?

A. Specifically I can't say for a fact that I recall that statement. But it was made probably.

Q. All right. And when that statement was probably made, didn't you hear Phillip Booth, your husband, say to Phillip Dale Moore if you open your mouth, I'm going to cut off one of your fingers, and I'm going to cut off one of your toes if you say any more about this. Don't talk about the Roundman going up to the auger no more.

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Didn't you hear your husband say that?

A. Sir, to be honest with you, I don't recall that statement.

Q. I see. Let's see if you and I can agree. Roundman or the Roundman was the nickname up there in McDowell of Phillip Booth, your husband at that time, wasn't it?

A. Yes, sir.

Q. People called him that, didn't they?

A. Yes.

Q. All right, sir. And in that same conversation or in a subsequent conversation on that Sunday afternoon where you were present, didn't you hear Phillip Dale Moore admit that he had helped Phillip Booth blow up that auger?

A. Sir, as I told you before, I didn't pay attention to those guys. I never took them seriously because they was all the time boasting that they had done things. They wasn't as mean as they was acting like they was.

Q. I see. They was just acting mean. Is that what you are trying to say?

A. But did I have any conversation in all of that?

Q. I beg your pardon?

A. Do you recall me having any conversation in all of that? I'm sorry, I shouldn't ask that question. But if I took it seriously, I would have a conversation in it.

MR. HARWELL: May the Court please, I respectfully ask that you again advise this lady that I am questioning, and it is not part of the procedure for her to do so.

THE COURT: Just be responsive.

THE WITNESS: I am sorry, Your Honor.

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Q. Let me move from that Sunday afternoon, ma'am to Monday, February 22. I understood to be that you had a meeting with Edgar Jones in McDowell. Is that right?

A. Yes.

Q. At Em Pack's restaurant. Is that right?

A. Yes.

Q. And you went to Em Pack's resaurant by yourself, did you not?

A. First of all, I went with myself, okay.

Q. Okay. And is it your testimony that Edgar Jones was there when you got to Em Pack's restaurant that Monday, or did he come in after you?

A. I recall him being there. It is possible that he could have come in afterwards; but he was there.

Q. And you have been in that restaurant on several occasions--more than one occasion, haven't you?

A. More than one, but I wasn't in there quite a lot. I didn't go in the restaurant that much.

Q. But you know how the restaurant was laid out in terms of the walls where the tables were back in February, the 22nd of February of '82? You were that familiar with it, weren't you?

A. I would say so.

Q. All right.

A. As far as appearance, anybody I guess would be.

Q. Now, where is it that you are saying that you and Edgar Jones talked in that restaurant the 22nd day of February?

A. At one of the tables towards the back.

Q. All right. And at which-- As you go in the door, is the table that you are referring to to the right or is it to the left or is it straight back?

A. Straight back.

Q. Straight back.

A. As I recall, now. I was upset that day. Well, anyway-- Okay.

Q. Is that straight back towards the kitchen area when you go in the front door?

A. No, sir.

Q. Tell us where it was?

A. Like I said, I haven't been in Em Pack's restaurant that much but when you go in the door, it was towards the right.

Q. Toward the right.

A. Yes, as I recall it.

Q. All right. And did you and Edgar Jones sit at the same table during this alleged conversation, or were you standing up?

A. I sat with Edgar.

Q. You sat with him. All right. Was that a table for two, one of the small tables at Em Pack's, or one of the larger tables, or that big family table that you were sitting at?

A. My God, sir, I don't know which table for a fact.

Q. Was anybody else sitting at that table?

A. Phillip had sit there for an instant or so.

Q. Anybody else sitting at that table on that Monday when you allegedly talked to Edgar Jones?

A. I don't recall, but at one point, me and Edgar was talking by ourself as I recall it. But--

Q. (Interrupting) At one point. Was it at that point when you all were by yourself that you are telling this jury that he made some comment about being like J. R. Ewing, or was it while others were there that he allegedly said that?

A. He could have possibly said it when my husband was there. My husband could have been around. But as I recall it, that is the way he said it.

Q. Yes, ma'am. But my question is not the way he said it. My question was who was present when he said it allegedly. And you are saying that your husband may have been there or may not have been there, but you are not sure. Is that your answer?

A. Sir, my answer is as I recall, I was sitting with Edgar; and Edgar said this. And as I recollect, Phillip had got up, but that doesn't mean that he did because that was two years ago.

Q. All right. And is it in that same conversation that you are telling this jury that Edgar Jones said he would take care of his contract miners by paying them during that past week when there had been trouble at Ray-Mac?

A. Edgar had told us all along he would take care of the contract miners. The first day we went out he said it.

Q. And did you take that to mean, Mrs. Booth, that the contract miners would be paid for that week?

A. He said that he would see that his miners were taken care of. He said that he would see that me and Phillip was taken care of.

Q. Yes, ma'am. But did you take that to mean taken care of in a financial sense that you all would be paid by JRM or Edgar Jones? Is that the way you took that comment?

A. I took the comment he would take care of us. He is the one where we got our money from.

Q. Financially take care. Is that right?

A. Edgar made a lot of promises. I don't know what he meant.

Q. All right.

A. I just know ...

Q. You have also testified, ma'am, that during the problems up at Ray-Mac that you had a conversation with Edgar Jones about a coal

tipple?

A. Yes, sir.

Q. And you have said, have you not, that Mr. Jones told you that Ray-Mac had a tipple under lease which he wanted. Is that right?

A. That is correct.

Q. All right. Now, when was it Edgar Jones told you that?

A. We had talked about it earlier.

Q. All right. Can you tell me when?

A. I can't tell you the exact day.

Q. All right. Where was it that Edgar Jones told you that?

A. We talked about that in the office at one time.

Q. In the JRM offices?

A. As I recall this. It has been two years.

Q. Yes, ma'am, I know that. The JRM offices--are those the offices that you are referring to?

A. Yes, sir.

Q. All right. And who else, if anyone, was present when Edgar Jones told you that?

A. I don't recall anyone.

Q. All right. Was that in the middle part of that office or to the right or to the left or the middle part? Which section was it that he told you that in?

A. We usually went in Edgar's office and closed the door, sir.

Q. That was to the right. Is that correct?

A. Yes.

Q. And that is where you say it was he told you something about the tipple. Is that correct? Is that right, ma'am?

A. Sir, as I recall it.

Q. If I understand, Ms. Booth, you say that at some time, Benny CAudill came to you and talked to you about the coal tipple. Wasn't that your testimony yesterday?

A. Oh, yes, it was.

Q. All right. And you say that he asked you for some money. Is that correct?

A. That is correct. He didn't ask me. He told me he would need money from us.

Q. He told you that he would' need it. All right.

Now, at this time, Edgar JOnes had a tipple operating, didn't he?

A. Yes, he did, but he wanted that other lease. But for some reason, Cobb Turner or Nick Cooley or somebody had something to do with that tipple.

Q. Well, the fact of the matter is that throughout your testimony, haven't you said that there were meetings at and people went to Edgar Jones' tipple? Isn't that what you said?

A. He had a tipple, that's right, a JRM tipple. That don't mean he doesn't want another one.

Q. And that tipple was right up the road from the JRM offices headed up toward RAy-Mac. Isn't that right?

A. Yes, sir, it was.

Q. As a matter of fact, it was very close to another tipple that was owned by Arnold Turner, and another one that was used by NIck Cooley. Is that right?

A. I don't know who owned them. I figured it was them.

Q. You didn't know who used the other tipples, who owned them?

A. Let me tell you I don't pay any attention to what everybody else done. I just worried about what I done.

Q. All right. The truth of the matter is that Phillip Booth told you that he burned or had that tipple burned, didn't he?

A. Sir, I don't recall that.

Q. You don't recall that. Do you recall a conversation on August 21, 1982, where you, your husband, Phillip, and Agent Kemp were present, and your husband said that he had had the tipple burned?

A. Didn't I tell you-- I am sorry-- Previously, as I have said, I don't pay any attention to what my husband said, very little. When he was boasting and drinking, I didn't pay him no mind.

Q. Well, on August 21, Agent Kemp, as far as you all knew if I recall your testimony from yesterday, was a hit man. Is that right?

A. Now, what was the date?

Q. On August 21 of 1982,

August 21, it was your belief that time that Agent Kemp was a hit man?

A. Yes, sir.

Q. And had served time in the penitentiary-- Is that right? A convicted felon?

A. Yes, sir.

Q. All right. And as a matter of fact, it was your belief that he was looking for work, some kind of illegal work in the McDowell area. Isn't that correct?

A. To tell you the truth, I didn't pay it no mind at that time.

Q. You didn't pay it any mind at that time?

A. Well, to be honest with you, I believed it probably; but I didn't pay it that much attention.

Q. All right. And isn't it true that on August 21, that Phillip Booth--Phillip Booth in that conversation that he was having with you and Agent Kemp said that he didn't know that anybody had knowed about what he did at the tipple; he was surprised that Kemp had learned about it? Didn't Phillip Booth say that to him?

A. I will have to repeat again,

sir--

Q. (Interrupting) Now, ma'am. If you would please answer my question, then clarify. May the Court please, I am asking wasn't that said.

THE COURT: Just state, ma'am whether or not you know whether it was said..

A. I don't recall it being said, but it was-- May I? My husband all the time when he was drinking, he bragged about things.

THE COURT: Ma'am, you have said that two or three times.

THE WITNESS: Okay. I am sorry, Your Honor. I am sorry.

Q. Did you hear him say that?

A. Sir, I cannot recall.

Q. Did you hear him say, during that conversation, quote, when I burned it up, it really go up in flames. That is the way I burned it up, close quotes. Do you recall him saying that?

MR. SELF: Objection, Your Honor, under Rule 613.

THE COURT: Sustained. She said she didn't hear it. She can't recall it.

MR. HARWELL: I was addressing a separate

comment, Judge, within the same conversation on that; not the same comment. I may have not made that clear to the Court. There was two separate comments Phillip Booth had made about which I was questioning her.

THE COURT: All right. State whether or not you recall hearing it.

MR. SELF: I would like to renew my motion under Rule 613 as to prior statements of the witness.

THE COURT: Overruled.

State whether or not you recall hearing that statement.

THE WITNESS: I don't recall whether I did or not.

MR. HARWELL: All right. Judge, consistent with your suggestion the day before yesterday, may I approach the Government?

THE COURT: Yes, sir.

MR. HARWELL: All right.

MR. SELF: May we approach the Bench?

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THE COURT: Well, let's do this. We will be in recess for lunch until one o'clock. During this recess, the not now admonition is in effect.

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

MR. SELF: No, Your Honor.

THE COURT: All right. Please excuse the jury.

Ma'am, you may be excused until one o'clock.

THE WITNESS: Thank you.

THE MARSHALL OF THE COURT: The jurors are out of the courtroom, Your Honor.

THE COURT: All right.

MR. SELF: If it please the Court, I had moved and the Court had so ordered that any time a witness was inquired about a prior inconsistent statement, the Court ordered counsel to produce or advise us of those statements. That was my understanding.

Mr. Harwell has apparently quoted from some transcript or some tape recording, and we have not been furnished with that transcript pursuant to the Court's order, Your

Honor. He did it on at least two occasions, if not more, of this witness. And we have not been furnished that, and the Court previously ordered it.

MR. HARWELL: Two comments, may Your Honor please.

Number one, we unfortunately have a problem of not having a transcript because the Government didn't timely deliver the tapes. I have heard them, parts of them, pieces of them. I have had a yellow pad and a pen, and I have scratched out bits and pieces of that which I have heard.

By the same token, however, Your Honor, that is not what Rule 613 says; and I find it hard to believe that a prosecutor of Mr. Self's experience doesn't know that 613 says: In examining a witness concerning a prior statement made by him.

I was asking this witness about what the husband said. That wasn't made by her.

THE COURT: Well, let me ask you this: You asked her if she recalled him making a statement.

MR. HARWELL: Yes, sir.

THE COURT: Now, she says she can't

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recall it.

MR. HARWELL: Yes, sir. That statement, Your Honor, is right. That --

THE COURT: (Interrupting) Now, are you going to put into evidence before this jury a statement that he made which she says she can't recall him making? Under the rules --

MR. HARWELL: (Interrupting) Judge, I don't have the right -- Judge, if she -- Your Honor, if the witness --

THE COURT: (Interrupting) Don't interrupt me, Mr. Harwell.

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

THE COURT: All right. You are not contending that you are entitled to put that statement that she made into evidence which she couldn't recall being made just to prove to this jury that a statement was made in her presence which she says she couldn't recall or didn't hear.

MR. HARWELL: If I understand Your Honor's question, the answer is if the witness says I can not recall, then I am not entitled to bring that statement in to impeach her because there's nothing to impeach. If that witness says no, sir,

that wasn't said, then I am entitled, as I understand the law, to bring in proof that it did take place and was in her presence. See? Am I making --

THE COURT: (Interrupting) Yes. Then I have to admonish the jury the truth or veracity of this statement has nothing to do with this witness. The only thing which is in issue was whether or not it was said in her presence, and she did or did not hear it.

MR. HARWELL: Under certain circumstances, may the Court please, I agree with the Court; however, I think there are those circumstances, given a conspiracy charge in this case and the fact that this is an unindicted coconspirator, that it could be that it would go in without the kind of admonition you are talking about.

But Your Honor, I haven't gotten to a point on these two questions with this woman where I have any right to impeach on that because she said I don't know when I asked her the question about Phillip Booth saying that is the first time that I knowed anybody knew about the tipple.

My second area of questioning was: Didn't your husband say when I

burned it, it really go up in flames. She said I don't know. And I don't have the right, Judge, to impeach and I don't know unless I have proof that she does know. If she's told somebody yesterday I know he said that, then I can impeach.

THE COURT: Yes, sir.

MR. HARWELL: That is my point, Judge.

THE COURT: Fine. You certainly can.

MR. SELF: Your Honor, if I understood Mr. Harwell, he is saying that the statements that he specifically is asking on August 21st and August 22nd, 1982, are statements in the course of the conspiracy. If he is, Your Honor, we will agree to that.

MR. HARWELL: Judge, that is not what I am saying.

MR. SELF: I don't think he is, Your Honor. If he is -- if he is not saying that, then they are hearsay statements of another witness. And he is attempting to introduce those not through the speaker, but you introduced them as totally hearsay statements. If he is showing state of mind, that is a different matter.

THE COURT: No, no, no. Mr. Harwell has dealt with that. That is what was concerning

the Court in the first instance. We have dealt with that.

MR. SELF: But he is asking essentially if she overheard a statement. She says I don't know.

THE COURT: Right.

MR. SELF: But he is attempting -- and if he does it consistently -- the statement is hearsay, Your Honor. I don't think there is any question. I don't think there is any question that the statement that he is asking is a hearsay statement. And I think he is trying to introduce it, Your Honor, as to the truth of it. And therefore, it is totally impermissible hearsay unless he is contending it is a statement of a coconspirator in the course of a conspiracy. And I don't think he is, Your Honor.

THE COURT: You are not saying he is getting ready to lead?

MR. SELF: Well, I am saying he is trying to get to the jury the statement of Mr. Booth through his wife.

THE COURT: Well, Mr. Booth will be here.

MR. SELF: If he is asking these

questions to Mr. Booth, I think it is permissible as a prior statement, Your Honor. But asking her if she overheard him make this and then repeatedly going through it, I think is a waste of time.

THE COURT: He has got a right to ask her if she overheard the statement.

MR. HARWELL: Yes, sir, because she said this guy did this, and this guy did that. Well, ma'am, other people admitted to those same crimes that she has tried to lay on these people. It is proper impeachment, Judge.

MR. SELF: Those are statements during the course of the conspiracy, Your Honor.

THE COURT: I am saying he has got a right to ask her if she has heard that statement. If I say he has got a right to ask, he has got a right to ask.

MR. SELF: That also applies to the United States about statements of Defendants likewise, Your Honor?

THE COURT: We will deal with it when we get to it.

MR. SELF: Thank you, Your Honor.

THE COURT: Just like I ruled on criminal conduct. I ruled on it. If I am in error,

FEDERAL COURT COPY

someone will tell me I am in error. If we try it again, we will let the criminal conduct in. But we have only got one issue of criminal conduct for this jury. And that is a criminal conduct of the Defendant upon the specific charges which are set forth in the indictment. That is the only thing on trial in this.

The other matter is just to credibility. We have got rules that say you bring in witnesses who say I don't believe that person under oath. We have got rules which deal specifically with credibility. We have no need for using some other guise to try to get that in. That just confuses the issue.

All right, we will be recess until one o'clock.

THE MARSHALL OF THE COURT: This Court will be in recess until one o'clock.

(Reporter's Note; At 11:52 A.M. Court was recessed.)

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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, VA. B. PATTON

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TRANSCRIPT OF TRIAL

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BEFORE: THE HONORABLE G. WIX UNTHANK

DATE: FEBRUARY 22, 1984

VOLUME THIRTY-SEVEN

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

BERNARD PAFUNDA, ESQ.

