UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

UNITED STATES OF AMERICA

-vs- CASE NO. 83-8

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

****

TRANSCRIPT OF TRIAL

****

BEFORE: THE HONORABLE G. WIX UNTHANK

DATE: FEBRUARY 23, 1984

VOLUME THIRTY-EIGHT

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

INDEX

PEARL BOOTH

Cross-Examination by Mr. Pafunda:	pgs. 8-15
Cross-Examination by Mr. Thomas:	pgs. 16-28
Cross-Examination by Mr. Walbourn:	pgs. 28-36
Cross-Examination by Mr. Spencer:	pgs. 36-37
Cross-Examination by Mr. Adams:	pgs. 37-41
Cross-Examination by Mr. Branson	pgs. 42-43
Cross-Examination by Mr. Kirkland:	pgs. 43-54
Cross-Examination by Mr. Harwell (Resumed)	pgs. 55-64
Avowal Examination by Mr. Harwell	pgs. 64-152

62 PAGES
COTTON CONTENT

A P P E A R A N C E S

For the United States of America:

THOMAS L. SELF, ESQ.
Assistant U.S. Attorney
CHARLES L. DAUSE, ESQ.
Assistant U.S. Attorney
RANDY KEHRLI, ESQ.

For the Defendant Edgar A. Jones:

AUBREY B. HARWELL, JR., ESQ.
ALBERT F. MOORE, ESQ.
JERRY A. PATTON, ESQ.

For the Defendants Benny Caudill, Harold Moore, Hermit Newsome and Mose Mead:

E. J. WALBOURN, III, ESQ.

For the Defendant Tim Milan:

DAN ROWLAND, ESQ.

For the Defendant Eugene Tackett:

DAVID THOMAS, ESQ.

For the Defendant Pebo Gayheart:

THOMAS K. HOLLON, ESQ.

For the Defendant Donahue Halbert:

HERSHEL BRANSON, ESQ.

For the Defendant Linville Mosley:

LOWELL E. SPENCER, ESQ.

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

BERNARD PAFUNDA, ESQ.

For the Defendant Ranny Blankenship:

ELDRED E. ADAMS, JR., ESQ.

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

WILLIAM D. KIRKLAND, ESQ.

MILLERS FALLS
EZERASE
LOOSEN CONTENT

REPORTER'S NOTE: The Court was called to order at 9:00 A.M.

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

THE COURT: Let's give Mr. Marshall a minute, gentlemen.

Is Mr. Spencer somewhere in the building?

THE MARSHALL OF THE COURT: I didn't see him this morning.

THE COURT: Who is - -

MR. ROWLAND: (Interrupting) Mr. Spencer.

THE COURT: Yes. Who is his client?

MR. MOSLEY: Me.

THE COURT: Mr. Mosley and Mr. Walbourn, come up here this morning. Mr. Self.

REPORTER'S NOTE: At this time, Mr. Self, Mr. Walbourn, and Mr. Mosley approached the Bench, whereupon the following was heard:

MR. MOSLEY: He has been seen in the Courtroom this morning. He may be in the bottom bath.

THE COURT: In the bathroom? Let me ask you this. Do you want to continue, or do you

want to wait?

MR. MOSLEY: Yes, go ahead, that is okay.

THE COURT: Do you want to talk to him and see if he understands he is agreeing that we can go ahead?

MR. MOSLEY: I will waive my right until they find him.

MR. WALBOURN: Can I talk to him a minute, Your Honor?

THE COURT: Yes.

REPORTER'S NOTE: Whereupon Mr. Walbourn and Mr. Mosley conferred out of the hearing of the reporters.

MR. SELF: With all due respect, Your Honor, I think the most appropriate thing to do is - - would be just to take an adjournment and just tell the Jury that Mr. Spencer has been here for every time and sometimes people have difficulties.

THE COURT: Let's see.

MR. WALBOURN: Judge, in talking with Mr. Mosley, I believe it is his position at this time he ought to wait until Mr. Spencer gets here. Mr. Spencer, of course, has represented him throughout this matter. We are now in the sixth week of

trial, and I think Mr. Spencer is certainly much more able to protect his rights.

MR. SELF: I totally agree.

THE COURT: All right.

REPORTER'S NOTE: End of Bench Conference.

THE COURT: All right, Mr. Marshall, what do you have?

THE MARSHALL OF THE COURT: Your Honor, I couldn't locate Mr. Spencer in the building, nor do I see him on the streets.

THE COURT: Now, Mr. Mosley, it is my understanding you have seen him here this morning?

MR. MOSLEY: Well, I never seen him, maybe the Postman said it, I'm sorry.

MR. WALBOURN: He comes in from Paintsville everyday, and it might have been the weather.

THE COURT: Well, we are going to have a recess here for fifteen minutes. You understand all this time counsel has been on time and this happens. Let's have a recess for fifteen minutes.

You understand that during this recess the not now admonition is in effect? You understand?

THE MARSHALL OF THE COURT: All rise. The

Court is in recess for fifteen minutes.

REPORTER'S NOTE: The Court recessed at 9:05 A.M.

*** *** ***

MILLERS FALLS FED CASE

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

THE COURT: Yes, Mr. Spencer.

MR. SPENCER: I would like to apologize to the Court for being late, but it is necessary. No way to avoid it.

THE COURT: All right.

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

THE COURT: All right. I believe you requested a bench conference.

MR. PAFUNDA: Yes, Your Honor.

THE COURT: All right, approach the Bench.

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

MR. PAFUNDA: Good morning, Judge.

THE COURT: Good morning.

MR. PAFUNDA: For the record, Mr. Justice last night provided me with Mrs. Booth's notes as he represented they relate to the subject matter of her testimony. He has an additional notebook and other loose matters.

MR. JSUTICE: If it please the Court, there were twenty pages of handwritten notes that were written by Ms. Booth. She did use them to refresh her recollection. I think they are discoverable under 612 as related to the subject matter of her tesetimony.

There is a-- It was provided to all counsel last night.

Your Honor, there is another notebook that does not relate in any way to this matter whatsoever.

THE COURT: All right. Let the record reflect that the Court is ...

MR. PAFUNDA: Your Honor, if it is necessary, maybe in an effort to-- I hate to be the one to raise this. To save time, Mr. Thomas was in the process of his cross-examination. If he wishes to continue, if the Court would want to review that matter while cross is going on--I don't know if that would be too much of a distraction or not.

MR. THOMAS: I think my cross would be more interesting than that.

THE COURT: Let's go.

MR. PAFUNDA: And one other thing. I did--pursuant to the Court's directive, I read the

daily copy last night. And Your Honor, nobody had asked her for copies of her notes. I mean it wasn't repetitious.

THE COURT: Okay.

MR. PAFUNDA: All right.

THE COURT: Okay. Proceed with your cross-examination.

MR. PAFUNDA: Thank you, Your Honor.

MR. JUSTICE: Your Honor, may I return these notes to the witness. They are her notes.

THE COURT: Yes, sir.

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

THE COURT: Okay, are you ready to proceed?

MR. SELF: Yes, Your Honor.

THE COURT: Mr. Pafunda.

THE CLERK OF THE COURT: Ms. Booth, you were previously sworn on Monday. Do you still recognize that you are still under oath as executed on Monday.

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

THE CLERK OF THE COURT: Thank you.

MR. PAFUNDA: Thank you, Your Honor.

CROSS-EXAMINATION (Resumed)

BY MR. PAFUNDA:

Q. Ms. Booth, if you will, turn your attention to the week of February, 1982. At that time, Drexil Hall was not employed by you, was he?

A. No, he wasn't.

Q. He didn't work for either Bryan or Calamity Coal Company. Is that correct?

A. Not to my knowledge.

Q. And youwere aware of the fact that he was employed by Adkins & Adkins Coal Company?

A. A & A, yes.

Q. All right. And at that time you were aware of the fact that Drexil Hall was a local union official of Local 5967. Correct?

A. As far as I know, yes.

Q. And I believe it would be accurate to say that at that time, Drexil Hall had a reputation as a strong union man. Is that correct?

A. That's correct.

Q. Now, Ms. Booth, with regard to Monday, February 15, 1982, it is true, is it not, that at the time that you arrived at Edgar Jones'

office on Monday morning, some of the union men had already been up to and were at the Ray-Mac site. Is that correct?

A. I was told.

Q. All right. And was it at that time that you learned that the local union--

THE COURT: (Interrupting) Just a moment. Just tell them what you know. Let's don't get into what you believe, what you were told, what you understand. Just tell them what you know.

THE WITNESS: Well, I don't know it for a fact. I didn't see it.

Q. And it was at that time that you learned that the local union had on Saturday, February 13, 1982, taken a vote to go up and organize Ray-Mac?

MR. SELF: Objection.

THE COURT: Sustain the objection.

Q. Ms. Booth, yesterday you mentioned something about a meeting, and I believe present at that meeting were yourself, your husband and another individual whose name I don't recall at this time where it was mentioned that there was a plan to kill Drexil Hall. Is that correct?

A. I had heard of that, yes.

Q. All right. I mean you were present there at that time?

A. I heard it.

Q. From your husband, Phillip Booth?

A. I beg your pardon?

Q. Was it from Phillip?

A. I heard them talking.

Q. Okay. So there was no meeting at which you were present. Is that correct?

A. I don't know whether you would call it a meeting or not. I can't know the specific times that it happened. But it did happen.

Q. All right. But that was sometime after the week of February 15, 1982. Correct?

A. I would not say that.

Q. All right.

A. He had-- I'm sorry.

Q. In that regard and with respect to those two Uzis that have been introduced as Government's Exhibits 71 and 72, you received those on February 24, 1982. Is that correct? The Uzis?

A. I received them the next

week or so afterward.

Q. All right. Well, the check written on Calamity Coal Company was made out on February 24, 1982.

A. That is when I received them.

Q. All right. And you sent MOrris Ray Hall after the two Uzis. Is that correct?

A. That is correct.

Q. All right. And he brought them back and gave them to you?

A. That is correct.

Q. All right. And you kept them at your home. Is that correct?

A. I kept them there.

Q. And those Uzis, if Morris Ray Hall signed a form for those Uzis, they were registered in his name and not in your name. Is that correct?

A. I would suppose so.

****

Q. Ms. Booth, I take it that you've known Drexil Hall for some time, is that correct?

A. I don't know Drexil personally --

Q. (Interrupting) All right, but you know of him from living up in McDowell?

A. Yeah.

Q. And you said that -- I believe on questioning that you cared for the men that were over there?

A. I did care about those men.

Q. And that would be true of Drexil Hall also, would it not?

A. It would be true as to Drexil Hall.

Q. Did you warn Drexil Hall that somebody was trying to kill him?

A. I don't recall warning him.

MR. PAFUNDA: Thank you, ma'am. That's all I have, Your Honor.

THE COURT: Next?

CROSS EXAMINATION

BY MR. THOMAS:

Q. Ms. Booth, once again, let me tell you that I'm David Thomas and I represent Eugene Tackett.

I trust you had a good night's rest -- or as good as you could have over in that place, right?

A. Pardon me?

Q. I said I hope you had a good night's rest.

A. I slept better last night than I had, thanks.

Q. Now, when I was asking yesterday about your relationship and Phillip's relationship with Eugene Tackett you said that you've known him or Phillip had known him for thirteen years, is that right?

A. I have known of him ever since I was married to Phillip.

Q. Okay. And you also knew him in Michigan, is that right?

A. We lived in Michigan with him, yes.

Q. Around the Detroit area?

A. Yes.

Q. Did Eugene spend a lot of time with your family and Phillip?

A. He was around quite a bit.

Q. And he had worked for Phillip for how many years now?

A. I couldn't say exactly, he's worked for a while.

Q. Okay. About eight or nine years, something like that?

A. Phillip had not been in business that long.

Q. He's worked for him as a foreman, hasn't he?

A. On one occasion or so, yes.

Q. And that's in the last few years, is that correct?

A. Yes.

Q. And would you characterize him as a good worker?

A. Eugene is an excellent worker.

Q. And is he loyal to

Phillip?

A. Yes, he is, -- as far as I know, he was.

Q. All right. When Phillip asked him to do something, he would do it, is that right?

A. As far as I know.

Q. And there's been several times -- isn't it true that Blue has intervened in fights to save Phillip, is that right?

A. See, I'm not sure about that.

Q. Do you remember the one in Michigan?

A. I don't recall it, but it's very well possible, because he was close to Phillip.

Q. And that he sustained serious -- well, broken noses and blackeyes in going into these fights?

A. Sir, I'll be honest, I don't know this, you know, I'm not saying it's not true, I just don't know anything of this, you know, it could be possible and I may not be recalling it right now.

Q. Would you characterize -- thank you, ma'am.

Would you characterize him, Eugene, as a simple man?

A. Eugene is a simple man, when he gets drinking he's rowdy. But when he's sober, he's a fine person.

Q. Is he a nice person?

A. I like Eugene.

Q. Well, would you characterize him as someone that is mean and onery when he's not drinking?

A. No, I would not.

Q. He has a speech defect, doesn't he?

A. Yes, he does.

Q. Now, I want to go into something a little bit different here. You talked about him going to get some ammo with Phillip Dale Moore, is that right?

A. Yes, sir.

Q. Now, Phillip Dale and Eugene don't get along too well, do they?

A. I don't really know that for sure, Phillip Dale, you know, he can be mad at

you one minute and be your friend the next --

Q. (Interrupting) Well, did they hang around together?

A. Well, I don't know. I was at home most of the time, Idon't know what they did out in public and stuff. I could say that for a fact.

Q. Okay. But you do remember, don't you, that you testified before the Grand Jury and the minihearing and here on questions by Mr. Self about Eugene going with Phillip Dale to get the ammo either on Tuesday or Wednesday, is that right?

A. Yes, I did.

Q. And upon questions by myself at the minihearing you continued with that story, is that right?

A. That's as I recall it, sir.

Q. Now, when you took the oath, ma'am, do you remember saying that you would tell the truth, the whole truth, and nothing but the truth as you'll answer unto God?

A. Sir, I recall that.

Q. Well, I guess my question

is for you, Ms. Booth, is are you telling me and this jury here that it's the truth, the whole truth and nothing but the truth that Eugene went with Phillip Dale to get that ammo?

A. I'm telling you that I recall seeing Eugene go. Phillip Dale brought back the ammo.

Q. Okay, so Eugene went with Phillip Dale. You gave him the list, is that right?

A. That's as I recall it. Now there was a lot of guys around but to me I remember seeing Eugene go.

Q. Now, you remember testifying also that I like these men?

A. I do like these men.

****

Q. And you wouldn't so nothing to hurt them, is that right?

A. No, not intentionally I would not hurt nobody.

Q. So, are you trying to tell us then that if you were maybe mistaken on this that you were error on the favor of saying that he was not there and he didn't go with Phillip Dale?

A. I will not say it because I don't know that he didn't go, I think he went. I recall seeing him go.

Q. Well, what are the chances, why don't you put it in a percentage, is it a ninety-five percent chance that he went?

MR. SELF: Objection, Your Honor.

THE COURT: Sustained, it's argumentative.

MR. THOMAS: Okay.

Q. I guess what I am trying to do, Ms. Booth is get the truth, did he go or didn't he go?

MR. SELF: Objection, Your Honor, it's repetitive.

THE COURT: Sustained.

Q. Are you telling us you

don't recall?

MR. SELF: Objection.

THE COURT: Sustained.

I think she said that she - - she said he went.

Q. Have you had a chance to talk to the Government since you started testifying on direct on this matter?

A. Since yesterday?

Q. Yes, have they told you anything about this?

A. The Government ain't told me nothing.

Q. Okay.

A. They didn't even come to see me last night or anything - - I'm sorry. I had no right - -

Q. (Interrupting) That's okay, no problem.

So, you don't know after talking to them that Ed Tackett was the one that went instead of Eugene Tackett - -

MR. SELF: (Interrupting) Objection, Your Honor.

THE COURT: Sustained.

MR. THOMAS: Your Honor, I'd like to approach the Bench.

THE COURT: All right.

REPORTER'S NOTE: Let the record reflect that there was a Bench Conference held with all counsel except Mr. Spencer, Mr. Bransen, and Mr. Hollon.

MR. THOMAS: Your Honor, at this time I request that the Court read into the record any evidence as a stipulation that Ed Tackett instead of Eugene Tackett was the one that went with Phillip Booth to get the ammo. On the grounds that I'll state to the Court - -

THE COURT: (Interrupting) A stipulation.

MR. THOMAS: A stipulation because the Government is well aware of this fact. And for further grounds I state this that yesterday afternoon after trial concluded, here I went down to the Government's office and talked to the Government about that.

Mr. Kehrli had said that she was mistaken. Furthermore yesterday I went down there and they pulled out - - Mr. Self out of his file a statement and said you might want to see this. It was in the Brady material

which I still don't have a copy of but it's that Ed Tackett said he was the one that went with Phillip Dale Moore. I think the use of the Brady material and I think I shall ask them for a stipulation.

THE COURT: A stipulation is where there is an agreement of parties.

MR. THOMAS: They agreed to it, Your Honor.

MR. SELF: No, we didn't.

THE COURT: Okay, this witness is testifying as to something. What you're doing is you're arguing with this witness. Now, you may get your evidence in another way, but you're not going to get it in the way you're trying to get it in.

MR. THOMAS: They tried to impeach her on the same statement yesterday, they said wasn't it Ed Tackett.

Now, I can't see why they won't stipulate it.

THE COURT: Well, I sustain the objection.

MR. THOMAS: Your Honor, I further want to move that this item of the Brady be added to numerous other Brady material that has come to the atten-

tion of the defense counsel.

THE COURT: All right.

MR. THOMAS: And I would also add this with Mr. Harwell's motion.

THE COURT: Fine, continue, get it in.

MR. THOMAS: Thank you, Your Honor.

THE COURT: I sustain the objection as to argumentative.

REPORTER'S NOTE: The Bench Conference is concluded.

*** *** ***

Dale Soergel Moore Shaw & Associates
COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

Q. Ms. Booth, just a couple more questions.

Do you remember saying that -- I think it was on cross examination by Mr. Harwell that I'm guilty of all of this and all of us are guilty of this?

A. I am guilty.

Q. You remember saying that all of us are guilty?

A. We were all guilty.

Q. Okay. Do you remember coming to this courthouse on the day of the arraignment, and the men were downstairs and some of their wives were down there, you remember being downstairs?

A. I couldn't help remembering being downstairs.

Q. Do you remember seeing Eugene Tackett there with his wife?

A. Yes.

Q. Do you remember telling him "I don't see what you're doing here. You didn't do nothing"?

A. Sir, I don't remember saying that.

MR. THOMAS: Thank you.

THE COURT: Next?

MR. ROWLAND: I have no questions, Your Honor.

MR. WALBOURN: May it please the Court.

THE COURT: Yes.

CROSS EXAMINATION

BY MR. WALBOURN:

Q. Ms. Booth, my name is E. J. Walbourn, and I'm from Ashland, Kentucky. I represent four different individuals in this case and I would like to ask you some questions regarding those individuals.

I represent Mose Mead, Mose would you stand up?

(Reporter's Note: At this point Mose Mead stood up.)

Q. Ms. Booth, you don't know this individual, do you?

A. I don't know that man.

Q. All right, thank you.

How many employees worked for Bryan Coal Company?

A. On and off there was quite

a few of them.

Q. During the week of February 15th, 1982, do you remember how many employees worked for Bryan Coal Company?

A. Possibly around eighteen.

Q. All right.

A. I'm saying approximately now, I don't know for a fact how many.

Q. Ma'am, do you remember how many employees worked for Calamity Coal Company?

A. I'm not sure.

Q. Do you recall how many shifts you were running at Calamity Coal Company during the week of February 15th, 1982?

A. I don't recall whether it was one or two.

Q. Do you recall normally how many men was on a shift?

A. Enough to run the equipment and get the coal out.

Q. And approximately how many by numberwise that is?

A. Maybe around eight or ten.

Q. Now, during the time --

during the week of February 15th, 1982, there were miners associated with coal companies other Bryan and Calamity that was on strike, is that not true?

A. I suppose so.

MR. SELF: Objection, move to strike, Your Honor.

THE COURT: You said suppose so, ma'am, do you know?

THE WITNESS: I don't know.

THE COURT: All right.

Q. Another individual I represent is Hermit Newsome. Hermit, would you stand up, please?

(Reporter's Note: Mr. Hermit Newsome stood up.)

Q. You know this individual, don't you?

A. I know Hermit.

Q. And Hermit's been a friend of yours and Phillip's for quite some time?

A. Yes, he has.

Q. Has he worked for you and Phillip for a period of time?

A. Yes, he has.

Q. During the week of

February 15, 1982, he was working for you and Phillip, was he not?

A. February what?

Q. The week of February 15, 1982 Hermit was working for you and Phillip, was he not?

A. Yes.

Q. In fact, he worked for you at Calamity Coal Company?

A. As I recall he worked for us.

Q. All right. Did Hermit spend quite a bit of time around your house?

A. I would say so.

Q. Okay. Now, both before the week of February 15 and after the week of February 15, 1982, it wasn't unusual at all to have a lot of miners up there around your house, was it?

A. The ones that worked for Phillip a lot, not all, but the close ones came around.

Q. In fact, those that worked for Phillip and spent a lot of time down there partying and carrying on, didn't they?

A. They spent a lot of time

down there, yes.

Q. Your house was kind of a meeting and gathering place for those miners who worked for Phillip?

A. The men came to the house.

Q. When they came, they were usually talking, drinking, and carrying on; isn't that true?

A. Usually.

Q. So that just during the week of February 15 is not the only time people came and gathered around your house, is that a fair statement?

A. I would say so.

Q. In fact, Phillip's men enjoyed coming down there and partying, and Phillip when they were doing good work and working hard, had them down there and partied?

A. Phillip just liked the men.

Q. And the men liked Phillip, didn't they?

A. I think they did.

Q. And Hermit was one of

those who came down and worked hard and partied hard, would that be a fair statement?

A. Hermit was a hard worker.

Q. A good worker, wasn't he?

A. He was a good worker.

Q. He relied on you and Phillip for his job, is that correct?

A. Yes. He got paid good for it, too.

Q. And he earned the money?

A. I think he did.

Q. All right. I also represent Harold Moore.

MR. WALBOURN: Harold, would you stand up.

(Mr. Moore complying)

Q. Harold is another one of your all's workers, wasn't he?

A. Yes.

Q. Was Harold likewise a good worker?

A. Yes, Harold was a good worker.

Q. Harold and I think his

brother, Bobby, the spent some time down there around your house, didn't they?

A. Harold was there more than Bobby.

Q. Okay. But it wasn't unusual for Harold to be down around your house?

A. Not real unusual, no.

Q. And prior to the week of February 15, 1982, Harold had been to your house, is that true?

A. That is true.

Q. And likewise after the week of February 15, Harold came to your house?

A. That is true.

Q. Ms. Booth, if you recall, during the -- during this period of time both before and after the week of February 15th, how many, on an average, if you know, how many people would spend time down there around your house?

A. Sir, I couldn't tell you exactly how many men was at my house.

Q. I am not asking you that, I'm asking if you have some idea normally how many would be around there?

A. Well, I can't recall how

FEDERAL COURT

many.

Q. All right. I also represent Benny Caudill. Benny did some dead work for you and Phillip on weekends, didn't he?

A. Yes.

Q. And that -- and he was doing that, he was in the process of buying a Jeep from you all, isn't that true?

A. Well, he was using Phillip's Jeep.

Q. Okay. And he wasn't working for you particularly during the week, but on the weekends he would take care of your rock and matters like that, isn't that true?

A. As I recall, it is true.

Q. Okay. Now, did Benny spend much time down there as the other men did, or do you recall?

A. Benny came down quite often.

Q. Okay. Would Benny take part in these same activities of drinking and talking and carrying on?

A. Yes, Benny would.

Q. Okay. Benny got caught up in the same crowd as the rest of them, they would get talking and drinking and carrying on, and bragging and what have you, that is true, isn't

A. I can't say that for sure.

Q. You don't know or you don't recall.

A. I will put it I don't recall.

Q. All right. So the last three individuals I mentioned, Mrs. Booth, Harold Moore, Hermit Newsome, and Benny Caudill, it wasn't unusal for them to be down at your and Phillip's house?

A. No.

Q. They did probably nothing more nor nothing less than the other men down there did, is that correct?

A. I suppose.

MR. WALBOURN: Thank you very much, Mam.

THE COURT: Next.

MR. SPENCER: May it please the court.

CROSS-EXAMINATION

BY MR. SPENCER:

Q. Hello, My name is Ed Spencer and I practice in Paintsville, Kentucky. And today I

represent Linville Mosley.

Do you know Linville?

A. I know Linville.

Q. How long have you known him?

A. Since Linville has been working at Frasure Creek.

Q. Was Linville employed by you and Phillip on the week of the 15th to the 22nd of February, 1982?

A. I don't recall it.

Q. Was Linville present at any meetings that you all had at Edgar Jones' Office.

A. I don't recall Linville being around.

Q. Do you recall Linville being present at any meeting that you had at your home?

A. I don't recall.

MR. SPENCER: I have no more questions.

THE COURT: Thank you. Next.

CROSS-EXAMINATION

BY MR. ADAMS:

Q. First, for the record, I am Eldred Adams on behalf of Ranny Blankenship.

Good morning Pearl, How are you?

A. Fine, thank you.

Q. Pearl, I believe Ranny worked for you and Philip, Didn't he?

A. Yes, he did.

Q. And I believe Ranny was your husband's cousin?

A. That is right.

Q. And I believe befoe the week of February the 15th, Ranny would hang around and drink and party with Philip, didn't he?

A. Yes.

Q. And I believe after the week of February 15th, 1982, he would drink and hang around the house, is that right?

A. That is right.

Q. So there was nothing unusual that Ranny Blankenship being there on the week of February 15th, was there?

A. He-- no.

Q. I mean, that was nothing unusual.

I believe even him and his wife even sometimes would come down and spend the night with you and Philip, wouldn't they?

MILLER FALLS
EZERASE
COTTON CONTENT

A. Quite often.

Q. Alright. So Ranny wasn't there anymore or any less in the week of February 15th.

A. You can practically say he almost stayed there.

Q. Okay. Now, Pearl, I believe you testified earlier on direct examination you took some guns down to Ranny's sister's?

A. Yes, sir.

Q. And I believe that is Judy Sizemore?

A. I think that is her name.

*** *** ***

MILLERS FALLS
EZERASE
COTTON CONTENT

Q. Ranny never told you to take those guns down there, did he?

A. I don't recall Ranny talling me to.

Q. As far as you know he didn't even know you took them down there, did he, to your knowledge?

A. At present, I don't recall whether he knew or not.

Q. He wasn't there when you took them down there, was he?

A. I don't recall him being there.

Q. Okay. Now, I know two years is a long time to remember, but on Monday February the 15th, do you remember running into Ranny and his wife, Judy, sitting on the steps of the church?

A. I recall something being on the steps of the church.

Q. At that time did you tell Ranny, in the presence of his wife, words to the effect you have to get up on the hill or we won't have a job or you won't have a job?

A. It seems like I recall

something like that. I'm not sure.

Q. Sometime along that line. Now, isn't it a fact, Pearl, during the week of February 15, Ranny never made any statements to you about trouble at Ray-Mac, did he?

A. I cannot say that for sure.

Q. And isn't it also a fact that during the week of February 15th, you did not hear him make any statements to anybody about him being involved in trouble at Ray-Mac, did you?

A. Mr. Adams, I cannot recall that for a fact that he didn't make any statements.

Q. Well, you don't recall that he did?

A. I can't say that I didn't.

MR. ADAMS: Well, would the Court please ask her to answer the question.

THE COURT: Well, if you can, Ma'am, respond to the question whether you, you know, whether you do or don't, if you can't, you can't.

A. I don't recall right now.

MR. ADAMS: Okay. Thank you, Pearl.

THE WITNESS: You are welcome.

THE COURT: Next.

MR. BRANSEN: May it please the Court.

THE COURT: Mr. Bransen.

CROSS-EXAMINATION

BY MR. BRANSEN:

Q. Mrs. Booth, I'm Hershel Bransen, and I represent Donahue Halbert.

Now, Mrs. Booth, I am not going to go into the matters of the guns and when you got them and all of this, because it's been covered by counsel before and I don't want to bore the Jury or draw this out.

Mrs. Booth, isn't it true that you testified earlier that you were a Deputy Sheriff of Floyd County during February of 1982?

A. Yes, sir.

Q. Mrs. Booth, isn't it also a fact that Donahue Halbert was the Deputy Sheriff of Floyd County during February, 1982?

A. I don't know.

Q. Mrs. Booth, isn't it a fact that you were dismissed as Deputy Sheriff of Floyd County February 16th, 1982?

A. I don't know what time it was. They came - - I wasn't dismissed exactly the

way I recall it, Beaver had come and said he knew Hale was mad at me and wanted me in the office, and I told him I would give him what I had.

MR. BRANSEN: No further questions, thank you.

THE COURT: Mr. Kirkland.

CROSS-EXAMINATION

BY MR. KIRKLAND:

Q. Mrs. Booth, my name is Bill Kirkland, and I represent the men kind of on that end down there (indicating). I think you know most of them fellows down there. They are pretty much your neighbors.

You fellows stand up over there, those five.

(Defendants complied)

Q. You know German Stumbo and Jason Moore and Teddy Kinney and the Postman?

A. Yes.

Q. Raymond Hall?

A. Yes.

Q. Do you know what Postman was doing for a living in the middle of February of 1982?

A. As far as I know he was hauling coal.

Q. Had a truck and he was hauling coal where ever he could get it to haul, is that about right?

A. I don't know what he had. I don't know whether it was his truck. I don't know that much about Postman.

Q. All right. He had only been back in the community for a while, or do you know?

A. Sir, all I knew is that he hauled coal.

Q. All right. Now, Teddy Kinney, how long had you known Teddy Kinney?

A. Well, since Phillip was running the mines.

Q. Had he worked for you all at different times?

A. I can't recall Teddy working for us.

Q. He never had worked for you as a matter of fact, had he?

A. I can't recall him working for us.

Q. Did you know he had been

an officer for several years at the local there at McDowell and UMWA?

A. Yes.

Q. In fact, he was a very strong outspoken union man, wasn't he?

A. Yes.

Q. Pretty much?

A. Yes.

Q. And occasionally being a strong union man that would get him in trouble with some of the operators, wouldn't it?

A. Well see, I don't know.

Q. All right. What about Jason Moore, do you know Jason and his wife lived there in McDowell, didn't you?

A. I know Jason, I didn't know his wife.

Q. Okay. Do you know that Jason also for several years was an officer in the local at McDowell, don't you?

A. Yes.

Q. Had different offices at different times?

A. Well, I just know he belonged to the union.

Q. All right. And that was and still is almost second religion to him being a UMWA member, is that - -

MR. SELF: (Interrupting) Objection, Your Honor, I don't believe - -

THE COURT: (Interrupting) Sustained.

MR. KIRKLAND: Well, I will just ask it this way.

