UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

UNITED STATES OF AMERICA

-vs- CASE NO. 83-8

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

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TRANSCRIPT OF TRIAL

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BEFORE: THE HONORABLE G. WIX UNTHANK

DATE: FEBRUARY 29, 1984

VOLUME, FORTY-FOUR

DALE SOERGEL MOORE SHAW & ASSOCIATES
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For the Defendants Jason Moore, German Stumbo, Teddy Kinney, Kenneth Rolland and Raymond Hall:

WILLIAM D. KIRKLAND, ESQ.

REPORTER'S NOTE: The Court convened at 9:00 A.M., February 29, 1984.

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

Your Honor, all Attorneys are here, but there are two Defendants that haven't arrived yet.

THE COURT: All right. We can achieve this. Mr. Burchett.

MR. BURCHETT: Yes, Your Honor.

THE COURT: You were called here on a matter concerning impeachment.

MR. BURCHETT: Yes, Your Honor.

THE COURT: Your former client, Mr. Moore, is on the stand, and he has testified on direct, and he is now in the process of cross-examination.

In this cross-examination

inquiries are being made to this witness concerning what primarily would be collateral matters.

Collateral matters, as you well know, are anything which the cross-examining party would not be able to put on in their case.

However, they come back, and they state to the Court, "Judge, this isn't a collateral matter, because it is bearing upon bias", which would be bias of the witness against the Defendants; the interest of the witness and the subject matter, or the motive to falsify.

The inquiries which they are making are concerning specific acts of criminal conduct where this witness has not been charged nor convicted. This may involve his Fifth Amendment rights. This Court is holding and ruling that by reason of the plea agreement this witness has not waived his Fifth Amendment rights as to other crimes outside of the case which is on trial.

And you will advise him on that. But this is by avowal and out of the presence of the Jury.

He has several things which he wants to ask him. I will permit him to ask, and you may advise him when he can decline and when to

answer. I will permit him to ask, and where you permit him to answer.

Then after it is over, I am going to permit counsel to tell me how all of these things bear upon bias, interest of the witness or motive to falsify.

After I have done that, and I conclude under 403 that it isn't more prejudicial than it is beneficial, then I will make a ruling. Do you understand that?

MR. BURCHETT: I think so, Your Honor.

THE COURT: All right. You gentlemen may go talk to him, and then when the other two Defendants get here, then we will proceed, hopefully, before 10:00 o'clock, so we can get this trial under way.

We are in recess.

THE MARSHALL OF THE COURT: All rise. This Court is in recess until the other two Defendants arrive.

*** *** ***

(Reporter's Note: Court reconvened at 9:24 a.m.)

THE MARSHAL OF THE COURT: This Honorable Court is again in session. Be seated and come to order.

Your Honor, all attorneys and all defendants are present. The jury is not.

THE COURT: Thank you, sir. Mr. Burchett?

THE MARSHAL OF THE COURT: Sorry, Your Honor, I thought he was present.

MR. HARWELL: We thought he was in Chambers, Judge.

THE COURT: He was, but he stepped out.

Mr. Harwell, you may go to the stand.

MR. HARWELL: Thank you, Your Honor.

THE COURT: I guess he's walking down to the other end or maybe he's going to the bathroom. He had a cup of coffee.

THE MARSHAL OF THE COURT: He's present, Your Honor.

THE COURT: Mr. Burchett, you can just have your seat down there and we'll proceed.

THE CLERK OF THE COURT: Mr. Moore, you've been previously sworn here in this trial, sir. Do you recognize yourself as still being under a continuing oath?

THE WITNESS: Yes.

THE COURT: All right. You may proceed, sir.

AVOWAL EXAMINATION

BY MR. HARWELL:

Q. Mr. Moore, as the Court's told you, this is out of the presence of the jury, and I want to ask you some questions. If you need to consult with your attorney, sir, by all means do so. If you're uncomfortable with any question before you answer it I urge you to consult with your attorney.

Yesterday, I asked you if, as a matter of fact, you were taking any drugs during the week of February 15, 1982. Do you remember my asking you that question?

A. Yes.

Q. All right, sir. And do you remember your answer to that question, sir?

A. Yes.

Q. What was that answer, sir?

A. No.

Q. All right, sir. Now, is it not a fact, sir, that in a conversation that you had with Special Agent Kemp on March 19, 1982, you told him you'd been taking speed?

A. Yes.

Q. All right, sir. Was that true?

A. No.

Q. All right, sir. And didn't you tell him, sir, you'd like to have some more speed, that you were out?

A. I never had any to start with.

Q. Yes, sir. But did you tell him that, Mr. Moore?

A. Yes.

Q. All right, sir. Was that true?

A. Yes.

Q. That was true that you wanted some more?

A. No, it's true I told him.

Q. Yes, sir. But you're saying that that statement that you made to him was

not true, is that right?

A. I told him that but it's not true.

Q. All right, sir. In that same conversation on March 19, 1982, Mr. Moore, didn't you tell him that you had been getting drugs from your cousin in Columbus and you could get coke or acid or anything you wanted from him?

A. I don't know.

Q. All right, sir. If you told him that was that untrue?

A. Yes.

Q. All right, sir. And didn't you also in that conversation with Agent Kemp on March 19, referring to the week of February 15, tell him that you'd bought two ounces of dope for one hundred dollars in Magoffin County, ten cases of beer--

THE WITNESS: Do I have to answer this?

Q. And you all sat there taking that speed, smoking that dope, and got plumb wild all day and all night until Sunday morning?

THE WITNESS: Do I have to answer this line of questions?

(The witness conferred with his counsel.)