For the Defendant Ranny Blankenship:

ELDRED E. ADAMS, JR., ESQ.

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

WILLIAM D. KIRKLAND, ESQ.

REPORTER'S NOTE: The Court is called in session at 1:01 P.M., E.S.T.

THE MARSHALL OF THE COURT: All defense counsel except Mr. Linville Mosley are present and all counsel are present along with the members of the Jury.

THE COURT: Does anyone know where Mr. Linville Mosley is?

MR. SPENCER: He's out and about. I believe one of the Special Agents sent him somewhere a while ago. They said he was having some trouble with his sister.

MR. SELF: Mr. McCallister, would you stand up and tell the Court what you said.

THE COURT: Wait just a second.

THE MARSHALL OF THE COURT: Here he is now, Your Honor.

THE COURT: All right. Would you like to make your statement again?

THE MARSHALL OF THE COURT: All counsel, and Defendants and the Jury are present in the room, Your Honor.

THE COURT: Mr. Harwell, are you ready to proceed?

MR. HARWELL: Yes, sir. Thank you, Your Honor.

EXAMINATION

BY MR. HARWELL:

Q Ms. Booth, before the luncheon break I was asking you some questions about a conversation that was held August 21, 1982 and you and your husband and the man you later learned to be Special Agent Kemp. And you were telling us about certain comments that were made that which you responded to or that which you felt at the time you heard those comments.

I'd like to ask you one more question about that conversation.

If you recall, we were talking about burning the tipple, isn't it a fact, Mrs. Booth that in the course of that conversation that Phillip Booth in your presence and that of Agent Kemp described how he took gasoline and a tube of grease and he put the gas in the grease and dissolved the grease in the gas and that he put it in plastic milk jugs and lit the top and let the plastic get hot and melt down so as to catch the gasoline on fire.

Didn't he say that's how he burned it?

MR. SELF: Objection, Your Honor, it's hearsay.

THE COURT: She can answer whether or not she heard him say that.

A. I don't recall it.

Q. All right.

Do you recall anything that was said at that August 21 conversation by Phillip Booth in regards to how he had burnt the tipple down, any details of what he said?

A. I am going to tell you this, I don't recall, but can I go ahead and say that - -

MR. HARWELL: (Interrupting) If she doesn't recall Your Honor she doesn't recall. I believe Your Honor told me a minute ago - -

THE WITNESS: (Interrupting) I'm sorry.

THE COURT: All right, continue.

MR. HARWELL: All right, sir.

Q. Ms. Booth in addition - - in addition to the other things in which you were involved in February of 1982, you also borrowed

three guns, three rifles from your brother, Wendall Ray Newman, did you not?

A. Yes, I did.

Q. All right.

And it was your testimony, was it not, that you were worried about your house and that's why you borrowed those from your brothe- Wendall Ray?

A. At that time I was worried about my house, there had been shooting.

Q. And is that why you borrowed those guns from Wendall Ray Newman?

A. At the moment it was.

Q. Edgar Jones didn't tell you to borrow those guns, did he?

A. No, sir.

Q. All right.

The indictment Ma'am states that you borrowed three rifles from your brother on February 1 of 1982.

Did I understand you to say that you had borrowed those guns on February the 16th, 1982, Tuesday?

A. Sir, yes, I borrowed them on the 16th.

Q. All right - -

THE COURT: (Interrupting) Approach the Bench, gentlemen.

(Whereupon a Bench Conference was held between all counsel except Mr. Pafunda, Mr. Thomas, Mr. Bransen and Mr. Kirkland.)

THE COURT: How did the indictment get in there?

MR. HARWELL: May the Court please, the indictment states that on February 1, she borrowed the guns, that's a specific allegation of an overt act - -

THE COURT: (Interrupting) But how did you make that statement to her?

MR. HARWELL: The indictment says that. May the Court please it's a public record.

Secondly Judge - -

THE COURT: (Interrupting) Are you asking her what the indictment says?

MR. HARWELL: No, but the Government has the burden of proofing the case and the specifics of the indictment. The indictment charge is February 1.

THE COURT: The indictment has been

read to them.

MR. HARWELL: I am aware of that, Your Honor. May I finish Your Honor?

THE COURT: Yes.

MR. HARWELL: Judge she says it was February 16th, she was the apparent source of the information set forth in the allegation in the indictment.

THE COURT: She can testify as to what day it is. I have no problem with you asking her what day it is.

MR. HARWELL: Judge, in Agent McCallister's statement she and her brother said that those guns were borrowed from him on 2-1-82.

THE COURT: Now, here is the point I am making. You're asking her what date it happened and the indictment says this and then you say this is different from what the indictment says, and that I don't want and don't like.

MR. HARWELL: Well, what I'm going to do is on McCallister hopefully and I hate to disclose too much of my case to Mr. Self. But I'm stating that on the basis of that allegation and the indictment and this lady's statements to McCallister, was February 1 and her brother's statement was February

1, see what I am saying?

THE COURT: I see where you are going, but - -

MR. HARWELL: (Interrupting) Your Honor is saying don't mention the indictment.

THE COURT: Well, when an attorney is saying this and this and this, what the indictment says, you know that's not right.

MR. HARWELL: Fine, then I'll ask her about Mr. McCallister, didn't she tell Mr. McCallister it was February 1.

THE COURT: Fine, that's fine.

MR. SELF: Your Honor, I'd like to make an objection that the indictment does not state on February 1.

MR. HARWELL: On or about.

THE COURT: Well, I just don't want you questioning this witness about the indictment.

MR. HARWELL: Judge, that's the only reference that I am aware of where there's an inconsistency in the indictment as to her testimony.

I understand, Your Honor, and I won't make reference to the indictment.

THE COURT: All right.

(End of Bench Conference)

Q. Mrs. Booth, you have just told us that you called your brother Wendall Ray Newman and you borrowed those rifles from him on February 16th, 1984, is that correct?

A. That's the way I recall it.

Q. All right. Let me ask you this, Ma'am. You know Agent McCallister her sitting behind the Government lawyers, do you not?

A. Yes, sir.

Q. And in the course of talking to him in regards to this matter, didn't you tell him that it was on February 1, 1982 that you borrowed those rifles from Wendall Ray Newman?

A. I could have, I was so nervous I could have made a mistake.

Q. All right.

Those rifles as I understand you Ma'am included a .243 is that right?

A. Yes, sir.

Q. And it included a 30.06?

A. Yes, sir.

Q. And it included a 30-30 carbine, am I correct?

A. Yes, sir.

Q. And after you borrowed those rifles those ultimately were taken by your husband Phillip Booth and given to the men who were on strike against Ray-Mac, isn't that right?

A. Phillip Booth took them.

Q. He took them, all right.

A. The next morning.

Q. The next morning, what you're saying was the 17th day of February, Wednesday morning?

A. Yes.

Q. All right. The truth of the matter is that you are aware, are you not, that the fact that that .243 rifle, the one with the scope, ended up in the hands of Phillip Dale Moore, is that correct?

A. Sir, I don't know who had what gun for sure, because I wasn't there, I didn't see that.

Q. All right. But those particular guns, the ones that came from your brother, were returned a couple of weeks later to you, were they not?

A. There was a couple returned, I don't know whether it's the same guns or not

returned, but there was a couple returned.

Q. My question Ma'am is, as to the guns that you borrowed from your brother, within a couple of weeks they were returned to you, and you are saying you don't know whether they were the same guns or not?

A. I am saying two guns were returned to me. One they said had got burned up, they had tore it up or something, the carbine.

Q. Ms. Booth, the two guns that were returned to you, are the same two guns that you had borrowed from Wendall Ray Newman? Did you get back the same two?

A. I got back two guns.

Q. Yes, Ma'am. Were they the same two that you borrowed from your brother, or do you not know?

A. Sir, it was dark when it was brought back to me, and as you can see before, I don't know that much about guns.

I know about what I had purchased, but I don't know that much about those rifles.

Q. You know about the ones you purchased, the Uzis and the carbines, but not the

ones that came from your brother, is that right?

A. I pay attention to what I had ordered. A carbine is completely different than one of those.

Q. All right.

A. And so is an Uzi different than one of those.

MR. HARWELL: May the Court please, might I inquire from Madam Clerk as to the Government Exhibit No. to the .243 scope? I believe it's 109 or 114. I believe it is 114, Madam Clerk.

THE CLERK OF THE COURT: No. 109 is the Remington .243 with a scope.

MR. HARWELL: It is 109.

If the Court please, might I have the Marshall pass Government Exhibit 109 to this witness?

THE COURT: Yes, sir.

MR. HARWELL: All right.

REPORTER'S NOTE: The Marshall handed the Exhibit to the witness.

THE COURT: That is all right. Just give it to the witness.

MR. HARWELL: May the record reflect,

Your Honor, the witness has been handed by the U.S. Marshall Government Exhibit 109.

THE COURT: It may so reflect.

A. This looks like a gun, but I don't know what type of gun this is.

Q. Let me ask you this. Does that look like the gun, one of the guns that you borrowed from your brother?

A. It looks like the one we went and got from him, or something.

Q. Yes, Ma'am. But does that look like one of them you went and got from him?

A. It possibly resembles it, yes.

Q. Does that look like one of the guns that was returned to you a couple of weeks later?

A. Sir, it looks like that. I don't know.

Q. Thank you, Ma'am, thank you, Ma'am.

MR. HARWELL: Mr. Marshall, with the Court's permission, would you put that back with the other exhibits, sir.

REPORTER'S NOTE: At this time the Marshall returned the Exhibits to the Exhibit Table.

Q. Mrs. Booth, you testified about purchasing Uzis and carbines. That was a week or two after the violence at Ray-Mac, was it not?

A. I had ordered them during the violence of Ray-Mac.

Q. Yes, Ma'am. But I am referring to the delivery of them when you came into possession of them. That was after the problems at Ray-Mac, isn't that correct?

A. It was after they went back to work, yes.

Q. After they went back to work, and they went back to work on Tuesday, February 22nd, 1982, did they not?

A. As I recall it.

Q. All right. And when you say they, you are talking about the miners that went back to work, are you not?

A. Yes.

Q. Including some of these Defendants who were miners, that is who the they is, is that right?

A. Yes.

Q. All right. Now, you sent Morris Ray Hall over to pick up the Uzis and the carbines after the men went back to work, is that correct?

A. Yes.

Q. All right. And just as you had done previously with Phillip Dale Moore, you gave Morris Ray Hall a check drawn on your coal company account to pay for those weapons, did you not?

A. Yes.

Q. All right. Mrs. Booth, in late 1981 and early 1982, you were aware of the fact that Ray-Mac had other mines operating around the McDowell and East McDowell area, not just the one up there at the top of the hill, were you not?

A. Sir, I may have heard talk about Ray-Mac, I heard a little maybe, but Ray-Mac don't mean anything to me.

Q. Does Coal-Mac mean anything to you?

A. Well, I know them both now, well, well. But before that, I was not interested in nobody else's mines or anything.

Q. But my question, ma'am, is, what knowledge or what awareness did you have in late

1981 and 1982 about other Ray-Mac or Coal-Mac or affiliated mines operating in and around East McDowell area?

Did you have any knowledge at that time about that that you can remember now?

A. There may have been rumors, talk around the men about the mines. Maybe on several occasions I might have even heard them say something about Ray-Mac.

Q. Having other mines, not the ones where the violence took place, but other mines around East McDowell?

A. Let me tell you, I don't think I was too much aware that there was another mine besides Ray-Mac until after the violence started.

Q. Until after the violence started, is that what you are saying?

A. You know, I know I didn't pay any attention.

Q. Never did, all right.

Let me ask you, Mrs. Booth, you said earlier that as to the meetings on Monday night, the 15th of February and Tuesday night and the Wednesday night meetings at your house, Edgar Jones was never there; and as a matter of fact, did you not

say that he had never been to your home?

A. Yes, I did.

Q. And the fact of the matter is you had never been to Edgar Jones' home, have you?

A. No.

Q. All right. Now, you indicated a moment ago, Mrs. Booth, that on February 22, Tuesday--

MR. HARWELL: Judge, let me calculate and be sure I have got the right date--

Q. (Continuing) I placed it from the 15th. The 15th is Monday, the 21st is a Monday, so the 22nd-- Yes, on February 22, Tuesday, you told this Court and this jury the miners went back to work, is that right?

A. I said I recall they went back to work that day.

Q. All right. And is it true, ma'am, that after the following weekend when the tipple burned, there was no further problem in regard to Ray-Mac, was there? There was no more violence, no more equipment damage, no more of anything as to Ray-Mac, was there?

A. No, Edgar told it to cease.

Q. I see. Mrs. Booth, during

the course of my questioning you, and during the time that the Government lawyers have questioned you, you have testified in regard to a number of activities which you were involved in February of 1982, have you not?

A. Yes.

Q. All right. And the fact of the matter is, ma'am, that you have not been charged with any criminal offenses by the federal government in regards to those activities, have you?

A. I am in prison.

Q. Ma'am, that is not--

MR. HARWELL: May the Court please, I don't want to argue with the witness. I would again respectfully ask the Court that she please be admonished to answer the question. The question being have you ever been charged as a result of these activities that she testified about at Ray-Mac, Your Honor.

THE COURT: Just answer the question.

A. No, I have not.

Q. Thank you, ma'am. And likewise, your husband has never been charged with any activities concerning, or any charges, concerning his activities at Ray-Mac, has he?

A. Not to my knowledge.

Q. All right. And the fact of the matter is, as you indicated in the course of your direct testimony, you have an understanding with the government where they agreed not to prosecute you for those activities, is that true?

A As a plea agreement.

Q I beg your pardon, ma'am?

A It was a plea agreement.

Q Ma'am, I heard that you said it was a plea agreement--

THE COURT: She said it was a plea agreement.

MR. HARWELL: Okay.

THE COURT: I assume that is an affirmative answer, isn;t it, ma'am?

THE WITNESS: Yes.

MR. HARWELL: Thank you, Your Honor.

Q And your husband has a similar plea agreement similar to yours with the Government, doesn't he?

A I presume so.

Q Now, you signed a plea agreement, did you not, ma'am?

A I signed one, sir, I don't deny; and he signed one, but that is what you should

ask him.

Q. As a matter of fact, you all signed the same plea agreement, did you not?

A. We pleaded guilty to the same charge.

Q. Yes, ma'am. But addressing your attention to the actual plea agreement, didn't both of you sign the same plea agreement on October 18, 1982?

A. I don't--I don't recall whether we signed the same one or not.

MR. HARWELL: Okay.

****

MR. HARWELL: May the Court please, in order to refresh the memory of the witness, might I have this marked for identification and --

THE COURT: (Interrupting) Just let it be handed to the witness.

MR. HARWELL: Just hand it to her, okay.

THE COURT: He will hand it to her, that will be fine.

MR. HARWELL: Should I identify it for the record, Judge, or hand it to her first?

THE COURT: No, sir, let's see if it refreshes her recollection.

Q. For the record, I hand you a two-page document, ma'am, and ask you if you could identify it?

MR. HARWELL: Is that the way Your Honor wishes? Judge, Your Honor, is that the way you wish me to proceed with this document?

THE COURT: Just let her read it and see if she recalls it.

MR. HARWELL: All right.

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

(Witness reading document)

A. Yes.

Q. Can you identify that document, ma'am?

MR. HARWELL: Mr. Marshall, will you leave it with the witness for just a moment?

Q. Will you tell us what that document is, please, ma'am?

A. It is a plea agreement between me and Phillip and the United States.

Q. Would you turn to the second page of it please, ma'am, down toward the bottom on the left hand side there are a number of signatures, are there not?

A. Yes, sir, there is.

Q. Tell us whose signature it is that is not at the very bottom on the left, but one name up, isn't that your signature?

A. My signature, and Phillip's is above mine.

Q. All right. What date is this?

MR. SELF: Your Honor, I'm going to object but this is to refresh her memory, he is not putting the document into evidence.

THE COURT: Well, do you all want it in evidence?

MR. HARWELL: Let's put this in evidence, Your Honor. I think for the record it probably ought to be, with the Court's permission.

THE COURT: Well, just to refresh your recollection I thought it was only going to be whether or not she had signed it.

MR. HARWELL: It is at this point.

THE COURT: If it is only for that, it shouldn't be necessary to go into the record. If you want it in to this thing, you might as well put it in the record.

MR. HARWELL: Judge, I am, I intend to do that later.

THE COURT: Hand it back and let it be marked to save time in doing it.

MR. HARWELL: That will be fine, Your Honor.

Judge, in that I have this witness on cross, would it be appropriate that that be marked as Defendant Edgar Jones Exhibit number?

THE COURT: Yes, sir.

MR. HARWELL: Thank you, Your Honor.

THE COURT: Didn't you go into this at the beginning of cross examination?