Q. How strong a union man had Jason been all his adult life that you know of?

A. All that I know since I know him, he is as strong as Edgar would allow him to be.

Q. So you think he is subjected to Edgar, is that right?

A. Do you want to know what I think?

Q. Yes.

A. Okay. I think he is a strong union man, but he had a job and to keep his job he had to do as he was told.

Q. Now, let me ask you this. Isn't it a fact that Jason stood up to Edgar from time to time on union matters and got into conflict with Edgar?

A. He got fired. Well, I don't know whether he was fired, anyway he got messed up.

Q. Now, in February of '82, Jason was trying to truck coal too, wasn't he?

A. When?

Q. In February of '82.

A. What date though? What other?

Q. Well, the middle of February, February 15th.

A. During the trouble?

Q. Just during February of '82, at that time, didn't he have an old truck trying to haul coal?

A. If you will be specific when, then I can tell you.

Q. All right. Let's go back to the day of the union meeting on Saturday, February 13.

At that time, did he have a coal truck?

MR. SELF: Objection, Your Honor, I don't believe she testified about a union meeting on February 13th.

THE COURT: No, she didn't say anything about a union meeting on February 13th.

Q. Okay. February 13th, Saturday, February 13th, do you know?

A. I wasn't at a union meeting.

Q. Well, I understand that. My question is, on that day, do you know whether or not Jason had a coal truck and that is what he was doing for a living was hauling coal?

A. As far as I know he has done that, hauled coal for a living, but I don't know what Jason owns and stuff.

Q. Okay, all right. Now, on one occasion you had a little conflict with Jason over loading his truck, didn't you?

A. When was this though?

Q. I don't know whether it was before February or after February. Do you remember the problem that you had been directed not to load his coal truck? Do you remember that?

A. Who directed me?

Q. Ma'am, I don't know.

THE COURT: Have you had a problem with him, Ma'am, on the coal truck?

THE WITNESS: Can I answer it and explain it?

THE COURT: Yes.

A. Yes.

Q. Now, wasn't that at the direction of Edgar Jones?

A. Yes.

Q. All right. As a result of that, didn't Jason lose his coal truck?

A. I can't say it for sure. Can I explain?

Q. If you don't know.

A. Well - -

Q. You don't know why he lost his coal truck, or you don't know that he lost his coal truck?

A. I will explain the problem how come he wasn't allowed to load coal because - -

THE COURT: (Interrupting) Well Ma'am, he is asking you do you know whether or not he lost it?

A. I don't know whether he lost it.

THE COURT: All right.

COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

Q. All right. Now, do you know Raymond Hall, he is in the black shirt over there (indicating).

A. I know Raymond.

Q. You probably don't know him as well as some of the others, is that right?

A. I know Raymond, but not as well as the rest.

Q. All right. And German Stumbo, you know him and his wife, Delores, don't you?

A. I just know German.

Q. Now, until German had worked up to where he was kind of an operator himself, do you know whether or not he was a union member?

A. I didn't know.

Q. You didn't know him?

A. I didn't know German before I went to McDowell.

Q. All right. Didn't you have some association -- didn't your kids go to school with his kids for a while?

A. Well, at McDowell --

Q. (Interrupting) I mean,

you knew who he was, who his family was, and a little bit about him because it's a small place?

A. I knew German, my kids went to school at McDowell -- my little girl was sick all during that time, she didn't even attend school half the time, she was homebound.

Q. I understand. Let me ask you this.

Isn't it a daily activity in the coal mines to use explosives?

A. Yes.

Q. That is something you do everyday, isn't it?

A. If you want to shoot coal down.

Q. In fact, you can't, as a practical matter, mine coal underground, as far as that is concerned, probably even strip it, without the use of explosives, isn't that a fact?

A. As I know. I haven't been under shooting coal.

Q. I know, I understand. But you have had to help pay the bills for powder, haven't you?

A. They use powder.

Q. And use a lot of it?

A. Yes, sir.

Q. Thousands, maybe thousands of dollars a month, is that a fair statement?

A. I would say so.

Q. And do you recall -- I believe it was on Tuesday, February the 16th, that I believe that is the first day of the shooting that Jason Moore's son was shot apparently up at the Ray-Mac entrance.

Do you recall that?

A. I recall, you know, Jason saying he was shot.

Q. Do you recall that Jason left to go check on his son at the hospital?

A. He said he was going to check on his son.

Q. Do you recall what time of day that was?

A. That is when I went in the office that first meeting.

Q. All right. Now, you say that is the first meeting you had at Edgar Jones' office?

A. As I recall I had walked in, he had been shot.

Q. That was on Tuesday the 16th of February?

A. Yes, sir.

Q. Now, do you recall approximately what time of day it was?

A. Sir, I couldn't tell you exactly what time of day it was.

Q. Okay. Now, after Jason left to check on his boy, did you see him any more that day, or was he gone pretty much from that time on?

A. I don't recall whether I seen him or not.

Q. Did he seem to be upset about the fact that his boy had been shot in the eye, or wherever it was?

A. Yes, he was upset.

Q. In fact, it made him very upset, didn't it?

A. Yes.

Q. He was, well, distraught, is that a good word?

A. Well, he was upset.

Q. Was he at the point that he wanted to do something about the fact that his boy had been shot?

A. I think they was all at that point.

Q. Was he frustrated, mad, upset?

A. Sir, he was awful upset. How else can I answer it?

MR. KIRKLAND: That is all the questions I have, Your Honor.

THE COURT: All right.

I believe we had a matter with you?

MR. HARWELL: From yesterday, Your Honor?

THE COURT: Yes, sir.

MR. HARWELL: (Nodding head in the affirmative.)

THE COURT: About the Winchester --

MR. HARWELL: (Interrupting) Yes, Your Honor.

MR. JUSTICE: Your Honor, may I assume my feet up there?

THE COURT: Yes, sir.

RECROSS EXAMINATION

BY MR. HARWELL:

Q. Ms. Booth, I was asking --

MR. HARWELL: May I proceed, Judge?

THE COURT: Yes, sir.

Q. Ms. Booth, I was asking yesterday about the situation out in Winchester that occurred in March of 1982. As a matter of fact it is true, is it not, ma'am, that in March of 1982 your husband, Phillip Booth, received some traffic citations that required his presence in court down there, isn't that right?

A. It seems like it.

Q. And as a matter of fact, you recall the date the court appearance as being March 27, 1982?

A. If you have the records, I would like to see it.

Q. Ma'am, I don't have the records. I met with your counsel last night.

A. Okay.

Q. Do you recall the date as being March 27th?

A. I can't recall the date, no.

EXHIBIT
COPY CONTENT

Q. And isn't it true, ma'am, that your husband didn't go to court on that date that he was to appear?

A. That is true.

Q. And in lieu of his going, you went. Is that right? You went for him?

A. Yes.

Q. All right. And in the course of going before him, you appeared before a judge down there. Isn't that right?

A. AS I recall.

Q. And do you remember the name of that judge?

A. I don't know for sure. Do you have the name?

Q. Ma'am, do you remember the name of the judge?

A. Not at present.

Q. You don't remember the name of the judge?

A. I am not saying I don't remember it. I remember something about going down there.

Q. But you are saying you don't remember the name of the judge before whom you

appeared?

A. I don't recall his name right now, sir.

Q. All right. And it is true, is it not, ma'am, that you did appear before that Judge, and you lied to him twice in an effort--

A. (Interrupting) I didn't--

Q. Let me finish my question, please, ma'am. In an effort to get him to see to it that your husband wasn't jailed. Isn't that true?

A. I didn't lie to no judge.

Q. You didn't lie to no judge. All right.

Is it not true, ma'am, that on August 22 of 1982, in a conversation with your husband, Phillip Booth, you, in referring to that incident at Winchester said the judge caught me lying twice.

Didn't you say that?

A. Who was present at that time?

Q. Mr. Kemp and Mr. Booth.

A. What was the conversation about?

Q. Ma'am, the question is

didn't you say that the judge down there caught you lying twice. That is my question.

A. I was trying to impress Mr. Kemp. He had everything going down with Phillip. And I was only trying to impress Mr. Kemp.

Q. So you are telling this jury that you lied to Mr. Kemp, and that you didn't lie to the judge. Is that right?

A. I exaggerated to Mr. Kemp.

Q. You exaggerated?

A. That's right. I was trying to impress him.

Q. I see. You say exaggerate. Did you lie once to the judge down there, and exaggerate in saying that you lied--

A. (Interrupting) I am talking to Mr. Kemp. I exaggerated to Mr. Kemp.

Q. Yes, ma'am. My question is did you make the statement to Mr. Kemp the judge caught me lying twice?

A. I told Mr. Kemp.

Q. You told Mr. Kemp that?

A. But what I was doing was only trying to impress him.

Q. You were trying to impress

Mr. Kemp?

A. Yeah.

Q. I beg your pardon, ma'am?

A. I said yes.

Q. All right. Now, that was on August--that was eight days before the marijuana-gun-dynamite transaction. Is that correct?

A. That was all going down. I was impressing him.

Q. And you were tying to impress him so as to make that deal come about. Is that correct?

A. It is possible. I wanted to impress him.

MR. HARWELL: Thank you, Your Honor.

THE COURT: All right. Are we ready to proceed in the other matter?

MR. HARWELL: May the Court please, may counsel approach the Bench on that very briefly?

THE COURT: Yes, sir.

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

MR. HARWELL: May Your Honor please, we would respectfully request, given the fact that we are talking about an avowal in Your Honor's rule that

I can't get into certain matters in the course of my cross-examination, that it would be more appropriate for the Government to do its redirect; then to take up the avowal.

THE COURT: No, sir. Let's do the avowal right now.

MR. HARWELL: All right, sir. If that is the Court's wish, we will do our avowal now.

MR. JUSTICE: May I resume my seat?

THE COURT: Yes, sir.

MR. HARWELL: I should advise the Court merely as a matter of courtesy in that you have got to do something with the jury, that this will be fairly lengthy, Judge.

THE COURT: I understand.

MR. HARWELL: I just wanted to mention that to you.

THE COURT: Let me ask you this--

MR. SELF: (Interrupting) One o'clock.

THE COURT: One o'clock.

MR. HARWELL: I don't know how long the cross will be on the avowal. I certainly will be through in that time frame easily. Mr. Self may have a long or short cross. My guess is that would

be appropriate.

MR. SELF: I would send them out until one o'clock.

THE COURT: Okay. All right, one o'clock.

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

THE COURT: The jury is going to be in recess until one o'clock. During this recess, you are not to discuss the case among yourselves or permit anyone to discuss the case with you. You understand that the not now admonition is in effect.

Are there any objections or corrections in the form of the admonition?

MR. SELF: None, Your Honor.

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

MR. SELF: Your Honor, did the Court say one o'clock?

THE COURT: Until one o'clock. Please excuse the jury until one o'clock. Isn't that what I said?

THE MARSHAL OF THE COURT: Yes, Your Honor.

THE COURT: Am I mumbling. Mr. Pafunda, am I mumbling?

MR. PAFUNDA: No, Your Honor, you are not now. I go home and say that--not now.

THE COURT: All right. We will be in recess, gentlemen, for ten minutes before we start again.

MR. HARWELL: Judge, may I have the Court's permission to have Mr. Moore sit back behind me like he did earlier?

THE COURT: That will be fine.

THE MARSHAL OF THE COURT: The court will stand in recess for ten minutes.

(Reporter's Note: Court recessed at 10:10 a.m. and reconvened at 10:20 a.m.)

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

THE COURT: All right. Gentlemen, I have reviewed these notes. They appear to be just a daily diary. They have nothing tc do with this case. If you gentlemen want it sealed, we will seal it and place it in the record. If there is no objection, I will give it back to the witness.

MR. SPENCER: Give it back to her, Your Honor. I have no objection.

MR. PAFUNDA: I have none, Your Honor.

THE COURT: All right.

THE WITNESS: Thank you, Your Honor.

MR. JUSTICE: Your Honor, may I resume my seat?

THE COURT: Yes, sir, you certainly may.

Oh, just keep your seats.

(Reporter's Note: At this time the Court left the courtroom and then returned.)

THE COURT: Ms. Booth, the matter which we are about to take up right now is what is called in the law an avowal. The counsel wants to ask you about specific acts of alleged criminal conduct for which you have not been tried and convicted. The Court has made a decision that it isn't permissible. And the law permits by avowal something to be placed in the record out of the presence of the jury. I ruled it isn't permissible. What I am ruling is it shouldn't be heard by the jury. What they are going to do is put this in the record so that a reviewing court may rule on whether or not I have made a correct decision. Do you understand?

THE WITNESS: Yes, sir.

THE COURT: You have with you your personal attorney to be with you. And he may advise

you with regard to your Fifth Amendment rights. You haven't waived your Fifth Amendment right. He has told us that, and he is here. He is going to ask you some questions. You may consult with your attorney before you answer.

THE WITNESS: Okay.

THE COURT: Do you understand?

THE WITNESS: Yes. Thank you.

THE COURT: You may proceed, sir.

MR. HARWELL: May the Court please, having just heard what Your Honor said, there is one other very small area that you prohibited my going into yesterday concerning tax matters due and owing in early 1982. With the Court's permission, I would like that to be included in the avowal. May it?

THE COURT: Fine.

MR. HARWELL: All right.

AVOWAL EXAMINATION

BY MR. HARWELL:

Q. Ms. Booth, I asked you yesterday about financial problems that were being suffered in 1982 by you and Phillip Booth. Let me ask you, ma'am, is it not a fact that in February

of 1982, the Department of Revenue of the State of Kentucky assessed Bryan Coal Company eighty-plus thousand dollars? Isn't that true?

A. Sir, I don't know. I don't recall.

Q. You were the individual for Bryan Coal Company who handled the mail and the papers, were you not?

A. The mail came to us.

****

Q. Yes, ma'am, and you opened that mail, did you not?

A. (Interrupting) It came -- I don't recall.

Q. Beg your pardon, ma'am?

A. I don't recall.

Q. What mailing address, what post office box mailing address were you all using in 1982, February?

A. Well, as I recall, post office box 428.

Q. Post office box 428?

A. McDowell, Kentucky.

Q. McDowell, Kentucky. And did you regularly go to that post office box and get that mail?

A. Yes, sir.

Q. Is that true in February of 1982, did you do that in February of '82?

A. Well, I was alive and I guess I went.

Q. All right. And if I understood you a moment ago, you said you generally opened that mail when you got it?

A. I suppose so.

Q. But you have no recollection of receiving in February or March of 1982 an eighty thousand dollar notice of tax due from the Kentucky Department of Revenue, is that what you're telling us?

A. In '82?

Q. Yes, ma'am.

A. I can not recall that. I'm not saying it didn't happen, I can't recall that.

Q. All right. Do you, ma'am -- setting the idea of the notice aside, do you have any recollection of owing a significant sum of money in February or March of 1982 to the Kentucky Department of Revenue?

A. Sir, I don't have no records or anything, I don't know what I owed.

Q. Yes, ma'am. But do you remember whether or not you owed a significant sum of money to the Kentucky Department --

A. (Interrupting) Well, I think I should be entitled to the record before I should have to be allowed to answer this, because Angie Elliott had most of those.

MR. HARWELL: May the Court please, I

have --

THE COURT: (Interrupting) Just answer the question, whether you know or not.

THE WITNESS: I don't know.

THE COURT: She does not know.

MR. HARWELL: Fair enough.

Q Let me ask you this, ma'am, it is true, is it not, that in 1982 you and your husband owed a significant sum of money with the Internal Revenue Service or to the Internal Revenue Service?

MR. HARWELL: May the record reflect that the witness is counseling with her attorney, may the Court please.

MR. SELF: Your Honor, let me object to the form of the question. He said did she owe it or has it been assessed. Is he asking whether she owed it or if she knew if the assessment had been issued?

THE COURT: Well, let her answer the question.

MR. JUSTICE: Your Honor, I would ask the Court to ask Mr. Harwell to be -- to explain what these taxes are, not what they're for, but the difference between the Internal Revenue Service and

the Kentucky Department of Revenue.

Q. Federal tax, United States Internal Revenue Service.

MR. JUSTICE: Restate your question.

MR. HARWELL: All right.

Q. Isn't it a fact, ma'am, that you and your husband owed a substantial sum of money in 1982 to the Internal Revenue Service, the United States Government Internal Revenue Service?

A. It's possible that the coal company owes it.

Q. Are you talking about Calamity or Bryan?

A. I'm not sure which one. I don't know what was owed.

Q. All right.

Do you know that it was a substantial sum of money regardless of the precise amount?

A. I'd say it was quite a bit.

Q. All right. And what do you mean by quite a bit, ma'am, approximately?

A. Well, sir, by your

statements is what I'm saying. I really don't know how much it was.

Q. You have no recollection of that?

A. I just --

THE COURT: (Interrupting) She said she doesn't know.

MR. HARWELL: All right, Judge. May I --

THE COURT: (Interrupting) Proceed.

A. You had conversations with representatives of the Internal Revenue Service about the money that was alleged by them to be owed in 1982, didn't you?

A. I talked to the Revenue Service, and I told them the truth.

Q. And you talked to them on more than occasion, didn't you, ma'am?

A. Maybe a couple, I don't know how many.

Q. And during those conversations, they were telling you that the coal company that you and your husband owned owed a substantial sum of money, isn't that correct?

A. It is possible.

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

Q You don't have any clear recollection of that?

A I know that we owe taxes. I know the coal company owes taxes.

Q All right.

MR. HARWELL: May Your Honor please, that concludes my avowal as to the matter yesterday concerning finances that the Court ruled I could not get in front of the jury. May I move on to the next topic, Your Honor?

THE COURT: Yes.

Q Mrs. Booth, on January 29th, 1981, you and Phillip Booth were living --

THE COURT: (Interrupting) Just a moment. I will permit that which has been on the avowal as to taxes to be read to the jury.

MR. HARWELL: Thank you, Your Honor.

MR. SELF: Is the Court saying all of the questions and answers or just the last statement of the witness?

THE COURT: The questions and the answers which were made about her being in debt for taxes, I'll permit that to go to the jury.

MR. KEHRLI: Your Honor, would the Government be given the opportunity to redirect on

those questions at this time?

THE COURT: I guess we better do that.

MR. HARWELL: On that issue --

THE COURT: (Interrupting) No, no. You can do that on your redirect.

MR. KEHRLI: All right.

THE COURT: They can address that matter on redirect if they have some. And the questions and her answers regarding the taxes that was in the avowal will be read to the jury.

MR. HARWELL: Your Honor, with great deference to this Court I respectfully submit that that would be unfair. It would be more appropriate and the more fair way for me to handle that is for me to sit down and let them question her at this point in time and then if the Court finds those questions and those answers to be such that they should go to the jury, because reading cold transcript, Your Honor, as compared to their being allowed to get into that during the course of their redirect gives them an advantage. It's like reading a deposition versus a live witness.

THE COURT: That's the way I'll do it. The avowal can be read to the jury regarding

the tax matters. Let's go on with the next matter.

MR. HARWELL: And then you will let the Government in person examine her in front of the jury on redirect, is that what Your Honor is saying?

THE COURT: I'm going to let them have redirect.

MR. HARWELL: That won't be read to the jury from a transcript? That will be live, that's my question, Judge.

THE COURT: Redirect will be live.

****

MR. HARWELL: Yes, sir, Your Honor.

THE COURT: Youmay proceed.

THE OFFICIAL REPORTER: I need to mark that.

Q. Mrs. Booth - -

THE COURT: (Interrupting) Wait just a moment the reporter has to get back and mark that part which is going to be read to the Jury.

Proceed.

Q. Mrs. Booth on January 29 of 1981 you and your husband Phillip Booth was living together in McDowell, Kentucky, weren't you?

A. January 29th, 1981?

Q. Yes, Ma'am.

A. Yes, sir.

Q. As a matter of fact, you all were living in that house that has been pictured in Exhibits 10A thru 10H that you looked at yesterday, isn't that right?

A. Yes, sir.

Q. They're in McDowell?

And it's a fact, is it not, Ma'am, that on January 29 of 1981 that adjacent to your house there was a house that belonged to an Arlie Potter, isn't that true?

MILLERS FALLS
EZERASE
COTTON CONTENT

A. Yes. sir.

Q. All right. The truth of the matter is Ms. Booth, that the Arlie Potter house was destroyed by fire on January 29th, 1981, isn't that true?

MR. HARWELL: Let the record reflect that the witness is consulting with counsel, Judge.

THE COURT: She's got it in the record.

MR. JUSTICE: Repeat your question, please.

MR. HARWELL: All right.

Q. And the fact of the matter is Ma'am, that the Arlie Potter house was destroyed by fire on January 29th, 1981, was it not?

A. There was a fire.

Q. All right. And was that fire in January of 1981, do you remember when it was or about when it was?

A. I don't know the exact time when it was.

Q. All right, do you remember that fire occurring about 11:00 o'clock at night whatever day it was?

REPORTER'S NOTE: Let the

record show that the witness is conferring with counsel.

A. Now, your question again?

Q. Do you recall that fire, the Arlie Potter fire occurring about 11:00 o'clock at night on whatever day it was?

A. Sir, at this time, I refuse to answer that question on grounds it may tend to incriminate me at the advice of my attorney I am doing this.

Q. So, you're taking the Fifth Amendment on that?

A. It may tend to incriminate me.

MR. HARWELL: All right. May the Court please, I respectfully would like the Court's permission to go on with my questions on a question by question basis to determine if the witness is in fact taking the Fifth on each of my questions pertaining to this subject matter.

THE COURT: Sir?

MR. HARWELL: I'm sorry, Judge, I had my hand over my mouth.

I would pose for the Court's permission to go on questioning this witness on a

question by question basis to determine if, as a matter of fact she will take the Fifth on each of those questions I intend to pose.

THE COURT: To save time, why don't we say does she intend to take the Fifth Amendment with regards to any of this matter.

MR. HARWELL: I don't know if that's her statement and that of her counsel, Judge. I met with her attorney last night - -

THE COURT: (Interrupting) Why don't we let her counsel make a statement.

MR. JUSTICE: Your Honor, at this time Ms. Booth will assert her Fifth Amendment privilege against self-incrimination on all matters relating to the incident that Mr. Harwell is questioning her about.

THE COURT: All right.

MR. HARWELL: Fine.

May the witness be handed by Mr. Marshall Defendant Edgar Jones' Exhibit No. 11, may the Court please.

THE COURT: Are you going into umpteen questions about this matter?

MR. HARWELL: Judge, given what her counsel said I am merely going to attempt to prove

to this Court that the plea agreement is such that she is immunized and she has no standing to exercise any Fifth Amendment rights.

And I'm prepared if the Court insists to put on proof in an evidentiary hearing as to the underlying reason for it or as an officer of the Court to represent the factual predicate for that.

MR. JUSTICE: Your Honor, I'll ask the Court to take judicial notice that this complete agreement is between the United States and this Defendant and it's not in any way obligated to state - -

MR. HARWELL: (Interrupting) May the Court please on December 28th of 1982, there was a meeting in the United States Attorney's office in this very building in Pikeville, Kentucky. That meeting I am advised was initiated by or at least in part representative of the United States Government.

That part of which I do have familiarity consisting of the State Arson Investigator, J. B. McKensie, Phillip Booth and Pearl Booth.

In the course of that

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

meeting about which the Government has told us nothing but about which we've learned from independent means, both Phillip Dale Moore and Phillip Booth were placed under oath. They testified under oath to Mr. McKensie as to the subject matter about which I am currently examining this witness.

They made comments indicating that Pearl Booth, Phillip Booth and Phillip Dale Moore had burned the Arlie Potter house.

In the course of that interview in substance, J. B. McKensie pointed out that under the plea agreement that there was immunity as to those matters about which Phillip Booth and Phillip Dale Moore told Mr. McKensie.

*** *** ***

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

May the Court please, paragraph 5 of the plea agreement provides no testimony, statements or other information given by Phillip Gene Booth and/or Pearl Booth or any information directly or indirectly derived from such testimony, statements or other information while cooperating with the United States in the course of its investigation of the activities of Ray-Mac Mining Company will be used against Phillip Gene Booth and/or Pearl Booth in any criminal case except a prosecution for perjury for giving a false statement.

I further represent to the Court that I had a meeting with David Justice last night, Mrs. Booth's attorney and I congratulated him on the language in that because of the breadth that it covers. That is if Phillip gives testimony that provides the immunity to Phillip and as to Pearl. Mr. Justice with what I sense to be some pride indicated he was pleased with that language he had negotiated with the Government.

This witness can't take the Fifth if she has no possibility of criminal prosecution, Your Honor.

THE COURT: All right, the Court holds that she hasn't waived her Fifth Amendment rights by

the agreement.

MR. HARWELL: Has not waived it.

THE COURT: That's right.

Q. Do you intend, ma'am, to take the Fifth Amendment rights exercised--your Constitutional guarantees under the Fifth Amendment as to all questions that I might pose you concerning the Arley Potter fire in January of 1981?

A. Yes, sir.

Q. All right.

Speaking of fires, Ms. Booth, the truth of the matter is that you and your husband, Phillip Booth, burned down your house on Jack's Creek in March of 1980, isn't that true?

(Reporter's Note: The witness conferred with counsel.)

A. Sir?

Q. Ma'am.

A. I refuse to answer that question. It may tend, it may tend to incriminate me at the advice of my attorney.

Q. If I pose further questions, ma'am, of you in regard to the burning down of the house that you and your husband owned on Jack's Creek, is it your intention to take the Fifth

Amendment?

(Reporter's Note: Witness conferring with counsel.)

A. Sir?

Q. Ma'am?

A. Upon the advice of my counsel, I do.

MR. HARWELL: May the Court please. I would like to have the Marshall hand to Madam Clerk for marking for purposes of identification a statement, what is purported to be a statement. A copy of this was given to Mr. Justice last night and a copy of this was given to the Government right prior to our convening this morning. I would respectfully ask that Mr. Justice give me back his copy because I won't have one when I give this one to Madam Clerk or I'll borrow the Government's.

THE COURT: The Government is giving you theirs.

MR. HARWELL: Thank you, sir.

If we could have that as the next marked exhibit for identification, Madam Clerk, I think it will be 12 Defendant Edgar Jones.

THE COURT: By way of avowal?

MR. HARWELL: By way of avowal.

MR. JUSTICE: Your Honor, may I return to my seat for just a minute?

THE COURT: Yes, sir.

MR. WALBOURN: Your Honor, while that's being marked, I guess this avowal is being made for the purposes of all counsel, is that correct?

THE COURT: I guess so.

MR. WALBOURN: Well, simply what I wanted to get into the record, Your Honor, so the record is complete is the position of my individual Defendants that this witness should and can be compelled to testify and it's not in any way open the way to subsequent or possible State prosecution under the authority of Murphy versus The Waterfront Commission No. 387 U.S. 52, 1964.

THE COURT: What's the remark?

MR. HARWELL: Pardon me?

THE COURT: What is the effect of that decision that you have?

MR. WALBOURN: Pardon?

THE COURT: What is the highlight of the decision which you have?

MR. WALBOURN: Your Honor, that case went into discussing the use of transactions and finally put to rest some concepts as to what had to

be granted on immunity. There's also a lot of language in that case and I believe there's a subsequent First Circuit case that won sovereignty by giving immunity and therefore being compelled to the testimony of that individual that would be getting it if you compel the testimony for federal prosecution and then the State can turn right around and use this testimony that was secured under the Order of the Court because of immunity. And that case stands for the proposition that once the Federal Court gives immunity that likewise is binding on other jurisdictions, whether it be State, local, or municipalities.

THE COURT: All right.

MR. HARWELL: Judge, it's premature, but merely as a matter of advising the Court after I found out the areas where she's taken the Fifth, it's my intention to move the Court for an Order compelling the Government to give her immunity on these things so that we have the right to fully cross examine.

I think it's premature. Let's see where she's --

THE COURT: (Interrupting) Does the Government grant immunity or does the Court?

MR. HARWELL: The Government grants it, Your Honor, but case law is complete with the fact that Your Honor has the right and the ability in order to ensure the Defendants a fair trial and full cross examination to compel them to do it.

THE COURT: This being a collateral matter, I will not require them -- I will not require them to do that.

MR. HARWELL: One side issue and further response to Your Honor's question.

My recollection is that Judge Wiseman, who you know, did that after a very heated battle sometime last year.

THE COURT: Well, this is a collateral matter which is just bearing on the credibility of this witness.

MR. HARWELL: Yes, sir.

THE CLERK OF THE COURT: Your Honor, Exhibit -- the exhibit which has not been previously marked for identification has now been marked for identification purposes as Defendant Edgar Jones NPM-12 and has now been marked for the purposes of trial as identification exhibit Edgar Jones Defendant No. 12 and being placed in by avowal.

MR. HARWELL: May the Court please --

(Reporter's Note: At this point the witness conferred with counsel.)

MR. PAFUNDA: Your Honor, just in regards with response to Mr. Walbourn, it's my understanding that this avowal applies to all Defendants?

THE COURT: All right.

MR. PAFUNDA: That is the way it's correct, Your Honor?

THE COURT: If all Defendants want it that way, it's fine with me. That's my understanding. If there's one objection, it applies to all. Unless, as Mr. Kirkland has said, unless they specifically state they don't want it to apply. Is that right, Mr. Kirkland?

MR. KIRKLAND: I think that's been my understanding all along and I have relied on that.

MR. PAFUNDA: I have too. Thank you, Your Honor.

MR. KEHRLI: Your Honor, on behalf of the United States, we would require of Mr. Harwell the purpose for the introduction of this exhibit before stating our objection.

THE COURT: Well, let's let him lay his foundation.

MR. KEHRLI: All right.

THE COURT: Well, he doesn't have to lay a foundation, because this is on avowal.

It's being marked, I'm not admitting it into the record. It's being put into the record by avowal.

MR. KEHRLI: That's correct, Your Honor, but the Government would object to it being placed in the record for any purpose. It has no appropriate value, it's hearsay.

THE COURT: Well, we'll overrule the objection.

THE MARSHALL OF THE COURT: All attorneys have viewed Exhibit 12.

Q Ma'am, do you have that -- do you have before you that which has been marked Defendant Edgar Jones Exhibit No. 12, marked for identification?

A Yes, I do.

Q All right.

Let me ask you this, ma'am. It is true, is it not, that on April 15th of 1980 that you and your husband gave a sworn statement under oath to a man by the name of Ernie Collins, is that true?

(Reporter's Note: At this time witness confers with counsel.)

A. Sir, I refuse to answer that question on the grounds that it may intend to incriminate me, it may.

Q. All right.

Ma'am, I'll ask you to look at that which has been marked for identification as Defendant Edgar Jones Exhibit 12 and tell us if you can identify it, unless you decide you're going to take the Fifth on response.

A. On what?

Q. Look at it and tell me if you can identify that which has been marked as Exhibit 12 or if you're not going to, tell me whether you can or can't identify it because of your Fifth Amendment rights and advise us of that if you will.

(Reporter's Note: At this time witness confers with counsel.)

****

A. Sir, I recognize number twelve, but I don't know what you mean. What are you getting at?

Q. If you recognize it, please, Ma'am, tell us what it is.

A. I said Exhibit No. 12, that is what you have got here.

What are you getting at? What is your question?

Q. Do you recognize that which has been marked, the Pearl and Phillip Booth statement taken on April 15th, 1980 by Ernie Collins before you, the one I gave your lawyer last night?

A. That is what it says.

Q. Do you recognize it?

A. That is just what it says.

Q. Have you seen it before?

(Witness conferring with Mr. Justice).

A. It seems like I have.

Q. All right. Had you looked it over last night or this morning with your attorney?

A. Sir, this is the first time.

Q. You didn't see it this morning?

Mr. Justice didn't show it to you earlier?

(Witness conferring with Mr. Justice).

A. I seen a copy of this this morning.

Q. Yes, Ma'am. Before you came to Court?

A. Yes, sir.

Q. And you looked it over, did you not?

A. I may have glanced.

Q. Glanced. And that paper before you contains sworn statements of you and your husband, Phillip Booth, does it not, a transcript of them?

(Witness conferring with Mr. Justice)

A. Sir, I take the Fifth Amendment on the - - on the grounds that it may tend to incriminate me. It may.

Q. Are you telling this Court that you are not going to respond based on your Fifth Amendment rights to anything concerning that which has been marked as Defendant Edgar Jones'

Exhibit No. 12? Is that what you are telling us?

THE COURT: Exhibit 12 by way of avowal.

MR. HARWELL: By way of avowal.

(Witness conferring with Mr. Justice)

MR. JUSTICE: May I address the Court on this, just to save some time?

THE COURT: Yes, sir.

MR. JUSTICE: The witness is not saying that, but the witness is not going to incriminate herself on any matters pertaining to this fire. He is just going to have to go through it question by question.

THE COURT: Now, there is no need of going into that.

MR. HARWELL: Judge, we are talking about arson, we are talking about perjury as well, perjury, Judge, swearing under oath and I am concerned about the record, given the fact that this is an avowal, my bald-faced statement to the Court that this concerns arson and perjury doesn't give a reviewing tribunal much room to see.

THE COURT: That is in the record. She is taking the Fifth Amendment about any of that

matter, and it is in the record.

MR. HARWELL: Yes, Your Honor.

THE COURT: It isn't necessary to repeat each question in there.

MR. HARWELL: Yes, Your Honor.

THE COURT: I think I made a rule on this as collateral matter.

MR. HARWELL: Your Honor has made a ruling that this is collateral matter, but I understand the very purpose of an avowal, with all due respect, Judge, is so that some reviewing entity might determine if the Court errored - -

THE COURT: (Interrupting) Whether my ruling is proper?

MR. HARWELL: Yes, sir.

THE COURT: That is right. It is in the record, and whoever the reviewing board is can look it up.

MR. HARWELL: Yes, Your Honor.

Q Let me ask you this, Ma'am. It is a fact, is it not, that as a result of a fire in the house that you and your husband had at Jack's Creek, that you received fifteen thousand one hundred fifty dollars from the Kentucky Insurance Company.

THE COURT: I thought she took the Fifth Amendment on that?

MR. HARWELL: Judge, I have talked about the fire, arson; I have talked about perjury, and I am now talking about insurance fraud as the third subject.

You are saying, Your Honor, the whole body - -

THE COURT: (Interrupting) That was my understanding. Is that correct?

MR. JUSTICE: It is, Your Honor. This all relates to the question that was just answered.

THE COURT: All right.

MR. KEHRLI: Your Honor, for the record, the United States would also note that Exhibit 12 is extrinsice evidence which is specifically precluded from being required by rule 608B, or being proven by rule 608B.

THE COURT: This is by way of avowal.

MR. KEHRLI: That is correct. For the record, Your Honor, I subject my objection.

MR. HARWELL: Might I have another paper marked by Madam Clerk, Your Honor?

THE COURT: Yes, sir.

MR. HARWELL: For identification as a

Dale Soergel Moore Shaw & Associates
COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

proposed exhibit for avowal.

THE COURT: Yes, sir.

REPORTER'S NOTE: The Marshall of the Court handed the Clerk of the Court a document.

THE CLERK OF THE COURT: Your Honor, the exhibit which has not been previously marked for identification, has been identified as Defendant Edgar Jones NPM No. 11, and has now been marked for purposes of trial as Defendant Edgar Jones' Trial Exhibit No. 13, placed in by avowal.

THE COURT: Thank you.

REPORTER'S NOTE: At this time the Marshall of the Court handed all counsel the exhibit.

MR. KEHRLI: Again, Your Honor, for purposes of the record, the United States would object to the introduction of this exhibit, including for purposes of avowal, on the basis that it's extrinsice evidence of a collateral matter that could not be presented to the Jury under these circumstances under rule 608B.

THE COURT: All right. Let that be noted. Let it be placed in by avowal.

THE MARSHALL OF THE COURT: All Defendants

have had a chance to look at Exhibit No. 13.

MR. HARWELL: In that Your Honor has told me it is the Jack's Creek fire and all matters concerning that, that I am to move on with this witness taking the Fifth, Your Honor, there is no need to take the Court's time and question her about that. It is in the record, and it is a matter objected to under avowal.

THE COURT: Let me ask you this. Now, we had the indebtedness as one matter.

MR. HARWELL: Yes, sir.

THE COURT: And then we had what?

MR. HARWELL: Arlie Potter (spelling) A - R - L - I - E, Judge, Potter fire.

THE COURT: All right. Potter fire.

MR. HARWELL: Yes, sir. January 29, 1981.

THE COURT: Then we have got the Jack's Creek?

MR. HARWELL: Yes, sir. Then we have got the Jack's Creek fire, may the Court please.

THE COURT: All right. Are you ready to move on?

MR. HARWELL: Yes, sir, Your Honor.

THE COURT: Please proceed.

Q. Let me ask you this, Ma'am. Isn't it a fact that there was another fire near your house, a trailer fire, in 1980, burning up a trailer owned by a Fern Hall? Are you aware of that?

(Witness conferring with Mr. Justice)

A. Sir?

Q. Ma'am?

A. I respectfully refuse to answer that question on the grounds that it may possibly tend to incriminate me.

Q. I see. Is it your intention, Ma'am, on all these questions that I might pose concerning the Fern Hall trailer fire, to respond in the way you have? That is, exercising your Fifth Amendment rights?

A. It may possibly tend to incriminate me.

Q. Ma'am, with all due respect, you are not paying attention, listen to me.

Is it your intention to respond to all of my questions concerning the Fern Hall fire by exercising your Fifth Amendment rights?

(Witness conferring with Mr. Justice.)

Dale Soergel Moore Shaw & Associates
COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

A. Yes, sir. Upon the advise of my attorney.

Q. All right. Let me ask you this, Ma'am. It's a fact, is it not, that you got your husband to burn up a 1977 Lincoln Continental automobile belonging to your brother so he might get insurance money as a result of that arson.

(Witness conferring with Mr. Justice)

THE COURT: Is this a different matter?

MR. HARWELL: It is a different matter, Judge. This is 1977 Lincoln Continental matter.

THE COURT: All right.

A. Sir?

Q. Ma'am?

A. Could you be specific when this was, and what you are talking about?

Q. Let me ask you this. Have you ever gotten anybody to burn up an automobile?

(Witness conferring with Mr. Justice)

MR. KEHRLI: Your Honor, for purposes of the record, the United States would object to the question. It's vague, there is no relevancy, and there is no point in time. It would be improper

cross-examination.

THE COURT: All right. Let it be noted and be overruled. This is by way of avowal.

A. Do you want me to answer it now?

Q. Yes, Ma'am.

A. I respectfully refuse to answer that question on the grounds that it may tend to incriminate me.

Q. All right. And any questions I ask you about arson or fires concerning automobiles, would it be accurate to say that you intend to exercise your Fifth Amendment rights, and answer any other such questions that I might pose just as you have answered that one?

A. At present, no. That is not my intentions.

Q. That is not your intentions, all right.

MR. HARWELL: With the Court's permission, I believe that entitles me to question her question of time.

THE COURT: Well, of course, that has been your purpose all along is asking the question, and if she will answer some of the questions, then

Dale Soergel Moore Shaw & Associates
COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

you open the door for additional ones.

MR. HARWELL: That is right, Your Honor.

THE COURT: And if she answers additional ones, then you are waiving the Fifth Amendment.

MR. HARWELL: That is right.

THE COURT: Right, I understand. Let's have her counsel here.

MR. JUSTICE: The question was do you intend to assert a Fifth Amendment privilege on any question having to do with any car that is burned, which, of course, is broad.

The question was so vague that it is hard to answer anyway. I don't think that opens any doors.

THE COURT: Restate your question.

Q Have you ever been involved in the arson of an automobile in the last five years, directly or indirectly?

(Witness conferring with Mr. Justice)

A Sir, I respectfully - - I refuse to answer that question as it may possibly tend to incriminate me.

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

MR. HARWELL: I will move on, Your Honor, to the next topic. And the next topic is a 1981 black Cadillac.

THE COURT: Is that another car?

MR. HARWELL: Yes, sir. This is different.

THE COURT: Okay.

MR. HARWELL: There are several cars.

THE COURT: All right.

Q. Let me ask you this, Ms. Booth. You and your husband got you a black Cadillac Coupe de Ville from Ken Isaac's Cadillac Oldsmobile in April of 1981, didn't you?

(The witness conferred with Mr. Justice.)

THE COURT: Let me ask you this. Numerically, how many of these questions do you have?

MR. HARWELL: About twelve. That is an approximation, Judge, do you wish me to count them?

THE COURT: Yes, please do.

MR. HARWELL: What number am I on now, Your Honor?

THE COURT: One, two, three, four, five.

MR. HARWELL: Is the Cadillac no. 5?

MR. JUSTICE: Your Honor, I want to

Dale Soergel Moore Shaw & Associates
COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

object to her answering that question. I think based on all the information that I have that this is going to lead right back to the last question that was asked, the arson involving any automobile in the last five years, unless Mr. Harwell can tell us otherwise.

THE COURT: Is he going to tie it back into vehicles generally?

MR. HARWELL: Vehicles generally, Your Honor. It is our position this car was bought, this car was insured, this car was fraudulently and illegally reported to the Clark County Police Department as being stolen when as a matter of fact it was not stolen. Insurance fraud was committed, and it ended up in the slate pit up here at Wheelwright, and we pulled it out of the slate pit.

THE COURT: That is different. This is regarding destruction of a vehicle.

MR. JUSTICE: I thought that car was burned.

THE COURT: What?

MR. JUSTICE: I think that that car was burned.

MR. HARWELL: Oh, really? I would like--

THE COURT: Let's have order,

Dale Soergel Moore Shaw & Associates
COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

gentlemen.

MR. JUSTICE: Go ahead and ask the question.

THE COURT: Well, if arson is involved in the thing, it's been answered.

MR. HARWELL: Judge, that is news to me. I wasn't aware that arson has been involved, because it was in such a shape when it came out of slate pits, I didn't know whether it had been burned or not burned.

MR. JUSTICE: Your Honor, I don't know either until he asks some specific questions. But he is asking about a car, about arson, and about a car in the last five years, and he is asking about a 1981 Cadillac. If he is getting back to that other question, I would think that she should not have to answer it.

THE COURT: The other question that has been answered.

MR. HARWELL: That was a Continental.

THE COURT: It's wasting time-- Well, the other-- I think if I am not mistaken, when you read it back, I think you asked a question about the burning of any cars.

MR. HARWELL: May the Court please, with

COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

all due respect to Your Honor, this is avowal, and I need to make this record, Judge. This is different. I represent as an officer of the court that it may appear to a listener to be the same, but, Judge, it is a separate and distinct and different situation than the Continental automobile.

THE COURT: But if you ask a question, Mr. Harwell, if she has burned any car and she refuses to answer, then you come back to saying have you burned a Ford, have you burned a Chevrolet, and that is just duplicitious.

MR. HARWELL: Judge, until Mr. Justice mentioned arson in reference to that Cadillac, I thought very frankly, Judge, it was my hunch that that Cadillac was placed in that slate pit to hide it after insurance fraud had been committed; and I didn't know about any arson on it.

Now, maybe it was a subject of arson.

THE COURT: Well, if we are speaking of arson, it is this: Let me--

MR. JUSTICE: (Interrupting) Your Honor, I don't know anything about arson with this car. He talks about arson, and then he brings up an '81 Cadillac.

THE COURT: Okay. Restate your question in regards to the Cadillac. If it is a different subject matter, fine.

THE WITNESS: Your Honor, in private, do you want me to tell you what I know? In private, I would.

THE COURT: No. This is in the record.

Q. Ma'am, is it not a fact that you and your husband, Phillip Booth, in April of 1981 got yourselves a black Cadillac Coupe de Ville from Ken Isaac's Cadillac Oldsmobile?

(The witness conferred with Mr. Justice.)

****

MR. KEHRLI: May we approach the Bench?

THE COURT: You don't need to.

MR. KEHRLI: There is a specific reason to make that request, Your Honor.

THE COURT: Okay.

REPORTER'S NOTE: At this time all counsel approached the Bench, whereupon the following was heard:

MR. KEHRLI: The United States respectfully objects to this continuing and repetitive line of questioning on the grounds, one, it should be noted that members of the press are present in the Courtroom.

We believe that the witness has asserted her Fifth Amendment rights, particularly with regard to any arson in any regards, and we believe that essentially what is happening here is - -

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

MR. KEHRLI: Essentially what is happening, counsel's questions inadvertently are just repeated attempts to go over a number of criminal actions committed, allegedly committed, by this witness which will be reported in the press tomorrow. I expect it could be prejudicial to the

Government's case.

THE COURT: It isn't supposed to be prejudicial, because the Jury is not supposed to be reading it.

MR. HARWELL: For the record, I would like to state, if the Court please, what press I have seen since this case started has been highly prejudicial to the Defendants, and I am not aware of any press being present.

THE COURT: The Jury is not supposed to read it.

MR. HARWELL: They are not supposed to.

THE COURT: The not now admonition. Overruled. Let's get it over with, gentlemen. We are wasting time.

MR. HARWELL: Yes, Your Honor.

(End of Bench Conference)

Q Let me ask you again, Ma'am, isn't it true in April of 1981 you and your husband obtained a 1981 black Cadillac Coupe de Ville from Ken Issacs Oldsmobile.

THE COURT: Let's do this. If they intend to take the Fifth Amendment on this matter, let's do it right now.

MR. HARWELL: Do it right now if you

intend to take the Fifth.

MR. JUSTICE: Your Honr, we don't know.

THE WITNESS: On this we do. We will take the Fifth on this.

THE COURT: Let's have order, gentlemen.

Q Will you state that, Ma'am, so the Court Reporter can get it in the record?

A I respectfully take the Fifth Amendment.

MR. HARWELL: May the Court please, I now intend to move on to another topic among those eleven, may I do so?

THE COURT: What is the other topic, give the date and time such as that, and let them say if they are going to - -

MR. HARWELL: (Interrupting) I didn't hear you, Your Honor.

THE COURT: State the subject about which it is.

MR. HARWELL: Your Honor, I intend to ask her about her propensity and history of violence of specific acts underlying that series of questions.

THE COURT: All right.

Q Ms. Booth, you don't deny being a violent person, do you?

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

A. Do I look violent?

Q. Ma'am, if you will respond to my question.

THE COURT: Just answer the question.

Q. Are you or are you not a violent person, in your judgement?

A. I don't think I am violent.

Q. All right. Ms. Booth, there was a time when you got into a controversy back in March of 1982 with a fellow named Hall over there at McDowell, isn't that correct?

A. Who is the name? I don't know who Hall is.

Q. Budeo Hall, C. B. Budeo Hall.

A. Oh, I remember that.

Q. There was a shootout in March of '82 in which you were involved, is that right?

A. He tried to kill me.

Q. And you tried to kill him, didn't you?

A. Just a moment.

(Witness conferring with Mr. Justice.)

MR. SELF: Again, Your Honor, for purposes of the record we object on the Federal Rules of Evidence such questions being totally not being allowed out of the presence of the Jury.

THE COURT: All right.

A. Repeat your question.

Q. All right. Is it a fact that you got in a shoot-out back in March, 1982, over in McDowell with C. B. Budeo Hall?

A. Okay. Can we go into details about it?

THE COURT: No, answer the question.

Q. Answer the question. Did you get in a shoot-out?

A. I shot at him.

Q. All right. Isn't it a fact that you told several people over there that he needed killing, in your opinion, Mr. Hall I am referring to.

A. I don't recall that, but if I had thought that, I would have went ahead and sent him to prison over it.

*** *** ***

Q. Isn't it a fact that you discussed with several people overthere the possibility of you going into the jail and trying to kill him in the jail?

A. Absolutely not.

Q. Absolutely not?

A. I don't recall no such statement.

Q. Alright. As a matter of fact, when he was taken to court for a hearing and you were present, didn't you threaten to go into the courtroom with your pistol and blow him away.

A. Sir, I don't recall any such thing as that.

Q. Alright. Speaking of violence, Miss Booth, you shot your husband's finger off, didn't you answer I did do that.

Q. Alright, I think you testified in front of a jury that it was your habit and custom to carry a firearm with you all the time, isn't that right?

A. I think everybody in Eastern Kentucky - - maybe not everybody, most everybody carries one.

Q. Alright. The fact of the matter is , Ma'am, is that you have attempted on several occasions to kill your husband. Philip Booth, did you not?

A. Sir. If I had attempted it would have been done. I didn't do it.

Q. You didn't attempt it, alright.

A. Let me tell you, C. B. Hall, we will get back to that - - at that time I was a deputy, too.

MR. HARWELL: If the court please - - If Your Honor wants to hear her talk, it is alright, but I have moved on.

THE COURT: Go ahead and answer it.

MR. HARWELL: Are we going back to C. B. Hall?

THE COURT: Go on back to C. B. Hall.

MR. HARWELL: Alright.

A. All I was going to say at the time, C. B. Hall, I was a deputy.

Q. Yes, Ma'am you were a Deputy as a matter of fact, you had been told by Sheriff Hale that that was so you could carry a

firearm. You had absolutely no arrest powers, isn't that what he told you?

A. He did not tell me that.

Q. Alright. Have you not offered me the statement, Miss Booth, that you want to get even with anybody who makes your life miserable? Haven't you been known to say that?

A. I don't want to get even with nobody.

Q. Yes, Ma'am. But haven't you been known to say that you want to get even with anybody that makes you unhappy, or who makes your life miserable?

A. No comment sir.

Q. You didn't say that?

A. I didn't say no such stuff.

Q. About nine or ten years ago, you went over to the Comprehensive Care Center, didn't you?

A. I have been there.

Q. Yes, Ma'am. At that point in time, you talked to several people including Mr. Lafferty, did you not?

A. Seems like he is a psychologist.

Q. Don Lafferty?

MR. SELF: Excuse me this is getting into a privileged matter, and is totally inappropriate in any form or fashion.

THE COURT: Who is that?

THE WITNESS: He is a psychiatrist or psychologist where I went to at the time when Philip was drinking and beating on me and stuff.

THE COURT: Well, you did go to Mr. Lafferty, or did you and did you not go to Mr. Lafferty?

THE WITNESS: I answered that.

THE COURT: She said she went to him.

*** *** ***

Q. Alright. And didn't you tell Mr. Lafferty that you wanted to get even with anybody that made your life miserable, and that is the way you had always been even since you were a little girl.

THE COURT: Sustained the objection to that, and - -

MR. HARWELL: On what grounds, Your Honor?

THE COURT: First, I want to know how you got that.

THE WITNESS: I would like to know that, too.

MR. HARWELL: May the court please, I subpoenaed that.

MR. SELF: Your Honor, I call the court's attention to Judge Moynahan's admonition to various accounts of fond subpoenaing of privileged information obtained prior to trial in a recent case down in Lexington.

MR. HARWELL: May the court please - -

MR. SELF: If she obtained that confidential information through a subpoena - -

THE COURT: (Interrupting) Well - -

MR. HARWELL: May the court please,

May I be heard? I anticipated this.

THE WITNESS: He can't even go to a Psychologist - - Psychiatrist or anything.

MR. HARWELL: As a matter of law to support my position, with the court's permission, I would like to file this at this time. There is no privilege on this. We have researched it rather thoroughly.

THE COURT: Alright.

MR. HARWELL: May I have a moment to sign off on it because it is blank signature.

THE COURT: Alright.

Dale Soergel Moore Shaw & Associates
COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

MR. SELF: All I know about it is she said he is a psychiatrist or a psychologist, and--

THE WITNESS: (Interrupting) And that was back years ago.

THE COURT: Well, let me ask you was this before this matter?

THE WITNESS: It was way before, Your Honor. It was back, way back, right when me and Phillip married.

THE COURT: Let him file it in the record.

MR. ROWLAND: Your Honor, may I say that I know Mr. Lafferty personally and I don't believe he has a college degree of any kind. He is a counselor.

MR. HARWELL: The record should reflect that I am filing a memorandum of law.

THE COURT: Are these--these are statements how many years before this matter in controversy?

MR. HARWELL: Eight years, may the Court please.

THE COURT: Before the matter which is on trial?

MR. HARWELL: 1974, 1976 and 1978 or '79, Judge. The one I just asked about is 1974.

THE COURT: Well, put it in the record. Put it in the record. The Court certainly thinks it is incompetent to bring in her visit to a social worker or a--

THE WITNESS: (Interrupting) It is not even safe to go to the doctor anymore.

THE MARSHAL OF THE COURT: Let's have order, please.

MR. SELF: May the Court please, we renew our motion we made previously at the Bench.

THE COURT: Now, that is about the second or third time you gentlemen have been told to come to order. Let's don't have any laughing or such as that. Let's watch that.

MR. JUSTICE: Your Honor, if I may, I think that Ms. Booth is at least entitled to see that. It is her's. She has never seen it. I am her attorney. I didn't even--

THE COURT: (Interrupting) Well, I think--

THE WITNESS: (Interrupting) And, Your Honor, I was real sick at that time.

THE COURT: This is just a memorandum of law. That is all. But if you have got the report from the psychiatrist, mark it as an exhibit and put

in the record.

MR. HARWELL: With the Court's permission, I will have to bring it to you Monday. I do not have it in this courtroom.

May the Court please, may I be heard briefly as an officer of this court?

THE COURT: Yes, sir.

MR. HARWELL: Judge, Your Honor has been kind enough to hear me on a motion for dismissal in this case by virtue of prosecutorial misconduct. They stand up today and start screaming privileged.

This is an avowal, may the Court please. The jury is not here. I want the record to reflect, may Your Honor please, and I say this with great respect for the Court, that I resent their standing up without knowing what the facts are and popping off in an effort to cut me off on an avowal.

Your Honor has said Mr. Harwell, that is not going in; but if you want to make your record, obviously I will let you do it.

I would like the record to reflect I don't think that is proper.

THE COURT: Well, the record so reflects.

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

MR. HARWELL: All right, sir.

Q. Let me ask you this, Ms. Booth: You have had periods in your life where you have suffered hallucinations, have you not?

A. I think that is personal, and I refuse to answer that on grounds it may tend to incriminate me.

MR. HARWELL: May the Court please, I would ask the witness to be allowed to consult with her counsel in an effort to determine if that is a good faith Fifth Amendment refusal or not. I know of no--no criminality underlying that question or surrounding the question.

If a person, Judge, who has testified as a, quote, star witness in this case, has had hallucinations in the last five to six years--

THE COURT: (Interrupting) You didn't say last five or six years.

MR. HARWELL: No, sir. I said at all because I didn't want to tip her off as to exactly where I was going to be very honest with you, with Your Honor. I think I am entitled to know that. And I think that maybe the Court will find that the jury ought to know about that.

Dale Soergel Moore Shaw & Associates
COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

MR. KEHRLI: Your Honor, for the record, this is the second time counsel has referred to this witness as an allegedly star witness. I would like to note for the record that defense counsel is the only individual in this courtroom who has referred to this witness in this fashion. The Government has never referred to this witness in this fashion, and does not treat her as such.

Additionally, this is the reason why the Government made its objection concerning the privilege that this witness may have. We believe that the testimony that is being given here may in fact be privileged testimony of this witness. And whether the jury is here or not is irrelevant to that privilege. That privilege is like the attorney/client privilege, the doctor/patient privilege. We believe it is a valid privilege notwithstanding Mr. Harwell's contentions.

And I resent the fact that he gets up and makes a reference, and we have no right to assert that privilege on behalf of the witness.

THE COURT: Well, it is all in the record, gentlemen. And you may ask her if she had hallucinations during the period of time when

Ray-Mac occurred, or if she is presently having hallucinations. Now, going back fifteen-twenty years ago, I can't see. Even on an avowal, I can't see where that is --

MR. HARWELL: (Interrupting) Can I go back six years ago, seven years ago, Judge, and track it forward from that point on the avowal, Your Honor?

THE COURT: The only thing I am concerned about I guess is during the Ray-Mac time, during the matter which is in controversy and up to the present time, -- and up to the present time.

MR. HARWELL: Is Your Honor telling me I can't question her on hallucinations before February of 1982 during the avowal?

THE COURT: Yeah, you can ask her on avowal, go ahead.

Q All right. Has there been a period of time in your adult life where you have suffered hallucinations, Ms. Booth?

A. Sir, I really don't know what you are talking about because I can't recall hallucinating in the last five years or so.

Q All right. There was a time in 1977, when you told people that you were

suffering through -- suffering hallucinations, and you had seen your deceased brother walking around some five months after he passed away. Isn't that true?

A. Lord, God no.

MR. KEHRLI: The United States asserts a specific and strenuous objection to this line of questioning. Counsel is attempting to muddy up this witness with completely inadmissible evidence and questions that are intending to elicit responses which may or may not be --

THE COURT: (Interrupting) He is entitled to get this into the record. Let him answer.

MR. KEHRLI: Well, Your Honor, as I understand, an avowal is evidence that would -- that the defense is contending would be -- and has a legitimate contention would be admissible before the jury.

THE COURT: Right.

MR. KEHRLI: We are saying that is getting so far beyond the realm of that area that it is completely nonprobative of that very issue and is extremely prejudicial to this witness and an invasion of her privacy.

Dale Soergel Moore Shaw & Associates
COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

THE COURT: Go ahead.

Q. Ma'am, I was asking you a question in regards to whether or not --

A. (Interrupting) My brother is dead.

Q. Yes, ma'am.

A. And he has been dead since '76. And I have not seen him walking around. I dream about him a lot. And it hurts a lot. But I know he is dead and gone.

Q. All right. Did you see him mentally after he passed away?

A. See him mentally in person or in my mind? What are you talking about, sir?

Q. I am talking kind of like --

THE COURT: (Interrupting) I don't think she understands. She said she dreamed about him.

MR. HARWELL: Yes, sir, Your Honor, but she said she didn't understand the meaning of the word hallucinations. What I am trying to do is --

THE WITNESS: (Interrupting) I believe my -- I am sorry.

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

MR. HARWELL: I asked her the question, may the Court please, about using that word. And it is a little difficult for me to devise the proper verbiage to do that since that is a commonly accepted term.

THE COURT: Go ahead.

Q Ma'am, is it or is it not true that after your brother passed away there came a time when not dreaming, but when awake you thought you saw him and you thought that you talked to him and told others that you had seen and talked to him?

THE COURT: All right, told whom?

THE WITNESS: I would like to know who I told.

THE COURT: Just a moment. Be specific.

MR. HARWELL: May the Court please, I don't believe, unless Your Honor directs me to, that that is necessary. Did she tell anybody? If she says I didn't, fine. If she says I did, fine.

THE COURT: You might help her recall.

MR. HARWELL: Yes, sir. If Your Honor directs me to, I will certainly do that.

THE COURT: All right, please do.

MR. HARWELL: The truth of the matter is, Judge, either she did within her own knowledge or she didn't. That is what I am probing for right now.

THE COURT: Did she tell it to whom?

MR. HARWELL: Are you telling me to tell her, Your Honor?

THE COURT: Yes, sir. That might refresh her recollection.

Q Mr. Lafferty, Don Lafferty, in 1977. I do not have a date, a specific date, Your Honor.

A I told him he talked to me?

Q Told Don Lafferty that you had hallucinations. You said you didn't know what hallucinations meant. All right, did you tell Don Lafferty in 1977, after your brother had died that you had seen him not asleep, but you had seen him while awake?

A I truly believe my husband -- my husband. I truly believe my brother went to heaven. Okay, and I think he is all right, but --

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

THE COURT: (Interrupting) Did you tell that to Mr. Lafferty?

A Sir, it is possible. I don't recall it.

THE COURT: All right.

MR. SELF: Your Honor, for purposes of the record, under Rule 613, we renew our motion for any --

THE COURT: (Interrupting) Mr. Lafferty is the social worker or mental counselor?

MR. SELF: He is asking her about a prior statement. And we have asked repeatedly to be furnished those prior statements which we're entitled to under the Rule. I am merely renewing that even in the avowal context, Your Honor.

THE COURT: Let me get back. Did this Court issue a subpoena to Mr. Lafferty?

MR. HARWELL: This Court issued blank subpoenas. The Government got them and had their subpoenas served. And we got them, and served a number of witnesses in this matter, Your Honor. In terms of you, the Judge --

THE COURT: (Interrupting) I never issued the subpoena.

MR. HARWELL: No.

COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

THE COURT: All right, the Clerk did?

MR. HARWELL: Yes, sir.

THE COURT: All right.

MR. HARWELL: But Judge, not filled in for Mr. Lafferty. As is customary throughout the country, when we first came here -- may the Court please, as is customary throughout U.S. District Court all over the United States, when we first came here, we got a number of blank subpoenas. We didn't think this case was going to go so long, but we started subpoenaing witnesses at that time, December, as I recall, who we believed are going to testify in mid to late February.

THE COURT: And you submit, by way of memorandum, it is proper to go to the community health center and subpoena a record where someone goes in and confidentially talks to a counselor.

MR. HARWELL: I submit, may the Court please, that I am entitled to talk to any witness who will talk to me. I am entitled to see any record that I am allowed to see by the custodian of that record, yes, sir, I do, as a matter of law.

THE COURT: All right.

MR. HARWELL: If there is some privilege, then it is the responsibility of the custodian to

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

exercise that privilege, may Your Honor please.

THE COURT: Right.

MR. HARWELL: I believe that is the law.

MR. SELF: Could I ask, for purposes of the record, to whom this subpoena was served?

THE COURT: No, no. Let's go on with this. Go on, Mr. Harwell.

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

MR. SELF: May I ask if that subpoena has been returned to the Clerk?

THE COURT: You can check. You check it later.

MR. SELF: Thank you, Your Honor.

MR. HARWELL: If the Court please, I would like to briefly respond. If we are going to return our subpoenas immediately upon service, we ask the Court order the Government to do the same thing with their subpoenas.

THE COURT: All right. Let's go on.