MR. HARWELL: No, sir. I think when I ask the next question, Your Honor will recognize that that is a different area than I have delved so far.

THE CLERK OF THE COURT: Your Honor, the document which has not been previously already marked for identification has now been identified as Defendant Edgar Jones NPM No. 9, and it's now marked for trial exhibit as Edgar Jones Trial Exhibit No. 11.

MR. HARWELL: All right. May the Court please, may it be handed to the witness -- I withdraw that comment, Your Honor, until the Government sees it.

THE COURT: Let him show it to all counsel first.

MR. HARWELL: Yes, sir.

Judge, to be precisely certain, I understand the Court's directives earlier today, might counsel approach the Bench while that is being passed around?

THE COURT: Yes.

MR. HARWELL: Thank you, Judge.

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

MR. HARWELL: May the Court please, I don't want to fail to follow this Court's directives, and I would like with Your Honor's permission to give you a slight overview of where I am going with this witness if it would help, given your objections a moment ago.

THE COURT: Well, I swear, of course, the daily copy will reflect, I think you went into it at the beginning of cross examination about her entering into plea bargaining and that she pled guilty to one count and she wasn't charged with anything which is in the indictment.

MR. HARWELL: What I went into primarily, Judge, was the admissions that were made at that time of what she admitted to.

THE COURT: Yes, but didn't you also ask her that she didn't plead to anything which is contained in the indictment?

MR. HARWELL: Judge, my --

THE COURT: (Interrupting) The daily copy will reflect.

MR. HARWELL: My recollection that she pled to an information, one count, what I was --

THE COURT: (Interrupting) Tell me where you are going here. Where are we going to? Gentlemen, on the completion of everyone's cross examination, then we will do the avowal with each specific instance. Then you can tell me how it relates to this case, why it should be in.

MR. HARWELL: I understand, Judge. Judge, I hate to be running up, but I want to be sure I understand and am following the Court's directives, rather than asking her cold. I intend to ask her, Your Honor, if it is a matter of fact that the Government did agree to recommend a six month sentence.

MR. SELF: Let's put the plea agreement into evidence.

THE COURT: No, she -- I remember specifically she said she agreed to recommend it, but that I gave her two years. She specifically said that. What is the use of going back over it again?

MR. HARWELL: Because of this, may the Court please. These Defendants are charged with activities under a statute that calls for a

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punishment up to twenty years or ten thousand dollars, and I think I am entitled to go into what happened to her with what these people are charged with. She could be charged with every single count of this indictment short of the last one or two, or another two or three.

Then Judge I intend to ask her in regards to that six months if she didn't come back in here and ask Your Honor to cut that down.

THE COURT: All right.

MR. HARWELL: May I ask those questions, Your Honor?

THE COURT: Yes. Now, you want me to take the stand and tell the jury that I am not going to do anything?

MR. HARWELL: If you want to, Your Honor. It is under advisement according to the transcript.

THE COURT: Yes. I mean, you are involving me in this thing. She asked me to do that.

MR. HARWELL: No, she has sort.

MR. SELF: He is in turn involving me in it, Your Honor, as attorney for the United

States as to why I agreed to recommend it.

THE COURT: She filed a motion and it's still pending.

MR. HARWELL: Here is my point, Judge --

THE COURT: (Interrupting) I don't mean that --

MR. HARWELL: (Interrupting) But Your Honor --

THE COURT: (Interrupting) You are entitled to that.

MR. HARWELL: Judge, can I say one thing just for the record, because I don't want this record to reflect any lack of following Your Honor's directive.

THE COURT: Okay.

MR. HARWELL: My point is this. She got two years, she asked for relief, and all that she is hoping that if she cooperates well in this case for the Government, it may have an impact on lessening of her sentence.

THE COURT: You can get it in. Now, one other thing. You mentioned one other thing on criminal conduct, I will permit, but you mentioned something about a divorce proceeding and where she admitted she lied.

MR. HARWELL: No, sir, it wasn't a divorce, Judge, it is a proceeding, Your Honor, with Phillip --

THE COURT: (Interrupting) If she admitted she lied somewhere, I will let that in.

MR. HARWELL: All right. I have also sworn testimony from her that I intend to approach the Bench on where she committed perjury on insurance claim in 1980. She was asked certain questions and she gave certain answers, and later on --

THE COURT: (Interrupting) You will have to go into that later. The only thing where she admitted perjury, that is fine.

MR. SELF: Mr. Harwell, I strenuously object to any questions regarding the plea agreement as to possible potential sentencing in the hearing of the Defendants, it is not a part of the case.

MR. HARWELL: Judge, I'm not going to say that. All I am going to say is that she could have been charged as each of these Defendants could, with these violations, and if she is aware of the punishment versus what she got, that goes to bias.

THE COURT: Okay. Let's go.

MR. SELF: Fine.

THE COURT: Let's go.

(End of bench conference)

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THE MARSHALL OF THE COURT: All counsel has seen defense exhibit No. 11.

MR. HARWELL: May the Court please, given the colloquay with the Court and prosecutors and the defense attorneys, I respectfully move that Defendant Edgar Jones Exhibit 11, the plea agreement, be admitted into evidence.

MR. SELF: No objection, Your Honor.

THE COURT: Let that which has been marked as Defendant Edgar Jones' Trial Exhibit No. 11 be finally admitted into evidence as Jones Trial Exhibit 11.

MR. HARWELL: Thank you, Your Honor.

Q. Now, you have that plea agreement, Defendants' Exhibit 11, before you, do you not, ma'am?

A. Yes.

Q. All right.

A. Yes.

Q. And addressing your attention to paragraph number three, Mrs. Booth, in that agreement, the United States agrees to make a recommendation to the Court that you be sentenced to no more than six months in jail. Isn't that

correct?

A. That is correct.

Q. All right. And you understand, do you not, Ms. Booth, that these Defendants who were charged with activities regarding Ray-Mac have been indicted under a statute, indicted by the Federal Government under a statute that calls for imprisonment of not more than twenty years and a fine of ten thousand dollars.

MR. SELF: Objection, Your Honor. Move for sanctions.

MR. HARWELL: Judge, I thought you had ruled on that?

THE COURT: Well, overruled.

MR. HARWELL: Thank you, Your Honor.

MR. SELF: Overruled, Your Honor?

THE COURT: Yes, overruled.

Q. Are you aware of that, ma'am?

A. I am aware of it. I am also aware that I have got two years.

Q. Yes, ma'am.

A. And I am serving two years.

Q. Are you also aware of the

fact that you could have been indicted on virtually each count in the indictment that these Defendants are standing trial on? Are you aware of that?

A. Well, we was all guilty.

Q. Yes, ma'am. I know that is your position. But are you aware of the fact that you could have been indicted on this indictment?

A. I feel -- I care for those guys.

Q. Ma'am, I ask that you please respond to my question. Are you or are you not aware? That is my question, ma'am.

A. What does the time have to do. I am just telling the truth.

MR. HARWELL: May the Court please, I hate to continually ask Your Honor that the witness answer.

THE COURT: Well, approach the Bench, gentlemen.

MR. HARWELL: All right, sir.

****

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

THE COURT: Isn't your question erroneous?

MR. HARWELL: She could have been indicted on each and every count. Virtually that is-- My exact language is virtually. I mean except for the last three she can be, Judge.

THE COURT: You said on every.

MR. HARWELL: I said virtually, each and every one can, Your Honor. I am sure because I got it written down there. And if I didn't say it, if Your Honor is right and I am wrong, I apologize. But I believe I said virtually, one through five she could have.

THE COURT: Okay, whether or not she is aware of the indictment, I mean what count-- You know.

MR. HARWELL: Could you please, Your Honor, ask her to respond to the questions. And then she can go out and make these self-serving statements.

THE COURT: We have told her that.

MR. HARWELL: But it isn't working yet, Your Honor. It might need a little teething.

THE COURT: It is not working a

hundred percent on both sides gentlemen you know, I mean --

MR. HARWELL: I don't believe I have failed to follow any of Your Honor's directives or admonishments. If I have I would like to know which ones.

THE COURT: I will admonish her to answer.

MR. HARWELL: Thank you kindly judge.

THE COURT: You go ahead and restate your question and I will admonish her.

MR. HARWELL: OK.

Mr. SELF: I would like to strenuously interpose an objection that I raised at the counsel table. It was my understanding Mr. Harwell was not going to mention and the court ordered him not to mention specific punishments.

THE COURT: There was a misunderstanding

MR. SELF: I would like to oppose this objection because in Federal Court as opposed to maybe State Court, punishment is not the prerogative of the jury and the jury is not to consider the punishment.

THE COURT: But that is not the function of his question. His question is, didn't

she make a bargain to were she could get off alot lighter than the other defendants.

MR. HARWELL: Exactly, your Honor. Precisley.

MR. SELF: No, he said they were going to get $20,000 and 20 years on these counts, he specifically informed the jury what the punishment is in this case.

MR. HARWELL: I said not more than I think.

THE COURT: Well, let's do this to it, you are not suppose to go into the realm of punishments which these defendants can get.

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MR. SELF: He did.

THE COURT: I know.

MR. HARWELL: Because she could have gotten - - she came out with two years, Judge. That is the purpose. To show the light - -

THE COURT: (Interrupting) Is she aware that she is facing - - that she could have been - - is she aware that she could have been charged with those things that she could have gotten for punishment.

MR. HARWELL: That's right. That is correct. That is precisely where I am going. But I can't get her to answer. She said well, let me tell you, Mr. Harwell, I am just telling the truth.

I want her to answer the question.

THE COURT: The way you brought it up, you are suppressing it on the Defendants here. You are saying the Defendants got this; therefore, you could have gotten the same thing.

He is objecting to stating what the Defendants got. What she is facing is the only thing which is of issue.

MR. HARWELL: Versus what she could have faced.

THE COURT: Right.

MR. WALBOURN: The most she could have gotten would have been a five year sentence. I think it is permissible to bring it out.

MR. HARWELL: The Court is saying it is permissible. He is saying you can't focus it on - -

THE COURT: (Interrupting) You are focusing on - -

MR. HARWELL: (Interrupting) On the Defendants. You have got to focus it on what she could have gotten versus - -

THE COURT: (Interrupting) Right.

MR. HARWELL: Well, then I go through and say you could have been charged with this, this, this, and this, and you are aware of the fact that you could have been locked up for a hundred years.

THE COURT: Right.

MR. HARWELL: But you weren't.

THE COURT: Right.

MR. HARWELL: You are saying that I can say that?

THE COURT: Yes.

MR. SELF: I want to object to any potential punishment under this indictment. The Federal Courts are guarded in the realm of punishment and a possible punishment.

THE COURT: Some way or another she has got to be able to be asked if she was aware that she could have been charged with so and so and face that punishment.

Now, I'm going to let that be done, gentlemen.

MR. KEHRLI: I think you ought to admonish the Jury on the punishment.

THE COURT: Right. She understands that.

MR. KEHRLI: I think you should admonish the Jury on the punishment aspect.

THE COURT: Okay.

MR. SELF: I move the Court at this time that at the conclusion of Mr. Harwell's portion of examination in regard to this, that the Court give the Jury instruction with regard to punishment, that which is normally given for the punishment.

THE COURT: Okay. Let's go back, gentlemen.

REPORTER'S NOTE: Whereupon the Bench Conference was concluded.

THE COURT: Ladies and gentlemen of the Jury, through inadvertence, the question was brought out concerning the possible punishment

that which these Defendants may face.

As you know, the Federal Court is different from the State Court. In the State Court, the Jury must find guilty or not guilty; then the Jury must fix the punishment. This is different in Federal Court.

In Federal Court, the Jury merely finds guilty or not guilty; then the Court is the one who fixes the punishment.

Punishment is not before you. Do you understand that?

The question which counsel is asking her, to the witness is, are you aware that you could face such and such charges involving such and such a punishment.

And by reason of your plea agreement, you got less. That is the function of this. That is the only thing that this is to be centered on.

As to the punishment which any of these Defendants may be facing isn't before you. That is the sole concern for the Court, if the Court must face it upon the conclusion of your verdict.

But the punishment has

nothing to do with it. Do you understand that as far as these Defendants are concerned? You aren't concerned with that.

All right, you may proceed.

*** *** ***

MR. HARWELL: Judge, did you want to admonish the witness. I understood that you--

THE COURT: Yes, she will answer.

MR. HARWELL: All right.

THE COURT: Go ahead and ask her the question.

Q. Ms. Booth, you have the plea agreement, Defendant's Exhibit 11, before you, do you not?

A. Yes.

Q. The first numbered paragraph provides that you and your husband, Phillip, would be charged with engaging in the business of dealing with explosive materials in violation of Title 18 of the United States Code, Section 371, is it not?

A. Yes.

Q. And paragraph 4 provides that notwithstanding whatever recommendation might be made, that you and your husband could be sentenced up to five years and/or a ten thousand dollar fine. Isn't that what it says?

A. Yes, sir.

Q. And that was the maximum punishment that you could receive under the plea agreement, is it not?

MR. SELF: Objection, Your Honor. I don't believe that is a correct statement on the plea agreement.

MR. HARWELL: If the Court please, I am mystified as to why that is not a correct statement.

THE COURT: Well, on cross-examination you can show--I mean redirect you can show the difference.

Q. That is the most that you all could have gotten, isn't it, ma'am?

A. As far as I know, I don't--

Q. (Interrupting) That is what it says in paragraph 4, does it not, ma'am?

A. It reads it.

Q. And the fact of the matter is you admit, do you not, that it would have been possible for you to have been charged with a number of other crimes, each providing for significant punishment, significant periods of incarceration. You know that, don't you?

A. Know what?

Q. That you could have been charged with a number of criminal acts by virtue of the activities which you were involved in February of 1982? Don't you know that?

A. I know I could have been charged with Ray-Mac. I always said I was guilty of it.

Q. All right. And you know that you could have been charged under certain statues, do you not, ma'am, that carry punishment much more severe than a maximum of five years and a fine--and/or a fine of ten thousand dollars. You are aware of that, are you not?

A. I am aware, also--

Q. (Interrupting) Ma'am, would you please--

THE COURT: Answer the question.

A. Okay. I am aware. I am sorry.

Q. All right. Thank you, ma'am. And is it not true that you are aware that you could have been charged with a number of those things at--that these defendants are charged with?

MR. HARWELL: Is that consistent with Your Honor's instruction?

THE COURT: Yes, that's right.

Q. Are you aware of that, ma'am, that you could have been charged with a number

of the things that the defendants were charged with?

A. I am aware.

Q. All right. Now, even though the United States attorney agreed to recommend to Judge Unthank six months, you were sentenced to two years. Is that correct?

A. That is correct.

Q. And you are, therefore, a convicted felon, are you not?

A. I sure am.

Q. And the truth of the matter is you came back in this court before this very Judge on December 14, 1983, and asked him to reduce that to your sentence down, didn't you?

A. Yes, I did.

Q. And that motion is under advisement. It hasn't been ruled on by this Court at this time. Isn't that correct?

A. That is correct.

Q. All right. Now, the events that you have told us about, the events that you pled guilty to that occurred up at Jenny Wiley Park-- And you have got a plea agreement which we have already discussed, ma'am. But part of that plea agreement involved your commitment to cooperate with the United

States, didn't it? Didn't it? You can look at it, ma'am, before you--

A. (Interrupting) Yes, sir.

Q. All right. And to be totally honest, Ms. Booth, isn't it a fact that you hope that the more you help the Government in this case, the less time you will have to serve? You don't deny that, do you?

A. Let me tell you--

Q. (Interrupting) Would you answer the question, please.

A. I want out of prison. Nobody wants out anymore than that. But I would never do nothing.

Q. But you do hope--

A. (Interrupting) Who wouldn't want out of prison. I have got a sick daughter, a son that needs me--

MR. HARWELL: May the Court please, the answer is not responsive to the question.

THE COURT: Say yes or no, and then explain.

Q. Isn't it true, ma'am, that you hope the more you help the Government in this case, the less time you will have to serve on that

two-year sentence this Court has given you? As His Honor said, reminding you, ma'am, yes or no.

A. I will help the Government all I can.

Q. Ma'am, you don't have any other criminal charges pending against you at this time, do you?

A. If there are, I don't know of them.

Q. You don't know of any that are pending against you, do you? You know of none if I understood what you just said to me. Is that right? Did I understand you correctly?

A. To my knowledge, I don't know of any.

Q. Okay. Ms. Booth, let me get you to again direct your attention to late August of 1982. And it is not proper for me to rehash things that I've already asked you about. I only use that late period of August as a starting place to ask you some more questions.

But on August 28, 1982, there was the arrest at Jenny Wiley. There is where I want you to start.

Shortly thereafter, there

came a time where you began to work for Government agents. Isn't that true?

A. That is true.

Q. All right. And you, in working with them, attempted to set up some of the people in this case by taping conversations with them, didn't you?

A. I helped the Government, yes.

Q. Yes, ma'am. And in helping them, you agreed secretly, unknown to the people you talked to, to tape those conversations, did you not?