Q Let me ask you this, ma'am. You have suffered for the last six or eight years with problems concerning memory loss, haven't you?

EXHIBIT
COLTON CONTENT

A. Your Honor, do I have to answer that? That is supposed to be a doctor/patient relationship.

THE COURT: Well, no. This is out of the presence of the jury. You can answer the question, ma'am.

A. On some occasions.

Q. And have you, as a matter of fact, in the last three years, suffered moments of memory loss?

A. Sometimes.

Q. And is it not true, ma'am, since February 15 of 1982, that you have suffered lapses of memory, moments of memory loss?

A. Well, sir, don't you on occasions?

Q. The question,ma'am, is directed to you. Isn't it a fact that during a period of time between February 15, 1982 that you have suffered lapses of memory, memory loss?

THE COURT: I guess her answer is yes. And she says everybody does. That is the way she has answered.

Q. All right. Isn't it true, ma'am, that those lapses of memory that you have suffered between February, 1982, and the present, have been significant losses of memory, significant lapses in memory?

A. Just a moment.

Sir, not anymore than average.

Q. All right, ma'am. Is it not a fact that in 1982, that you were taking certain powerful tranquilizering drugs-- May the Court please, this doesn't come from the medical records. It comes from other sources.

Isn't it a fact, ma'am, that in 1982, you were taking powerful tranquilizers?

A. What do you mean by powerful?

Q. Valium.

A. Yeah, I took Valium.

Q. In 1982?

A. I don't know for sure if it was '82, but I have took Valium.

Q. All right. Did you take them regularly during 1982--the Valium?

A. Sir, I don't know what you

call regular, though. What do you mean by that?

Q. How often did you take Valium during 1982, Ms. Booth?

A. On occasions. Only when it was needed. Only when I was nervous.

Q. Yes, ma'am. Did you take them on a day at a time basis, or were there periods in 1982, when you would take some Valium every day for a sustained period of days?

A. Sir, I don't see what this has to do with it, but the Valium was not--I did not abuse drugs if that is what you are getting at.

Q. What quantities of Valium did you take and what frequency, please, ma'am, in 1982?

A. In 1982-- This is '84.

Q. Yes, ma'am. All these events which you testified about were in 1982. That is the year I want you to focus on.

A. Well, I don't really recall how many I had taken. I have been to the doctor. Did you get my doctor report from there? Check it out.

Q. Some of the Valiums you got didn't come from a doctor. They came from other

sources, didn't they?

A. What sources?

Q. From other sources, ma'am, other than a physician or other than a prescription taken to a drugstore?

A. Well, I still don't know what you are saying. I admitted that I used Valiums, but I don't know how many or when. I didn't abuse them. I didn't use a lot. So what are you getting at?

THE COURT: What he is asking you, ma'am, is you said you took Valiums in 1982, pursuant to a doctor's prescription. Did you get any and take them outside of a doctor's prescription. That is what he is asking.

A. I might have a few times if I had it. It would have been-- It wouldn't have been illegal sources. To my opinion, it wouldn't have been.

Q. Do you the size Valiums that you took? They come in five, ten, and fifteen milligram tablets. What size Valium were you taking in 1982?

A. It may not have been '82 or '83. Who keeps count of when they have to take

a nerve pill. I had to have a sedative yesterday.

Q. I beg your pardon?

A. I had to have a sedative yesterday.

Q. Were you taking Valiums during the week of February 15, 1982, or do you remember?

A. That has been almost four years--three years since then.

THE COURT: Do you remember, ma'am?

THE WITNESS: I don't recall right now for sure, Judge.

THE COURT: All right. Let's move on.

MR. HARWELL: May the Court please, may I talk to my cocounsel for a moment?

THE COURT: Yes, sir.

MR. HARWELL: May the Court please, that completes my avowal on this witness. And I respectfully move--

THE COURT: (Interrupting) Now, let's do this. Now, let's start back with the first instance and recapitulate what it is and tell me how that is relevant to probative evidence in this case and not a duplication.

MR. HARWELL: All right, sir. May the

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

Court please, as I contended yesterday at the Bench in regard to the degree of debt that the Booths were in in 1982, we believe that to be relevant and material in regard to their going to Edgar Jones. They were under significant financial pressure. And his refusal to loan them money or aid them financially created an animus.

We believe that that would therefore be admissible, may the Court please, in regard to bias.

THE COURT: That is with regard to bias?

MR. HARWELL: Yes, sir. Judge, if you go to somebody and you are really in trouble financially, and you ask for help, and they say I am not going to help you, it is not unusual, given human nature, for them--for the borrower or the intended borrower to despise he who refused.

THE COURT: But the jury has heard her admit that she was in debt.

MR. HARWELL: Yes, sir.

THE COURT: The jury has heard her say she went to Edgar and asked for a loan.

MR. HARWELL: That's right.

THE COURT: And the jury has heard

her say that Edgar wouldn't let them have it.

MR. HARWELL Yes, sir.

THE COURT: And the jury is going to hear read to them from the avowal that she owed taxes during that period to the State of Kentucky and to the IRS.

Now--

MR. HARWELL: (Interrupting) Then Your Honor is ruling that will go to the jury.

THE COURT: Yes, sir.

MR. HARWELL: All right.

THE COURT: That goes to the jury; but nevertheless, are you contending something else other than that should go to the jury?

MR. HARWELL: Yes, sir.

THE COURT: Are you contending that the taxes, how much property they had, and each specific debt--are you contending that ought to go to the jury?

MR. HARWELL: No, sir. No, sir. Only that which I have questioned her about this morning. Nothing else on that, number one.

THE COURT: All right.

MR. HARWELL: Moving on with the Court's directions, number two, that is the Arlie Potter

fire, may the Court please.

THE COURT: All right.

MR. HARWELL: That fire occurred on January 29, 1981.

THE COURT: All right.

MR. HARWELL: May Your Honor please--

THE COURT: (Interrupting) Before this happened?

MR. HARWELL: Yes, sir.

THE COURT: All right. Go ahead.

MR. HARWELL: Slightly over a year before the instance at Ray-Mac. We believe that to be admissible. It involves, may the Court please, arson. It involves insurance fraud. It involves dishonest conduct. We believe that that is admissible under Rule 608(b), specific instance of misconduct. It is probative of-- Truthfulness or untruthfulness may be inquired into on cross-examination of the witness.

We also believe, may the Court please, the Government opened the door on that, though they say it was inadvertent-- And it may or may not have been-- Regarding the testimony of this witness concerning her being a loving mother and a good wife to a brutal man.

COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

In addition to that, may the Court please, it is our position that she is immunized under the plea bargain agreement; and under certain statements to which I earlier made reference given by state arson investigaor, J. B. McKensie. I believe also as a basis, may the Court please, for admissibility that 405(b) should be viewed in that it provides that proof may be made of specific instance of conduct or character, traits of character as an essential element of a charge or defense. It is an essential element of our defense that we convince this jury that this woman just isn't honest, Your Honor.

****

MR. HARWELL: In addition, may the Court please, we think under 404B that this is admissible to show her state of mind and motive and intent - -

THE COURT: (Interrupting) Intent of what?

MR. HARWELL: She has consistently, Your Honor, during the course of my examination try to say as to a number of acts, Phillip made me do it, Edgar had made me do it and taking the responsibility of very little on her own.

The Arlie Potter fire - -

THE COURT: (Interrupting) I don't get the intent.

MR. HARWELL: All right, may the Court please, this woman - -

THE COURT: (Interrupting) Witness's intent for her commission of the fire.

MR. HARWELL: May the Court please. She has admitted to this Court that she committed certain crimes. But she has attempted in most instances regarding those admissions to say well, that would because Edgar made me do it, he had us on a string or I did that one because if you'd know my husband like I know him, I had to do that.

The Arlie Potter fire goes

to show her state of mind or motive where she is perfectly capable of going out and committing crimes that are not initiated in or triggered or caused to be committed by anyone else.

MR. SELF: Your Honor, he has no good faith basis for making that statement.

THE COURT: All right, that will be by avowal. Go ahead.

MR. HARWELL: That's the J. B. McKensie fire, if Your Honor pleases, 608B, 404B, 405B.

May Your Honor please, as to the next one the Jack's Creek fire of March 21 of 1980. May the Court please, we believe that that is admissible in regards to arson. In regards to insurance fraud. In regards to false swearing under oath as to the April statement that's been made in avowal exhibit in this matter.

We believe may the Court please that it's the Federal Rules of Evidence that that should go to the Jury under 404B, 405B and most especially may the Court please, 608B which addresses itself to specific instances of misconduct appropriative of truthfulness or untruthfulness may be inquired into on cross-examination of the witness.

THE COURT: Let me ask you this. In inquiring as to the truthfulness or the untruthfulness of the witness how many instances should the Court let in, one or a hundred?

MR. HARWELL: Judge, you shouldn't let a hundred in. We were talking about that last night having dinner and saying, you know, if certain lawyers saying if I was the Judge I would let in X or Y or Z and that matter is within Your Honor's discretion as to how many comes in.

That is certainly one as the Court saw fit to come in and should - -

THE COURT: (Interrupting) What's the number between one and a hundred?

MR. HARWELL: Sure, Your Honor, there's not a hundred that we've got here. If there was a hundred and five though I'd take the hundred to the hundred and five Your Honor.

THE COURT: The only reason you don't have a hundred is because your investigator didn't find a hundred?

MR. HARWELL: Pretty close to it, Your Honor, I have left out a number of them here because Your Honor wants to move along and I want to move along and I'd like to get to see my family.

But Judge, let me say this in response. There are a number of other things which we are aware of that we didn't go into because I think that these are significantly blatant and they're the ones I want the Court to direct me to move on.

THE COURT: Please move on.

*** *** ***

MILLERS FALLS
EZERASE
COTTON CONTENT

MR. HARWELL: Yes, sir.

For the record, Your Honor, I'll say that that fifteen thousand or a hundred and fifty dollar check is part of the Jack's Creek situation. I don't know if the record is clear on that.

May the Court please, the next one which I think Your Honor will probably have noted as number three is the burning, the arson of a trailer concerning or owned by Fern Hall. And may the Court please it's our position that that is admissible for reasons similar to that of Jack's Creek fire.

The jury is entitled to know about that, --

THE COURT: (Interrupting) Would that be the same thing?

MR. HARWELL: Yes, sir, except for one thing. May the Court please, there was no insurance payment made with regards to the Fern Hall trailer case to Phillip or Pearl Booth.

May the Court please the next one is the 1977 Lincoln Continental which later became during the course of my questioning car arson.

With regard to car arson,

it is our position that arson was committed on certain automobiles or the purpose of that arson was to defraud insurance companies and that there were lies told. Judge, I don't know of any under oath, that is perjury, but lies rather told in regards to that matter or those matters and moneys were paid.

We believe that is admissible for reasons previously stated in regards to the Jack's Creek fire situation.

May Your Honor please as to the black Cadillac Coupe de Ville I don't know if there was arson or not arson involved. It's our position that that is admissible, assuming she answers the questions in that that automobile was purchased in 1981, April as I recall of 1981, sometime relatively short period thereafter there was a insurance policy obtained on the car, there was a report to the Clark County Police Department that the car had been stolen when in truth and fact it had not been stolen. And that there was insurance fraud on that car. And we think, I don't represent this, but we think that when Mr. and Mrs. Booth became concerned about the insurance fraud that they had the car dumped in a slate pit overlooking

Wheelwright, Kentucky under two feet of slate and five feet of water.

In addition to that, may the Court please, there is in telling of that as I've made reference false statements made to the police agencies as to that Cadillac. We believe for reasons previously stated concerning Rule 608B, 404B, 405, 611B that that is admissible.

In so far as the violence, Judge, which I have somewhat lumped together, we believe that is admissible, may the Court please, under 608B.

THE COURT: As to the truthfulness or untruthfulness?

MR. HARWELL: Yes, sir. The truthfulness and untruthfulness . And also, Your Honor, as to 405B -- 404B, excuse me, in regards to the evidence of other wrongs to show proof of the motive, opportunity and intent.

That is state of mind, Your Honor, that this woman is not a quiet laid back demur housewife as compared to certain historical instances of violence.

May the Court please, in regard to the making of people miserable, getting

getting even with them, getting even with people who make Ms. Booth's life miserable. We believe that that is a common trait of this lady and goes to her bias in regards to Edgar Jones. We also believe it ties in and reflects back on the fact that she and her husband were in financial trouble and the two went to Edgar Jones thinking and hoping there would be financial help and did not get any.

May the Court please, she has denied the hallucinations. She has denied the lack of memory.

May the Court please, in regards to Valium, it's my understanding from physicians that Valium taken in significant doses can cause several things.

Number one; a quasi-comatose situation where a person can function in society but can not function in recall, what happened during that functioning while on Valium.

Secondly; a heavy dose of Valium, may the Court please, on advice of physicians may cause memory losses or lapses on a sporadic or block basis. We believe that's admissible obviously, Your Honor, it goes to her memory.

May the Court please, you I think were making a list and have number five, have I covered all of those, Your Honor, I don't want to leave any out because I obviously believe that all of them should be admitted by the Court. I state as a basis 404B, 405B, 608B, 609, and 611.

THE COURT: It has been admitted by avowal. The Court will do this.

We'll change the procedure. I will not let the reporter read back. The Court will state to the jury that out of the presence of the jury and on matters on avowal, the jury will be advised that during 1982 that Ms. Booth and her husband were in debt. That they owed taxes to the Commonwealth of Kentucky --

THE WITNESS: (Interrupting) To the federal.

THE COURT: That she owed taxes -- she owed considerable, I think we can say substantial taxes to the United States and to the Commonwealth of Kentucky.

I will further state to the jury that out of their presence inquiries were made of the witness with regards to alleged instances of arson and that she took the Fifth

Amendment as to those.

MR. HARWELL: Fair enough.

MR. SELF: We would strenuously object to that --

MR. WALBOURN: (Interrupting) Your Honor, I'm sorry, but Mr. Self is doing it again.

MR. SELF: I'm sorry.

We would strenuously object to any admonition by this Court about this witness taking the Fifth Amendment on matters which are totally impermissible to be asked under the Rules.

I ask Your Honor for what reason could those questions even be asked in front of the jury would be violating this witness' rights.

I call the Court's attention to a case in Lexington where the former Governor of the Commonwealth of Kentucky took the stand and was asked whether he was ever the Governor and he took the Fifth and that wasn't even allowed to go through the jury.

How is her answers to those questions here -- in taking the Fifth Amendment, why anybody can see that that can be appropriate or relevant to this case, Your Honor.

THE COURT: That's what I want to know.

MR. SELF: That's extremely prejudicial to the United States. It's already been plastered all over the public domain now and she has denied a lot of them, and there's no basis for the others.

But I'm certain that the jury will imply -- it will imply to them -- they're common people, Your Honor, and to take the Fifth they may assume or take some assumption that they're not entitled to. I submit to the Court that the Court -- it would be extremely prejudicial to the United States, Your Honor, and incorrect admission of evidence under the Federal Rules of Evidence for the Court to admonish the jury in regards to the latter matter of her taking the Fifth Amendment.

This forces me, Your Honor, to ask her questions on redirect about this.

THE COURT: I don't think you will.

MR. KIRKLAND: I have a separate motion.

THE COURT: What?

MR. KIRKLAND: I have a separate motion, Your Honor, I thought he was finished.

Dale Soergel Moore Shaw & Associates
COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE KENTUCKY 40206
(502) 587-6006

THE COURT: All right.

MR. SELF: May I request the Court to state --

THE COURT: (Interrupting) Let him finish. Does anyone else have anything?

MR. KIRKLAND: I do, Your Honor.

On behalf of my client specifically, I move for an Order which allows the defense counsel to go into the following matters in front of the jury.

Number one, all insurance frauds.

Number two --

THE COURT: (Interrupting) He's already covered that.

MR. KIRKLAND: I'd like to make my motion, it's slightly different, Your Honor.

Her hallucinations or other manifestations of aberrant activities on her part. The use of Valium or other such drugs in 1982 and fourthly, the false police reports.

I think clearly all of these acts indicate either a lack of ability to factually and truthfully testify or a limited ability or limitation on her ability to factually

and truthfully testify under oath in this case.

I think under 608B they clearly are relevant and I respectfully move the Court for an order allowing the defense counsel to go into these four specific areas which are extremely appropriative as to her truthfulness. I think these are the exact kinds of things that defense counsel ordinarily go into and should be allowed to go into and do reflect upon her character and truthfulness, and they do show her ability to testify factually and truthfully in this case.

THE COURT: Anyone else, gentlemen?

MR. BRANSON: I would like to specifically join in Mr. Kirkland's motion.

MR. SPENCER: It's my understanding that she's talked about taking some yesterday. From her testimony -- is that correct, yesterday, if she's been under any medication while she's been testifying, I move to advise the jury.

Any sedatives at all.

THE COURT: All right.

MR. THOMAS: Your Honor, David Thomas. I assume, Your Honor, that we are allowed to go into that either on avowal now --

COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

THE COURT: (Interrupting) Go into what?

MR. THOMAS: What kind of medication. It goes to her ability to -- and competency to testify. It's like when someone's pleading guilty and you ask them if they're on drugs or something that would prevent them from knowingly and understanding what they're doing.

And I would like to specifically join with Mr. Kirkland.

THE COURT: Okay, they're all noted and overruled. I'm going to advise the jury like I said.

MR. SELF: Your Honor, I'd like to also renew my objection on the Court's admonition under Rule 605.

THE COURT: Sir?

MR. SELF: I would like to renew my objection on the admonition under Rule 605.

THE COURT: All right.

MR. HARWELL: May the Court please, I would respectfully move the Court to compel the United States Government to grant this witness immunity as to all acts in regards to the questions that she was asked in the courtroom.

THE COURT: All right, let that be noted and overruled.

All right, gentlemen, we will be in recess till one o'clock.

(Reporter's Note: Whereupon the Court was called to recess at 12:06 P.M.)

****

MILLERS FALLS EZERASE COTTON CONTENT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

UNITED STATES OF AMERICA

-vs- CASE NO. 83-8

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

****

TRANSCRIPT OF TRIAL

****

BEFORE: THE HONORABLE G. WIX UNTHANK

DATE: FEBRUARY 23, 1984

VOLUME THIRTY-NINE

Dale Soergel Moore Shaw & Associates
COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

INDEX

PEARL BOOTH

Cross-Examination by Mr. Harwell:	pgs. 163-169
Redirect Examination by Mr. Self:	pgs. 170-261
Recross Examination by Mr. Harwell:	pgs. 261-280
Recross Examination by Mr. Walbourn:	pgs. 280-283
Recross Examination by Mr. Kirkland:	pgs. 284-291

WENDALL RAY NEWMAN

Direct Examination by Mr. Dause:	Pgs. 312-334
Cross-Examination by Mr. Harwell:	Pgs. 334-

EXHIBITS

Government's Exhibits 108 and 109:	Pg. 334

A P P E A R A N C E S

For the United States of America:

THOMAS L. SELF, ESQ.
Assistant U.S. Attorney
CHARLES L. DAUSE, ESQ.
Assistant U.S. Attorney
RANDY KEHRLI, ESQ.

For the Defendant Edgar A. Jones:

AUBREY B. HARWELL, JR., ESQ.
ALBERT F. MOORE, ESQ.
JERRY A. PATTON, ESQ.

For the Defendants Benny Caudill, Harold Moore, Hermit Newsome, and Mose Mead:

E. J. WALBOURN, III, ESQ.

For the Defendant Tim Milan:

DAN ROWLAND, ESQ.

For the Defendant Eugene Tackett:

DAVID THOMAS, ESQ.

For the Defendant Pebo Gayheart:

THOMAS K. HOLLON, ESQ.

For the Defendant Donahue Halbert:

HERSHEL BRANSON, ESQ.

For the Defendant Linville Mosley:

LOWELL E. SPENCER, ESQ.

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

BERNARD PAFUNDA, ESQ.

For the Defendant Ranny Blankenship:

ELDRED E. ADAMS, JR., ESQ.

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

WILLIAM D. KIRKLAND, ESQ.

REPORTER'S NOTE: The Court was called to order at 1:04 P.M.

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

THE COURT: Alright, Gentlemen. I will give my admonition upon the conclusion of all of the evidence with regard to this witness.

Are we ready to proceed with redirect examination?

MR. SELF: Your Honor, I perceive if the court does it that way we are opening up a recross and redirect totally again into those matters.

THE COURT: No, sir. Those matters which we heard by avowal aren't in evidence.

MR. SELF: Well, the court is proposing to place them in evidence through it's instruction to the jury.

THE COURT: Well, you proceed with your direct examination, redirect - -

MR. SELF: (Interrupting) It is my understanding that after I do the court is then going to advise the jury about the witness's tax

difficulties and alledgedly some arson.

THE COURT: I would advise the jury that she had already admitted they were in debt.

MR. SELF: Sir.

THE COURT: I will advise the jury that part of those debts were taxes to the Commonwealth of Kentucky and to the United States.

MR. SELF: I had planned, Your Honor, on asking her specific questions about who it was - - what individuals were responsible for those taxes.

My understanding of the court, Your Honor, it is my understanding that agents of Edgar Jones were responsible for administration - -

THE COURT: (Interrupting) Alright. We will leave the whole matter of the taxes up - - you go into it, he goes into it. Now, do your direct.

MR. SELF: My point was, Your Honor --

THE COURT: (Interrupting) I understand your point. You are wanting me to instruct you of what I am going to do so you can proceed with your redirect examination.

MR. SELF: Yes, Your Honor.

Dale Soergel Moore Shaw & Associates
COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

THE COURT: I have instructed you. The matter of taxes is over. I am going to permit him to go back into it.

I will permit them to go back into whether or not in '82 she was taking drugs, and whether the extent that she was taking drugs when this occurred.

Now, I am only concerned with when this occurred, gentlemen, not before, not after. Was she taking drugs while this occurred, and whether or not she was taking drugs, while you are testifying Ma'am, it is all bearing on your present - - you understand, your present capacity and mental capacity at that time?

THE WITNESS: Yes, Your Honor, I am willing to be examined by a psychiatrist or anybody.

THE COURT: No - - well, they are going to be permitted to ask you that. Let's go, gentlemen, Bring the jury up.

MR. SELF: Continuing with the cross examination, is that it?

THE COURT: Do you want to go back into it? Which of you wants to go back into the - - just go back into the taxes, and if you want, go back into it. Go back into the drugs during that period

but that is it.

MR. HARWELL: May the court please, If I understand, Your Honor, that which came out during the course of avowal is not to be touched by the prosecution or the defense in this case?

THE COURT: Al right.

MR. HARWELL: Except your're saying, Mr. Harwell, if you want to go into the tax matter as to the Internal Revenue Service and the Kentucky Revenue Service, you can. If you do,the government will.

THE COURT: If you do it, then the government will, right.

MR. HARWELL: You are saying likewise if you want to go into the drugs you may, then I will let the government.

THE COURT: Right. Now let's don't get this comment in. You did it before the avowal and the avowal, that is fine. We realize your father is a doctor, you know, and that is - -

MR. HARWELL: (Interrupting) Did I say that, Judge, during the avowal?

THE COURT: No, you didn't say that, but you said well I am aware that drugs come in

different sizes, etc, which reflected you had some expertise in it. But don't do it before the jury.

MR. HARWELL: I am saying, Your Honor, in an effort to lay the ground work and to get an answer as to the size.

THE COURT: Yes, sir. But in laying the ground work to get that, you are stating evidence.

MR. HARWELL: Judge, Just for the record, that didn't come from a father. That came from a Physician Desk Reference, because I couldn't get him on the phone.

THE COURT: No. But a attorney may come in feeding questions that from a sometimes get into evidence, let's don't do that.

MR. HARWELL: If, say. May the court please, if I am understanding Your Honor, you are putting the ball in my court and that of these other defense attorneys in these two areas as to whether I do or don't wish to. If I don't, they don't, is that right?

THE COURT: No comments. I am giving you the opportunity to do it.

MR. HARWELL: And if I do, they can cross examine on that topic. But - - on redirect. But if I don't get into it, they don't get to stand up on redirect and go into it since I haven't asked any questions in front of the jury, is that right?

THE COURT: If you haven't, they can't do it, that is right.

MR. HARWELL: Al right, may the court please, I will exercise my options as to the drugs, and I would like permission to continue my cross examination since Your Honor is allowing me to do so when the jury is brought back in, if I may.

THE COURT: Okay.

MR. HARWELL: Thank you, Your Honor.

THE COURT: Now, on the specific acts of criminal conduct, that is out.

MR. HARWELL: Yes, sir, You told us Your Honor, on that. I am not going to get into that, Judge, only on the drugs, Your Honor.

MR. ROLLAND: Do I understand you to say when you first started talking about this, that we could inquire into the time frame of the Ray - Mac incident, and also as to whether or not she is taking drugs now?

THE COURT: Whether she is taking drugs now.

MR. ROLLAND: Thank you, sir.

THE MARSHALL OF THE COURT: Are we ready for the jury, Your Honor?

THE COURT: Yes, see. Do you understand that, Mr. Justice?

MR. JUSTICE: I do.

THE COURT: Do you want to come up here and sit by your clients?

MR. JUSTICE: Not at this time, Your Honor.

THE COURT: Al right.

*** *** ***

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

THE COURT: All Defendants and counsel are present?

THE MARSHALL OF THE COURT: That is correct, Your Honor.

THE COURT: All right. Mr. Harwell, you may or any of the Defendants may proceed with further cross-examination.

MR. HARWELL: Might I go first, Judge.

THE COURT: (Judge Unthank nodding head in the affirmative)

MR. HARWELL: Judge, can Mr. Moore come over?

THE COURT: Yes, sir, he certainly may.

CROSS-EXAMINATION (Resumed)

BY MR. HARWELL:

Q Ms. Booth, let me ask you some questions, if I may, Ma'am, consistent with His Honor's directives.

Ms. Booth, in 19 hundred and 82, you were taking a tranquilizer drug known as Valium, were you not?

A. I couldn't be for sure exactly what time. Sometimes I would take some Valiums, but very few.

Q. All right. And Ma'am, specifically in regard to the week of February 15 and February 22 of 1982, you were taking Valiums, were you not?

A. Will you ask that again? I'm sorry.

Q. Yes, Ma'am. I want you please, Ma'am, to focus your attention on February 15, and February 22 at this time. Think about that time period in your mind.

And I ask you as to that time period, is it not a fact that you were taking Valiums?

A. I don't think I was taking Valium that week. I don't know for sure.

Q. Did you have Valiums that week in your home?

A. It's possible. I think my little girl had to be on Valiums. She is sick.

Q. And you had been on Valiums prior to that time, had you not?

A. Prior.

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

Q. And you had obtained Valiums prior to that time, had you not?

A. Yeah.

Q. All right. And as a matter of fact, you also had been on and had obtained Valiums after that time, after that week of February 15th, had you not?

MR. SELF: Your Honor, I'm going to object. This is going beyond what the Court permitted.

THE COURT: Well, overruled at this point. You may ask her about it.

MR. HARWELL: Thank you, Your Honor.

Q. Do you remember my question, Ma'am? After the week of February 15th, 1982, you had taken Valiums. Isn't that correct?

A. Maybe a couple of few times.

Q. All right. Now, is it not a fact, Ma'am, that you are aware that Valiums come in different sizes, different strengths, if you will?

A. Yes, sir.

Q. All right. And is it not a fact that the size or strength of Valiums that you were taking were the stronger size or strength of Valiums?

A. What do you mean by that?

Q. Fifteen milligrams. Do you know what size you were taking, Ma'am?

A. You said fifteen milligrams?

Q. Yes, Ma'am.

A. Sir, I don't know of - - I didn't know they come in fifteen milligrams. I am sorry.

Q. All right. What size do you know they come in?

A. Well, my little girl was on two milligrams.

Q. Yes, Ma'am. And what size, if you know, did your Doctor prescribe for you?

A. I remember a two milligram my little girl was taking.

Q. Yes, Ma'am.

A. And possibly a five milligram.

Q. Five for you or five for your little girl, Ma'am?

A. Me.

Q. For you. And do you remember when it was that you got five milligram Valiums?

A. Sir, I don't know exactly

when the Valiums - - it may well have - - I didn't take so many Valiums - - okay, I don't remember.

*** *** ***

Q. All right. And that there came a time, did there not, when you obtained Valiums other than from your physician or pharmacist. Is that correct?

MR. SELF: Objection, Your Honor.

THE COURT: Sustained.

MR. HARWELL: In 1982, Your Honor. I should have put that time period in. In 1982.

MR. SELF: I asked for an admonition, Your Honor. The Court stated what areas we were allowed to go into, and that was not one of the areas, Your Honor. And I ask for an admonition.

THE COURT: Well, overruled. Let her answer.

Q. Will you answer the question, please, ma'am.

A. I don't really think-- Now, this is as I remember. This is in 1982 you asked. Right?

Q. (Nodded his head.)

A. Okay. What I got, I didn't get outside sources as I recall.

Q. As you recall now?

A. In '82.

Q. All right.

A. '82 is when I was arrested.

Q. I am sorry, ma'am. I didn't hear you.

A. I am sorry. I shouldn't have spoke up. Excuse me. I said excuse me. I shouldn't have spoke up.

Q. Yes, ma'am. And were you, ma'am, in 1982, taking any other drugs that would be properly classified as a prescription, that is drugs you could obtain by purchasing them from a drugstore or a pharmacist without a doctor's order.

A. Sir, I don't recall any.

Q. Do you recall none?

A. You know, unless you have got records, I don't recall any.

Q. I see. Let me be more specific with you, Ms. Booth. Other than the Valium that which you told this Court and this jury, in 1982, did you take any other drugs that would be known commonly as tranquilizer-type drugs?

A. I am trying to recall. I don't recall any.

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

THE COURT: All right. Any questions?

All right. Are you ready for your redirect?

MR. SELF: Yes, Your Honor.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. SELF:

Q. Ms. Booth, they are accusing me of mumbling. So if I start mumbling, will you just ask me to speak up. If you don't understand my question ask me to repeat it.

A. Yes, sir.

Q. Ms. Booth, you and I have talked a number of times since before you came on this stand, did we not?

A. Yes, sir.

Q. And do you know what the word coaching means outside of a sports event?

A. Yes, I do.

Q. What does it mean to you?

A. It means someone telling you exactly how to do and what to do.

Q. Did I ever coach you on being a witness?

A. No, not as I would say,

you didn't. I didn't take it that you did.

Q. Did I ever tell you what to say on this witness stand?

A. No, you did not.

Q. Did I tell you one thing to say?

A. You told me to tell the truth and nothing but the truth.

MR. SELF: Madam Clerk, would you hand the witness what has been marked for--introduced as Edgar Jones' Exhibit No. 11.

Q. Do you see that--have that in front of you, Ms. Booth?

A. Yes, sir.

Q. And you testified under cross-examination that you recognized your signature on there dated October 18, 1982, do you not?

A. Yes, sir.

Q. And is that document entitled plea agreement?

A. Yes, sir.

Q. Would you read that to the ladies and gentlemen of the jury, Ms. Booth?

A. The whole thing?

Q. Yes, ma'am.

A. This plea agreement entered into between the United States of America and by and through Thomas L. Self, Assistant U.S. Attorney for the Eastern District of Kentucky, and Phillip Gene Booth and Pearl Booth in person and by their attorney, C. B. Creech.

This agreement constitutes the entire plea agreement between the United States and Phillip Gene Booth and Pearl Booth.

The United States agrees to charge Phillip Gene Booth and Pearl Booth by information with the felony crime of conspiracy to engage in the business of dealing in explosive materials without a license to do so in violation of Title 18, United States Code, Section 371.

The United States makes no agreement, nor will it make any recommendation as to the sentence which may be imposed by the Court as to Phillip Gene Booth.

The United States agrees to recommend to the Court at the time of sentence that Pearl Booth be sentenced to no more than six months in jail. All parties hereto hereby state, understand, and agree the sentence court--the sentencing court is not bound or required to follow any

recommendations made by the United States and may sentence Phillip Gene Booth or Pearl Booth to not more than five years or--and/or a ten thousand dollar fine or both.

The United States agrees that no testimony, statement or other information given by Phillip Gene Booth and/or Pearl Booth or the information directly or indirectly derived from such testimony, statement or other information while cooperating with the United States in the course of its investigations of the activities of Ray-Mac Mining Company will be used against Phillip Gene Booth or--and/or Pearl Booth in any criminal case is said prosecution for perjury or giving a false statement.

The United States will advise the Court at the time of sentence as to the nature of and extent of cooperation of Phillip Gene Booth and Pearl Booth.

The United States agrees to recommend oral ...

Q. Is that oral recognizance?

A. Yeah, bond to their appearance before the Court.

Phillip Gene Booth and Pearl Booth agrees to waive indictment and to enter

a plea agreement to one count of conspiracy to engage in the business of dealing in dynamite without a license to do so in violation of Title 18, U.S. Code, Section 371.

Phillip Gene Booth--

MR. HARWELL: (Interrupting) May the Court please, I would respectfully ask that the misstatement which I am sure was inadvertent to that paragraph be made clear, the precise language, that it be re-read by the witness.

****

Dale Soergel Moore Shaw & Associates
COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

Q. Would you reread paragraph eight, Ms. Booth?

A. Well, I am sorry if I made a mistake.

Paragraph eight: Phillip Gene Booth and Pearl Booth agrees to waive indictment and to enter a plea of guilty to one count of conspiracy to engage in the business of dealing in dynamite without a license to do so in violation of Title 18 U.S. Code Section 371.

Go ahead?

Q. Please. Read number nine.

A. Phillip Gene Booth and Pearl Booth agrees to testify truthfully under oath if requested in any and all proceedings involving charges which may be brought by the United States or Commonwealth of Kentucky concerning events beginning on or about February the 12th, 1982, concerning Ray-Mac Mining Company or other matters within their knowledge which may have occurred since that day relating to violations of Federal or State Law.

Phillip Booth - - Phillip Gene Booth and Pearl Booth agrees to forfeit any and all interest, rights, or ownership they may have or have had in any and all explosives, firearms, or

ammunitions which was seized on August 28th, 1982.

A violation of any part of this agreement by any of the parties hereto will result in the entire agreement being null and void at the option of the other party.

Q. And it is your signature thereon, Mrs. Booth.

A. Yes, mine is.

Q. And is that the entire plea agreement between you and the United States?

A. Yes, sir.

Q. And you were charged with the one count in that conspiracy to engage in the business of dealing in dynamite, were you not?

A. Yes, sir.

Q. And that is what you are serving your time for right now?

A. Yes, sir, I am serving it.

Q. Do you recognize and does it not state in there that you are not immunized from any perjury or false statement?

MR. HARWELL: May the Court please, I object to the leading nature of the question.

THE COURT: Well, overruled.

*** *** ***

Q. Do you realize that you're not immunized from any perjury or giving false statements under oath?

A. Yes, sir.

Q. Did you recognize that before you took the stand in this trial, did you not?

A. Yes, sir.

Q. Going back to our conversation.

When we talked Sunday down at the Pike County Jail, did you have with you when we talked your Grand Jury testimony and your other testimony at the minihearing?

A. Did I have it Sunday?

Q. Yes, did you have it with you when we talked?

A. I didn't have it at the time, you brought it to me or something.

Q. We did not go through that line by line or page by page, did we?

A. I don't even think we looked -- I don't even think you looked over it with me. I don't even recall you looking it over with me.

Q. During that conversation, Ms. Booth, or any conversation that I had with you or any of these gentlemen, did I ever tell you that you were a "star witness"?

A. No, and I'm not treated like one.

Q. There's no star on your jailhouse door down there, is there?

A. No, and behind those bars don't feel good.

Q. In the course of those discussions, Ms. Booth, did I ever tell you what any other witness that has testified in this case had testified to?

A. No, sir.

Q. Did I ever tell you what any of these gentlemen had said about you on direct examination of any witness or cross examination or in their opening statements?

A. No, sir.

Q. Did I ever show you or ask you to read the testimony of any other witness in this matter or any other matter?

A. No, sir.

Q. The notes that Mr. Pafunda

asked you about last night that were turned over to him and defense counsel, did you ever show me or let me read those notes?

A. No, sir --

MR. PAFUNDA: (Interrupting) Your Honor, I object. I did not question Ms. Booth from those notes.

THE COURT: Overruled.

Q. Did you ever show them to me?

A. No, sir.

Q. Didn't I tell you if you reviewed those that you would have to turn them over to the defense counsel?

A. You told me if I had notes I had to turn them over and that's why I gave them to my attorney.

Q. You kept them though after that time on Sunday, didn't you?

A. Yes, I did.

Q. Did you consider my asking you questions or questioning you preparing your testimony to be something unusual, Ms. Booth?

A. No.

Q. Why?

A. We didn't over that much. I don't think you done anything out of the way. We just talked a little. I don't understand what you mean by out of the way?

Q. Do you know if it's normal or not for lawyers to talk to witnesses before they take the stand?

A. Yeah, I would think it would be normal.

Q. Now, you say you've been down at the Pike County Jail for twenty-six or twenty-seven days. Isn't it a fact that you were down there a-waiting to be a witness in this trial?

A. Yes, sir.

Q. Did the U.S. -- the United States Attorney's Office have you sent to the Pike County Jail for any reason other than that?

A. No.

Q. And you're there pursuant to a writ and order from this Court, are you not?

A. Yes, sir.

Q. Now, Ms. Booth, the incident of 28 August 1982 out of Jenny Wiley, did you ever have any marijuana in your car, the car you were driving or in your hands?

A. No, sir.

Q. Did you ever get out of the area or did your entourage ever get out of the area before you were arrested?

A. Out of the area where we were at at the time?

Q. Yes.

A. No.

Q. And you were arrested by the agents of the ATF and the Kentucky State Police, were you not?

A. That is right.

Q. Now, do you remember when you first met Special Agent Kemp, Ms. Booth?

A. It seems like Phillip Dale brought him down to the house, but it was right after the trouble at Ray-Mac or -- right after Ray-Mac, something happened at Ray-Mac. But Phillip Dale had brought him down to our house.

Q. And did he tell you what he wanted from you and Phillip Booth?

A. To be honest -- you know, as I recall it was something about he knew something or other, but I don't remember exactly what it was.

Q. Was he attempting to

purchase dynamite from you?

A. It's possible, but see, I didn't really pay much attention to what went on with Phillip Dale and Richard and all of them at that time.

Q. Did Mr. Kemp ever supply you any drugs, Ms. Booth, or your husband that you are aware of?

A. I'm not aware of it.

Q. Did you ever supply him any or use any in his presence?

A. I don't recall any such -- no.

Q. Do you remember when you -- when you were asked about the knowledge of any union meetings prior to Monday, February the 15th? Do you remember when you first heard about any union meetings prior to that?

A. I don't remember exactly what I heard of that, and I didn't know for sure that there was one, just a little bit of talk.

Q. You didn't attend any such meeting, did you?

A. No, sir.

Q. And to your knowledge,

did your husband attend any such meeting on Saturday?

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

Q. Did he ever tell you that he did?

A. I don't think he did.

Q. Now, calling your attention in regards to questions that were asked about your and Mr. Booth's -- strike that, Your Honor.

On cross examination you were asked questions about the running of the mines and you made the statement, I went and saw Angie when she didn't do what she was supposed to do.

What was Angie supposed to do in relation to your mines, Ms. Booth?

A. Angie took care of the payroll. She figured out how much the men's checks were supposed to be and she figured out their checks.

And she was supposed to make reports to the Government, the tax returns. And a lot of times she would let them go over and

she would not have them done and I would go and tell her. And --

Q. (Interrupting) But you were responsible for them?

A. Huh?

Q. You were responsible for any payroll, though, is that correct, you and your husband were responsible for paying the men?

A. Yes.

Q. It was your obligation?

A. Yes, she just took care of the paperwork.

Q. And was she paid a salary by you and your husband?

A. Yes, sir.

Q. Was she also paid a salary, if you know, by Edgar Jones, if you know, at that time?

A. Yes, she was Edgar's secretary.

Q. You don't know whether she was paid by Edgar personally as opposed to a corporation such as JRM or JPL or some other corporation?

A. No.

Q. You never saw her check, did you?

A. No, I've never seen her check.

Q. To your knowledge, Ms. Booth, did she handle the payroll for anyone else other than you and your husband and Mr. Jones?

A. At one point she handled the Dye's payroll.

Q. Now, what companies were those?

A. Well, they were -- they worked for Edgar Jones.

Q. Is that coal -- Dye Coal Company?

A. Dye Coal Company.

Q. Did she keep books for any other coal companies of Edgar Jones', if you have knowledge?

A. I don't really have -- I don't have knowledge, but I was told that she had started for German, but I don't know.

Q. After she completed the payroll records, did she give them back to you?

A. She kept them.

Q. Now, calling your attention specifically to February 15th, 1982, you indicated and we're concerned with a second meeting with Edgar Jones, where you had gone back to him after you had been to the mines. Was there any mention in that meeting of Donahue Halbert, if you recall?

A. On Monday?

Q. On Monday.

A. I don't know whether it was Monday for sure or not. It seems like I went back there and I had ordered guns. I had ordered shells and ammunition from Donahue and it seems like -- I'm not sure whether I told him that I had ordered shells and stuff on Monday or not or it was Tuesday. It's been a --

Q. (Interrupting) Would you tell us why you ordered guns and ammunition for a union -- an alleged union organization picket line?

A. Edgar said we had to stop Ray-Mac. And he told us whatever it took.

Q. Did that mean -- did he explain the phrase what it took, to mean?

A. Well, he -- he couldn't

put up with Ray-Mac underbidding him and taking his orders because he would have no way -- the way I took it, his mines would be closed.

Q. What did he say?

A. He said Ray-Mac had to be stopped. They had to be shutdown and we had to pull our men out.

Q. Is this Monday or Tuesday?

A. Well, he said the same thing about two days in a row. But the first meeting he told us Ray-Mac had to be stopped and the second meeting he didn't, he said make sure our men is out on the picket line and Phillip was too.

Q. Now, was Phillip Booth at that time, if you know Ms. Booth, a member of Local 5967 at McDowell?

A. He was an operator, he couldn't be.

Q. And were the operators -- did the operators at McDowell have a union themselves? Did they belong to some kind of a union?

A. Not unless it was for Edgar Jones.

Q. Was Mr. Booth going out as a separate member of some labor organization to attempt to organize the operators of Ray-Mac?

A. I don't -- I don't think so.

Q. Now, to your knowledge Mr. Edgar Jones was not a member of Local 5967, was he?

A. If he was, I don't know it.

Q. Did he and your husband or you and he and your husband have some sort of labor organization where you all were attempting to organize the supervisors or the foremen of Ray-Mac?

A. I have no -- all I did -- there was no organization, Edgar just told us what to do, and we done it. He told us to pull a strike and stop Ray-Mac. That was our way of living, it was the only way we had. At that time I know I had a choice, but I felt I didn't have no choice.

Q. Then what did--ordering guns and ammunition have to do with trying to stop them?

A. Because there was a big organization and that was the only way there was to stop them.

Q. And there had been no violence when you first ordered the guns and the ammunition, had there?

A. No, but usually from way back you can recall in Eastern Kentucky when there's a strike there's always trouble, there's violence. I've even seen where they shot police cars and they turned them over and everything and it happened since I can remember.

Q. Has it ever happened in the McDowell area?

A. There's been violence in the McDowell area before but I can't go into just when. When my husband had worked for my brother there had been violence one time, they had shot at him on several occasions--

MR. SPENCER: (Interrupting) Show my objection, Your Honor.

THE COURT: I think that's a good

objection. Mr. Self, you ought to know better than to get into those things.

MR. SELF: Yes, Your Honor.

THE COURT: Here we've gone through this thing and I've told this jury five or six times, any violence which occurred in some other place has nothing to do with this.

MR. SELF: I know it does not, Your Honor.

THE COURT: Well, let's don't do that.

Q. Now, calling your attention to Monday night down at your house, Ms. Booth, you were asked on cross-examination by Mr. Harwell about whether the men were drinking and talking and you indicated they were.

A. Yes, sir.

Q. And did you supply or were you and your husband supplying all the men all the liquids they were drinking down there?

A. I don't recall who was supplying it. I did not go out and buy it for them.

Q. Did you see any of them bring their own?

A. I didn't pay any attention, Mr. Self.

Q. On cross-examination by other counsel you were asked whether this was a normal occurrence for the men to be down at your house talking and drinking and I think you indicated that it was, is that correct?

A. It was, but not as many as there was, just a few would come in, but not--

Q. Tell the jury the difference between the size of the crowds that were there during the week of February 15 as opposed to the crowd that were there before and after that?

A. There was more there during that week going on and drinking than there was before. There would be just a few before and during that week there was more.

Q. What do you mean by a few?

A. Well, usually maybe about four or so would come around.

Q. And during this period of time how many men were there?

A. About ten or fifteen possibly, maybe even more.

Q. And were all these men that were there on Monday and Tuesday and Wednesday night employees of you and Phillip Booth?

A. They all was not.

Q. Who was there that was not your employee?

A. German was there.

Q. German Stumbo, is that correct?

A. Yes. And Kenneth Rolland, he was not an employee.

I can't recall them all, but Jason was there and it seemed like Teddy was there.

Q. Was it unusual for those gentlemen you just named to be down at your house drinking with Phillip Booth?

A. Yes.

Q. Now, you indicated on Tuesday after the meeting that you had with Mr. Stumbo and Mr.--your husband and Phillip Dale Moore and Edgar Jones in Edgar Jones' office, the first meeting, do you remember that?

You indicated that Mr. Booth--excuse me, that Mr. Jones and Mr. German Stumbo left the room?

A. Yes, sir.

Q. Now, on that day or within

the next week did you ever talk with any of these defendants-- Listen to my question.

Did you ever talk with any of these defendants as to what may have transpired or occurred between Edgar Jones and Jason Moore-- German Stumbo?

I don't ask what they said but did you ever talk with any of these defendants about what may have happened between Edgar and German?

MR. SPENCER: Your Honor, show my objection until he identifies whom talked with whom.

MR. SELF: I'm trying to get at it one step at a time, Your Honor.

THE COURT: Let the objection be noted and at this point overruled.

Q. I'm not asking you who, Ms. Booth, but did you ever talk with any of these defendants about what happened between German and Edgar on that Tuesday?

A. I was told that Edgar--

Q. (Interrupting) Don't say that. Who did you talk to?

A. Jason and Teddy.

Q. And when did you talk to them?

A. It seemed like it was Tuesday or so, I don't remember exactly which day.

Q. Will you think just a minute and try to figure out was it during the week of February 15, let's say, to February 25?

A. It was during the week where this trouble at Ray-Mac.

Q. And you talked with what two individuals?

A. Jason and Teddy.

Q. Jason Moore and Teddy Kinney?

A. That's the way I recall it.

Q. You remember where the conversation took place?

A. It could have been a number of places, I ran into them all over.

Q. And specifically what did Jason Moore and Teddy Kinney tell you--

MR. HARWELL: (Interrupting) May the Court please, at this time I'd like to interpose an objection.

THE COURT: Overruled.

A. Edgar Jones had given

German Stumbo money to get his ammunition and stuff with.

Q. Did they tell you how much?

A. I'm not sure, I don't recall exactly how much.

Q. Did they say how the form--whether it was cash or check?

A. I heard something about--

Q. (Interrupting) Don't, did they tell you?

A. I'm not sure whether they told me really, I don't know whether they told me it was a check or cash.

MR. SELF: Just a moment, please, Your Honor.

THE COURT: All right.

MR. SELF: Madam Clerk, would you hand-- Mr. Marshal, would you hand the witness what's previously been marked for identification only as Government's Exhibit 104.

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

Q. Ms. Booth, if you would, do you recognize the scene that's depicted in that

photograph?

A. Yes, sir.

Q. And do you-- Is that scene as it existed in February of 1982?

Has there been any changes other than maybe the trees or the gravel to the structure as depicted therein as they appeared in February of 1982?

A. Seems like there's a little bit of difference.

Q. Do you know what that difference is?

A. It's built onto. Around the back--there used to be a fence there where the house is behind the trailer.

****

Q. For the purpose of the record, what is depicted in that photograph?

A. It's JRM office.

Q. And where is that office located?

A. At East McDowell.

MR. SELF: Your Honor, at this time I move the introduction of what is previously marked for identification as Government's Exhibit 104.

MR. HARWELL: May the Court please, no objection.

THE COURT: Being no objection, let that which has been marked as Government's Exhibit 104 be finally admitted as Government Trial Exhibit 104.

Q. Now, Ms. Booth, in February of 1982, was that the offices that you have referred to as Edgar Jones's offices?

A. Yes, sir, the trailer was.

Q. And does the building as depicted in that photograph have an additional building attached to the back of it?

A. It looks like it.

Q. Was that in existence in February, 1982?

A. Not when I was there.

Q. Okay. When you referred to going to Edgar Jones's office, is that the trailer that you went to?

A. Yes, sir.

Q. Is that where you had meeting that you previously talked about with Edgar Jones and other of these Defendants?

A. Yes, sir.

Q. Now, in questioning by Mr. Harwell and further questioning, you were asked about Jason Moore. You made the statement that he was a strong union unless his job was on the line and he was forced to do something about it.

You were further asked questions about later incidents with Jason Moore I think by Mr. Kirkland or by one of the other gentlemen.

Would you describe to the ladies and gentlemen of the Jury that incident? When did the incident that you were making reference to occur?

A. Okay. There was separate incidents.

Q. When did they occur?

A. This was after the trouble with Ray-Mac, something that happened with Edgar and Jason, they had had some kind of falling out and Edgar refused to let him - - Edgar told us not to let him haul coal from the Mines. We are given strict instructions not to let him, so we didn't.

He went and set up a picket line at JRM office. JRM tipple - -

Q. (Interrupting) Who did?

A. Jason did. Jason and some old time union men, real strong union men. They was there picketing. I don't know who else was with Jason.

Anyway, they had set it up, and I was at the mines at Bryan and Edgar called and he gave me strict orders.

Q. What did Edgar tell you?

A. He told us to get down there and stop them and make them let the trucks be dumped, you know, let the coal be dumped.

They wouldn't let the coal trucks down at the tipple at JRM.

I was mad because I said it was not right for a woman to have to go down and do it when a man should have to do that. But I had

Dale Soergel Moore Shaw & Associates
COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

to go down there, and sit with a gun, me and my husband. And another - - I think it's Ricky Johnson, I think that is who it was.

And we had to guard that tipple so those trucks could - - and Jason after a while backed off and left. But Edgar made us do that. He ordered us to do it, put it thataway.

Q. This was after the violence at Ray-Mac?

A. As I recall it, sir.

Q. Do you know if Mr. Moore is working for Mr. Jones at this time, Mrs. Booth?

A. I don't go around that area that much, I don't know.

Q. Now, in regard - - I apologize for skipping around, Ms. Booth.

In regard to February, 1982, Fall of 1981, how were you - - you were paid, were you not, by the ton for your coal that you produced, is that correct?

A. Yes.

Q. And is it not your testimony that the coal was trucked from your mine to one of Edgar Jones's tipples by contract truck drivers?

A. Yes. All except one.

COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

Q. Now, who kept the records of how much coal was hauled from your mines?

A. JRM.

Q. And did you have any way of checking those records to see whether the tonnage was correct or not?

A. Only when we go and pick up the tickets, but the guy that - - the loader men that fixed the tickets - -

Q. (Interrupting) The weight man?

A. Well, they would have someone on a loader and - - that would load it, and he would make out the tickets, you know.

Q. Now, who determined whether you had "dirty coal" or not?

A. Mr. Jones. He says he would send it off and have it checked.

Q. Did you have any control over where the samples were taken, or when they were taken, or where they were sent?

A. No, sir.

Q. Did you all send in independent samples yourself?

A. I don't recall doing it.

Q. And based on the samples that come back, did that have any economic benefit on you or economic impact on you and your husband?

A. It broke us.

Q. What do you mean?

A. That is what got us in the shape we was in. He got us down to where we didn't have money to pay taxes or anything else. We barely had enough to pay the men, let alone what was cut to be turned into the Government.

Q. Were you running dirty coal?

A. It looked as it did before.

Q. Before what?

A. Before he started cutting.

Q. Cutting, I don't know what you mean.

A. Before he started cutting out for dirty coal, saying it was dirty. Maybe on a couple or few occasions, it might have been a little bad, but it was nothing - - to me, it didn't look like it was as bad as he said it was, and I had been around it for a while.

Q. Again, jumping back to

Tuesday, February the 16th, you said at that meeting on cross, you said that we all agreed to send men into the hills to spot out a place. What did you all agree to spot out a place to?

A. How to get to Ray-Mac, and the only way to get to Ray-Mac was through their equipment and stuff.

Q. Why were you going to spot out a place to have a picnic?

A. No. They was going to picket Ray-Mac - - well, you can't picket Ray-Mac on a hill, fight Ray-Mac.

MR. WALBOURN: Your Honor, I apologize. This is rehash, not redirect. We went over this Monday, and it's repetitious and I object.

MR. SELF: On cross-examination she made the statement, partial statement that we all agreed to send men to the hills to spot out a place, and I am asking her to be allowed to complete that answer, Your Honor.

MR. WALBOURN: Your Honor, I heard that, and Mr. Self handled the questioning on that.

THE COURT: I agree with Mr. Walbourn on that particular point. Go ahead.

MR. SELF: Yes, Your Honor.

Dale Soergel Moore Shaw & Associates
COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

THE COURT: Sustained.

MR. WALBOURN: Thank you, Your Honor.

THE COURT: Go ahead, continue.

Q. At this same meeting, as the Court advised me before you answer, at this same meeting did you all agree as to what the men would be sent in the hills for?

A. We had - -

MR. SELF: (Interrupting) May the witness respond, Your Honor?

MR. WALBOURN: Your Honor, I certainly have the same objection. I have had the same objection to most of what is going on today. I thought we would get over it, and I have to object.

THE COURT: What is troubling me is you all.

MR. SELF: Let me be more specific.

Q. The meeting of February 16, 1982 at Edgar Jones's office between you and German Stumbo and Phillip Dale Moore, Jason Moore, Phillip Booth and yourself, you stated on cross examination that we all discussed going into the hills.

My question is, what did you all discuss, or agree that you were going into

COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

the hills for, or to do?

MR. WALBOURN: Your Honor, we discussed that same thing on direct examination. This is not - - redirect is not letting him take his breath and do it again, but to raise new matter covered in cross examination.

THE COURT: Well, overruled.

MR. WALBOURN: Thank you, Your Honor.

MR. SELF: You may answer, Ms. Booth.

A. To get at their equipment and get it down before they could get it down on the highway.

Because in the road there, where they went on the Tuesday, it was easy for Ray-Mac to shoot them.

But up in the hills, Ray-Mac didn't have the chance to get it down as quick up in the hills as they did out in the highway. Plus they could get their equipment.

THE COURT: You all approach the Bench.

REPORTER'S NOTE: At this time all counsel approached the Bench and whereupon the following was heard:

THE COURT: Maybe I am not remembering this correctly, but I believe in response to Mr.

Harwell she stated she didn't know who said what, did she?

MR. WALBOURN: That is correct.

MR. HARWELL: That is my recollection, Judge, yes, sir.

MR. WALBOURN: Her memory has gotten awful well.

MR. SELF: I am talking about the meeting on Tuesday, not Tuesday night, I'm talking about the meeting at Edgar Jones's office on Tuesday afternoon about the shooting in the hills, the shooting in the picket lines that came out.

THE COURT: I don't remember at any one hearing where she could remember any specific thing that anyone said.

MR. WALBOURN: Exactly, Your Honor.

MR. HARWELL: Precisely.

MR. SELF: She testified at that meeting they all agreed, one agreed and they all agreed, Your Honor, and the statement of coconspirators, if you want to attribute it to any of them.

MR. WALBOURN: Au contraire, you have got to attribute it to the person.

THE COURT: Somebody asked that statement.

Dale Soergel Moore Shaw & Associates
COURT REPORTERS
210 A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

MR. SELF: She said that they all agree to do that, Judge.

MR. KIRKLAND: We don't know who all was. She said she couldn't remember.

MR. BRANSEN: She couldn't remember.

MR. SELF: She testified to who was there and what they agreed to.

MR. KIRKLAND: It may be only the co-conspirators that are not standing trial today, Your Honor.

THE COURT: It wouldn't matter even if you would have them today, isn't standing trial. If he said it, then the rest of them done it.

MR. KIRKLAND: That is right, but they are not identified.

THE COURT: But somebody has to make the statement.

MR. WALBOURN: My objection, Your Honor, is that we covered this Monday, because she was questioned about it on cross-examination, and it does not make it a competent area of redirect.

THE COURT: Well, he brought out specifically no one had made the statement. Now, this is all redirect. He comes back on who made the statement, who adopts such, and that it would be proper

redirect.

MR. SELF: My question went to during - - was this question when I approached the answer, she partially answered the question and didn't get allowed to finish it.

THE COURT: Go back over it again.

MR. SPENCER: It's a waste of time.

MR. WALBOURN: I would like an admonition that this is not rehash, this is redirect. If Mr. Self is inquiring as to new matter brought up on cross, he is certainly entitled to go back into it, but not on the guise and say Mr. Walbourn said or Mr. Harwell said that, does not make something competent for redirect.

If she testified on direct examination that the American flag was red, white and blue, I say on cross-examination didn't I understand your testimony to be that the flag was red, white and blue.

Mr. Self cannot come back on redirect and say now, Mr. Walbourn asked you on cross-examination what the color of the flag was.

THE COURT: Well, that is true.

MR. SELF: Well, I realize that, Your Honor. If she is allowed to answer the question on

Dale Soergel Moore Shaw & Associates
COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

cross-examination, I am entitled and should be allowed to have her answer it on redirect.

MR. KIRKLAND: By our calculations on direct examination, this witness testified approximately fifteen or sixteen times that, "Edgar Jones said the only way you could get to the Ray-Mac people is through their equipment."

I know that was said at least fifteen or sixteen times. There is no need to have it brought out.

It's been brought out four more times, I believe, in rehash, Your Honor.

MR. SELF: I think the Court will remember some of the questions I didn't ask her. I was trying to get into why they went into the hills, why they were going to find a spot.

MR. KIRKLAND: Then she is not responsive to his questions if she just automatically answers these things.

THE COURT: (Interrupting) Go back and ask your questions, go ahead.

REPORTER'S NOTE: End of Bench conference)

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

THE COURT: You may proceed.

MR. SELF: Do you remember my last question, Mr. Booth, or do you want me to restate it?

A. Just to be safe, go ahead and restate it.

Q. The meeting that you had on Tuesday morning with Edgar Jones, your husband, Philip Dale Moore,German Stumbo, and Jason Moore, do you remember that meeting?

A. Yes, Sir.

Q. Were there anyone else present.

A. That is all I recall.

Q. You remember someone making a statement that you made the statement that we were all discussing going into the hills? Do you remember that testimony?

A. Yes, sir.

Q. Do you remember who made that statement?

A. We all were talking. It was Jason talking, Edgar talking. We was all talking. We joined in together talking. We agreed Ray-Mac

had better guns, better than we.

Q. Let me ask you if you all agreed and you stated that you were going into the hills?

A. Yes.

Q. My question is, what did you agree that you were going into the hills for?

A. To stop Ray-Mac.

Q. Stop Ray-Mac from what?

A. To shut them down and from producing coal. And the purpose was to shut Ray-Mac down because they had underbid Edgar.

Q. What do you mean by the term - - or what did you all state that the term shut them down meant ?

A. Just close the mines down, that is the way I would - -

Q. (Interrupting) Is that what you mean? If it is, that is fine.

A. Well, Just that they had to be closed down, they had to be stopped.

Q. Was there any discussion that you were going up to the hills to try to get them to sign union cards or union contracts?

A: I don't recall any such thing as a contract named.

Q: Now, the photograph that Mr. Harwell showed you of your former residence of McDowell, when is the last time you saw that house?

A. It has been a long long time.

Q. Have you ever seen that house in the condition that is depicted in those photographs before?

A. No, sir.

Q. Did those photographs accurately reflect the location the driveway and fences as it was in February of 1982?

A. I think the fence was shoved down around it - - could I see the photographs again before I answer that?

Q. Yes, please.

MR. SELF: That would be Edgar Jones exhibit 10A - H. (Witness viewing photographs).

A: (Continuing) Yes, the fence is down. It's gone.

The weeds are all the way around it. The pool is missing. The door, it looks like the windows, it looks like the windows are out. The garage door is not there.

MR. KIRKLAND: I object on the basis of relevancy. She is not accusing these people of tearing her house up, it's just not relevant.

THE COURT: Well, I think I stated originally the purpose is merely to show the location of the doors and windows, and what was the bedroom, what was the kitchen, what was the living room.

MR. SELF: My understanding is the court allows them to show where the men were during the meetings on Tuesday and Wednesday.

THE COURT: Where the men were.

MR. SELF: Then I move to strike those other photographs that don't depict those, Your Honor.

THE COURT: Let your motion be noted and overruled. I think the jury understands the difference between pictures and the purpose they are in there for.

*** *** ***

Q. Back to the house, Ms. Booth. Was there a sliding glass door that led into the backyard?

A. Yes.

Q. Was that out of the family room?

A. Yes.

Q. And were the windows at the front of the house, or the front of the house that looked over into the front of the yard?

A. In the front of the house, yes.

Q. What are those windows into, do you remember?

A. Pardon me?

Q. What room are those windows from?

A. The ones in the front of the house?

Q. Yes.

A. The ones in front of the house is in the living room, and the one as you go on -- as you are looking at it as I am?

Q. If you are looking straight in the front door.

A. Okay. On the left hand side is the living room. On the right hand side window is a bedroom.

Q. Whose bedroom is that?

A. That was my son's.

Q. And could you see from the family room or the kitchen out those living room windows out into the front yard?

A. No, sir.

Q. There is a wall between the family room and the kitchen and the living room area?

A. Yes, sir.

Q. Was that the same house that Jason brought the list of ammunition to?

A. Yes, sir.

Q. In regards to Tuesday evening, you stated on cross examination that you called Donahue Halbert on your own. Did anyone else tell you to call Donahue Halbert?