A. Yes, I did.

Q. All right. You didn't tell those people you were taping them, did you?

A. No, sir.

Q. And you didn't tell them that you were working with the Government agents, did you?

A. I didn't want to get killed. No, I didn't.

****

Q All right.

Mrs. Booth, the fact of the matter is that you initiated conversations with a number of different people and secretly taped them in August and in September of 1982, isn't that right?

A Yes.

Q And in September those conversations that you had that you secretly taped, they were conversations with friends of yours, isn't that true?

A They were friends and I still care about them.

Q All right.

And Mrs. Booth during the course of some of those conversations that you were taping you deceived those individuals in an effort to get them to make certain statments, didn't you?

A Maybe I deceived them in a way.

Q All right.

And ma'am you did that because you wanted to show the government how helpful you could be, true?

A I didn't want to go to

prison.

Q I understand

A I never once said I was not guilty.

Q Ma'am--

A (Interrupting) When --

Q (Interrupting) Excuse me.

THE WITNESS: I'm sorry, go ahead.

Q When you were taping the conversations that was done in such a way that you were aware of it, you knew about it, you were the instrumentality so to speak in regards to the taping, am I right

A That's the way its usually done, isn't it?

Q Yes, ma'am. I want to be sure it was done this time as its usually done, it is true it was as usual , isn't that right?

A I had never done it before, I guess, I don't know.

Q All right. Isn't it true ma'am that you made certain comments in talking to friends and many other people, you made certain comments on those tapes, to impress the government

agents and to make them think you were doing a good job? Wasn't that what was in your heart and in your mind when you made some of those statements?

A When I made the statements I was getting the truth for them and that was it.

Q Yes, ma'am. BUt my question is, isn't it a fact as to some of the things you were saying you were saying that in an effort to impress the government, the agents that you were doing a good job, yes or no ma'am?

A I was in a state of mind, I don't recall whether that would have been the reason or not. I just wanted to get the truth, but because I had agreed to it.

Q Mrs. Booth you knew as you just said that you were taping certain conversations with these people and these people didn't know it, did they?

A Well, No, I didn't know I was being taped when I was taped either.

Q As a matter of fact they had no idea those conversations you were sharing with them were being taped, did they?

A No, they didn't.

Q All right. And in the course of some of those secret tapings you did talk to my client Edgar Jones, didn't you?

A Pardon me?

Q I beg your pardon?

A Could you repeat the question?

Q All right.

In the course of some of those secret tapings you talked to my client Edgar Jones, did you not?

A Yes.

Q As a matter of fact, you talked to him while secretly taping conversations on three different occasions, didn't you?

A I think it may have been three.

Q And isn't it true that after talking with him on those occasions that you had conversations with other people about what Edgar and you had said and in it you made the comment during the conversations that Edgar Jones never admitted to doing anything wrong, didn't you make that commentto people after you taped Edgar?

A It's possible.

Q All right.

A He didn't admit to not doing it either.

Q I beg your pardon, ma'am I interrupted you .

A I'm sorry I interrupted you.

Q Ok. In one of those taped conversations you had with Edgar Jones, you made a comment did you not, that Phillip Dale Moore was going to turn folks in for what happened up on the hill, didn't you -- or something along those lines, I know you don't remember verbatim what you said or what he said but didn't you say something about like that?

A It's possible.

Q All right. And didn't you later tell Benny Caudill when you said that to Edgar, Edgar seemed not to be worried about it, didn't you say that, after you talked to Edgar Jones?

A I don't recall for sure.

Q All right. Going back, not to have the questions answered but to get you to direct your attention to a certain date, I refer

again to August 28, the day of the arrest at Jenny Wiley.

The fact of the matter is Ma'am wasn't it almost immediatley after that that you began to tell the Federalgovernment that Mr. Jones was responsible for all the problems, isn't that true?

A When they ask me I told about everything we were all involved in, I told what I knew.

Q All right. Mrs. Booth in these conversations you taped with various defendants and any other people, often times you would outline the details of what happened in regards to Ray- Mac, wouldn't you ma'am?

A I suppose so.

Q And you did that in an effort to get those folks to talk specifically about Ray-Mac and any various matters pretaining to Ray-Mac, isn't that true?

A I suppose so.

Q All right. With various people you would outline certain specifics about Ray-Mac so they would hopefully say something in turn specifically back to you, that happened,

didn't it?

A I guess so.

MILLERS BALL
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COTTON CONTENT

Q. All right. And Ms. Jones -- Ms. Booth --

THE WITNESS: (Interrupting) Ms. Jones?

MR. HARWELL: Your Honor, I apologize for the slip. I apologize to the jury and the Court and everybody in the courtroom.

Q. Ms. Booth, you agreed with the Government almost immediately after August 28th when you were arrested to go in and tape a conversation with Edgar Jones, didn't you?

A. That was the first time I ever was arrested.

Q. That's not my question, ma'am --

A. (Interrupting) I agree.

Q. (Continuing) -- isn't it a fact that you agreed to go in on August 30, 1982, to Edgar Jones' office at JRM two days after the arrest and tape a conversation?

A. I agreed to go in Monday.

Q. Yes, ma'am, and tape a conversation, didn't you?

Now, before you went to Edgar Jones' office you hadn't secretly recorded any conversations with anybody, had you?

A. Well, I didn't get out of jail until -- was it Sunday, I don't recall doing it.

Q. My question is, isn't it true that the first conversation that you taped was the conversation you had on August 30th, 1982 with Mr. Edgar Jones? If you don't remember whether it was first or not --

A. (Interrupting) It seems like it was.

Q. Seems like it was, all right.

And before you went into that office to talk to Edgar Jones you talked to ATF agents about how you should conduct yourself and what you ought to try to do, isn't that right?

A. I had never done anything like that before.

Q. That's not my question, ma'am.

Isn't it a fact that you talked to one of these agents and they told you how you ought to go about talking to Edgar Jones in an effort to get something on tape, isn't that right?

A. If I went about it

normal I would have got something on tape probably.

MR. HARWELL: May the Court please, that's not responsive.

THE WITNESS: I'm sorry.

THE COURT: Did they tell you how to do it, ma'am?

THE WITNESS: They told me to go in and see if I could get Edgar to talk, that was all.

Q. Who is they --

A. (Interrupting) As I recall.

Q. Was that McCallister, Mr. McCallister?

A. Yes.

Q. Did Mr. Kemp tell you also before that first taped conversation with Edgar Jones?

A. I don't recall whether Kemp was involved in it or not, McCallister was and maybe Kemp.

Q. What about Mr. Farrar, Tim Farrar, was he involved in it in telling you how?

A. They all didn't have to tell me. I don't -- it's been a long time ago.

Q. All right.

Let's talk about that Monday, August 30th of 1982. You walked in Edgar Jones' office with a tape on, is that correct?

A. Yes, I did.

Q. And you began to talk to Edgar Jones in that office, didn't you?

A. Yes, I did.

Q. And you never did mention to Edgar Jones that he was the man that started the Ray-Mac problems, did you?

A. If I had he probably would have blown my head off.

Q. And this conversation that you had that was taped that was just you and Edgar Jones, is that right? There wasn't anybody else in that office at that time when you were taping, was there?

A. I don't recall for sure. I think it was just me and Mr. Jones, I'm not sure.

Q. Well, let me back off this first conversation for just a minute and maybe I can make my questions a bit more easy if we talk about the three conversations.

You will agree with me

that you taped Edgar Jones at JRM in his office three times, on three different occasions, won't you?

A. I think I recall three times.

Q. Okay. Now, as to all three of those situations, all three of them, ma'am, in none of those did you mention any specifics about the Ray-Mac situation, did you?

A. I don't really recall what I mentioned. Could I see the document?

Q. I have no document, ma'am.

A. Well, see, really, it's been a long time. I don't know what I had said in particular.

Q. Well, let me ask you some questions and see if you do or you do not remember various things that were said, all right?

MR. SELF: Objection, Your Honor, the best evidence rule.

THE COURT: If you have something for her to refresh her recollection, let her see it.

MR. HARWELL: Judge, I have nothing from which she can --

THE COURT: (Interrupting) All right,

that's fine.

MR. HARWELL: I wish I did. Your Honor is aware of my statements to Your Honor about that.

THE COURT: Fine, go ahead.

MR. HARWELL: All right --

MR. SELF: (Interrupting) May we approach the Bench?

Reporter's Note: Whereupon a Bench conference was held with all counsel present where the following was heard:

MR. SELF: Two things, Your Honor. Mr. Harwell has implied problems with these tapes. These were furnished to Mr. Harwell back in September of '83. These are not recent tapes. And the reason I'm objecting for the best evidence rule of what happened in that conversation, tapes are inadmissible.

MR. KIRKLAND: It's not even the best evidence rule situation, Your Honor. There's no relationship to the best evidence rule which is things that are based on any coherent writings or -- it's not subject to the best evidence rule. It's not even allowed in this case.

THE COURT: Now, he can ask her the

THE COURT: Now, he can ask her the questions as she remembers. The only thing which concerns me is if she doesn't know, I assume maybe he's talked to Mr. Jones and that's the basis.

MR. SELF: Well, he has the tapes and I presume he has a transcript.

MR. HARWELL: I agree with Your Honor, I have multiple sources including my client.

THE COURT: Well, you can ask her if she recalls making the statements and she can say yes or no.

MR. HARWELL: But, Your Honor, I am --

THE COURT: (Interrupting) The thing that concerns me is when you're asking a question like -- lay the foundation.

MR. HARWELL: May I state to the Court that I have laid a good faith basis --

THE COURT: (Interrupting) The only good faith basis you have is going to be your conversation with your client.

MR. HARWELL: It could be that or it could be the tape or it could even be a third party.

THE COURT: All right, but if you're asking her about something like that, she's entitled to refresh her recollection if she has something.

MR. HARWELL: I don't have it, Your Honor.

MR. SELF: Well, if he's got the tape and I believe he's got a transcript of the tapes.

MR. HARWELL: I've got the tape. And if Your Honor wants to let her listen to the tapes downstairs away from the jury to refresh her memory.

THE COURT: Well, I'm not going to do that.

MR. HARWELL: I don't have, I've not had a transcript made on them because quite frankly I just couldn't get it done. We can use Government transcripts though, Judge. They gave them to us.

MR. SELF: We don't have that tape.

THE COURT: Okay, go ahead.

MR. HARWELL: Thank you, Judge.

Reporter's Note: At this point the Bench conference was concluded between all counsel except Mr. Harwell and Mr. Self who remained at the Bench where the following was heard:

MR. SELF: Since she is not able to refresh her recollection, I'm not going to let you ask her if she comes back and use it to impeach her.

MR. HARWELL: Judge, if she says I don't remember then I don't think I can impeach her. If she says I didn't say that, then I can impeach her. Or if she said I did say that then I can impeach her, but if she denies making the statement--

THE COURT: (Interrupting) Well, not if she denies it, but if she doesn't remember that's what I'm saying.

MR. HARWELL: Well, the trouble is with this witness, Your Honor, there's many questions that I asked her that she says I don't remember. But I'm not going to do that, Your Honor, that's not impeachment.

THE COURT: That would be laying a trap.

MR. HARWELL: Well, it's not impeachment.

MR. SELF: Well, let me say this. These tapes that he's referring to, she has never heard them.

THE COURT: All right.

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

Q. Mrs. Booth, I'll ask you to direct your attention to all three of the conversations that you had with my client, Edgar

Jones, in which you taped, okay? Now, in those three conversations, ma'am, you never mentioned to him any specifics about the Ray-Mac situation, did you, Ms. Booth?

A. I'm not sure whether I did or not.

Q. All right. Let me ask you this, Ms. Booth. You never did in those three taped conversations say anything or mention in any fashion that Edgar Jones had been the man that was responsible for that problem, did you?

A. I doubt if I directed it like that, because he would have -- he wouldn't have liked that very much.

Q. No, he wouldn't have liked it very much.

A. He probably would have killed me in the office.

Q. Would the reason for that have been, ma'am, that he knew --

THE COURT: (Interrupting) Mr. Marshall, let's have order.

MR. HARWELL: Pardon me?

THE COURT: Let's just have order. Go ahead.

Q. Was the reason for that because you knew that he was not responsible for all those problems?

A. I knew that he was responsible and he knew I knew it.

Q. I see. Let me ask you, ma'am, in those three conversations, never one time did you mention to Edgar Jones that he agreed to pay for those guns and ammunition, did you, ma'am?

A. I don't know whether I mentioned that or not, I just got out of jail.

MR. HARWELL: May the Court please, with Your Honor's permission, may the Marshall pass Government exhibits 112, 114, and 115 to the witness. Those are checks, Madam Clerk.

THE COURT: Okay.

MR. HARWELL: Judge, may I go to my table for a moment?

THE COURT: Yes, sir.

THE CLERK OF THE COURT: Is that 112 and 114?

MR. HARWELL: I think there was three of them, 112, 114 and the other one was --

THE CLERK OF THE COURT: 115, Mr. Harwell?

MR. HARWELL: Yes, ma'am.

THE COURT: All right.

Q. Ms. Booth, let me get you to look at Government's Exhibit 112, that's the check that you previously testified about for five hundred and fifty dollars, isn't it?

A. Yes, it is.

Q. And it is drawn on your coal company, Calamity Coal Company, right?

A. Yes.

Q. And the Government's Exhibit 114, that is likewise Calamity Coal Company's check that you signed for two hundred and sixty dollars and fifty cents, is that correct?

A. Yes, it is.

Q. And the Government Exhibit 115, that is another Calamity Coal Company check in the amount of seventeen hundred sixty-two dollars and ninety-two cents, is that correct, ma'am?

A. Yes, it is.

Q. Ms. Booth, I have added those up, will you agree with me as a matter of arithmetic that they total in excess of twenty-five hundred dollars?

A. Well, probably. He also owed us money besides that that I didn't ask for.

Q. And you never one time said to Edgar Jones, I want you to pay that money, did you?

A. Let me tell you something. I was afraid of Mr. Jones. I wasn't going to make any demands like that on him.

Q. Couldn't you have said, ma'am, Edgar, I'd be mighty grateful if you could see fit to keep your word and pay the money you promised to pay, couldn't you have approached him that way?

A. You try sometime doing him that way.

Q. All right. You never mentioned in those three recorded conversations, did you, ma'am, that Edgar Jones was responsible for having that tipple burned, you never mentioned that to him, did you?

A. I don't know what I mentioned to him.

Q. All right. Getting back to the checks just a moment, Ms. Booth, by August of 1982 you and your husband, Phillip, were suffering severe financial problems, weren't you?

A. Yes, we was.

Q. As a matter of fact, in May of 1982 Phillip Booth had come over to the

unemployment office in Pikeville and applied for unemployment, hadn't he?

A. I don't really know-- Well, I'll put it this way. I don't recall.

Q. Do you recall whether or not he did that or are you saying you don't recall when he did it or whether he did it?

A. Well, at present I just don't recall it.

Q. You don't recall whether he applied for unemployment or not?

A. He could have.

Q. All right. And as a matter of fact, it is true, is it not, Ms. Booth, that in 1981 you and your husband through your companies, Bryan and Calamity, had been paid by JRM in excess of seven hundred thousand dollars, you know that, do you not?

A. I don't know how much money was paid.

Q. You don't know whether it was more or less than seven hundred thousand dollars?

A. Well, I don't recall at present how much it was.

Q. It was a lot of money in

any event, wasn't it?

A. That was a lot of expenses and a lot of labor and everything that went back out, too.

Q. All right. But by August of 1982 you all--I think you just said was having financial problems, isn't that true?

A. Yes.

Q. Ma'am, can you tell us approximately how many times you talked to Richard Kemp from the time you first met him until the time of the arrest on August 28 of 1982?

A. I couldn't really tell you how many times.

Q. He was--he was frequently with you and your husband, was he not? There was a number of occasions when you talked, isn't that true?

A. He came to our house on several occasions with Phillip Dale Moore.

Q. And you all met him at the Cricket on occasions, did you not?

A. One occasion.

Q. And of course you met him at Jenny Wiley, did you ever meet him in the Winchester-Lexington area, did he come down and visit with you

all at the Double-Y?

A. I don't recall him being there.

Q. All right. In any event regardless of the number of conversations you had with Mr. Kemp before August 28, there were conversations with him, were there not, ma'am, where he would mention Edgar Jones' name and throw out the name of Edgar Jones?

A. He mentioned a lot of names.

Q. And he included in the lot of names was the name of Edgar Jones, wasn't it?

A. Edgar and all the others.

Q. And isn't it true, Ms. Booth, that before August 28, of 1982, when this man that you believed was a hit man, Agent Kemp, when he would mention Edgar Jones' name you never one time responded to him by saying, quote, Edgar Jones is responsible for this Ray-Mac situation, you never told him that before August 28, did you? Do you recall, ma'am?