A. I don't recall anyone telling me right then to call Donahue.

Q. Had anyone told you at that point in time to get guns and ammunition?

A. On which day was this?

Q. Tuesday.

A. Tuesday, yes.

Q. Who was that?

A. Mr. Jones.

Q. He did not tell you who to call, did he?

A. No.

Q. In regard to your testimony that you had called Donahue Halbert on Tuesday I think to order some -- the Uzis and .30 caliber carbines?

A. That is right.

Q. Why did you order those Uzis and .30 caliber carbines?

A. Well, I ordered those -- I was told to get what it would take to stop Ray-Mac. I figured that was the best thing to get.

Q. The calls to Donahue and the calls to Mr. Jones' office, those are not long distance calls, are they?

A. No, sir.

Q. Those are local within the McDowell area?

A. Yes,sir.

Q. Now, Mr. Harwell --

you testified that he would do it to help you and not Edgar, is that just a summary of what you said?

A. Yes.

Q. Now, at that time, either you or your husband were never officers in the United Mine Workers, were you?

A. No, sir.

Q. Nor were you advocating --

A. (Interrupting) Just a moment. At one point or another, Edgar had called me in the office. He was forced to sign a contract with the union. I don't remember whether it was before or after, so I am going to make it clear. And for our --

Q. (Interrupting) Let me ask you a question. As the time that you ordered -- Donahue stated that he was going to help you and your husband, you all weren't union members, were you?

A. No, I didn't belong to no union.

Q. And you weren't union officers, neither you nor your husband?

MR. THOMAS: I'm going to object to the leading.

A. No.

THE COURT: Well, this is redirect, overruled.

Q. Ms. Booth, to your knowledge, was Phillip Dale Moore a member of the local union over there?

A. I don't think so.

Q. Was Hermit Newsome, I'm talking about February, mid-February, 1982?

A. No.

MR. WALBOURN: Your Honor, I apologize, but I have to object. I represent Mr. Newsome and I recall what I went into on cross examination. I haven't touched any of these areas.

THE COURT: Mr. Self, let's stay within the limits of cross examination.

Q. All right. You testified as to Phillip Dale Moore, correct?

A. Yes.

Q. He was not a member of the union.

He was a foreman for you at the time, wasn't he?

A. Yes.

Q. At the time in February,

do you know what Jason Moore was doing?

A. As far as I know he had a truck.

Q. Was it a coal truck that he was hauling coal for someone?

A. Yes, sir.

Q. You don't know of your own knowledge who he was hauling coal for?

A. Mr. Jones, as I recall. JRM, you know, as I recall it.

Q. Was he a contract trucker for one of JRM's mines?

A. As far as I know.

*** *** ***

Q. Ms. Booth, why didn't you go down to Donahue Halbert to get the guns and ammunition?

A. I had never been to Donahue's before is one reason. The other reason, I just didn't want it brought back to me, even though Edgar said he didn't want it traced back to him, it just kept - - I didn't want it back to me, even though I did write the checks as I said before, it was stupid, but I done it.

Q. Now, you testified that on Wednesday, that the men were trapped in the hills, or excuse me, on Thursday the men were trapped in the hills.

Do you remember who told you that?

A. Mr. Jones said it first, I think. There was two people. It seems like Mr. Jones had done said German's side had got out of it, Panhandle's side was still in. And I went to see if I could find the men.

Q. Do you know who they were trapped by?

A. The police is the way I understood it. Helicopters and police cars around.

Maybe it was - - I heard something about a SWAT team, I don't know.

Q. At that point in time, maybe on Wednesday you testified - - you testified that on Wednesday you went up to the tipple and got some guns from the men at the tipple, is that correct?

A. That is correct.

Q. You testified that you put them in - - you testified that Edgar Jones didn't tell - -

MR. WALBOURN: (Interrupting) Mr. Self is exactly right. She had already testified and I object, this is not redirect.

MR. ROWLAND: I agree.

Q. Why didn't you take the guns and ammunition back and put them in Edgar Jones's trailer?

A. Because the police - - we was afraid the police would come and search his trailer.

Q. What did Mr. Jones say? Did he say anything?

A. I don't recall for a fact.

Q. Did he tell you to bring them back, or did he tell you to not bring them back, or

did he say anything?

MR. HARWELL: If the Court please, she just answered she didn't remember anything. He keeps on pushing the witness and we object to the leading.

THE COURT: All right.

THE WITNESS: Oh.

MR. SELF: May the witness respond, Your Honor?

THE COURT: Yes. But if the witness answers, you know, answer.

MR. SELF: Okay.

A. He didn't want them in the trailer.

Q. What did he say, if anything?

A. If the police came, he didn't want them there because he didn't really even want my car sitting there either.

Q. Whose car?

A. My car with the guns in it.

Q. What did he - - what, if anything, did he tell you to do with them?

A. That I better get rid of them.

Q. You indicated that on Tuesday, on cross-examination by Mr. Harwell, that you had a conversation with Mr. Jones in regard to Drexil Hall.

Do you remember that conversation? Do you remember that conversation?

A. With Drexil or with Mr. Jones?

Q. With Mr. Jones regarding Drexil Hall?

A. Yes.

Q. Do you remember if anyone else was present during that conversation?

A. There is so much excitement, I couldn't be sure.

Q. Would you tell the ladies and gentlemen of the Jury what was said in regard to Drexil Hall on Wednesday?

A. When you want me to come and get Drexil?

Q. Yes.

A. He wanted to go and get Drexil he was supposedly supposed to be under arrest.

Q. Let me stop you there. Did you have a later conversation with Mr. Jones that day about Drexil after he had been arrested?

A. Yes. He said Drexil would be the first to tell everything. He said he would tell everything he knew.

Q. Did he say anything, make any other statements in regard to Drexil Hall?

A. I don't recall right now.

Q. Do you remember a conversation that day between Benny Caudill and Edgar Jones and Phillip Booth in regard to Drexil Hall? You testified on cross about a conversation. Do you know when that conversation was, Ms. Booth?

A. I don't know the exact date. Possibly it was that day.

Q. Was it after the violence at Ray-Mac?

A. It was after Ray-Mac had got in trouble, turned over his guns and stuff. I don't know whether it was after the arrest or what, but I recall the statement.

Q. Was it during the week of the 15th, the next week, or much later?

A. It was very well possible

on the 15th. They was talking--not the 15th. The week of the 15th. No later than the next week because they was furious with Drexil because he--

Q. (Interrupting) Who is they?

A. Edgar and Benny and Phillip. Well, they all was--the ones they really thought Drexil had told everything, was mad. They thought that Drexil--

Q. (Interrupting) Okay. Who said what, Ms. Booth?

A. They was discussing getting rid of Drexil.

Q. Who was saying get rid of Drexil?

A. Benny and Edgar and Phillip--they was talking.

Q. And did they state why they were going to have to get rid of Drexil?

A. He would tell everything he knew, and he would have us all in trouble.

Q. Did everyone that was present agree with that statement?

A. Nobody objected, sir.

Q. And after that statement,

did--

THE COURT: (Interrupting) We will be in recess for fifteen minutes. While in recess, the not now admonition is in effect.

Any objections or corrections to the Court's admonition?

MR. HARWELL: No, Your Honor, may the Court please.

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

THE COURT: All right, sir. Gentlemen, this trial is most difficult. It is kind of like trying to puddle up quicksilver. You hold it up on one side, and it gets out on the other. And I am trying my best judiciously to keep this case within the rules of evidence.

A lot of what you have done, Mr. Self, is just rehashing. It is just rehashing.

MR. SELF: Specifically, Your Honor, I did not go into this matter on direct examination. I did not. I left it alone. I didn't touch it. It was brought up on cross-examination. And as soon as it was hit, it was dropped like a hot pototo. I have got the right to go into this specific conversation.

THE COURT: Well, if it is just merely repeating what was done--

MR. PAFUNDA: (Interrupting) Your Honor, if it please the Court, I represent Drexil Hall; and I want to get into the conversation.

THE COURT: That is what I say about quicksilver, see. You want him to get out of the rules. He wants you to get out of the rules. Both sides wants to get outside the rules of evidence because each side thinks it is helping him. It might or it might not be. But if this jury is going to make a decision on something outside the evidence, then it is violating all rules of evidence. So let's don't do that, gentlemen.

We will be in recess at two-thirty.

THE MARSHAL OF THE COURT: We will be in recess until two-thirty.

(Reporter's Note: Court recessed at 2:20 p.m. and reconvened at 2:30 p.m.)

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

THE COURT: Mr. Marshal.

THE MARSHAL OF THE COURT: Your Honor, all

defendants, all counsel, and all members of the jury are present.

THE COURT: You may proceed.

MR. SELF: Thank you.

Q. Ms. Booth, before the recess, I was asking you a question concerning a conversation that you overheard between Benny Caudill and Edgar Jones and Phillip Booth in relation to Drexil Hall. Do you remember that conversation?

A. I just remember them discussing having a rock fall on them. That he would be the one that told and got all of us in trouble.

Q. What was the--

A. (Interrupting) And get--

Q. Go ahead.

A. And get us into prison. Now, what was it you were going to say?

Q. What was--what did a rock fall-- What did they say in relation to a rock fall?

A. In our mine--

MR. BRANSON: (Interrupting) Objection, Your Honor. Who is they? What person said it? They is not a particular person.

Q. Who said what, Ms. Booth?

A. I don't know for sure which one said what. They was just discussing it.

Q. Did any of those three men say I don't--indicate they didn't want to have part of it?

A. Nobody indicated it.

Q. Did they agree on something, or were they just making statements?

A. They made a statement that said that Drexil would be the first one that would tell everything. He had turned his gun over to the police. And he would be the one that told everything. And then we would all be in trouble. We would all get sent away.

MR. WALBOURN: Your Honor, since we can identify the speaker, I move to strike that statement.

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

MR. WALBOURN: Thank you.

Q. Did any of them agree to do some--to go actually do some violence or have something done to Drexil?

A. After that they didn't--nothing--they didn't make no more effort towards

Dale Soergel Moore Shaw & Associates
COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

hurting Drexil. They talked about it, but there was no action that I know of was done.

Q. Did all of the people that were at that conversation agree, though, that-- Strike that.

I call your attention to the following Sunday, specifically the Sunday that you testified that Benny Caudill came down to your house. Do you remember that Sunday?

A. Yes.

Q. When allegedly something had occurred up at Ray-Mac?

A. When the equipment was blowed up.

Q. Do you remember when you first saw your husband that day, Ms. Booth?

A. That day-- I am not sure what you mean.

Q. Did he ride back to the McDowell area with you in the same vehicle that you were driving?

A. We never went anywhere together. You know, we went in separate cars all the time.

THE COURT: Just answer his question,

Dale Soergel Moore Shaw & Associates
COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

ma'am. Be responsive.

THE WITNESS: I am sorry, Your Honor.

THE COURT: All right.

A. I don't think he rode back with me.

Q. Do you remember seeing him somewhere prior to coming--prior to getting back to McDowell on that Sunday?

A. Winchester.

Q. You saw him in Winchester?

A. As I recall, it was.

Q. And do you remember what time you saw him in Winchester?

A. Sir, I am not sure.

Q. Did you all leave at the same time, or who left first?

A. Phillip--as I recall, Phillip left first.

Q. Did you arrive home before he did?

A. I don't think I did, sir. I don't recall being there before he was.

Q. Do you know how long after you got there that he came in?

A. See, he always--

Q. (Interrupting) Well, do you recall how long you were there before he came in on Sunday?

A. I don't really know.

Q. Do you remember who was with him?

A. I think it was Phillip Dale.

Q. At the time that you left Winchester to the time you arrived home, did you see him anywhere in-between?

A. It seems like I did.

Q. Do you remember when, where, or what?

A. On the-- It seems like it was on the parkway.

Q. And how did you come to see him on the parkway?

A. He was in his Corvette or something. He was in the car. He was going one way, I was going the other.

Q. He was going one way, and you were going the other?

A. I think that is the way it was. It has been a while back, and I haven't

thought about it that much. But I met him there before you get to the tolls or somewhere or the first toll or something.

Q. Okay.

A. I can't really go into it. I don't know exactly where it was I met him. It wasn't unusual for him to--

Q. (Interrupting) Just answer my question as best you can, Ms. Booth. Okay?

A. Okay, I am sorry.

Q. Now, you were asked questions about a statement Mr. Booth allegedly made sometime in August, and you made the statement that Phillip didn't have it blown up, referring to the auger. Do you remember making that statement on cross-examination?

A. Phillip didn't.

Q. How do you know he didn't?

A. Well, I know Phillip didn't. He was in Lexington.

Q. Now, with regard to the conversation the next morning at the Em Pack restaurant with Edgar Jones, do you remember that conversation?

A. Yes, sir.

MR. HARWELL: May the Court please, I would like to state an objection. This is rehashing, rehashing, and rehashing. Mr. Self went into that in detail. I questioned on it. And it is just repetitious, may the Court please.

THE COURT: Let's see.

MR. HARWELL: I beg your pardon, Your Honor?

THE COURT: I said, let's see.

MR. HARWELL: All right, sir.

Q. When Mr. Booth--or Mr. Jones made the statement to you, do you know whether Phillip Booth was in hearing distance?

A. He probably was.

Q. Now, you indicated there was some discussion with Edgar Jones in regard to the tipple. Is that correct? Do you know how many times he mentioned the tipple to you?

A. He mentioned it several times.

Q. Now, at this point in time, Ms. Booth, February of 1982, how many tipples did Edgar Jones either have, own, lease that you are aware of that you refer to as Edgar Jones' tipples?

A. Well, as I recall, he

had one there at McDowell, JRM's tipple.

Q. That is on the John Hall and Bill Hall Branch going across Mud Creek. Correct?

A. Correct.

Q. Where was any other ones, if there were any?

A. And then I am not sure whether he had that one--he had the one at Martin. There is a tipple. But I don't know if-- That is all I know. I think he had the one at Martin at that time.

Q. You testified, and I apologize for jumping back and forth, in regard to the three rifles that you borrowed from your brother, Wendall Ray Newman. I think you testified you borrowed them before the violence at Ray-Mac. Is that your testimony?

A. No.

Q. You borrowed them after the violence at Ray-Mac?

A. I borrowed them on Tuesday.

Q. And why did you borrow them?

A. At the time when I borrowed

them, I was scared. Phillip had took all of our guns out to the picket line. And I called him up wanting the guns because I was scared around the house. There had been shooting around the house. There is a back road up back of the house. But the guns was taken out on the picket line.

Q. And when you borrowed them, you borrowed them for your own protection?

A. At that time, I did.

Q. But your testimony is they were later taken somewhere by your husband?

A. The next morning, they was taken out on the picket line.

****

Q. Now, you indicated that at some time later on, that Jason Moore brought two weapons, two rifles back to you. Is that your testimony?

A. Yes, sir.

Q. And you testified on cross there was two guns returned, and they said one got burned up. Who said one got burned up?

A. As I recall, Jason said one had got burned up. Basil Ray or someone had mentioned it to -- someone had mentioned it besides Jason. Jason said one had got burned up. They had shot it -- it split it.

Q. He didn't say it burned up in a house fire or something like that?

A. No. Just that they had shot it so much it had split.

Q. And you recall this being Mr. Jason Moore making that statement?

A. That is as I recall, yeah.

Q. Ms. Booth, you were asked questions I think by Mr. Harwell concerning your having filed a motion to reduce your sentence before Judge Unthank. I will ask you, Ms. Booth,

are you lying under oath here in an attempt to hope to get a reduced sentence?

A. No, sir, I am not.

Q. You made the statement on cross that I will help the Government all I can. Do you remember making that statement?

A. Well, I will help them because I am telling the truth. And I made that statement.

Q. Are you lying under oath to try to help the Government?

A. No, sir.

Q. Now, you indicated that you -- strike that, Your Honor.

And you were asked questions by Mr. Harwell about being -- about allegedly being paid some seven hundred thousand dollars in 1981 by JRM. Did you get seven hundred thousand dollars in profit from JRM if that figure is correct?

A. No, we did not get that much profit.

Q. Now, what all had to come out of whatever money you got from Edgar Jones in 1981?

COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

A. The upkeep of the mine. You brought your mine supplies. You bought your roof bolts, your rock dust, and you bought your powder and your caps. And you paid your labor. And you had to buy your oil. And by the time you paid for the gas -- you paid for the men's gas, and the upkeep of the equipment. When something tore up, it wouldn't just be five or six dollars. It would be five or six hundred dollars. And it was very little profit out of that.

Q. So if that figure is correct -- all of your expenses came out of that?

A. All of the expenses came out of that. Of course, the things, you know, he had paid for came out of that, too, to help us. You know, the equipment -- if we didn't have the money sometimes to get the stuff, he would go ahead and let us get it on him. But he would go ahead and take it out of the payday by the time we got it.

Q. And to your knowledge, is that the same way he operated his other contract mines, or do you know?

A. I really don't know.

MR. SELF: Just a moment, please, Your Honor.

Q. You were asked a question about going to Mr. Jones for financial help. Do you remember that?

A. Yes, I do.

Q. Was that before or after the violence at Ray-Mac?

A. It was after.

Q. And he refused you to loan you any money?

A. He said he didn't have it.

Q. And are you testifying here out of spite because he refused to give you some money?

A. No, I am not.

Q. You were asked questions in regard to Mr. Panhandle Moore. Was he the only one that ever guarded your house during this period of time, during the spring and fall or winter?

A. I am not sure. It seems like Van Patton might have. I think Van Patton might have been around some.

Q. But Panhandle Moore didn't work for you in the mines, did he?

A. No, he didn't.

Q. Did he ever work for

Edgar Jones that you know of?

A. I don't know. Just like he would us. Odd jobs.

Q. But to your knowledge, during February, mid-February, 1982, he was not working full time for any particular mine, was he?

A. No, not to my knowledge.

Q. Just a point of clarification, how old was Panhandle at that time?

A. Lord, he was -- this is a good guess. He was in his sixties. He looked like he was in his sixties anyway.

MR. SELF: I am getting there, Your Honor. I apologize.

Q. Now, a question that was asked you by Mr. Walbourn in regard to Mr. Hermit Newsome, you stated that he relied on you and Phillip for his job. And that is a true statement, is it not?

A. Yes.

Q. Would you tell us who you and Phillip relied on for your job?

A. Mr. Jones.

Q. Now, in regard to your conversation that you described to Mr. Bud Adams

Dale Soergel Moore Shaw & Associates
COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

in regard to Ranny Blankenship -- seeing Mr. Blankenship on the church steps somewhere.

A. I seen him, yeah.

Q. Was he waiting to go to church or just got out of church or could you tell?

A. They was just sitting there. Him and his wife was sitting there.

Q. Do you remember what you told them?

A. I don't even -- I couldn't specifically say it was that day -- excuse me.

MR. SELF: Just a moment, please, Your Honor. Let's get some water.

A. Ranny and his wife was sitting out on the steps, and I think that I did. I told Ranny he better get out on the picket line.

Q. Did you order him to get out on the picket line?

A. Well, I told him that we had to go and stop Ray-Mac or we wouldn't have the mines. I don't know exactly how I said he had to go out on the picket line -- you know, if we had a job.

Q. Any of your men, did you order any of them to go out on the picket line?

A. I didn't really order them. I told them what we had at stake. I told them that if Ray-Mac -- if I had ordered them, they all would have been out there. I didn't order them. But I told them if Ray-Mac wasn't stopped, that Edgar would shut our mines down if we didn't picket Ray-Mac. Edgar had said that we had to.

Q. Did you threaten any of them if they didn't go out, you would fire them?

A. I most certainly did not.

Q. Did you ever hear your husband threaten to fire them if they didn't go out?

A. No, because the men that didn't go out are still working -- they was still working for us.

Q. Now, in regard to Mr. Branson, he asked you about being a Deputy Sheriff. And you said somebody had come and gotten -- or he asked you a question about when you ceased being a Deputy Sheriff.

A. He had said 16th. It was later on after that, a week after that or so because during all of that, I was still a Deputy Sheriff.

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

Q. Now, when you -- strike that.

Mr. Harwell asked you about your going down to Winchester and testifying for Phillip when Phillip was arrested for some traffic related offenses.

Was Mr. Booth convicted of those offenses?

A. Not that I know of, sir, he wasn't convicted.

Q. Now, with regard to Mr. Harwell's last set of questions, Ms. Booth, you said you were taking Valiums in 1982. Were you taking them during the week of February 15th, 1982, if you recall?

A. I don't recall taking any during that week.

Q. And were these medicines that were prescribed to you by a doctor?

A. At that time, I don't think -- I don't recall taking any kind of medicine that week because I was taking care of my daughter. She had been sick all that time. And I wasn't -- I was too worried about her than to worry about myself being sick.

Sir, also the question before that on the tickets, if there was a conviction or anything, I am not aware of it. But his license or what was cleared. Everything was cleared. There was nothing against him that I know of, unless something come up later.

Q. Now, Ms. Booth, you were asked numerous questions by Mr. Harwell about conversations that you recorded with Edgar Jones or that Kemp recorded with you.

Other than -- I think he asked you to listen to a portion of one last night, did he not?

A. I listened to a portion this morning.

Q. Okay.

MR. HARWELL: I object to that. That is not what occurred. The fact of the matter is as a courtesy to this gentleman here, Mr. Justice, the attorney for Ms. Booth, who came and requested that I do that, I gave it to him. It was not done in a courtesy to me, Judge. It wasn't given to me.

MR. SELF: Thank you. I didn't mean to mischaracterize it.

Q. Ms. Booth, other than that listened to last night, have you ever heard or listened to any of the tapes up to this point in time?

A. No, sir.

Q. You haven't reviewed them to refresh your memory about your testimony, have you?

A. No, sir. I have not heard anything about the tapes until the part I heard this morning, just a portion of it to refresh my memory.

Q. Now, you did make three recorded conversations with Edgar Jones, did you not?

A. Yes.

Q. After you had been arrested in cooperating with the Bureau of Alcohol, Tobacco, and Firearms.

A. Yes, sir.

Q. And when you went in to talk to Mr. Jones, do you know whether he knew you had been arrested or not?

A. I don't know whether he knew it or not. You know, they had -- I don't know

whether he knew it or not.

Q. You didn't tell him, did you?

A. Lord, no.

Q. There were other people arrested besides you, were there not?

A. Yes, there was.

Q. Do you know whether they told Mr. Jones or told someone that told Mr. Jones?

A. I don't know whether they did or not.

Q. And you consented to having those conversations recorded, did you not?

A. Yes, I did.

****

Dale Soergel Moore Shaw & Associates
COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

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

THE COURT: Yes.

REPORTER'S NOTE: Whereupon a Bench Conference was held with all defense counsel present.

MR. SELF: At this point, Your Honor, the United States would ask for a Starks hearing in regards to those three tapes prior to the United States moving them into evidence. They're concerning portions of the conversations between Edgar Jones and this witness Pearl Booth.

MR. HARWELL: May Your Honor please, we object to that procedure for the following reasons. Number one; may Your Honor please as the Court said yesterday when I was examining her on that it got to be an inconsistent statement that is made in order to impeach.

Number two; may the Court please, he can question her about what took place in those three conversations; as to what she said and what he said. But those tapes can't come in at this point in time.

Number three; on October 15th, 1983 hearing, the Court in a four or five page

transcript set forth very clearly for the benefit of all counsel, the Government and the defense as precisely how those tapes would be handled. I'm sure Your Honor recalls better than I since you said it, but it was said that the questions could be asked by counsel to lay the groundwork and foundation for impeachment.

But those tapes would not as a matter of fact, be played during the defense case in chief or the Government's case in chief.

In playing those tapes, counsel would want to first hear those tapes and be obligated to pick out portions to address the Court; at that point in time let the Court make a determination to that.

May the Court please he can ask about those three meetings what did she say and what did Edgar say as cross-examination.

But, Your Honor, to have those tapes at this point in time is not proper, not consistent with the Court's prior order. You've already ruled on that Judge.

THE COURT: What do you hope to show with the tapes?

MR. SELF: Well, the nature of the

questions that Mr. Harwell has asked has been planted within the minds of these Jurors, it's quite clearly the fact that she was with Edgar three times and the nature of his questions were was that during these three meetings where the taping occurred there was nothing mentioned incriminating - -

THE COURT: (Interrupting) He didn't make it.

MR. SELF: Well, the tapes themselves - - it's the way the statements were made. The inflictions in these statements mean more than the statements themselves. I think reading those does not in any way do justice to the statements and the nature of the conversation between this witness and Edgar Jones.

It's my feeling, Your Honor and with Mr. Harwell's questioning is that he leaves this to the Jury. We feel that Edgar Jones denied having any involvement in this matter - -

THE COURT: (Interrupting) Well, why don't you ask her.

MR. SELF: She has not heard these tapes.

THE COURT: She has not heard the tapes but she was present and you can ask her if he said

anything incriminating.

MR. SELF: Your Honor, the point is these tapes reflect what was said. And the reason I am asking Your Honor this is that Mr. Harwell asked her certain statements she said and I know she never heard these tapes - -

THE COURT: (Interrupting) I'll sustain the objection.

MR. HARWELL: Thank you, Your Honor.

MR. SELF: May I ask the Court to state the basis for it?

THE COURT: Yes, because there is no reason for playing the tapes. There's nothing inconsistent.

MR. SELF: I'm not claiming there's inconsistent statements, Your Honor.

THE COURT: Well, what are you saying?

MR. SELF: To rebut the inference that Mr. Harwell has created during his cross-examination that Edgar Jones denied everything that was happening and he didn't know anything that was going on.

THE COURT: Well, you're just stating to the Court just play the tapes alone with rebut any inference?

MR. SELF: Sure.

THE COURT: Well, I don't buy that. What is on the tapes specifically?

MR. SELF: Well, may I ask the Court to conduct a Starks hearing to determine - -

THE COURT: (Interrupting) No, sir, no. You're asking me - - you tell me why I should listen to those tapes, not just the circumstances and the fact that these tapes were made.

MR. SELF: The statement of Edgar Jones - -

THE COURT: (Interrupting) What statement?

MR. SELF: The statement where he said there ain't nothing going to be done about it.

MR. HARWELL: Well, he can ask her about that but I think hearing the tapes would be improper, Your Honor has already ruled.

MR. SELF: May I ask for a recess to let the witness listen to the tapes and refresh her memory and then come back and ask her?

THE COURT: Denied.

MR. HARWELL: Thank you, sir.

MR. SELF: Judge, may I - -

THE COURT: (Interrupting) No.

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

MR. SELF: Well, no - -

MR. SPENCER: (Interrupting) Your Honor, may I say something?

THE COURT: No, sir.

MR. SELF: Note my objection.

MR. SPENCER: Your Honor, it's not about that, it's the procedure we're following. Once you make a ruling, why do we stand up here for three or four minutes and argue about it. I object to that procedure. Once you make a ruling that's it.

THE COURT: I'm making a ruling right now. Go back to your table.

REPORTER'S NOTE: The Bench conference is concluded.

THE COURT: Are you ready to proceed, sir?

MR. SELF: Yes, sir.

*** *** ***

Dale Soergel Moore Shaw & Associates
COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

MR. SELF: Yes, Your Honor.

THE COURT: Please proceed.

Q. Ms. Booth, when I asked questions about those specific statements on those three conversations yesterday you indicated you didn't recall whether certain statements were made. Do you recall anything about those conversations with Mr. Jones?

A. I don't recall that much about it, not to where I'd be safe in saying that no, telling it like it is.

Q. Did he deny any involvement in the Ray-Mac violence?

A. He didn't deny nothing. He didn't admit to it, but he didn't deny it.

Q. He didn't run you off and say Pearl get out of here, I don't know what you're talking about?

A. No, he did not.

Q. And you specifically in those conversations mentioned the violence at Ray-Mac, did you or do you recall?

A. Sir, I don't really recall how it was. I hadn't heard the tape since it -- since we went -- since I went in his office

I have not heard the tape.

Q. Have you seen a transcript of it or anything?

A. I have not seen nothing.

Q. After you went in there, did you listen to it afterwards at any time?

A. I don't recall listening to it.

MR. SELF: Just a moment, please, Your Honor.

THE COURT: Yes, sir.

(Reporter's Note: Whereupon Mr. Self conferred with Mr. Kehrli and Mr. Dause.)

Q. And at the time you went in there you didn't know whether Edgar Jones knew you were wired or not, did you?

A. No, sir, I don't know.

Q. Was the tender of your conversation, if you recall, any different from any normal conversation that you had with Edgar Jones?

A. He acted different.

Q. How did he act different?

A. I don't know, it was just something different about him. When you've been around someone and then you go around them --

there's something different, there was just a difference in him. I can tell when I'm around somebody if there's a difference and there was.

Q. Was it a good difference or a bad difference?

A. There was a difference, it was like he was more cautious than usual. And when you -- strike that.

MR. SELF: Just a moment, please, Your Honor.

THE COURT: All right.

(Reporter's Note: Whereupon Mr. Self conferred with Mr. Kehrli and Mr. Dause.)

Q. Ms. Booth, you recall when you were asked yesterday on cross examination or the day before about a conversation that you had with Benny Caudill in relation to Danny Blanton's house?

A. Yeah.

Q. Do you recall that conversation?

A. I recall it.

Q. Okay. Now, do you remember when that conversation occurred?

A. I'll tell you the best I

COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

can recall of the day, okay?

Q. Okay.

A. It seems like it was right after the trouble, the first day of the trouble at Ray-Mac when they shot up the Jeep. You remember the green Jeep that belonged to Bryan Coal Company, Benny Caudill had.

Q. How did Benny Caudill have that Jeep?

A. Phillip let him have it when he was working around the mines and stuff. He was using it. But they were mad over that.

Q. Now, who was --

A. (Interrupting) Phillip was in --

Q. (Interrupting) Who was talking in this conversation?

A. Phillip and Benny both.

Q. And you were there?

A. Yes.

Q. Was anyone else there?

A. It seemed like maybe Hermit -- it seemed like Hermit was there.

Q. Was he in the conversation or was he just in the room or was he -- were

all of you talking -- who was talking?

A. Benny and Phillip was talking.

Q. Where was this at?

A. It was out on the front steps of the house.

Q. And where were you?

A. I was standing outside.

Q. And what did Benny or Phillip say?

A. They should go out and shoot up Danny's house.

Q. Who said it?

A. Phillip -- Benny and Phillip were talking together. I don't know which one said what. They were both talking about shooting up the house, because it was close to the road. Phillip and Benny.

Q. Did they say why they were going to talk -- why they were going to shoot up Danny Blanton's house?

A. They shot up the Jeep.

Q. Who shot up the Jeep?

A. Well, I was led to believe at that time that Danny had shot up the

COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

Jeep or whatever.

Q. Did anybody ever tell you any different?

A. I found out later --

Q. (Interrupting) Did somebody tell you different?

A. Yeah.

Q. Who?

A. Later Phillip or somebody told me or --

Q. (Interrupting) Phillip or somebody, who?

A. As I recall --

Q. (Interrupting) Do you recall, Ms. Booth?

A. Not for a fact, okay?

Q. Well, what were they talking about out there on the porch that day, Phillip and Benny?

A. They were talking about Danny. They were mad at Danny because they shot -- well, he shot Phillip, that was Tuesday. He had shot Phillip and Phillip Dale and the Jeep up. And they were going to get back at Danny. Danny's house is close to the road I reckon now. They're

from McDowell, and they were going -- talking about going up there and shooting up his house.

Q. Did they leave and go do anything?

A. They were just talking, they didn't do it.

Q. They didn't do anything?

A. To my knowledge, they didn't do it.

MR. SELF: Now, Madam Clerk, would you hand the witness -- Mr. Marshall what's previously been introduced into evidence if I can find my list, the photos of the Jeep?

THE CLERK OF THE COURT: It's Exhibit No. 31.

MR. SELF: I think so.

(Reporter's Note: Whereupon the witness is handed a document by the Marshall.)

Q. Ms. Booth, do you recognize the Jeep that's in those pictures?

A. Yes, sir.

Q. Is that the Jeep that you're talking about that Mr. Caudill used?

A. Yes, sir.

Q. Do you recognize the

vehicle on the other side of those photographs, the backside?

A. That's loose?

Q. No, turn the thing over, do you recognize that vehicle?

Q. Do you recognize that vehicle?

A. It looks like -- it looks like Jason's truck.

Q. Jason Moore?

A. Yeah.

MR. SELF: Just a moment, please, Your Honor.

THE COURT: All right.

MR. SELF: No further questions at this time, Your Honor, of this witness.

RECROSS EXAMINATION

BY MR. HARWELL:

Q. A couple of things, Mrs. Booth, and I'll try to make it short given the hour and the Court's instructions.

Ma'am, you and Mr. Self had a series of questions and answers having to do with dirty coal. And you made some comment about

JRM or Edgar Jones one sending coal samples off for testing, do you remember that --

A. (Interrupting) Uh-huh --

Q. (Continuing) -- when he was questioning you?

A. Yes.

Q. All right.

And then I think he asked you if you had sent -- you and your husband had sent any samples off for analysis or testing and you said no?

A. I don't recall sending any off.

Q. The fact of the matter is that there was absolutely nothing to prevent or prohibit you and/or Phillip Booth from sending whatever samples off to whatever testing laboratory you wanted to with regards to dirty coal, isn't that a fact?

A. That's a fact.

Q. All right.

Ma'am, you also said if I understood you that Phillip Booth was not a member of the United Mine Workers in 1982, was that your testimony?

A. He tried to join the union.

Q. In January of 1982?

A. He tried to, but Phillip was an operator and an operator can not belong to the union.

Q. Yes, ma'am. But is it not a fact, ma'am, on the 4th day of January of 1982 Phillip Booth signed up as a member of the United Mine Workers and the union kicked it back, sent it back and said whoa, you can't do this, you're a signatory as an operator --

A. (Interrupting) Isn't that what I said he weren't no union, he couldn't, he was an operator.

Q. Yes, ma'am. My point is, isn't it a fact that he attempted to be and signed up to be a member of the Mine Workers on January 4th of 1982 until they kicked that application back for whatever period of days it was?

A. I think you're right.

Q. All right.

MR. HARWELL: If the Court please, may -- I can't even talk now, Your Honor.

May I approach the Bench,

Your Honor.

THE COURT: Yes, sir.

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

MR. HARWELL: As a matter of respect for Your Honor's prior ruling I asked to approach the Bench before I get into what I intend to question her on next.

I submit to the Court, please, given the redirect of Mr. Self, the door has now been opened in regard to acts of violence. And I would be entitled to question this lady as to those acts of violence which Your Honor earlier --

THE COURT: (Interrupting) What opened the door?

MR. HARWELL: Ms. Booth said that from way back you can recall in Eastern Kentucky when there's a strike there's always trouble, there's violence. I've even seen where they shot police cars and they've turned them over and everything and it's happened ever since I can remember.

And then the question was has it ever happened in the McDowell area?

And her answer was there's

been violence in the McDowell area before, but I can't go into just when --

THE COURT: (Interrupting) What violence are you talking about?

MR. HARWELL: I'm speaking about the violence that was on avowal where you said I couldn't go into it.

THE OFFICIAL REPORTER: Sir, I didn't hear that.

MR. HARWELL: I'm speaking of the violence on which I made an avowal and Your Honor said I could not go into it.

THE COURT: Her personal character as to the violence?

MR. HARWELL: Yes, sir.

THE COURT: Because of the acts or her statements about violence which occurred in labor trouble and that opens the door on her personal violence?

MR. HARWELL: I think it does, Judge. I'll give you the second basis for the door being opened which I think is a more valid one, Your Honor.

She said that Edgar Jones sent -- she was at the mine and Edgar Jones sent -- Edgar Jones gave strict orders telling the men to go

down there. With respect to going down to the tipple she said I was mad because I said it was not right for a woman to have to go down there. We had to guard the tipple. I contend, may the Court please, what's she's saying is she went down there because Edgar Jones sent her. When the truth of the matter is that her history of violence is such that she didn't need Edgar Jones to send her down there -- Your Honor, let me do this and be very candid with the Court. I know I am on thin grounds here. That's why I'm up here. I know this is one of these things that Your Honor said we should hear --

THE COURT: (Interrupting) What's that saying, there was a Mr. Preacher?

MR. HARWELL: Well, that's right.

THE COURT: Well, let the motion be noted and overruled. You might inquire or ask her about going down -- you might -- she said she went down and stood on the picket line with a gun, you might ask her about that.

MR. HARWELL: I believe I'll leave that alone, Your Honor, and hold on until my case and see if I can approach the Bench some more on this.

THE COURT: Fine. I mean I would permit showing her familiarity with the gun, but now

as far as her shooting off his finger or shooting somebody, I'm not going to do that.

MR. HARWELL: Judge, sometime after this case is concluded no matter what happens, I want to tell you a true story told about that, just as a side story. But I understand the Court's ruling.

THE COURT: All right.

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

Q. Mrs. Booth, there was also as I recall an exchange of questions by Mr. Self and answers by you in redirect concerning the Court's situation pertaining to Phillip Gene Booth and the driving citations down in Winchester.

And I think you said that to your knowledge that Phillip Gene Booth had not been convicted of any of those driving violations or citations, is that correct? Is that what you said?

A. Well, maybe I misspoke it. I don't know exactly how it was, but Phillip's license, there was nothing against that. There could have been a conviction.

Q. All right.

Did you, ma'am, in reference to that situation, the driving offense,

COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

including the revoked license offense, did you contact a man by the name of Gary Martin in the State Department of Transportation?

A. Yes, sir, I did.

MR. HARWELL: May the Court please, I know this is becoming ominous, but I need one moment with Your Honor at the Bench and perhaps just Mr. Self.

THE COURT: All right.

Reporter's Note: Whereupon a Bench conference was held between Mr. Self and Mr. Harwell where the following was heard:

MR. HARWELL: Your Honor, I don't want to prejudice anybody, but represent to the Court that I have information indicating that Pearl Booth made illegal and improper payments to this individual for the purpose of getting Phillip Booth's driver's license -- Phillip Booth's driver's license which had been revoked into a nonrevoked status. I don't want to ask that and have her say Lord no, and then have Mr. Self come up. Judge, I've got a good faith statement and I've been told in the last hour and a half and I make a good faith representation that this is accurate representation.

MR. SELF: Your Honor, I think this would be collateral evidence.

MR. HARWELL: She said, Your Honor, that he had the license and it had not been revoked. It was all just a big mix-up.

THE COURT: All right, I'll permit him to ask her if in fact the reason that they aren't revoked because she made payment. You may ask her that.

MR. SELF: Your Honor, he's talking about making a bribe.

THE COURT: That's what he's talking about.

MR. SELF: I have no knowledge of what he's talking about at this moment.

THE COURT: Well, he's going to be able to testify if she made a bribe in order to get his license.

MR. SELF: Well, she testified that there wasn't anything against him.

THE COURT: Well, he's going to ask her if the reason there's nothing against him is because she made a bribe.

MR. SELF: Well, may I -- I don't know where Mr. Harwell's good faith basis is for it,

but he's saying --

THE COURT: (Interrupting) Well he said --

MR. HARWELL: (Interrupting) Judge, as an officer of the court I want to show this to Your Honor. I asked Hank Hillin, I said Hank, is this information accurate and can I rely on it. It's from Gary Martin, he said he was paid several hundred dollars and that's the basis.

THE COURT: Go ahead and ask.

MR. HARWELL: Thank you, Your Honor.

MR. SELF: Note my objection.

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

****

Q. I apologize to the Court, the jury, opposing counsel, and Ms. Booth for approaching the Bench and having to go back up so readily after we were there a moment ago.

Ms. Booth, I was asking you about Gary Martin, do you know Gary Martin of the State Transportation Department?

A. I know Gary.

Q. Ma'am?

A. I know Mr. Martin.

Q. Is he a friend of yours and Mr. Booth?

A. Yes, he is.

Q. Is he a man that you all have known for some period of time?

A. Yes, he is.

Q. Is he related to either you or Mr. Booth?

A. No, he is not.

Q. And is it fair to say that he was a friend of yours, you and Mr. Booth?

A. Yeah.

Q. All right.

And in 1982, as a matter of fact, in March of 1982, he was, I think, you said

FILED UNDER SEAL
CONTAINS CONFIDENTIAL

employed for the State Transportation Department, is that correct?

A. Before I answer that, I want my attorney with me.

MR. HARWELL: Your Honor, may her attorney approach?

THE COURT: Yes.

MR. HARWELL: Ma'am, do you want to converse with him before I ask any more questions?

MR. JUSTICE: Your Honor, we ask for a five-minute recess.

THE COURT: Okay, let's have a recess until three-thirty.

While we are in recess, the jury is reminded that the not now admonition is still in effect, do you understand.

Are there any questions?

MR. HARWELL: No, sir.

MR. SELF: No.

(Reporter's Note: Court recessed at 3:30 p.m.)

REPORTER'S NOTE: The Court was called to order at 3:34 P.M.

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

THE COURT: Mr. Marshall.

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

THE COURT: Thank you, sir.

RE-CROSS EXAMINATION (resumed)

BY MR. HARWELL:

Q. Ms. Booth, a few moments ago we were talking about when you asked to counsel with your attorney and the Court ordered a recess, I understood from what you said that Gary Martin was an employee in March of 1982 with the State Transportation Department, is that correct?

A. That is correct.

Q. He was a friend of yours and Mr. Phillip Booth's, is that correct?

A. Yes, sir.

Q. Where is his place of employment? What office of the transportation?

A. He worked in Frankfort.

Q. I see. Mrs. Booth, it's a fact, is it not, that you contacted him in regards to the March, 1982 charges concerning Phillip Booth driving on a revoked driver's license, is that a fact?

MR. SELF: Let me object based on Rule 608 of the Federal Rules of Evidence.

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

Q. Is that a fact, Ma'am?

A. I called him.

Q. You called Gary Martin, is that correct?

A. Yes, I called Gary.

Q. I see. And you had a conversation with him about that revoked license, did you not?

A. I asked Gary to check and see if there is anything against his record at that time.

Q. I see. Did you ask him specifically when you called him? I am referring to Mr. Martin, did you ask him specifically to look into the matter concerning the revoked driver's license

Dale Soergel Moore Shaw & Associates
COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE KENTUCKY 40206
(502) 587-6006

of Mr. Booth, the charge placed against him down in Winchester?

A. I asked him if he would check into it, you know, I would appreciate if he would check and see if there was anything against his license.

Q. I see. It's a fact, is it not, Mr. Martin was responsible for having the revocation status of that license done away with, wasn't he?

A. Well, I asked him to help me.

Q. And he did help you, did he not?

A. Well, I told him I would appreciate if he could help me.

Q. Did he help you, Ma'am?

A. Well, his license was all right.

Q. Yes, Ma'am. And did you or your husband pay Mr. Martin for that help?

A. We asked him, because he was a friend.

Q. Yes. But in addition to that, did you or Phillip Booth pay Mr. Martin

for that help?

A. Just a moment, please. David.

MR. JUSTICE: May I, Your Honor?

THE COURT: Yes, sir.

(The witness conferred with Mr. Justice).

MR. SELF: Your Honor, again, I renew my objection under 608B, specific instances.

THE COURT: All right. Let it be noted and overruled.

THE COURT: Ma'am, after consulting with your attorney, can you answer the question?

THE WITNESS: Yes, sir, I'm sorry.

THE COURT: Please do.

A. Okay. You are talking about the violation there?

Q. Yes, Ma'am.

A. For that thing, no. I did not pay for that.

Q. Did you pay him, Ma'am, in regard to getting the revocation of his license situation straightened out for Phillip Booth?

A. (No response)

Q. Let's put it this way - -

COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

excuse me Ma'am, you were going to answer, I think.

A. Go ahead and put it the way you want to.

Q. Isn't it a fact, Ma'am, you and Phillip Booth paid Gary Martin some money to get - - you and Phillip Booth paid some money to Gary Martin in order to get the revocation lifted from the driver's license of Phillip Booth, the revocation with which you were cited in March of 1982?

A. I wasn't cited.

Q. I beg your pardon?

A. I wasn't.

Q. I wasn't what?

A. I wasn't cited for that.

Q. No, Ma'am, your husband was cited.

Let me ask you this. Forget the citing for a minute.

Isn't it a fact that you and Phillip Booth paid money to Gary Martin, a State Transportation employee, to get that revoked license unrevoked, isn't that true?

A. I don't know whether the money was paid for that or not, but - -

Q. (Interrupting) You are saying money was paid to Gary Martin, but you don't know now what it was for?

A. Just a moment. Your Honor, do I have to answer this?

THE COURT: Do you want to consult with your attorney?

THE WITNESS: Yes. I don't - - okay, I would rather.

THE COURT: Okay. Talk to your attorney.

MR. JUSTICE: Your Honor, I hate to ask this, would it be possible to step outside the door with the Marshall?

THE COURT: Yes, sir, please do.

MR. JUSTICE: Just for one moment.

REPORTER'S NOTE: At 3:39 P.M. the witness, Mr. Justice and the Marshall left the Courtroom and reappeared at 3:43 P.M., whereupon the following was heard:

Q. Ms. Booth, I think before you began this latest counseling with your lawyer, you were saying you and both Phillip Booth had paid some money to Mr. Martin, is that correct?

THE COURT: No, sir. She didn't

make that statement.

MR. SELF: Thank you, Your Honor.

Q. Did you make the - -

A. (Interrupting) What I am going to tell you is on advise of my attorney, I refuse to answer as it may tend to incriminate me.

MR. HARWELL: Yes, Ma'am. Ma'am, let me ask you this. How much money, if any, was paid by you and your husband to Mr. Martin?

MR. JUSTICE: If it please the Court, if this line of questioning is going to continue, I would like to have the chair there beside by counsel - - or beside my client.

THE COURT: All right. Let me ask you this. Do you discuss with your client whether or not the Fifth Amendment privilege would be asserted as to any and all questions concerning this subject?

MR. JUSTICE: Relating to the subject matter of this line of questioning, that is correct.

THE COURT: All right.

MR. HARWELL: May I ask the witness one more question?

Q. You just heard what the Court asked and what your attorney answered. Is that correct, Ma'am? That is, as to any and all questions

concerning this topic, you will exercise your right to the Fifth Amendment?

A. Yes, sir, it is.

MR. HARWELL: Thank you, Your Honor.

THE COURT: Any further questions?

MR. WALBOURN: Just briefly, Your Honor.

RE-CROSS EXAMINATION

BY MR. WALBOURN:

Q. Mrs. Booth, earlier you looked at Government's Exhibit 31, and that was a Jeep, is that correct? Some pictures of a Jeep automobile?

A. Yes, sir.

Q. Now, that was Benny Caudill-'s Jeep, was it not?

A. Well, it belonged to Bryan Coal Company. Benny used it, and him and Phillip made some kind of contract, I don't know.

Q. Well, that was my next question. In fact, in December of 1981, Bryan Coal had sold and leased that Jeep to Benny Caudill, had they not?

A. Well, for Benny working around the mines.

Q. Is that how Banny was paying for it? He was working around the mines doing the dead work for you and Phillip, is that correct?

A. Yes, sir.

Q. All right. So it is your testimony now that that Jeep had been sold and leased to Benny Caudill?

MR. SELF: Objection, Your Honor. This is two different legal terminologies, either sold or leased.

MR. WALBOURN: Your Honor, I ask the Marshall to hand this to the witness, please. The United States has been shown it.

THE COURT: Let it be marked.

THE CLERK OF THE COURT: Do you want this marked as Defendant Benny Caudill Exhibit?

MR. WALBOURN: Please, Ma'am.

THE CLERK OF THE COURT: Your Honor, the exhibit which was not previously marked for identification has now been marked for identification purposes as Defendant Benny Caudill NPM No. 1, and has now been marked for purposes of the trial as Defendant Benny Caudill Trial Exhibit No. 1.

MR. WALBOURN: Thank you.

Q. Mrs. Booth, the Marshall is going to hand you a paper, Ma'am, and I would ask you if you could look at it and review it and see if you recognize this.

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

THE COURT: Thank you.

(Witness reading document)

A. Yes, sir.

Q. Do you recognize what that is, Mrs. Booth?

A. Yes.

Q. Do you recognize your signature on there?

A. It is my signature and Phillip's signature.

Q. What is that document, please?

A. This is a purchase lease agreement.

Q. Does that purport to convey title in a Jeep?

A. To Benny Caudill.

Q. From Bryan Coal Company?

A. On the 10th - - let's see,

this agreement - - do you want me to read it out to you?

Q. Well, is that what that is?

A. Yes. He is supposed to pay one hundred fifty dollars a month.

Q. All right. And then he was doing the work to make those payments, is that correct?

A. When he could.

MR. WALBOURN: Your Honor, I would move that as Defendant Benny Caudill Exhibit No. 1, move for its introduction.

MR. SELF: No objection, Your Honor.

THE COURT: Let that be - -

THE WITNESS: (Interrupting) I had forgot about that.

THE COURT: Let that be finally introduced as Benny Caudill's Trial Exhibit No. 1.

MR. WALBOURN: Thank you very much, Your Honor. That is all the questions I have. Thank you, Ms. Booth.

*** *** ***

Dale Soergel Moore Shaw & Associates
COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

THE COURT: Anything further?

MR. KIRKLAND: Yes, Your Honor.

RECROSS EXAMINATION

BY MR. KIRKLAND:

Q. Mrs. Booth, for some reason the government went into the fact that you took a weapon down to the JRM tipple where Jason had set up a picket line, and you broke up the picket line.

Do you remember testifying substantially to that fact a few minutes ago?

A. I remember it.

Q. Tell me what kind of a weapon did you take with you? Was it one of these Uzis that have been introduced and have been out in front of everybody for the last several days?

A. Edgar told us to go down there.- -

Q. (Interrupting) no, I asked you what kind of weapon you took?

A. I don't know whether it was a Uzis or what kind it was.

Q. Was it one that had a strap you held over your shoulder?

A. It's possible.

Q. In fact, you showed up with the Uzis, or whatever, carbine, strapped over your shoulder, didn't you?

A. I didn't even want to go down there.

Q. Just answer my question, didn't you show up with this weapon strapped over your shoulder?

A. I got out of the truck and sit down there. Philip was with me.

Q. Your husband Philip.

A. Yes.

Q. Al right. Isn't it a fact that you had one of the Uzis that you had bought and paid for with your money, you had stored it at your house, and you had had it there for sometime. And you took it down to break up Jason's little old picket line, isn't that a fact?

A. At Edgar's orders I went down there.

Q. Have you been instructed to mention Edgar everytime you get a chance? Is there a reason for it, other than you have been instructed?

A. Sir, there is no reason, it's just the truth. That is all I'm telling you nothing but the truth.

Q. Did you find it necessary to take that weapon off of your shoulder that day?

A. My God.

Q. Now, you weren't alone as you carried out this mission that you have described? You had Phillip Gene Booth with you, didn't you?

A. Yes, who else?

Q. Did he have the other Uzis?

A. I'm not even sure that the Uzises that was the one that went - - that was even with us. It could have been.

Q. Then there was Phillip Dale Moore. He was with you, wasn't he?

A. I don't whether Phillip Dale was with us or not.

Q. And several others? How many were there, do you recall?

A. There was quite a few down there.

Q. The fact of the matter is

Jason and those old crippled miners up there didn't have a gun between them, didn't they?

A. Nobody threatened them though.

Q. Didn't threaten them, just carried an Uzis up there and told them to get out, isn't that a fact?

A. I didn't say a word to them.

Q. You didn't have to, they just took off.

A. I didn't want to go.

Q. You wanted to help run Jason off, didn't you?

A. Edgar told me to. If I hadn't went down there, we wouldn't have had our mines.

Q. Now, let's see, is it true that you are a little bit like Patty Hearst, that you --

A. (Interrupting) I beg your pardon, sir.

MR. SELF: Objection, Your Honor,

THE COURT: Sustained.

Dale Soergel Moore Shaw & Associates
COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

MR. SELF: Ask for an admonition.

THE COURT: The jury will not consider that.

Q. Well, you know how to use a gun outside the courtroom, don't you?

A. I don't deny knowing how to use a gun.

Q. The reason you went down there is you got kind of a mean streak through you, isn't that a fact?

MR. SELF: Objection, Your Honor, she testified three times as to why she down there.

THE COURT: Sustained. The jury will not consider that. I am admonishing coursel, you have had a ruling, let's don't probe around.

*** *** ***

Q. Now, Jason's little old picket line to try to do a little trucking, he didn't have no signs or placards down there, did he? They didn't hold up any signs?

A. I didn't even want to go down there. I want to make that very clear.

Q. Did he hold any signs up on his picket line?

A. I don't know.

Q. He wasn't passing out any literature, was he? Did you see him pass out any literature?

A. No, sir.

Q. Now, at one time--in fact, back in early 1982, isn't it a fact that you all needed a good foreman to get your mines in top production, and you tried to hire German Stumbo for one hundred seventy-five dollars a day?

A. Now, let me tell you I can answer for Phillip, but I didn't.

Q. You didn't?

A. I don't recall doing no such thing.

Q. Didn't you recognize he was a very efficient and good coal operator or coal

foreman?

MR. SELF: Objection, Your Honor. I don't believe I heard anything of that realm in the scope of redirect examination.

THE COURT: Sustained.

MR. SELF: It is beyond the scope.

Q. Did you have any other run-ins with Jason in addition to the one that the Government brought out at the JRM picket line?

MR. SELF: Objection, Your Honor, beyond the scope.

MR. KIRKLAND: Goes to bias, Your Honor.

MR. SELF: On redirect or recross, Your Honor?

THE COURT: Overruled. Did you have any other run-ins with him, ma'am, other than--

A. At present, I don't recall any. I like Jason, I want that made clear. I don't have a thing against Jason Moore.

Q. Even when you run him off his own picket line?

A. Even when I went there, I didn't have nothing against him. I just had to follow orders. I had kids to feed and everything, and I didn't have nothing against the man, and I

still don't.

Q. But you would take out just enough time from your kids and your housework to go carry a weapon to break up a picket line, is that what you are telling the jury here today?

A. When you have got a sick child, you take orders and you do a lot that you wouldn't ordinarily do.

Q. So you took off just enough time from your sick child to go get your gun--

A. (Interrupting) If I hadn't done as he said, we wouldn't have a mine and I would have no way to support my sick child, I would have no way to pay her doctor bills, I would have no way to done nothing.

MR. KIRKLAND: That is all the questions I have, Your Honor.

THE COURT: All right. Is there anything further from the Government?

MR. SELF: None other than renew my motion that I previously made at the Bench, Your Honor, and I would like to be heard on it.

MR. HARWELL: I have a motion whenever Your Honor desires to hear it.

THE COURT: You are going to be in recess--adjournment until Monday morning at nine o'clock.

How many more witnesses does the Government have, just approximately?

MR. SELF: I don't know how many more numberwise, Your Honor.

THE COURT: Well, just numberwise.

MR. SELF: We are still working on three more weeks or four more weeks for the Government's proof. The rate we have been going with one with one witness a week, we have done more than three, Your Honor. I am trying to be realistic.

****

THE COURT: Well, that is what I want to know. I just-- I realize that, gentlemen. I just want the jury to have some idea about this so they can make their plans.

MR. SELF: Your Honor, with all due respect, the length we are taking with just one witness, we will be lucky to be finished in another month.

THE COURT: All right.

MR. HARWELL: May the Court please, before we excuse the jury, might Mr. Self and I approach the Bench?

THE COURT: Yes, sir.

MR. HARWELL: Thank you.

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

THE COURT: At this time, I am not going to permit--

MR. SELF: (Interrupting) I know. I want the record to be clear.

MR. HARWELL: You ruled against me on all of the matters of credibility.

THE COURT: I am still ruling against it.

MR. HARWELL: Yes, Your Honor.

THE COURT: You have got that last thing in, I am not even going to say anything to them.

MR. HARWELL: You are not going to give your admonishment that you said you would, Your Honor?

THE COURT: No, sir.

MR. HARWELL: I didn't know I had lost one to get another one, Judge. If I'd known that, I might have done that differently. I would respectfully move the Court--

THE COURT: (Interrupting) That is the way the ball bounces.

MR. HARWELL: I respectfully move the Court to give the admonishment that, that Your Honor indicated he would give earlier.

THE COURT: Okay. It is denied. I feel like since we got into the Fifth Amendment thing on this other thing that there is no need for that.

MR. HARWELL: The Government opened the door pretty wide on that.

THE COURT: Well ...

MR. HARWELL: Your Honor, after the jury is out, I need to make a brief motion. I think that

I have--

THE COURT: (Interrupting) What do you need to make a motion on?

MR. HARWELL: May the Court please, in five seconds I can get my pad.

THE COURT: Well, here is what I want to do. If we can go on to something else-- We have got other witnesses.

MR. SELF: We have got them here if you want to do that.

THE COURT: That is what I want to do. We have got another hour, gentlemen.

MR. SELF: He isn't going anywhere.

MR. HARWELL: If the Court please, comes now the defendant, Edgar Jones, and moves the Court to strike the entire testimony of the witness, Pearl Booth, on the basis that we have been deprived our Sixth Amendment and Thirteenth Amendment guarantees under the Constitution in regard to the right to confront and cross-examine witnesses. And also we have been denied a fair trial by virtue of the inability to fully confront and cross-examine this witness. And I suggest, may the Court please, proper relief, given these facts, to strike that testimony and to admonish the jury. And we so move

for that.

THE COURT: All right. The Court is of the opinion this is a collateral matter. So therefore the motion is denied.

MR. HARWELL: Thank you, Your Honor.

THE COURT: And I believe-- What is it? The United States v. Brown or the case like that-- What is the case where they made a motion to strike, the Court denied it. And they appealed on those specific grounds.

MR. HARWELL: That is what I was going to get if I had that cite before me. I don't remember the name of the case. I don't know if it is or isn't Brown.

THE COURT: The Court held that that was--the Court held that by reason of the fact that it was a collateral matter, they weren't denied any--

MR. HARWELL: (Interrupting) Constitutionally-secured right.

THE COURT: That is my understanding of the case.

MR. HARWELL: May the Court please, if this witness is through, before another witness goes on, we respectfully urge the Court to allow the exhibits that have come in be passed to the jury.

I like to get them in early, but I know Your Honor has told me not to do that. I like to examine and pass, and you say no, that is not my procedure.

THE COURT: That's right.

MR. HARWELL: I would like for them to see them today, please, sir.

THE COURT: Well, let's-- How many have we got to see, Madam Clerk? We might as well let them take the exhibits to the jury room.

MR. SELF: There is only a couple of them.

THE COURT: Is there only two?

MR. SELF: I put in a photograph and one gun in.

MR. HARWELL: I put in-- Did I-- I didn't put any in by avowal.

MR. SELF: I just put in the gun and the photograph. And I don't think we need to waste the jury's time to do that.

MR. HARWELL: May I ask the Clerk if I put any in except by avowal?

THE COURT: Yes.

MR. HARWELL: Did I put in any except by avowal?

THE CLERK OF THE COURT: The photographs.

MR. HARWELL: That's right. My photographs are 10A through H, Your Honor.

THE COURT: Do you want them to see those?

MR. HARWELL: Yes, Your Honor. Judge, you will see why later on.

THE COURT: Okay.

MR. HARWELL: Thank you, Your Honor.

THE COURT: Okay. This witness can step down, and we can be calling the next witness then.

MR. SELF: All right.

THE COURT: All right.

MR. SELF: Your Honor, we have three photographs and one of the weapons.

MR. HARWELL: Yours and ours, too.

THE CLERK OF THE COURT: It is going to take me some time if they want to know which ones came in by her. If that is what they want.

MR. SELF: Let's let the exhibits go until Monday morning. Let's put on the witness, and let's let the exhibits wait until Monday morning.

THE COURT: No, he wants to do it now.

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

THE COURT: Do you want to view the exhibits here, or do you want to take them to the jury room with you for-- I think there are six or seven exhibits. Do you want to look at them here, or do you want to take them to the jury room?

JUROR: Jury room.

THE COURT: All right. Madam Clerk, get the exhibits out, and let them take them to the jury room.

In the meantime, ma'am, you are excused. You may step down.

THE MARSHAL OF THE COURT: Is she finally excused, Your Honor?

THE COURT: No, sir. I said no. Do you gentlemen want--do you agree to let her be permanently excused?

MR. HARWELL: No, sir. May the Court please, not so far as permanently excused.

THE COURT: All right.

MR. HARWELL: Judge, given the incarceration, I don't see any problem.

THE COURT: Well--

MR. HARWELL: (Interrupting) We would like-- With the usual understanding, that we would--

THE COURT: (Interrupting) The only

problem is she is here on loan.

MR. HARWELL: Judge, wherever she is more comfortable, we would have ample time if she goes back to Lexington to get her back with the Court's permission.

THE COURT: All right. Let her go back to Lexington.

MR. JUSTICE: Judge, may I be excused now to consult with her in that matter, and come back and advise the Court whether she wants to go back to Lexington.

THE COURT: We have to leave that to the discretion of the Marshals. He is the one that is in charge of security.

MR. JUSTICE: May I be excused anyway, YOur Honor?

THE COURT: Yes, sir.

MR. JUSTICE: Thank you.

THE COURT: May I suggest you talk with the Marshal, Mr. Justice?

MR. JUSTICE: Yes, Your Honor.