A. I don't recall before I was arrested-- I don't recall doing it, I could have, it's possible, it's very well possible.

Q. All right. Ma'am, we

talked in general about three times you visited Edgar Jones' office and taped conversations, I started asking you earlier about the first time which was on Monday, August 30 of 1982. Now, I ask you to direct your attention and focus your attention on that date, please, ma'am. That was after you talked to Agent McCallister and you believed that was the first time that you secretly taped any conversations.

Didn't you in that August 30 meeting tell Edgar Jones that you were worried because Phillip Dale had been arrested and he was threatening you? Didn't you say that?

A. It's possible, seems like that's familiar.

Q. All right. And didn't Edgar Jones say don't pay any attention to that, isn't that how he responded to you at that conversation?

A. I don't know exactly how it went. To answer truthfully, I really don't know how it went.

Q. But don't you remember Edgar Jones basically saying don't pay any attention, don't worry about that, young lady, isn't that basically how he responded, if you remember?

A. I don't remember exactly how he said it and be truthful in saying it, I really don't.

Q. In that same conversation--

MR. SELF: (Interrupting) Your Honor, I'm going to object, she stated three times that she don't remember.

THE COURT: All right, go ahead, let's move to something else.

MR. HARWELL: I am, Your Honor.

Q. In that same conversation, didn't Edgar Jones say you all should not fool around with Phillip Dale Moore because he was a crazy person, do you remember that?

A. I don't remember that, but--

Q. (Interrupting) Well-- I interrupted you, ma'am, you said but. I didn't mean.

A. I just don't recall him saying that.

Q. You don't recall him saying that.

Do you recall ever saying that Phillip Dale Moore was a fool?

A. Me say it, I could have.

Q. I see. In any event in that first meeting Edgar Jones never indicated in any fashion, did he, Ms. Booth, that he had conspired or done anything in regards to Ray-Mac?

A. The only thing I remember in any of the conversations--

Q. (Interrupting) Could we take them one at a time, ma'am, and you can pinpoint them one at a time. I don't mean to cut you off, but if we could do them one at a time.

****

Q. Let me ask you this, Ma'am. You left Edgar Jones's office after taping him on August 30, 1982, didn't you?

A. Pardon me.

Q. You left the office - - you talked with Mr. Jones and taped the conversation, and you walked out of there, didn't you?

A. Yeah.

Q. All right. When you walked out of there, you communicated with Federal Agents, didn't you?

A. Of course.

Q. And the truth is you were pretty disappointed that you had gone to Edgar's office and he hadn't said anything to prove that you were telling him the truth about Edgar's involvement in all of this, isn't that true?

Were you disappointed?

A. I was scared to death when I went into his office, so I don't know whether it was disappointment or what it was.

Q. All right. Let me ask you this, Ma'am. It was decided that you would go back into Edgar Jones's office the second time and try to tape the conversation to show that you had been

telling the truth about Mr. Jones's involvement, wasn't that true? Wasn't there a second time? I'm talking about a total of three.

A. About me telling the truth about it?

Q. No, Ma'am. The second time where it was decided that you would go back to JRM to tape secretly the conversation with Edgar Jones in an effort to show the Government you were telling the truth when you had been saying Edgar Jones did all this, isn't that what happened?

A. I really don't think I was saying Edgar Jones did all this before I was arrested.

Q. You don't think you were saying that before you were arrested?

A. I don't think I was the only one saying it. You said I am saying everything, but everybody knew it, all the men knew it.

Q. What I am getting at, Ma'am, I can't question them until they come on the witness stand, and I can question them one at a time.

I am questioning you now. You went back a second time, didn't you?

A. I went back the second time.

Q. You went back a second time and taped that conversation, did you not?

A. Yes, I did.

Q. That was on September 16 of 1982, wasn't it?

A. That would be on a Tuesday.

Q. All right. And Ma'am, had you had a script or any notes written out of what you were to say in there when you met with Edgar the second time, the second taped meeting?

A. I don't recall any.

Q. Do you recall, Ma'am, a conversation with Agent McCallister or any other agents, about what you ought to say in that meeting so as to try to get Edgar Jones to say something consistent with what you had been telling them?

A. I am going to answer your question and then I want to explain why.

Q. Whatever His Honor allows.

THE COURT: Go ahead.

A. I don't recall, but I was in a state of shock where I just got out of jail. I had been in the County Jail, and I just don't recall.

Q. I may have misstated and I didn't mean to, Ma'am. I am not talking about August 30th conversation when you had just gotten out of jail, I am talking about the second taped one on September 16.

A. Let me tell you, you don't get over just being in jail one day, a woman don't, not one that cares anything about theirselves.

Q. You understand I am referring to the second conversation.

A. I know what you are saying.

Q. And you are saying Mr. Harwell I understand but I - - I had still not gotten over the shock of being in jail two weeks later, isn't that what you are telling me?

A. (No response)

Q. Ma'am, I am just trying to understand you.

Is that what you are saying to me?

A. (No response)

MR. HARWELL: I withdraw the question, Your Honor.

Q. In any event, you went back the second - -

THE COURT: (Interrupting) No, let her answer the question.

MR. HARWELL: All right, sir.

THE COURT: Were you still in shock, Ma'am, two weeks later?

A. I was in shock for a long time.

THE COURT: All right, fine.

Q. Describe, Ma'am, if you would, the symptoms of that shock that you were under.

A. Okay. I had the shakes, I didn't know - - I didn't hardly have any feelings, I cried all the time just about it.

Q. Did you seek medical help at that time? Did you seek medical help?

A. No, I didn't even tell my family.

Q. Did your family know?

A. My family knew not this.

Q. Ma'am?

A. My family did not know when I was arrested until later on. They didn't know nothing. I didn't - -

Q. (Interrupting) Did they

know you were in the shock situation you talked about?

A. All they know, they come and got the kids.

Q. Okay. Ma'am, that second conversation on September 16 with Edgar Jones, he told you, did he not, that the Ray-Mac civil case had been stricken from the record over in Floyd County? Do you remember that?

A. I remember something similar to that.

Q. All right. And do you remember, Ma'am, telling him that you had been getting threatening phone calls?

A. It seems like I recall something of that.

Q. All right. And you remember my client saying he understood that Jason Moore had been out trying to stir him up and telling everybody that they were going to reopen that civil case that Ray-Mac had brought, do you remember that?

A. I am not sure about that, sir.

Q. All right. Do you remember, Ma'am, Edgar Jones telling you that all is over and

done with, the civil case in Floyd County was dismissed?

Do you remember his telling you that?

A. I am not sure, but it's possible.

Q. Okay. Do you remember Edgar Jones saying in regard to the civil case being over with, if anybody was trying to get blackmail money from him, they ought not to be doing that; do you remember that?

A. No, sir, I do not remember that.

Q. I see. Do you remember telling Edgar Jones in that second taped conversation that you had been getting calls on the checks that you had used to pay for guns and ammunition; do you remember that?

A. Sir, I don't - - like I told you before, I don't really recall all of these.

Q. Yes, Ma'am. But you recalled part of them, and I am trying to determine what part.

Do you remember talking about getting threatening phone calls concerning

checks? I'm referring to September 16, 1982.

A. I just can't - -

Q. Okay. You don't remember.

MR. KEHRLI: Your Honor, to save time, why don't he just ask what part she does recall?

THE COURT: Let's do this. She has been at this thing an hour and sixteen minutes, let's let this witness have a little break. We will be in recess until 2:30. During this recess you are under the not now admonition, do you remember that?

Any objections or corrections to the form of the admonition?

MR. PAFUNDA: No, sir.

MR. SELF: None, Your Honor.

MR. HARWELL: None, Your Honor.

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

THE COURT: Thank you, sir. All righty. We'll be in recess until 2:30.

THE MARSHALL OF THE COURT: The Court stands in recess until 2:30.

REPORTER'S NOTE: The Court recessed at 2:18 P.M. and reconvened at 2:34 P.M.

THE MARSHALL OF THE COURT: District Court

is again in session, come to order and be seated, please.

All Defendants, Attorneys and Jurors are in place.

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

MR. HARWELL: May I go back to the podium, Judge?

THE COURT: Yes, sir.

CROSS-EXAMINATION (Resumed)

BY MR. HARWELL:

Q. Mrs. Booth, at the time His Honor saw fit to recess, I was asking you about a second meeting you had with Edgar Jones on September 16, 1982, the second time that you taped his conversation.

I will ask you, Ma'am, isn't it a fact that in that meeting that you and Edgar Jones discussed Jason Moore? Do you have any recollection of that?

A. I don't recall for sure.

Q. All right. Do you remember your saying, "That they better shut Jason Moore up", during the course of that conversation?

A. As I said before, I don't recall, but could have.

Q. You don't recall any reference to Jason Moore, is that right in that conversation?

A. If I had something to refresh my memory, maybe, but - -

Q. (Interrupting) But not right now?

A. I don't recall.

Q. All right.

In any event, you walked out of that meeting with Edgar Jones on September 20 having taped it, and you reported back to the Government's Agent, didn't you?

A. Yes.

Q. All right. And the truth of the matter is that it was decided that you would go back a third time to tape a conversation with Edgar Jones at JRM, isn't that right? Wasn't that desire made?

A. I went back a third time, I think.

Q. Yes, Ma'am. The third time - - that third time, unlike the first two, you took

your husband, Phillip Booth, with you, didn't you? You and he both went in?

A. Yes, Phillip went in.

Q. And you all, the two of you, you and Phillip, talked to Edgar Jones at JRM, and that conversation was taped, wasn't it?

A. What was said was taped, yes.

Q. I'm sorry, I didn't hear you, Ma'am.

A. Yes, sir.

Q. Okay. And in that conversation with your husband and Edgar Jones on September 20, there was some discussion about the Ray-Mac civil suit over in Floyd County having been thrown out of Court, isn't that right?

A. It's possible.

Q. All right. And in the course of that conversation, didn't Phillip Booth say to Edgar Jones that he, Phillip Booth, had been questioned by the F.B.I.?

MR. SELF: Objection, Your Honor. Hearsay.

MR. HARWELL: If the Court please, I am not offering that for the truthfulness of the state-

ment - -

THE COURT: (Interrupting) Here is what it is. You understand what the attorneys say isn't evidence? What is evidence is what she is saying. Those are questions, and what the attorney is asking isn't evidence, unless the attorney - - I mean, unless the witness says it is.

MR. HARWELL: Or another witness, Your Honor?

THE COURT: Well, at this time we are speaking of this time.

MR. HARWELL: All right, I understand Your Honor. I have no objection to the admonition.

THE COURT: But you could state whether or not you heard that, or whether you recall it.

A. I really don't recall it.

THE COURT: But that is not - - if she doesn't, she doesn't recall what he is asking isn't evidence.

Go ahead.

MR. HARWELL: Thank you, Your Honor.

Q. Ms. Booth, in that meeting, September 20, the third one that you taped where your husband, Phillip Booth, was there, didn't

Edgar Jones say, "I don't know who done it, and don't want to know who done it, but this is my opinion. The ones that done it that I think done it, now, this is just a thought, I know they are mean enough to kill anybody and they will do it."

Do you remember Edgar Jones saying that in that September 20 meeting?

A. I don't remember him saying those exact words, no.

Q. Do you remember him saying in substance what I have just quoted? Did he tell you all, "I don't know who done it." In referring to the situation at Ray-Mac while you were taping the September 20th?

A. I am not sure, but it seems like I recall him saying that somebody had shot into the house with women and kids and somebody in it, and they didn't care who was in it. I don't know exactly how it went, but he let it be known that they would be killed - - you know, they had been killing, or something like that.

Q. Let's talk about that. That somebody that you are referring to is a fellow by the name of Denver Haynes, isn't that right?

A. I don't know. I don't

even know him. I don't know that name.

Q. No, Ma'am, I'm not asking if you know him. I am saying that you had said that there was a conversation there about somebody shooting in a house, and I am saying, didn't that conversation include the fact that that house was Denver Haynes' house?

A. No, I don't know - - he could have said that that that was the name, I don't know.

What stuck in my mind, him wanting - -making a remark about shooting kids and everything. That is the only thing that stuck in my mind about that.

Q. Let's talk about that. What was said in that conversation that you taped, the third one on September 20, and by whom was something said regarding shooting kids.

A. All I recall is Edgar Jones saying something to that effect.

Q. Yes, Ma'am. As best you can remember, and this is kind of important, Ms. Booth.

As best you can remember, tell me what it was that Edgar Jones allegedly

said in that conversation about shooting kids?

A. He said they wasn't - - I don't know exactly how it went now, just that they wasn't - - he wasn't referring - - he was referring to something that happened before, that when they shot, they shot in the house where women and kids and stuff was, or something to that effect.

Q. Isn't it a fact, Ma'am, that he referred to that house by saying, "That if the folks that done this that I think done it, done it, they wouldn't care no more to kill you than spitting."

Then he talked about what happened in years past at Denver Haynes' house.

A. Wait now, I don't know exactly how it happened. Like I said, the only thing that stuck in my mind so much was that he was talking about shooting a house where kids was, and they didn't care about women, kids or who.

Q. Ma'am, you are not telling this Jury that Edgar Jones was threatening that, are you?

A. I am not telling them nothing, I am just telling them what I recall, sir.

Q. Yes, Ma'am. What you are saying, if I understand is, he told you about the

situation that happened years before, isn't that right?

A. As I recall it, I told you what I recall of it all.

Q. The situation that he made very clear in that conversation, he had nothing to do with, is that right?

A. I am not sure about that.

Q. All right. Didn't Edgar Jones say to you and Phillip in that conversation that, "He didn't know who did it, but if it is who he thought it was, they don't play around, they don't play games?"

Didn't he say that to you and your husband, Phillip?

A. Sir, I really don't recall.

Q. All right. Do you recall in that conversation that you and your husband said that you talked with Benny Caudill and told him to keep his mouth shut? Do you remember saying that in the conversation?

Let me stop for just one moment and given the Court's instructions and to be totally fair, don't you remember that that was said by you or your husband in that conversation?

A. I am not saying I didn't say it. All I told you is I cannot recall most of this.

Q. All right. Do you recall Edgar Jones referring to Benny Caudill and the statement about keeping his mouth shut saying, "That is up to him, I think that is what he ought to do, but it is up to Benny?"

Do you remember that?

A. Who said that?

Q. Edgar Jones. Do you remember his saying that?

A. Sir, I do not recall this. Okay?

*** *** ***

Q. All right. Do you recall, ma'am, your husband saying to Edgar that Edgar ought to tell Benny to be quiet, do you remember that?

A. Sir, I do not. I am not saying it didn't happen, I just don't recall it.

Q. One more question on this thing.

Do you have any recollection of Edgar saying it was none of his business, and he wasn't going to tell Benny or anybody else to be quiet?

Do you recall Edgar Jones saying that on September 20, 1982?

A. I don't recall it.

Q. All right. Let's move along then, consistent with the Court's earlier comments.

Ms. Booth, I asked you earlier today during the course of this cross examination about the amounts of money that you and Phillip Booth had made in 1981, or had been paid by JRM; and you indicated you do not know the amounts, but there was a significant sum of money paid, is that a fair recitation of what you told us so far

on that issue?

A. Well, he contract mined for him.

Q. Yes, ma'am. And I am trying to get you to direct your attention to money that was paid by JRM to your coal company, yours and your husband's in 1981.

And I think you said it was a significant sum of money, but you didn't know exactly how much.

A. I do not recall how much.

Q. Okay. The fact of the matter is you and Phillip Booth in 1981 were in good shape financially, weren't you? You bought new cars, spent a lot of money.

A. Because he bought new cars didn't mean we was in good shape.

Q. Okay. Let's go at it a different way.

Is it your position that you all were or were not in good shape financially in 1981? I understood you earlier to say that you were.

A. I can't truthfully answer that question right now, because I don't recall that

far back. With mining business one day you are in good shape and the next day it takes everything you have to buy a piece or equipment, or your payroll is so high it takes your whole payday.

Q Let me go at it a different way.

Isn't it fair to say that you were on a relative comparative basis in much better financial shape, you and your husband, in 1981 than you were in 1982? Isn't that a fair statement?

A. I just really can't answer that for sure.

Q All right. Mrs. Booth, in 1982 you were assessed tax by the Department of Revenue in Frankfort, Kentucky in the amount of eighty thousand one hundred five dollars and eighty-four cents dated February 24, 1982, isn't that true?

MR. SELF: Objection, Your Honor, relevancy.

THE COURT: Sustained. The jury is not to consider that.

MR. HARWELL: To the substance or the form, Your Honor?

THE COURT: Substance.

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

THE COURT: Put it in by avowal?

MR. HARWELL: Yes, sir.

THE COURT: Okay. Ladies and gentlemen of the jury --

MR. HARWELL: (Interrupting) Judge, we will follow your direction and put the various matters that you have referred to in one clip if we can, Judge, all right?

THE COURT: Fine.