THE COURT: Let me explain to everyone in the entire courtroom, the jury and all, the Marshal's Service of the United States is responsible for the security of the Court and the jury and

everyone that is in here. That is why we like for counsel to stay back at the table, the witnesses here. The only one who is around is the Marshal. That is why I made the remark yesterday about the door being open. If the Marshal opens the door, fine. If the Marshal leaves the door shut, leave it shut.

There isn't anything unusual. We have a little thing out there like the airline. When you are coming through, persons are examined for carrying anything metal. That is the same way in all the United States Courts. There is nothing unusual about that. The Marshals have to have it.

And so if anyone at any time is in doubt about something, consult the Marshal.

As you know, the Marshal accompanies you when you go down to the jury room, and he comes back with you. All right.

Gentlemen, do any of you want to examine the exhibits which are going to go with the jury to the jury room?

MR. SELF: Yes, Your Honor, I do. May we approach the Bench?

MR. HARWELL: May we both approach the

Bench?

THE COURT: Yes, sir. Approach the Bench.

THE CLERK OF THE COURT: Exhibit No. 104, No. 112, No. 113, No. 114, No. 115.

MR. SELF: There was another Government exhibit that was placed in through this witness. I think it was one of the weapons if I am not mistaken.

THE CLERK OF THE COURT: The only weapon that she had in evidence was No. 110, one of the larger guns.

MR. SELF: Okay.

THE CLERK OF THE COURT: And this is Benny Caudill's purchase agreement, it is Benny Caudill's Exhibit No. 1, Defendant Edgar Jones' Exhibit 10A through H, and Defendant Edgar Jones' Exhibit No. 11.

MR. SELF: No objections, Your Honor.

MR. HARWELL: No objections. As a matter of fact, we request they all go to the jury.

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

THE COURT: You are going to the jury room to view the exhibits. You will be there for

twenty minutes. During this adjournment you understand that the not now admonition will be in effect. Do you understand?

All right, any objections or corrections to the form of the admonition?

MR. HARWELL: None, may Your Honor please.

MR. SELF: No, Your Honor.

THE COURT: All right.

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

MR. SELF: May it please the Court.

THE COURT: Yes, sir.

MR. SELF: If you want to take those matters up now, we can now as far as a motion.

THE COURT: Fine.

MR. SELF: Your Honor, comes now the United States and moves the Court to conduct a Starks hearing in regard to the three recorded conversations between the witness, Pearl Booth, and the defendant, Edgar Jones. I have copies of those now--copies of those tapes. However, Your Honor, they have already been placed or allegedly been placed in evidence by Mr. Harwell as part of the copies. Those being tapes no. 56, 49, and 32, Your Honor, on the tape log. A conversation of--

THE COURT: (Interrupting) Fifty-six, forty-nine, and what?

MR. SELF: Thirty-two.

THE COURT: All right.

MR. SELF: Thirty-two being, Your Honor, the--the conversation of September 30, 1982, between Pearl Booth and Edgar Jones in Edgar Jones' office.

Number 49 being an original transmitter of the conversation between Pearl Booth, Edgar Jones in Jones' office occurring on September 16, 1982.

And fifty-six being the original transmitter of Pearl Booth--Pearl Booth and Phillip Booth at Edgar Jones' office occurring on September 20, 1982.

I would ask the Court for permission to conduct a Starks hearing at this point in time, a Starks and a Cornett hearing to get, Your Honor, to allow the Court to examine the tapes determining if they are audible and if portions that contain conversations between these two individuals clearly and accurately reflects that conversation; to call necessary witness to establish the authenticity of those two recorded conversations, the audibility

of them, the equipment function, and the rest of the requirements under Starks.

I'm specifically asking the Court to listen to those tapes before the Court makes a ruling, a final ruling on their admissibility at this point. I again submit to the Court, based upon the tenor and nature of the cross-examination by Mr. Aubrey Harwell, as counsel for Edgar Jones, and his questions unpermissibly placed before this jury a feeling of Mr. Jones' negation of any involvement through those conversations when the tapes themselves, the conversations therein, and reflections of the speakers in that conversation make it very clear that Edgar Jones knew what was going on and didn't want to talk about it.

I renew my motion, Your Honor, that those tapes--we conduct a Starks hearing at this point in time, that those tapes be played to the ladies and gentlemen of the jury while Pearl Booth is still as a witness on behalf of the United States.

MR. WALBOURN: Your Honor, I would object to that. With all due respect, I thought we hashed this out last October as to the procedures on the tapes. I have got--I have got vivid recollection of

how we were going to do that. We got it in on the defense case and Government rebuttal.

****

THE COURT: Let's do this: I am going to do what Mr. Spencer suggests. You gentlemen will get all your statements out that you're going to make. Then I am going to make a ruling, and then nobody is going to say anything after that.

MR. WALBOURN: That is fine with me, Your Honor.

THE COURT: Go ahead and get it on the record.

MR. WALBOURN: It seems to me we are going to have to be examining more tapes or at least the possibility of more tapes coming up during this trial.

And with this procedure, we are going to run and have a Starks hearing every time this comes up.

I might as well get my divorce papers out because I will be spending so much time down here, I won't have a wife and a home to go home to.

MR. HARWELL: May Your Honor please, in regard to the Court's directive concerning getting it all on the record, I would like to briefly be heard.

First of all, Your Honor,

we got all geared up back in October for the Starks and Enright hearing. And we got a letter from the Government, a notice. And that notice provided that the Government wasn't going to use those tapes.

And their case in chief, they would use those tapes in rebuttal and possibly for impeachment purposes.

We got into a hearing before this Court, and I am sure you recall just as Mr. Walbourn has said, the Court said at that point in time gentlemen, here is what we are going to do: The Government puts on theirs in chief. The Defendants put on their case in chief. After the Defendant puts on its defense, the United States will say to the Defendants and to the Court, we have proposed to use portions of what tape, X-number such as that.

Then after that is done, the defense will have the opportunity - - they have the tapes and they have heard it. They will have the opportunity to request the Court to admit certain other portions of the tapes.

At that time, we can all hear the portions which are required or requested.

There was some conversa-

tion between the Court and Mr. Self and Mr. Kirkland at that hearing. And Your Honor said that what counsel were to do as to impeachment or cross-examination is to ask a person if he did such and such a thing on such and such a day and said such and such a thing on such and such a date to such and such a person to proper lay the foundation.

May the Court please, we believe that that is the proper procedure, and it is the policy that we have relied on. And we believe, may the Court please, it is improper to go into the tapes at this point in time. And we strenuously object to Mr. Self's motion.

Thank you for letting me be heard, Judge.

THE COURT: Fine. Have you got anything else that needs to be said on this?

MR. HARWELL: On that matter?

THE COURT: Yes.

MR. HARWELL: (Mr. Harwell shaking head negative)

THE COURT: At this time, the motion to play the tapes is overruled.

MR. HARWELL: Judge, I say this as I do occasionally to the Court with some trepidation on

another matter.

I thought you ruled at the Bench fifteen minutes ago precisely on this issue as you ruled now.

THE COURT: I did.

MR. HARWELL: And Mr. Self goes into it again. I don't want to waive any of my client's rights, but I think you ruled on what I am about to ask you.

And that is I move to strike the testimony of Pearl Booth.

THE COURT: I overruled it.

MR. HARWELL: Your Honor I - - I thought you had as I thought you had with them.

THE COURT: Right.

MR. HARWELL: So I am not waiving any rights by not addressing that here from the table now, am I?

THE COURT: No.

MR. HARWELL: Okay. Thank you, sir.

THE COURT: Anybody else got anything else?

How much time have we got, Mr. Marshall, before the Jury comes back?

THE MARSHALL OF THE COURT: Seven or eight

minutes.

THE COURT: All right. Let's be in recess for seven or eight minutes.

THE MARSHALL OF THE COURT: This Court is in recess for seven or eight minutes.

REPORTER'S NOTE: Whereupon the Court was recessed at 4:15 P.M. and was resumed at 4:25 P.M.

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

THE COURT: All right.

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

THE COURT: Call your witness.

MR. DAUSE: Thank you, Your Honor. I call Wendall Ray Newman, Your Honor.

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

WENDALL RAY NEWMAN, called on behalf of the United States, being first duly sworn, was examined and testified as follows:

THE COURT: Let me state this to the attorneys . The Marshall has conveyed to me that some of the Jury seems to be distressed over the objection as to the amount of time it is going to take to try this case.

MR. ROWLAND: They are not alone, Your Honor.

MR. KIRKLAND: Some of the defense lawyers are distressed, too; and I am one of them.

THE COURT: All right. You may proceed.

MR. DAUSE: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. DAUSE:

Q. Mr. Newman, would you tell the Jury and the Court what your name is and where you live?

A. My name is Wendall Ray Newman, and I live at Bevinsville, Kentucky.

Q. Where is Bevinsville?

A. It is on Route 1598.

Q. Which county is that?

A. Floyd County.

Q. How long have you lived in Floyd County?

A. All my life.

Q. All right. Are you a brother of Pearl Newman Booth?

A. Yes.

Q. Are you a younger brother to her?

A. Yes.

Q. Now, I want to ask you, Mr. Newman, what kind of work do you do?

A. I am a mine operator.

Q. How long have you been doing that?

A. About eight to ten years.

Q. Were you - - I take it then that you were a mine operator in 1982, is that correct?

A. Yes.

Q. And I want to direct your attention to February of 1982. I want to ask you if you are familiar with an area called John Hall Branch in Floyd County?

A. Yes.

Q. Are you familiar with a mining operation that was going on there in 1982, February of '82, called Ray-Mac Mining operation?

A. I know it was there, but that is all.

Q. You are aware that it was there?

A. Yes.

Q. All right, sir. I want to ask you, did there come a time in February, of 1982, that your sister, Pearl Booth, called and asked that you give her some guns?

A. Yes.

Q. All right. Would you tell the Court and ladies and gentlemen of the Jury if you did give her guns, and what guns you gave her?

A. Okay. My sister called me and said somebody had shot at her, and that her husband had took all the guns away from her house, and that she needed some guns for protection. And I think - - the best I can remember, I took two guns down there to her, a 30.06 and a .243 caliber rifle.

*** *** ***

Q. Those are rifles?

A. Yes, sir.

Q. All right, now, do you remember when this occurred?

A. Not the exact day. It wason a Monday or a Tuesday I think.

Q. Monday or Tuesday?

A. Yes.

Q. All right. Now, are you aware that in February of 1982 some violent activities occurred at the Ray-Mac Mining site?

A. Yes.

Q. Can you tie into the day of your delivery of these guns to any way when you're aware that the violence was going on?

A. I think it was the first day of trouble I think -- of violence.

Q. All right, sir. Did you ever give her a third gun?

A. That's -- I don't know whether I give it she came and got it.

Q. There was a third gun exchanged?

A. Yes.

Q. When was that?

A. The same day I think.

Q. What kind of gun was that?

A. It was a .30 caliber carbine.

Q. And what was the reason that she asked for that gun?

A. For protection. I don't think I was there when she come and got it, I'm not sure.

Q. Now, did your sister, Pearl or her husband Phillip Booth, did they ever tell you that they were involved in any way with the violence that was going on at the Ray-Mac Mining site?

A. Yes.

Q. Did they tell you why they were involved?

A. They said -- they said Edgar --

MR. HARWELL: (Interrupting) May the Court please --

THE COURT: (Interrupting) Approach the Bench, please.

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

THE COURT: Where are you headed?

MR. DAUSE: Your Honor, I was going to ask one additional question. What did they tell you, and I think the answer to that would make the statement of coconspiracy --

MR. HARWELL: (Interrupting) May the Court please, this is totally blatant hearsay.

MR. DAUSE: Your Honor, I think the coconspirator's exception would cover that for argument.

I can place it at the time of the coconspiracy.

MR. HARWELL: May the Court please, has Your Honor ruled on that?

THE COURT: If you've got a response get it in the record.

MR. HARWELL: May the Court please, we object on the basis of it being hearsay. We object in that it's a violation of the conversation clause and most importantly, we object to it on the basis that the Government has just put Pearl Booth on the stand and it would have been proper for them to ask

her did you say anything in regards to this matter to your brother and therefore allow us the opportunity to cross examine her. But right after she finishes and leaves her brother comes in and they try to get the evidence on, it's hearsay, that's not the proper way to do it.

May the Court please, notwithstanding the exception of the coconspirators' statements, I believe it's hearsay. I contend that it's not fair, it's prejudicial and it's hearsay and it can not come in, Your Honor.

MR. KIRKLAND: Your Honor, if they proceed to put their case on this way, they can use any human being that heard Pearl say anything, whether it was during that period of time or not, and say didn't Pearl tell you so and so and then they could proceed to ask a number of people what Pearl said, that's self-serving and it's clearly hearsay.

MR. DAUSE: Your Honor, this goes to the credibility of the witness.

THE COURT: Well, I'm not going to do it on that basis.

MR. HARWELL: Well, I think -- I think the confrontation clause is what applies.

MR. MOORE: A further ground would be the fact that the Assistant United States Attorney represented to this Court during the hearing, during the minihearing that any statements made by an alleged coconspirator would be disclosed and can not come out in the hearing. And we did not get this until two days ago and we have not had an opportunity to investigate it or anything else.

THE COURT: But, didn't we set aside a ruling to put it in and didn't the Court say that we were going to listen to it at a new hearing on this trial?

MR. MOORE: I think Your Honor ruled that we were entitled under Rule 16 any statements alleging coconspiracy.

THE COURT: Well, we're not bound here in this trial by what went on in the minihearing.

MR. MOORE: I understand that.

THE COURT: Let me hear it, then I'll make a new ruling in this trial as to coconspirators.

MR. MOORE: I understand, Judge, but this is discovery.

MR. HARWELL: It's discovery, Your Honor. And we will raise some issue as to what

happened. I think the understanding is, Your Honor, that we will take whatever steps necessary. We were not given that transcript, Your Honor.

MR. SELF: Your Honor, this is a prior consistent statement of the evidence.

THE COURT: No, that's not -- under a prior consistent statement, I would not let it in.

Now, this will be tentative evidence. This is tentative evidence as to her statement to her brother -- this is only, he said he wasn't there when she got the gun.

MR. DAUSE: Your Honor, I have only just one more question.

THE COURT: All right. If it's not a statement made in the course of conspiracy, then it's not coming in.

MR. HARWELL: Thank you, Your Honor.

MR. WALBOURN: Your Honor, it's exhibit --

THE COURT: (Interrupting) Gentlemen, I ruled, let's go back and let him ask his question.

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

Q. Mr. Newman, if you recall, if you remember, when did either Pearl or Phillip, and specify which it would have been, when

did they make any statement to you, without telling us what the statement was, as to their reasons for being involved in the Ray-Mac violence?

A. It was either the first or second day of the violence.

Q. Which one was it, Pearl or Phillip?

A. Pearl told me first, then Phillip told me.

Q. They both told you?

A. Yes.

MR. DAUSE: May I proceed with this, Your Honor?

THE COURT: No, sir, where and what was the circumstance under which it was made?

MR. DAUSE: Yes, Your Honor.

Q. Where were these statements made to you?

A. These statements were made in Phillip's house, Phillip's and Pearl's house.

Q. And who --

THE COURT: (Interrupting) Who all was present?

MR. DAUSE: Yes, Your Honor.

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

Q. Who all was present?

A. Me and Phillip and Pearl, I think, the best I can remember.

Q. You recall anyone else being there?

A. No.

Q. Do you recall what time of day it was?

A. It was midday, I think.

Q. Was this on the occasion of your delivery of the two guns?

A. No, this was after.

Q. After it?

A. Yes.

THE COURT: What was the occasion?

THE WITNESS: I went down to visit my sister.

Q. And your testimony is this happened when?

A. When I was going to visit my sister and I asked them what they were doing.

Q. All right. And when was this in relation to the Ray-Mac violence?

A. It was during the Ray-Mac

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

violence.

MR. DAUSE: May I proceed with this, Your Honor?

THE COURT: No, sir, I sustain the objection.

MR. DAUSE: May we approach the Bench, Your Honor?

THE COURT: Yes, sir.

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

THE COURT: All right, get it on the record, gentlemen, and I'll make my ruling.

MR. HARWELL: May the Court please, we object to this on the same basis previously stated in the last Bench conference.

MR. DAUSE: Your Honor, I submit that we'll place the time of the statement made at the time of the Ray-Mac violence and that it was made during the course of a conversation and therefore it's a coconspirator's statement.

THE COURT: Yes, sir.

MR. DAUSE: And therefore, this can not be hearsay.

MR. HOLLON: It's not in furtherance

of the coconspiracy.

THE COURT: That's it, he's got it right there.

MR. SELF: Your Honor, may it please the Court.

THE COURT: Yes, sir.

MR. SELF: It falls under the hearsay rule by the prior existing statement of the other witness. We are entitled to put it in as evidence. And I think this statement is based on the consistency of it goes with the evidence and the statement is admissible and it's not a hearsay statement.

THE COURT: I sustain the objection.

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

THE COURT: You may proceed, sir.

MR. DAUSE: Thank you, Your Honor.

Q. Mr. Newman, do you know a person by the name of Benny Caudill?

A. Yes.

Q. The person that you know as Benny Caudill, is he in the courtroom today?

MR. DAUSE: Could I ask that the front row stand up?

THE COURT: Please do.

A. Yes.

Q. And would you describe where he is and what he's wearing?

A. He's the third from the end.

Q. How is he dressed?

A. In the blue shirt with glasses.

MR. DAUSE: I ask the record to reflect that he identified the Defendant Benny Caudill.

MR. WALBOURN: That's Benny Caudill, Your Honor.

THE COURT: Let the record so reflect.

Q. Mr. Newman, did there come a time and I ask you to identify when the time was that you heard a conversation of Mr. Caudill's that related to Ray-Mac violence?

A. Okay, I went down to visit my sister one day.

Q. When was this, sir?

A. This was -- I think this was after the first week -- after the violence had settled down, I believe.

Q. Who was there?

A. Benny and Pearl and Phillip and there was some other people which I don't exactly recall who they were. They were outside I think.

Q. Do you recall anything that Mr. Caudill said?

A. Well, he said --

MR. WALBOURN: (Interrupting) Object, Your Honor, until we get when. I think he's got to be very precise on that.

Q. Can you be any more precise about the when?

A. I think this was on a Tuesday or Wednesday and it was the second week after the violence started.

Q. What if anything did you hear Mr. Caudill say?

A. As I went through the door, I heard something about a tipple.

Q. What did you hear Mr. Caudill say?

A. Phillip asked about a tipple and Benny said it was going to be took care of.

Q. What else did you hear, if anything?

A. Okay, later on I went into the kitchen and got a beer out of the refrigerator and went on into the family room and there was something said about money and Phillip said he'd take care of the money.

****

A. Benny said he'd take care of the money.

Q. Mr. Newman, do you know a person by the name of Edgar Jones?

A. Yes.

Q. Is the person you know as Edgar Jones in the Courtroom today?

A. Yes, on the end there.

MR. HARWELL: Let the record reflect that that is Edgar Jones.

THE COURT: The record so reflects.

Q. Did you have any occasions to have conversations with Mr. Jones wherein the violence of Ray-Mac was mentioned?

A. Yes, I did.

Q. When was that?

A. Okay, I think this was - - this was after the trouble was over. I don't exactly remember what day. I went down to pick up a check, I think - - I sold coal to him.

Q. Where did you go, Mr. Newman?

A. I went to Edgar's office.

Q. Who was there during the conversation?

A. I think me and Edgar was in the room. It was a little room in his office and I am not sure whether his secretary was in the middle room or not.

Q. All right, sir.

What, if anything did Mr. Jones say to you or what did you say to him?

A. Well, we were talking about things and then - - I got my check. Then we were talking about Pearl and Phillip and it came up - - I told him Pearl and Phillip was in a little financial trouble and he said they were going to be well taken care of and the men up on the hill were going to be well taken care of.

Q. Did he say anything else?

A. And then we talked for a while longer and then he said something about somebody going over to Elkhorn running their mouth - - Elkhorn Coal Corporation's office and running their mouth and that they would be sorry.

Q. All right, sir.

MR. DAUSE: Your Honor, I'd like to have the witness shown - - before I do that, Your Honor - -

Q. (Interrupting) Did there

come a time that you requested of your sister or Phillip that you be returned the guns that you had loaned them?

A. Yes, that was the day that I found out - - they had trouble and that they were going to be used. I asked them for the guns back.

Q. And when did you get your guns back?

A. I think a month or two months after it all settled down.

Q. Who gave them back to you?

A. Pearl did.

Q. Now, did there come a time when you surrendered those guns to a Government agent?

A. Yes.

Q. And would you tell us when that was and what happened?

A. Well, Pearl called me and said she wanted the guns and I told her she could have them. And she brought a Federal Agent up to my house with her and I think that was in September sometime, sometime in September of '82, I think.

Q. All right, sir. When the guns were returned to you, how many guns were returned?

A. There was two guns returned.

Q. Were they your guns that were returned to you?

A. One of them was and one of them wasn't.

Q. Now, did you in fact in September of 1982 surrender those guns to a Federal Agent?

A. Yes, I did.

Q. Did you surrender the same guns - -

A. (Interrupting) Yes.

Q. (Continuing) That were given to you by Pearl?

A. Yes, I did.

MR. DAUSE: Your Honor, I'd like to have the witness shown Government's Exhibit 108 and 109.

THE COURT: All right, Mr. Marshall.

(Whereupon those exhibits were passed to the witness)

THE WITNESS: Those are the guns.

Q. Have you had a chance to examine Government's 108 and 109?

A. Those were the guns.

MR. DAUSE: Mr. Marshall, if you could keep them there just a minute.

THE MARSHALL OF THE COURT: Yes, sir.

Q. There's a little yellow evidence sticker on that. Mr. Newman, would you identify which is 108 and which is 109?

A. This is 109. This is a .243 that was mine.

Q. That was your gun?

A. That was mine.

Q. And that's 109, you say?

A. Yes.

Q. How about the other one?

A. This is a 30.06 rifle, this is not mine, this is 108.

Q. Is that the - -

A. (Interrupting) That's the one I got back.

Q. That you got back?

A. Yes.

MR. DAUSE: May I have just a moment, Your Honor?

THE COURT: Yes, sir.

MR. DAUSE: Your Honor, I move for admission into evidence as Government's Exhibit

108 and 109 - -

MR. PAFUNDA: (Interrupting) Your Honor, I'm going to object - - may I approach the Bench?

THE COURT: Yes, sir.

REPORTER'S NOTE: Whereupon a Bench Conference was held with all counsel being present.

MR. PAFUNDA: Your Honor, I would object on two bases, number one, there's no foundation of this witness being laid with regards to the 30.06. He has not identified that as being that weapon he gave to Pearl or the one Pearl gave him back.

Number two, it appears that Mr. Dause's motion at this time is premature. He hasn't established a relevancy on these particular weapons with this witness. And there's no indication they were used in the Ray-Mac trouble.

THE COURT: What Mr. Pafunda, was stated to the pretrial about the foundation of 108.

MR. PAFUNDA: That's the stipulation, Your Honor.

THE COURT: Okay, then let the objection be noted and overruled.

MR. PAFUNDA: Thank you.

REPORTER'S NOTE: End of Bench Conference.

COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

THE COURT: Let the objections be noted and overruled.

And that which is marked as government trial exhibit 108 and 109 be finally admitted into evidence, as government trial exhibit 108 and 109.

MR. DAUSE: That's all I have on direct Your Honor.

MR. HARWELL: Me.

THE COURT: Yes, sir.

CROSS EXAMINATION

BY MR. HARWELL:

Q. Mr. Newman, my name is Aubrey Harwell and I am the attorney for Mr. Edgar Jones, the gentleman that you commented on a moment ago when he stood up.

How old of a man are you sir?

A. Thirty.

Q. All right, sir, and how old is your sister?

A. I think thirty-five, I'm not too sure.

Q. All right.

The fact of the matter is like many brothers and sisters you and Pearl are close, are you not?

A. Pretty close.

Q. And have been close over the years, since you were children, is that right?

A. Off and on.

Q. As a matter of fact there are those that think that closeness is such that she is sort of motherly toward you, is that correct?

A. I don't know about that, I have a mother.

Q. All right, sir. Let me ask you, Mr. Newman,how long have you known Mr. Edgar Jones, my client?

A. I'd say for about twelve to fourteen years.

Q. Can you remember when you first met him, sir?

A. No, I can not.

Q. Mr. Newman, how often or how many times, better said, have you been in the JRM office in the presence of Edgar Jones? Let's say over the last five years.

A. Oh, no more than ten, I'd say.

Q. No more than ten times total?

A. Yes.

Q. And you've never employed by Edgar Jones, have you, sir?

A. No, sir.

Q. Have you ever been employed by JRM Coal Company?

A. No, sir.

Q. Have you ever been employed by Mr. Greg Jones, his son?

A. No, sir.

Q. You've never been employed by his son-in-law, Carson Akers, have you, sir?

A. No, sir.

Q. All right, sir. You've told us how many times in the last five years you've been in that office, let me ask you this, Mr. Newman. How many times in the last five years have you had conversations with Edgar Jones?

A. I'd say eight times.

Q. Eight times in the last five years?

A. Yes.

Q. All right. Were you in the JRM office anytime, sir, during the week of February the 15th? February 15th is a Monday, that's the day the problems began at Ray-Mac, were you in the JRM office that week?

A. I can not say for sure.

Q. All right, sir. I think you testified, sir, that you had gone by the JRM office to pick up a check when this alleged conversation with my client took place, is that your testimony?

A. Yes.

Q. All right, sir. Was that the only time as far as you can recall, that you were in the JRM office in the month of February of 1982?

A. The best I can recollect. I might have been there a couple of times.

Q. You might have been there a couple of times?

A. In February.

Q. In February?

A. Yes.

Q. All right. At this time the conversation allegedly took place on or about which you testified. You said if I recall, sir, that that was after the problems at Ray-Mac had just quieted down, is that what you said?

A. Yes.

Q. Was that after the shooting had ceased?

A. Yes.

Q. Was that after the State Police and the helicopters and all had left the Floyd County, McDowell area?

A. Well, I guess, I don't

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

know when the State Police and helicopters and everything left.

Q. All right, sir.

And what check is it that you were there to pick up?

A. A coal check, where I had sold some coal to Edgar.

Q. Sold coal to Edgar or did you sell coal to JRM?

A. I sold coal to JRM.

Q. All right. And did you as a matter of fact get that check that you went to pick up that day?

A. I certainly did.

Q. All right, sir. Do you know what time of day it was you went by to pick it up?

A. I'd say close to midday.

Q. Around noon?

A. Around noon, a little before or a little after.

Q. All right, sir. And if I understood you, you say you don't remember whether any other JRM personnel was there or not there at that time, is that your testimony?

A. That is my testimony.

Q. All right, sir. Where was it that you met Edgar Jones in that office?

A. In his office.

Q. In his office?

A. Yes.

Q. Now, that JRM office consists of a mobile home or did in February of 1982, isn't that correct?

A. That is correct.

Q. And that mobile home has really got two partitions in there so it's sort of divided into three different little rooms, is that right?

A. Yes.

Q. All right, sir.

I understood you to say that you got your check in Edgar Jones' office. As you go in the front door is his office to the right or the left or to the center?

A. It was to the right.

Q. To the right. And was there a desk or a work space right before you entered the door to his office in February of '82?

A. Yes.

COURT REPORTERS
210-A DISTILLERY COMMONS
LEXINGTON ROAD AT PAYNE
LOUISVILLE, KENTUCKY 40206
(502) 587-6006

Q. And that as a matter of fact is where Angie Elliott works, is that correct?

A. Yes.

Q. And I take it, sir, you went there and you walked in the main door, the outer door, is that correct?

A. Yes.

Q. And then you walked into the doorway inside to the right which you've described as Edgar Jones' office, is that correct?

A. Yes.

Q. All right. And you don't recall any other JRM personnel being there at that time?

A. Angie might have been there, I just don't remember.

Q. All right, sir.

And how long were you in that JRM office on that occasion?

A. For about ten or fifteen minutes.

Q. Ten to fifteen minutes.

Was it a door to that office that you've described as Edgar Jones' office opened?

A. I don't remember whether it was opened or closed.

Q. You have no recollection if it was opened or closed?

A. Is that before -- is that when I went in when me and Edgar was talking?

Q. Now, let's get to that, when was it that you were talking, when you went in or when you were going out or when?

A. I sat down in a chair and I asked him if he was going to need anymore coal.

Q. Yes, sir.

A. And I was talking about -- something came up about Phillip and Pearl and I said they were in bad shape and Edgar said well, they're going to be taken care of.

Q. Yes, sir. And that was while you were sitting in a chair?

A. That's while I was in the chair.

Q. Where was Mr. Jones, was he standing --

A. (Interrupting) He was behind the desk.

Q. Behind the desk?

A. Yes.

Q. About how far from him were you?

A. Oh, across a regular desk.

Q. Is that about as far as His Honor is from Madam Clerk?

A. Well, I don't know, it's just a regular desk from one side of the desk to the other.

Q. All right. The comments that Mr. Jones allegedly made, sir, were they made in a whispered voice or were they made in a normal conversation tone?

A. A normal conversation.

****

Q. Do you have any knowledge, sir, as to whether anybody overheard any conversation that you had during that meeting with Edgar Jones?

A. No.

Q. You don't have an knowledge?

A. No.

Q. Al right, sir. To be totally candid with this jury, Mr. Newman, you care a great deal about your sister, Pearl, don't you?

A. Well, I like her like any brother would like a sister.

Q. Sure, you do. As a matter of fact, you want to help her, do you not, sir?

A. Well, if I could, but there is no way I could help her.

Q. Al right, sir. Mr. Newman--

THE COURT: (Interrupting) I believe it is going to be necessary for this witness to come back, gentlemen.

MR. HARWELL: Okay, Your Honor,I'm sorry I didn't know the time, sir.

THE COURT: I am just thinking maybe

a matter of 15 or 20 minutes will be fine but if it's going to be longer than that - -

MR. HARWELL: (Interrupting) I suspect the total will be longer, Your Honor.

THE COURT: Al right, sir, you need to be back here Monday morning at 9:00.

We will be in adjournment until Monday morning at 9:00. During this adjournment no radio or television, newspaper, no discussing this with anybody else or permitting anyone to discuss it in your presence.

You understand you aren't to finally make up your mind upon the issues of this trial until you have heard all the evidence together with the courts instructions.

Any objection or corrections as to the form of the admonition?

MR. SELF: Your Honor.

THE COURT: Please excuse the jury until 9:00 Monday morning.

REPORTER'S NOTE: At this [illegible] the jury left the courtroom.

THE COURT: We will be in adjournment until 9:00 Monday morning.

THE MARSHALL OF THE COURT: Court will stand in recess until 9:00 Monday morning.

REPORTER's NOTE: Court recessed at 5:00 P.M.

*** *** ***

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

STATE OF KENTUCKY)
)
) SS.
)
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 23rd day of February, 1984.

Bruce D. Handy
Notary Public

James E Edmondson
Notary Public

Notary Public