MR. HARWELL: Yes, sir.

Q. Let me ask you this, ma'am. You had said earlier today that you all were in a financial tight or different financial position in 1982, isn't that what you told us earlier in the course of your testimony today?

A. Will you repeat that, please?

Q. Haven't you told us that during the course of your testimony earlier today that you and your husband, Phillip Booth, were in a tight financial position in 1982? Isn't that what you told us earlier?

A. Around the first part.

Q. I beg your pardon?

A. Around the first part of it.

Q. First part of what?

A. January or February.

Q. Of 1982?

A. This is as I recall it. Now, I don't have records before me, and I don't have nothing to --

Q. (Interrupting) All right. And the fact of the matter is that you had certain people and other entities that were pushing you all for the payment of moneys allegedly that were due you in 1982, isn't that correct?

MR. SELF: Again, objection.

MR. HARWELL: May counsel approach the Bench?

THE COURT: Approach the Bench.

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

MR. HARWELL: May the Court please, the purpose of my line of questioning is that she -- she and her husband were in financial tights in 1982. I intend to go on with that questioning and say isn't it a fact that you went to Edgar Jones to try to get some money from him to get you out of that tight in 1982?

And then I intend to say-- after I have laid the groundwork with the Internal Revenue Service and the Kentucky State Department of Revenue, and what else would indicate that she was in a tight, and say did you go to Edgar and try to borrow money, did Edgar say no; and did you at that point in time, commence to get even with him.

That is where I am going, Your Honor. The purpose of the eighty thousand dollars to the Kentucky Department of Revenue is simply one indication of the tight that they were in. It got real tight in 1982. They went to Edgar to get money, he said no.

THE COURT: Ask her if she wanted to borrow money.

MR. HARWELL: May the Court please --

THE COURT: (Interrupting) And that he wouldn't lend it to her, and ask her if that is the reason.

MR. HARWELL: I would like to lead up to it with the Court's permission, pointing out the reason she needed to borrow money.

THE COURT: No, sir. She already said she was in financial straits.

MR. HARWELL: Yes, sir. But I would like the severity of that to be shown, Judge.

THE COURT: I will sustain the objection as to the severity.

MR. HARWELL: Judge, could, for the purposes of the record, Mr. Self set forth the basis of the objection with Your Honor's permission? I don't know why he is objecting. I don't know it is not admissible even though Your Honor has ruled on it. I am not arguing with you. But I don't understand the lack of admissibility as it goes to bias.

THE COURT: You can ask her -- she said that she -- I think she has already testified that she was in bad financial straits. And she went through that. And the jury has heard that. Now, whether or not she owed fifty million dollars

or whether she owed five thousand, she said she was in bad financial straits.

MR. HARWELL: Judge, the point is the person that owes fifty million is under a much more emotional strain.

THE COURT: I understand that.

MR. HARWELL: And much more anxious to get money than a person who owes five thousand dollars.

THE COURT: Okay, I sustain the objection. If you're going to get into her financial condition, introduce her tax returns --

MR. HARWELL: (Interrupting) I haven't got them, Judge.

THE COURT: I am sure if you had them, you would put them in.

MR. HARWELL: If they showed what I think they do.

THE COURT: I know. I am just not going to permit it.

MR. SELF: My objection is based on relevancy and Rule 403, as to the prejudicial nature.

THE COURT: The record will reflect that she has specifically said that -- that they

were in bad financial condition.

MR. HARWELL: In '82.

THE COURT: I think she has already said that.

MR. HARWELL: I thought it did too.

THE COURT: You are doing that. And now you're going back into it, digging a little deeper.

MR. HARWELL: No, sir. I am approaching it from a totally different angle. The other has to do with --

THE COURT: (Interrupting) You might consider it two different angles, but it still ends up being the same evidence.

MR. HARWELL: The other has to do with why she went and asked Edgar for the twenty-five hundred and seventy-three dollars that he allegedly agreed that he would reimburse. That was that angle.

THE COURT: You have that in there, you are getting a different angle, but you are getting the same evidence.

MR. HARWELL: Your Honor, I am getting the same bottom line, but I am not getting the severity of financial problems. I am not arguing,

Judge. I am just telling you my position. I am going to go do what you say to do.

****

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THE COURT: Just ask her if she was in bad financial condition and I can't see where she was with her taxes--what her tax assessment was at the time I can't see that being relevant.

MR. HARWELL: Well, what it was, we had a tax notice from the Kentucky Department of Revenue dated 2-24-82, showing she and her husband owed eighty thousand dollars more or less.

THE COURT: Okay, she and her husband were in debt.

MR. HARWELL: But deep debt, Judge. We will have proof during our case that they paid in excess of seven hundred thousand dollars in 1981, and everything crumbled financially.

THE COURT: But that is gross. She had to pay her labor. She had to pay the equipment and everything like that.

MR. HARWELL: We intend, Your Honor, though it is too early to tell, to put on some proof on that, too.

THE COURT: All right. I think the jury is entitled to know--the jury is entitled to know that she was in bad financial distress and she went to borrow some money. But this is only on bias.

MR. HARWELL: Exactly, Judge.

THE COURT: Is only on bias.

MR. HARWELL: Judge, it gets to a point where there became a grudge, and an animus to Edgar Jones because of several reasons.

Judge, while I am at the Bench, I also intend to ask her--and I was going to come to Your Honor separately, but it is coming up very shortly. I also intend to ask her if it isn't a fact that she attempted to seduce Edgar Jones. A woman scorned. And I make a good faith representation to the Court that I have--I have evidence of that fact. Not, Judge, for love but apparently for money.

MR. SELF: I would object to that. It wouldn't matter one way or the other, whichever way she answered, it far outweighs any probative evidence. She may answer something and she may answer the other way around. And then you get into one way or the other. And then you can't get into it. It would far-- If she said no, then that is that. According to 403, YOur Honor, any relevancy would be far outweighed by the prejudicial effect of any relevancy of that type inquiry. It would be minimal as compared to prejudicial effect to the witness or to even Mr. Jones.

MR. HARWELL: If she said yes, then she

was scorned. And that would go to bias, Judge. If she said no, then that's that.

THE COURT: I am back on this financial thing. You can ask her about the financial condition.

MR. HARWELL: But not the specifics of the taxes and the revenue and such as that?

THE COURT: Not as to the taxes and such as that.

MR. HARWELL: When I come to the avowal time, Judge, can I put that in my avowal as part of it?

THE COURT: Yes, you can put everything you want to put in the avowal you want to.

MR.HARWELL: I understand.

THE COURT: I understand this. You gentlemen have spent many months in looking the evidence over and deciding what you can get in under bias and what you can get in under credibility.

MR. HARWELL: That's right.

THE COURT: And while technically you may do that, this jury has got more than ample evidence here that they can decide on bias. They have got more than ample evidence that they can decide credibility.

MR. HARWELL: I respectfully don't agree,

Your Honor, with the quantitativeness of the ample evidence. I say that with great respect, Your Honor. You know that. But I just don't want the record to have me silent on that issue.

THE COURT: I understand. You're looking to the defendants' side and he is looking to the prosecution's side and I am looking at the Court's side.

MR. HARWELL: We are advocates and you're the Judge.

THE COURT: That's right. And we can't try this case six months on bias evidence.

MR. HARWELL: Judge, I am not far from being through with this lady.

THE COURT: Good. Let's go on. But we have got nine more to go after you.

MR. HARWELL: Judge, I don't think--

MR. SPENCER: (Interrupting) If she would just clarify we and they, the cross-examination wouldn't have to go on.

THE COURT: Right. All right. Let's proceed.

MR. HARWELL: Thank you, Your Honor.

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

THE COURT: Who knows how to work the - - where is the GSA. Is the air conditioner on?

THE MARSHALL OF THE COURT: No, Your Honor.

THE COURT: But now, the Court doesn't want that door opened. I don't want the door back here opened.

MR. HARWELL: I believe the air conditioner - - there is something coming in on my balding head. I'm very sensitive to that.

THE COURT: You have plenty of hair compared to the Court.

MR. HARWELL: May the Court please, I am just taller than Your Honor.

THE COURT: All right. You may proceed, sir.

All right, sir.

Q. Ma'am, I understood you to say that you and your husband Phillip in 1982, early 1982, were having financial problems. Is that a fair representation of what you told this Jury?

A. As I recall.

MR. HARWELL: All right. May the Court please, will you indulge me just a moment.

THE COURT: Yes, sir.

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MR. HARWELL: Judge, may I walk over to my table?

THE COURT: Yes, sir.

Q. Ms. Booth, the fact of the matter is that in 1982, you went to Edgar Jones to try to get his help, his assistance in getting you out of those financial difficulties that you were in.

Isn't that correct?

A. I am going to answer that, and then going to ask permission to explain.

THE COURT: Answer the question, and then you can explain.

A. Yes, I went to him for help. But previously he had promised me he would help us with it.

Q. But you went to him to try to get helped out of those financial difficulties.

A. He had promised me before he would.

Q. And about when was that, Ma'am?

A. I don't recall the date, sir, or anything, or even - - I don't recall just when.

Q. Do you recall it being in 1982, do you not, because that is when you were having those financial difficulties? You recall the year, do you not?

A. It had to be in '82, sir.

Q. All right. Do you recall the season of the year, whether it was hot weather or cold weather or snow on the ground or spring or fall?

A. Sir, I really don't know.

Q. Okay. If you don't know, Ma'am, you don't know.

Isn't it a fact that you went to Edgar Jones and tried to borrow a large sum of money and to get his help, and that he said that he just couldn't do that? Isn't that what happened?

A. I don't know how much money it was. He had said all along when he made the payroll - - am I allowed to do this? By the look on your face, I must not be.

Q. You are allowed, Ma'am, to do whatever Judge Unthank tells you you can do.

THE COURT: Go ahead and answer the question.

A. Okay.

Q. Did he tell you - - I didn't mean to interrupt you.

A. Okay.

THE COURT: Let her answer it in her own way. Go ahead, Ma'am.

THE WITNESS: Let him ask the question again. That way I will know exactly what I am saying.

THE COURT: Did you go to him to borrow money?

THE WITNESS: Yes, I did.

THE COURT: What did you say to him and what did he say to you?

THE WITNESS: Edgar had told me prior to that when we got our paydays, he knew there was just enough to cover the men's payroll without the taxes. And he told me that he would help us with the taxes.

But when I went to him, he never did have it he said.

Q. He said he didn't have the money to help you, is that right?

A. Right. That is the way I recall it.

Q. All right. And wasn't it at that point, Ma'am, that you became very irritated with Edgar Jones because he wouldn't let you all have any money?

A. I was not really irritated at Edgar.

Q. You weren't?

A. Just Edgar - - do you want me to explain it?

Q. I want you to do whatever His Honor wishes you to do, Ma'am, and I don't want to cut you off.

A. We would produce coal quite a bit, but he would take so much out for saying that it was dirty coal. And for what coal we put out, we didn't get no money for it. It was very little money.

Q. Tell this Jury about that dirty coal. What is dirty coal? What does that mean, that expression?

A. Sir, you will have to get somebody more knowledgeable than me in it. I just know what - - it has got so much ash or something in it. I don't know.

Q. Doesn't that mean - -

doesn't dirty coal - - isn't that an expression that is used to refer to coal which has rocks and other things other than coal in it? Isn't that what dirty coal means generally?

A. It is possible.

*** *** ***

Q. All right. And the truth of the matter is Mr. Jones complained to you and your husband because you all were delivering dirty coal. Didn't he complain on a number of occasions about dirty coal in 1982?

A. He complained about dirty coal, but he also complained about Phillip going out and wasting money buying cars where he didn't need it. He said he was drawing too much attention to him.

Q. Yes, ma'am.

A. And he didn't like that.

Q. But I am addressing myself now to the dirty coal. If I understood your answer to my last question, you are saying yes, Edgar Jones complained to you and to Phillip Booth about you all delivering him dirty coal in 1982. Is that what you have said?

A. Yes.

Q. All right.

A. Can I correct something?

Q. You can correct or clarify, ma'am, with the Judge's permission.

THE COURT: Go ahead.

THE WITNESS: When he said about the dirty coal, also when I talked to him, he said when

Phillip straigtened up--if Phillip would straighten up, things would get better. And he meant straightening up about buying and drawing so much attention and acting like he was rich when we weren't.

Q. When Edgar was complaining about dirty coal, there came a time when you all weren't getting paid for the coal because it was dirty. Isn't that correct?

A. Well, he said it was dirty.

Q. Yes, ma'am.

A. And he would send us back in there to work. And then there would be very little money to pay the men.

Q. But isn't it true, ma'am, that there came atime after Edgar had complained about dirty coal on several occasions when he was no longer willing to pay for additional dirty coal. Isn't that what happened?

A. He done that on occasions.

Q. All right. And isn't it true, ma'am, that when he did that that you became very upset with Edgar Jones? Isn't that true?

A. I wouldn't really say it like that because I don't even have no really dislike for Edgar. I just don't like what he has done to us.

But I don't dislike the man.

Q. Ma'am, isn't it a fact that you got so mad that you told various people that you were going to get Edgar Jones?

A. Sir, I don't recall such as that. I have no ill feelings toward Edgar or anyone.

Q. I see. Let me ask you, Ms. Booth, in 1982, didn't you tell Jason Moore that you were going to get Edgar Jones?

A. I don't recall saying that. Maybe Jason said it. I don't recall such a statement.

Q. Would it be fair to say, also, that maybe you, Pearl Booth, said that?

A. I don't recall it is all I can tell you.

Q. Okay. You are not admitting it, but you are not denying it. You are saying I don't know. Is that right?

A. I am not going to say I didn't say it or I said it because I don't recall saying it.

Q. That is fine. Let me ask you this, ma'am: Isn't it true that you made a statement in the presence of Mr. Benny Caudill in substance,

quote, I am going to get Edgar Jones one way or the other, and I swear that on my kids' lives.

A. Somebody-- No, I don't remember saying such a statement. I don't recall that.

Q. I guess I am having a little problem, Ms. Booth, and I don't know that I understand when you say no, I don't recall. I need you, with the Court's approval, to state I don't recall, I don't know if I said it or not, or just say no, I didn't say it, or yes, I did say it.

Do you understand what I am asking?

A. I understand what you are asking.

THE COURT: Ma'am, if he didn't say it, say he didn't say it.

THE WITNESS: I don't recall saying it at all, Judge.

MR. HARWELL: She has answered, Your Honor, I don't remember. Thank you, Your Honor.

Q. Let me ask you this, ma'am: In one of these conversations that you and your husband, Phillip, were having, with Agent Kemp, isn't it a fact that you all talked about ripping Edgar Jones

off without it being known that you and Phillip Booth were involved in that? Do you deny that?

MR. SELF: Objection as to time frame specifically. That is my only objection.

THE COURT: Okay.

MR.HARWELL: I didn't hear the objection, Your Honor.

MR. SELF: Time frame, Your Honor. Was this a millennium ago or was this two weeks ago?

MR. HARWELL: May the Court please, I know Your Honor, like the rest of these attorneys and I, are anxious to move this along. I would respectfully ask the Court for a very brief recess so I might comply with the Government's objection. It won't take me but five minutes, but I haven't got it here. I can get it very quickly, Your Honor.

THE COURT: Well, let her answer the question.

MR. HARWELL: Okay.

THE COURT: When was this supposed to have been?

MR. HARWELL: Judge, may I go over to my table without recessing?

THE COURT: Yes, all right.

Q. Let me ask you, ma'am, on

or about May 13 of 1980, on the conversation that you had with your husband and Mr. Kemp, is it not a fact that you all discussed ripping Edgar Jones off without it being known that you and Phillip were involved in the ripoff?

MR. SELF: Objection, Your Honor. That precedes any time frame in this indictment.

THE COURT: Overruled.

MR. SELF: 1980.

MR. HARWELL: 1982.

MR. SELF: I am sorry, Your Honor.

Q. On or about 5-13-82.

THE COURT: May 13, 1982?

MR. HARWELL: May 13, 1982, Judge, yes, sir.

A. I don't recall it, but have you got something to refresh my memory?

Q. No, ma'am, I have just got what the Government has given me. I don't have anything beyond that.

Do you remember ever a conversation that was had with you and Kemp and you husband, Phillip, where there was discussion ripping Edgar Jones off, you all ripping him off without it being known that you were involved in the ripoff,

ever in 1982?

A. If there was, I--I am not saying there weren't, but I can't recall it because it was so much that went on. I can't recall that.

Q. Well, let me be more specific. Do you remember discussing ripping Edgar Jones off and making a buck to be split between you all, that is Phillip and Pearl, and Richard Kemp? Does that refresh your memory?

A. Sir, I don't recall this. But can I ask you did I agree to such a thing? Now, that is what I want to know because I don't recall doing this.

Q. I don't think that the Court would allow--

THE COURT: (Interrupting) No. She says she doesn't recall.

Q. All right, sir.

Let me ask you this, ma'am: Have you ever told anyone that you would say anything about Edgar Jones you had to say regardless of how big a lie it might be to tell, quote, get a day off your head? Have you ever made that statement?

A. I don't recall no such statement.

Q. Have you ever made that statement to your husband, Phillip Booth, or in his presence?

A. In Phillip's presence? I don't recall saying anything in Phillip's presence to that effect.

Q. All right, ma'am. Do you recall a conversation on September 15, 1982, with Donahue Halbert, conversation you were recording, when you said in regard to the coal business: I don't have any money. Edgar has broke us. He has done a good job at it.

Do you remember saying that to Mr. Halbert on September 15, 1982?

A. I remember going to Mr. Halbert's, but I do not remember exactly what was said.

Q. You don't remember saying anything with regard to Edgar Jones?

A. We talked. I can't remember the precise things.

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Q. Mrs. Booth, during the course of your testimony while Mr. Self was questioning you, you mentioned Ed Panhandle Moore, did you not?

A. Yes, sir.

Q. And you knew Ed Panhandle Moore fairly well, didn't you?

A. Yes, sir.

Q. As a matter of fact, he was one of those men that worked for you and your husband, is that correct?

A. He worked for everyone, he worked for Edgar and sometimes for Phillip too. He did odd jobs -- as I recall it he did odd jobs.

Q. Some of those odd jobs that he did for you and your husband included painting your home, the house you and Phillip Booth lived in, is that correct?

A. The deck around the pool.

Q. All right. He painted the deck around the pool?

A. Yes, he built the deck around it.

Q. All right.

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A. When he got killed, I reckon he just got through with it.

Q. Let's talk about that, his killing had nothing to do whatsoever with this lawsuit or any of these Government agents, prosecutors, or defense lawyers or Defendants, did it?

A. I don't know that it did, I know he was shot a lot. I don't know how come he got killed.

MR. HARWELL: May the Court please, might the Government for the purpose of clarification agree to stipulate on that issue so this won't be muddy.

MR. SELF: We will stipulate to that, it had nothing to do with any of the Defendants.

MR. HARWELL: And would Your Honor please?

THE COURT: Yes, does the jury understand that? The death of Panhandle Moore had nothing to do with this case.

MR. HARWELL: Thank you, Your Honor.

Q. Ma'am, you said that Ed "Panhandle" Moore did odd jobs around for you all

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and others, isn't it also true that when you received telephone threats oftentimes you would hire him to guard your house?

A. Yes, he stayed at the house some for us guarding it.

Q. I see. Isn't it a fact, ma'am, that Ed "Panhandle" Moore became involved in the Ray-Mac situation because he liked you and he thought he was benfitting you and Phillip?

A. He liked Edgar also.

Q. Yes, ma'am. But aren't you aware of the fact that he became involved in that situation because he liked you and Phillip and he felt he was benefitting the two of you?

A. I can't say that for sure.

Q. All right. Speaking of guarding, as a matter of fact Panhandle Moore during the week of February 15th, 1982, was frequently employed to guard your house during that week, wasn't he? The week of the happenings up at Ray-Mac?

A. It's possible, I'm not sure.

Q. You're not sure he was

hired as a guard during that week or you're not sure that he was ever hired as a guard?

A. He stayed there some. A lot of times Panhandle done it for nothing.

Q. And a lot of times he was paid a hundred dollars a month, wasn't he?

A. I don't know.

Q. He was paid some sum of money?

A. I can't truthfully say right now because I don't recall that.

Q. You don't remember ever paying Panhandle to guard your house?

A. He might have gotten money sometimes, but Panhandle would do it -- he was -- Panhandle wasn't a bad guy.

Q. He was what?

A. He was not a bad guy.

Q. He wasn't a bad guy?

A. Well, some things he wasn't. Even people that does things wrong they still have some good part -- they have some good things about them.

Q. Didn't he have a reputation of being a very tough man?

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A. Well, a lot of people have that, but they still have a part in them that still is good.

Q. I see.

Ma'am, since August 28th of 1982, you've told us about certain conversations that you've taped and certain other events that took place with you and Government lawyers or Government agents. Can you approximate for this jury about how many times since August of '82 you have talked to a Government agent or Government lawyer in regards to these matters about which you have testified? As best you can approximate.

A. Since '82?

Q. Since August 28th of 1982. And I include Mr. Dause, Mr. Kehrli, Mr. Self, Mr. McCallister, and Mr. Farrell --

MR. SELF: (Interrupting) Mr. Farrar.

Q. Mr. Farrar, and Mr. Kemp, who's not in the courtroom right now. About how many times?

A. Sir, I couldn't truthfully even guess how many times. I don't recall how many times.

Q. More than ten?

A. Of course it was more than ten, I don't even want to even speculate. I don't know.

Q. All right. Can you approximate, not speculate, but approximate. More than a hundred or less than a hundred?

A. I just don't recall how many times and I don't want to even speculate or approximate or what.

Q. All right. Ma'am, on December 7th of 1983, this past December, Mr. Hank Hillin and Mr. Bass came to the FCI in Lexington to see you, didn't they?

MR. HARWELL: Mr. Hillin, would you please stand up?

(Reporter's Note: At this time Mr. Hillin stood up.)

Q. That is Mr. Hillin.

A. Oh yes, he came to see me.

Q. All right.

Mr. Hillin sit down.

And Mr. Hillin introduced himself to you, did he not?

A. Yes, he did.

Q. And he was courteous, was he not, ma'am?

A. He was very nice and courteous.

Q. And he told you that he was constructing an investigation for me and my law firm on behalf of our client, Edgar Jones, didn't he?

A. He was -- he did, he was very nice.

Q. I see. And isn't it a fact, ma'am, that despite the number of times you talked to the Government and in spite of him being courteous that you told Mr. Hillin that you would not talk about the facts or the circumstances of this case and you got up and walked out, isn't that what happened?

A. I didn't -- okay, I'll answer you. I told him that -- I didn't realize before I ever met him who was there to see me. I went there and seen who it was and when I realized -- who he told me who he was it scared me and I just didn't expect this. I'd been in prison and I was not adjusting good anyway and it just -- I just couldn't

talk to him.

Q. So, you refused to talk to him, right?

A. I refused to talk to him, but he was very nice and I liked the man.

MR. HARWELL: May Your Honor please, at this point in time, the Defendant respectfully moves for the jury to be excused so that we might get the Court's directives --

THE COURT: (Interrupting) Approach the Bench, please.

MR. HARWELL: All right, sir.

Reporter's Note: Whereupon a Bench conference was held with all counsel present where the following was heard:

MR. WALBOURN: Judge, could we have a recess. We're about to roast over there. I told Brenda to bring some bread and we'd bake it for her during the afternoon.

THE COURT: What about a fan?

You can ask her if there is any romantic attachment between she and Edgar, did she make advances at him --

MR. HARWELL: (Interrupting) I can ask that, Your Honor?

THE COURT: Yes, but as far as trying to get him in the bed and that kind of thing, don't be blatant about it.

MR. HARWELL: Judge, my banality was limited to the word seduced.

MR. SELF: I don't have any objection into him inquiring into that,Your Honor.

THE COURT: Well, I don't think it would be proper. You can ask her if she made advances towards him.

MR. HARWELL: Well, it's a very painful question, Your Honor. His wife of thirty years is in the courtroom, and I'm not going to be banal -- like I didn't use the real word for M.F. --

THE COURT: (Interrupting) I know, and I'm proud of you.

MR. HARWELL: Judge,can I get a pat on the head?

THE COURT: Yes. Now, the avowal is going to place then after everyone's cross examination.

MR. HARWELL: I understand, Your Honor, but what I wanted to say I have some other things, Your Honor.

THE COURT: What's the other things?

MR. HARWELL: Judge, I'm intending to get into a fire. The fire took place on January 29th of '81 with Phillip, Pearl and Phillip Dale Moore at a house in East McDowell of a neighbor, and they committed arson and a coconspiracy with a fellow named Arley Potter. And Judge, I think that's admissible for various reasons.

The first reason it's admissible, may the Court please, is because there was some conspiracy to commit an insurance fraud and that's admissible under 608B.

The second reason, may the Court please, is this is one of the things I'm speaking about on Brady. There happened to be an interview in this very courtroom in the United States Attorney's Office on December 28th, 1982.

THE COURT: You can put that in by avowal, about burning the house.

MR. SELF: Let him finish, Your Honor, I don't even know what he's talking about.

MR. HARWELL: Well, a fire investigator by the name of James McKenzie interviewed under oath Phillip Dale and Phillip Booth. They weren't prosecuted, but the Floyd County has seen fit to indict Mr. Arley Potter.

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Pearl has gotten the benefit of that as does Phillip Booth and Phillip Dale. That's part of what the benefits from this matter they have. They burned the house down and they got all kinds of stuff out of it for exchange in burning the house which is fine to commit insurance fraud, Your Honor.

THE COURT: Well, I don't know, where is Mr. Justice, maybe he --

MR. JUSTICE: Here I am, Your Honor.

THE COURT: I don't want the Court to think that.

MR. JUSTICE: I think the Court has already ruled that this is going to come in by avowal. I'm concerned that the Court which has a motion pending under Rule 35 at this time whether or not it can accept the statements as being true. Certainly I don't want that to come up --

THE COURT: (Interrupting) Well, I don't think Rule 35 has anything to do with this here.

MR. JUSTICE: Well, I don't have -- the Court's already ruled I think that that's going to have to come in by avowal, if I understand the Court correctly.

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THE COURT: Well, I don't want to - - he said they could come in by avowal and they can come in by avowal. We might decide some will be relevant and some wouldn't. Let's do it by avowal.

MR. HARWELL: My second thing is Judge, there was another fire on Jack's Creek where Pearl Booth burnt down a house and collected the insurance proceed, I think that occurred in - -

THE COURT: (Interrupting) Well, is that a conviction?

MR. HARWELL: Judge, it doesn't have to be. No, it's not a conviction.

THE COURT: Well, put it in by avowal.

MR. HARWELL: Judge, you're restricting my cross-examination.

Here is a woman that burned up a house and confessed it to the insurance investigator - -

THE COURT: (Interrupting) You can put that in by avowal.

MR. HARWELL: May the Court please, in addition to that - - in addition to that on April 25th of 1981, she committed an insurance fraud and gave a statement to Mr. Collins.

In addition to that may

the Court please - -

MR. KEHRLI: (Interrupting) Your Honor, may I request that this be done outside the presence of the Jury, it's creating a lot of pressure and stress on us standing here.

THE COURT: Well, let's go on and get the cross-examination over with.

MR. HARWELL: Judge, then if you're permitting it in by avowal, then I've got a lot on avowal.

THE COURT: Well, we'll get to all of that. You've got this romantic thing and this ~~thing~~ in Winchester.

MR. HARWELL: What about the other - -

THE COURT: (Interrupting) That will go in by avowal.

MR. HARWELL: Judge, I've got another fire.

THE COURT: Well, that will go in by avowal.

MR. HARWELL: How about bootleg.

THE COURT: Put it in by avowal.

MR. HARWELL: Judge, what about burning down a trailer?

THE COURT: PUt it in by avowal.

MR. HARWELL: May the Court please, what about committing insurance fraud - -

THE COURT: (Interrupting) Wait just a moment now.

I thought you said something where she was indicted by a Court in Winchester or something?

MR. HARWELL: Yes.

THE COURT: Well, you can get that in but the rest of it goes in by avowal.

MR. HARWELL: Well, Your Honor doesn't know all the rest of them. May I tick them off to you briefly?

THE COURT: No, get it in the avowal.

MR. HARWELL: You mean, Your Honor in ruling everything else except the Winchester goes in by avowal and you don't know what everything else is?

THE COURT: Well, you've got that romantic thing.

MR. SELF: I think that the Court's ruling is you put it in by avowal and we hear something that is admissible you can go back on cross-examination.

THE COURT: Right.

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MR. HARWELL: I respectfully object to the Court's rule. If that's what the Court is saying that gies her a chance for a dress rehearsal.

THE COURT: Well, this woman has been on the stand now for how many hours.

MR. KEHRLI: Three days.

MR. SELF: About six hours, six and a half today and three yesterday.

THE COURT: This lady is ill and she has ulcers, she's been here two days or more and in the matter of what you're saying in thirty minutes she is not going to get prepared - -

THE OFFICIAL COURT REPORTER: Judge, I can't hear for the conversation.

THE COURT: Just let me do the talking.

MR. HARWELL: I understand Your Honor - but just note my objection and I will ask her that last thing.

THE COURT: You have two things. You can ask about the romantic advancements.

MR. HARWELL: I understand Your Honor.

REPORTER'S NOTE: At this point the Bench Conference was concluded.

MR. HARWELL: May the Court please in spite

of Your Honor's rule out of an abundance of caution, I respectfully suggest to the Court that that area which you have told me I can go into using certain verbiage can first be done by avowal until I get the Court's total clearance.

May I have the Court's ruling on that issue, Judge?

MR. SELF: Your Honor, we object to it. If he's going to ask it, let's ask it. He's made a representation as to the nature of the question and ths Court said he could ask the question.

MR. HARWELL: Your Honor said that, but Your Honor advised the use of certain language in a generic term.

THE COURT: Go ahead and use your words.

MR. HARWELL: Is it all right?

THE COURT: Yes.

Q Ms. Booth, you're aware of the fact, are you not that a number of people around McDowell, Kentucky believe that you have attempted to create a romantic situation in past times with my client Edgar Jones - -

MR. SELF: (Interrupting) Object, Your Honor, that's not the question that he tendered to the Court that he was going to ask.

THE COURT: Sustained.

Q. The fact of the matter is Mrs. Booth on those occasions in early 1982 when you would go to Edgar Jones's office, it was customary for you to really dress up for that, isn't that true?

A. Sir?

Q. Doll up.

A. Pardon me?

Q. Didn't you doll up or dress up?

A. I always straighten myself up. I didn't go out looking like no slouch. I don't now, I don't in prison.

Q. Didn't you do that to a greater degree than usual when you would go to Edgar Jones's office in 1981 and 1982?

A. Sir, I clean myself up and straighten myself up all the time. I didn't doll up for Mr. Jones. I respect Mr. Jones but I had no love affair or no living relationship or even want to with him, I assure you.

Q. Do you deny that you attempted to seduce Mr. Edgar Jones?

A. I most certainly do deny

that son.

Q. And then you deny that he refused your efforts?

A. Well, I'm telling you if somebody told you that they lied.

MR. HARWELL: May the Court please that gets me down to the point where Your Honor directed that I advise you.

THE COURT: All right, ladies and gentlemen of the Jury, you are recessed until tomorrow morning at 9:00 o'clock. During the adjournment, ladies and gentlemen, you're not to discuss the case among yourselves or permit anyone to discuss it with you - - let's set that aside, we will be in recess for fifteen minutes. During that fifteen minute recess, the not now admonition is in effect. Do you understand. That's a mistake - - that's the first mistake I've made today.

Gentlemen is there any objection on the directions to the Court?

MR. HARWELL: No objection, Your Honor.

MR. SELF: No objection.

THE COURT: Mr. Marshall, will you excuse the Jury for fifteen minutes.

THE MARSHALL OF THE COURT: Your Honor,

the Jury has left the Courtroom.

THE COURT: Mr. Marshall will you take the witness out?

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

THE COURT: It's my understanding that we be in recess - - it's my understanding that proceeding with cross-examination of the other Defendant..

What I had in mind was let the Jury go and then go over the avowal, but I think we ought to complete this, and then we will go back to the avowal.

MR. HARWELL: Judge, are you telling me that these guys are going to cross-examine before my avowal?

THE COURT: Yes.

MR. HARWELL: Then I will clean off the podium, Your Honor.

THE COURT: They might have some avowal also.

MR. HARWELL: Sure, Your Honor.

MR. THOMAS: I would sure like to hear that, Your Honor.

THE COURT: I am certain of that.

You may call a recess, Mr. Marshall.

REPORTER'S NOTE: Whereupon a recess was called at 3:28 P.M.

*** *** ***

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REPORTER'S NOTE: Court was reconvened at 3:44 P.M.

THE MARSHALL OF THE COURT: District Court is now in session. Be seated and come to order, please.

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

MR. HARWELL: Judge, your Honor, I had said that I would defer then it was called to my attention at the last bench conference you indicated to one of the areas I was permitted to ask about.

May I go back to the podium for just a moment?

THE COURT: Yes, sir. Fine

MR. HARWELL: Thank you.

(Cross examination resumed)

Q Mrs. Booth, in the spring of , I believe of 1982, there came a time when your husband, Phillip Booth was charged with speeding, DWI and driving on a revoked drivers license, do you remember that?

A Where at or what at?

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Q Down on the Mountain Parkway between here and Lexington, Kentucky, do you recall that?

A I recall something like that.

Q All right. And the truth of the matter is you went to court with your husband down there when he was set for a hearing in that matter, did you not?

A I went with my husband?

Q You went to court with your husband when that matter was set for a hearing

A I beg your pardon, I didn't go with my husband.

Q Were you at the court house at the time of the hearing that was held on that matter? Not whether you walked or rode or went with him physically, but you were there at that court house when that matter was set for hearing, wasn't that right?

A Just a moment before I answer that

Q I didn't hear you ma'am

A Can I speak to my

attorney about that question?

THE COURT: Mr. Justice

MR. JUSTICE: May I approach the bench first?

THE COURT: Yes, sir.

REPORTER'S NOTE: At this time Mr. Justice and the court confered.

THE COURT: You may go outside with her, with your client Mr. Justice

MR. JUSTICE: Thank you. Mr. Marshall would you please escort this lady outside with me, please?

REPORTER'S NOTE: At 3;46 P.M. Mr. Justice and the witness left the courtroom.

THE COURT: Her attorney just ask for permission to speak to her out of the presence of the court, and that was granted.

REPORTER'S NOTE: At 4;50 P.M. Mr. Justice and the witness reappeared in the courtroom.

THE COURT: Mr. Justice, did you decide to sit up here?

MR. JUSTICE: I think it might be best, your Honor.

THE COURT: ALL RIGHT. Mr. Marshall, you sit ther, let Mr. Justice move a chair out so

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Mr. Justice may sit with her.

All right. Proceed.

Q. All right, sir. Ms. Booth, we are talking about your husband appearing in Court for certain offenses, automobile offenses. Speeding, D.W.I., driving on a revoked driver's license; and I was asking you if you had gone to Court with him. By that I mean were you in Court with him when there was a hearing on that matter, not did you physically go with him?

THE COURT: Pull the windows down, the jury is having trouble hearing with the windows open.

MR. HARWELL: I'm sorry, Your Honor, can I get this one, Judge?

THE COURT: Yes, sir.

MR. HARWELL: I should have said may I. I won't do that again.

Q. Ma'am, did you -- were you in Court with your husband when there was a hearing on those charges against him?

A. Sir, I really don't know what you are talking about.

Q. You said earlier that you recall --

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A. (Interrupting) But I don't know what had happened or anything. I really don't know what you are talking about.

Q. Did you in 1982 appear in Court and testify as a witness for your husband when he was charged with some offenses concerning his driving?

A. You will have to go further than that, because I don't recall all of that.

Q. Let me ask you this, ma'am. Didn't you have a conversation with your husband and Agent Kemp on August 20, 1982 in regards to some traffic charges that your husband faced, and didn't you say in that conversation that you had lied under oath to that Judge, and, "the Judge caught me lying twice."

Didn't you say that?

MR. JUSTICE: Your Honor, may I have a moment?

THE COURT: Yes, sir.

(Reporter's Note: At this time Mr. Justice conferred with the witness.)

MR. JUSTICE: Your Honor, we would request a copy of that document if it exists.

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MR. HARWELL: If the Court please --

MR. JUSTICE: (Interrupting) I think we are entitled to it.

MR. HARWELL: I don't have that document.

THE COURT: Well, let's do this. You make available to her attorney the tape which you have, if you have it.

MR. HARWELL: Sure, we'll be happy to, Judge.

THE COURT: Do you have that so he may listen to it overnight and get back into this matter later?

MR. HARWELL: Sure. It's tape 26, may the Court please, and as soon as Court is over today, I will be happy to provide him with that.

THE COURT: Okay. Then we can get onto that after the --

MR. HARWELL: (Interrupting) If I sit down, I don't waive any right to examine her on this issue? I get to do that after she has heard the tape?

THE COURT: Yes, sir.

MR. HARWELL: All right, Your Honor. May the Court please, reserving the right for those

matters concerning the avowal, I will sit down now.

THE COURT: Thank you, sir.

MR. HARWELL: Thank you, sir.

THE COURT: Mr. Justice may return.

MR. JUSTICE: Thank you, Your Honor.

THE COURT: I guess right now, you may want to stay here.

All right, Mr. Pafunda.

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

THE COURT: Yes, sir.

Reporter's Note: At this time Mr. Spencer, Mr. Dause, Mr. Self, Mr. Kehrli, Mr. Branson, Mr. Harwell, Mr. Thomas and Mr. Justice approached the Bench whereupon the following was heard:

MR. SPENCER: At this time, comes the Defendant, Linville Mosley, and objects to the continuance of this cross examination until after Mr. Harwell finishes about this event here, because this is right in the middle of it and this is actually the way I feel about it. It is destroying the emphasis of the question to come back later. So I make a motion at this time that we recess and reconvene in the morning when she has had a chance to listen to the tape.

THE COURT: I understand, but with all due deference, let your objection be noted and be overruled.

MR. HARWELL: Can we all join in on the objection, Judge?

THE COURT: Yes, sir, that will be fine. Let me ask you this, gentlemen.

MR. HARWELL: Yes.

THE COURT: Do you think if it's necessary we can take our coats off?

MR. HARWELL: It's fine with me, Judge.

THE COURT: Some of the men in the jury may like to take their jackets off.

MR. HARWELL: Do what everyone in the courtroom desires, as long as it is consistent.

Pulling coats off, Mr. Self.

THE COURT: Okay, go ahead.

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

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THE COURT: This concerns - - let's see, one gentleman has a sweater, one lady has a coat - - two has a coat.

And if you want to pull off your coats or sweaters, gentlemen, please do.

MR. ROWLAND: How about lawyers, too?

THE COURT: Lawyers too.

MR. ROWLAND: Thank you, sir.

THE COURT: I realize - -

MR. SELF: (Interrupting) Is it okay if I loosen my necktie?

THE COURT: That will be fine.

MR. PAFUNDA: I will leave mine on, Your Honor.

THE COURT: All right. Let's proceed, Mr. Pafunda.

MR. PAFUNDA: May it please the Court, Mrs. Booth.

THE COURT: Mrs. Booth, do you want to take your coat off?

WITNESS: I am fine, thank you.

CROSS-EXAMINATION

BY MR. PAFUNDA:

Q. Mrs. Booth, if I may, I

would like to turn your attention to the months between August of 1982 and November of 1982. I take it from your testimony both by questioning of Mr. Harwell as well as Mr. Self, that during that period of time you had occasions to meet with both attorneys for the Government as well as Federal Agents for the Government, is that correct?

A. That is correct.

Q. All right. During that period of time, I take it that you made statements to those persons, is that correct?

A. I talked to them.

Q. All right. And they took down notes of those interviews, did they not, Ma'am?

A. I don't know.

Q. You were present - - they were present when you talked to them, correct, in the same room?

A. I would presume. If I was talking to them, they had to be present.

Q. And did they write down what you said, Ma'am?

A. I don't recall it.

Q. Did they tape what you said?

A. I don't recall.

Q. Are you saying when you say you don't recall - -

A. (Interrupting) I don't know. Okay? I'm sorry, I don't mean to be - - I'm just tired.

Q. That is fine.

Approximately how many occasions did this occur when you had such interviews with either attorneys for the Government or Agents for the Government?

A. Sir, I really don't know how many times.

Q. It was many times though, was it not?

A. I met with them often.

Q. And gave similar interviews on each occasion, correct?

A. I suppose so.

Q. And it would be accurate to say that some of those interviews were reduced to writing?

A. It would be what?

Q. They were taken down, written down by either of the agents?

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A. I don't know that.

Q. And you have not - - excuse me.

THE COURT: She said she doesn't know.

MR. PAFUNDA: All right.

Q. So then the only writings that you are aware of are your own notes that you mentioned earlier, is that correct?

A. That is all I have.

Q. And did you review those notes before today again?

A. I looked over them.

Q. To refresh your recollection?

A. (No response).

Q. To refresh your memory of the events of February, 1982?

A. Yes, I did.

Q. And again, as Mr. Harwell did, I presume that you have those notes here in Pike County with you, is that correct, Ma'am?

A. Some is, yes.

Q. And you have used those notes to aid you in testifying today as well as

yesterday, correct?

A. Yes, sir.

Q. Would you, with the Court's permission, make those notes available to me?

A. It's just what I wrote down.

Q. That would be fine, Ma'am. I would like to look at them.

THE COURT: Do you have any objection?

THE WITNESS: I don't think I should have to. That is my opinion.

THE COURT: She said she doesn't want to.

MR. PAFUNDA: I am asking the Court - - I would like to see those notes please, Your Honor.

THE COURT: Mr. Self.

MR. SELF: Your Honor, I don't have them. I never have had those.

THE COURT: Do you have those notes? Where are those notes, Ma'am?

THE WITNESS: I have them with me, Mr. Self or nobody has seen them.

THE COURT: Where are they now?

THE WITNESS: My attorney has some of them.

MR. JUSTICE: I have them, Your Honor.

THE COURT: Okay.

MR. PAFUNDA: As convenient, Your Honor. Well, this evening I can get them from her attorney if it is all right with the Court.

THE COURT: Well, I'm trying to get this thing through. Do you want to look at them before you examine her?

MR. PAFUNDA: I would like to, but I didn't want to interrupt the proceedings, Your Honor.

THE COURT: All right. You look at them and let somebody else cross-examine.

MR. PAFUNDA: All right, fine, thank you, Your Honor.

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WITNESS RELEASED

THE COURT: Mr. Thomas.

MR. THOMAS: Thank you, Your Honor. Excuse me, Your Honor. I feel naked without this on.

THE COURT: All right.

CROSS-EXAMINATION

BY MR. THOMAS:

Q. Ms. Booth, my name is David Thomas, and I represent Eugene Tackett.

I believe you know Eugene, don't you?

A. Yes, sir, I do.

Q. How long have you known him?

A. I have known him for a long time. He is my ex-husband's cousin.

Q. Is that a second cousin?

A. First cousin.

Q. First cousin. And about how many years had you known him?

A. Around thirteen.

Q. Thirteen.

A. Maybe.

Q. Now, I believe you said, if I am not mistaken, that you thought there was a

lot of good in all people, is that right?

A. I do think that.

MR. PAFUNDA: Judge-- Your Honor, Mr. J stice I believe? He said he would give them to me this evening if I buy him breakfast in the morning, and I am going to do that.

MR. JUSTICE: I will give them to him any time he wants to. I have them right here.

THE COURT: Give them to him now. Let's let him look them over.

MR. THOMAS: I guess I would kind of like to see them, too, Your Honor.

THE COURT: All right. We are going to be in recess until nine o'clock tomorrow morning-- adjournment until nine o'clock tomorrow morning.

THE WITNESS: May I request that they be returned?

THE COURT: Yes, ma'am, they will be returned.

All right. You understand during this adjournment you are not to discuss the case among yourselves, nor are you to permit anyone to discuss the case with you. You are not to finally make up your minds on this case until you have heard all the evidence together with the Court's instructions.

No radio, no television, no newspapers. You understand?

Any objections or corrections?

MR. BRANSON: No, Your Honor.

MR. HARWELL: No, Your Honor.

MR. SELF: No, Your Honor.

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

MR. JUSTICE: May I approach the Bench? Let me ask the Court am I to give these to the Government and defense counsel, or just the people who requested it?

MR. SELF: May it please the Court--

THE COURT: (Interrupting) First let me say this. You gentlemen on cross-examination, let's don't rehash any stuff that Mr. Harwell has gone into. Let's don't duplicate it, it's a waste of time. Mr. Harwell has gone into it extensively and it isn't necessary to get into it again.

MR. PAFUNDA: Your Honor, I wasn't going into it with regard to what Mr. Harwell asked about her notes. I knew she had those.

The thing I was getting at was any notes she had given to agents and she adopted

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her proof, and I was entitled to--

THE COURT: (Interrupting) I know, gentlemen. We all have different angles. It seems like we have different angles, and we are going into it, but it's always the same evidence back over again.

MR. PAFUNDA: I don't think so, Your Honor. I think my point was that between August and November she was intereviewed by several either agents for the federal government, or attorneys.

THE COURT: I think Mr. Harwell went into that. You check the daily copy of what Mr. Harwell asked, and you check that and see if that isn't precisely the same thing.

MR. PAFUNDA: I will do that, Your Honor.

THE COURT: If I am in error, I will apologize. That will be my second mistake.

MR. PAFUNDA: And if I am I will apologize.

MR. SELF: May it please the Court, I will state for the record that I have--we have turned over to the defendants all Jencks Act materials, statements that she made, and other than statements in her personal file--

THE COURT: (Interrupting) All right. Let's do this. Let the notes now be given to the

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United States, let them xerox them, duplicate them so they can see them, and the defense can see them.

MR. JUSTICE: Your Honor, I need to ask my client whether these notes pertain to what she has testified to only because I got some of these notes at lunch and I have not read all these.

THE COURT: Okay.

MR. JUSTICE: I can do that right now.

THE COURT: Then we have got an hour, you gentlemen have got an hour.

I am going to adjourn court, but you have got fifty-five minutes before court is over.

So you read the notes and the notes which are relevant to this case, you turn them over so they can make copies and the Government and the deense can have them.

MR. SELF: Your Honor, the reason I asked is that the provisions required that a portion of those that do not pertain to testimony that the Court review them and excise those portions. If the Court is willing to put that burden on us, we will--

THE COURT: (Interrupting) That is what I am telling Mr. Justice to do. He can tell us

what applies to this case and what doesn't.

MR. JUSTICE: I understand.

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THE WITNESS: May I speak to him?

THE COURT: What?

THE WITNESS: May I speak to him? My testimony of, you know, what is going on right now is what he has.

THE COURT: Oh, your notes are only on testimony - -

THE WITNESS: (Interrupting) Only on what is going on right here from back to here. I have got some others I can turn over that he don't have if they want them.

I am willing to do what the Court wants done.

THE COURT: Well, are these just your diary that you made of proceedings going on during this trial?

THE WITNESS: That I made from the mini-trial. It is things I put together on my own.

THE COURT: Well, that is all right.

THE WITNESS: If there is anything else, I want to - -

THE COURT: (Interrupting) Let Mr. Justice look it over.

MR. JUSTICE: Your Honor, if it please the Court, I will turn over with the Court's per-

mission what I think should be turned over. And what I don't turn over, I will inform the Court in the morning how many pages and in essence what it is.

THE COURT: I want to examine them.

MR. JUSTICE: Yes, Your Honor.

THE COURT: I want to examine what you don't turn over.

MR. JUSTICE: Yes, sir.

THE COURT: And then we can make a copy of it if it is necessary and seal it for the record.

MR. PAFUNDA: I was just thinking, after buying him breakfast he may give me everything, I don't know. But that will be fine, Your Honor.

THE COURT: Let's just get this case over with, gentlemen. Let's proceed.

MR. SELF: Is the Court still planning on recessing on Friday, or is that still up in the air?

THE COURT: Yes, sir. We are going to recess this Friday, but whether or not we are going to recess any Fridays after that, I don't know, gentlemen. I might even state Fridays and Saturdays.

MR. SELF: For scheduling purposes - -

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THE COURT: (Interrupting) We've got to get this over with, gentlemen.

This is getting to be a career, not a case.

MR. THOMAS: We are not getting paid for it.

MR. SELF: For scheduling purposes, Your Honor, might I ask is counsel anticipating taking an excessive amount of time for purposes of cross-examination?

MR. HARWELL: May Your Honor please, I understand the Government's desire to know. I suspect that the avowal will take a circuit of two hours, that is my best guess.

THE COURT: Well, gentlemen, the Court realizes the importance of this case to everyone. If it takes two hours - - I mean, if it is going to take two months to finalize this case, let's take two months, let's do that, and if it's going to take six months, let's do that.

But it is important, gentlemen, and it is important to everyone, it is important to the Defendants, it is important to the people out in the state who are not here, that are represented by this, it is important to everyone,

and if we just have to take it, we have to take it. Let's do it.

We are going to be in adjournment until tomorrow morning at 9:00 o'clock.

THE MARSHALL OF THE COURT: This Court will now stand in recess until 9:00 o'clock tomorrow morning.

REPORTER'S NOTE: The Court recessed at 4:10 P.M.

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STATE OF KENTUCKY)
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) SS.
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COUNTY OF JEFFERSON)

We, BRUCE D. HANDY, WILLIAM J. KALBFLEISCH, & JAMES E. EDMONDSON, Notary Publics, within and for the State at Large, do hereby certify that the foregoing proceedings were taken before us at the time and place and for the purpose in the caption stated; that the witnesses were first duly sworn to tell the truth, the whole truth, and nothing but the truth; that the proceedings were reduced to shorthand writing by us in the presence of the Court; that the foregoing is a full, true and correct transcript of the said proceeding so given; that the appearances were as stated in the caption.

We further certify that we are neither of counsel nor of kin to either of the parties to this action, and are in no wise interested in the outcome of said action.

WITNESS OUR SIGNATURES this 22nd day of February, 1984.

Bruce D. Handy
Notary Public

William J. Kalbfleisch
Notary Public

James E. Edmondson
Notary Public