A. I claim my rights under the Constitution to self-incrimination.

Q. And so you're not going to answer that question, sir?

A. I'm not answering that line of questions.

Q. All right, sir. I'm going to ask you some more questions along that line, and you can consult with your attorney. It may be that after you do so you'll want to take the Fifth. Given the fact that the Court is letting me make an avowal for the record then I'm going to ask you some more questions along that line. I don't mean to be rude to you, Mr. Moore.

The fact of the matter is, is it not, sir, that in that conversation with Mr. Kemp, the one to which I just referred, the one on March 19, 1984, you were referring to what you, Phillip Booth and others had done during the week of February 15, 1982, were you not?

A. I claim my rights on the Constitution.

Q. Under the Fifth Amendment, sir?

A. Yes.

Q. All right, sir. And is it not also true, sir, that on April 2, 1982 in a conversation you had with Mr. Kemp that you told him that earlier that year -- earlier in 1982 you had been securing some of your narcotics out of Detroit?

A. I claim my rights on the Constitution.

Q. All right, sir. As I said a moment ago, sir, I've got a series of questions for the record that I'm going to ask you.

A. You're going to get the same answer.

Q. Yes, sir. I'm going to ask them, if I may, and you give whatever answers you deem appropriate and necessary.

And is it not also true, sir, that you told Mr. Kemp on April 2 of 1982 that speed and pot and acid had been selling well in Floyd County, Kentucky?

A. I claim my rights under the Constitution.

Q. All right, sir. And did you not also tell Mr. Kemp on April 2 of 1982 that a month or so before that time you had

taken seventy-five thousand dollars to Virginia apparently for a drug buy?

A. I claim my rights under the Constitution.

Q. All right, sir. And did you not, Mr. Moore, tell Mr. Kemp on April 2 of 1982 that coccaine was selling well, for one hundred dollars a gram, even if it had been junked on?

A. I claim my rights under the Constitution.

Q. Your Fifth Amendment rights, sir?

A. Yes.

Q. All right, sir. And did you not also tell Richard Kemp on April 2 of 1982 that some of -- some of your narcotics pick-ups earlier in 1982, referring to an unknown date, had been made in Lexington, Kentucky?

A. I claim my rights under the Constitution.

Q. Yes, sir. In regard to Ray-Mac, sir, you had a number of conversations in 1982 with Richard Kemp, did you not?

A. I claim my rights

under the Constitution.

MR. HARWELL: May the Court please, I would respectfully ask that counsel consult with the witness given the plea agreement which provides for immunity in regard to that. I specifically --

THE COURT: Wait just a moment. Come back again. What was the question that you asked?

MR. HARWELL: The question was: Isn't it true, sir, that in the spring of 1982 you had a number of conversations with Richard Kemp in regard to Ray-Mac.

It was not in regard to drugs, Judge, but in regard to Ray-Mac.

THE COURT: All right.

(The witness conferred with counsel.)

THE WITNESS: Yes.

Q All right, sir. And is it not a fact, sir, that in one of those conversations with Mr. Kemp, one on March 19 of 1982, you told Mr. Kemp that you had been to see Donahue Halbert and that Donahue Halbert wanted you to sign for guns; and you said, no, just mark it

up any way you want to; if it's for Edgar there'll be a discount. Did you tell Mr. Kemp that?

A. I don't even remember.

Q. You don't recall that?

A. No.

Q. All right, sir. And did you not, sir, on March 19, 1982 tell Richard Kemp that you had purchased an Uzi?

A. I don't remember that either.

Q. All right, sir. Did you purchase an Uzi, sir, in regard to the Ray-Mac situation?

A. No.

Q. All right, sir. Mr. Moore, you testified -- you testified, did you not, in a case here in Federal Court against Morris Joe Hall on December 28 of 1982?

A. Yes, sir.

Q. All right, sir. And you were questioned during the course of that trial by a young lawyer named Larry Webster, were you not?

A. Yes.

Q. During that testimony you were under oath, sir, were you not?

A. Yes.

Q. All right, sir.

THE COURT: Let me get this, gentlemen. We get this about fifteen times where a witness is reminded he's under oath, you know.

MR. HARWELL: No, sir. Judge, I'm not reminding him he's under oath. I'm asking him if it's not a fact that he was under oath back in December --

THE COURT: All right.

MR. HARWELL: -- when he testified, as compared to talking to somebody, Judge. I'm not asking about now.

THE COURT: Okay. Go ahead.

MR. HARWELL: All right, sir.

Q. And, sir, you were asked by Larry Webster about the Ray-Mac situation, were you not?

A. I was asked a lot. I don't remember what all he asked.

Q. I'm sorry, Mr. Moore, I didn't hear you.

A. I said I was asked a lot.

I don't remember what all he asked.

Q. All right, sir. Let me ask you, sir, if you were asked these questions and if you gave these answers.

MR. HARWELL: Before I do I'll advise Your Honor that I've given pages 25, 26 or copies thereof of the transcript from which I'm quoting. questions and answers, to the Government earlier.

THE COURT: All right.

Q. Mr. Moore, let me ask you about these questions and these answers, please, sir.

It reads: "Question: Did you have the authority to order the powder around the certain places?

"Answer: If we needed powder in the mines I had the authority to tell somebody to go get it.

"Question: You had the authority to do what you wanted with it?

"Answer: No. I didn't have authority to steal it and sell it, no.

"Question: Well, prior to this time, the powder in that magazine had been used for highly illegal purposes that he had nothing

to do with, and you knew about it and your boss knew about it, is that true?

"Answer: What do you mean? Hauling it on the hill in my car?

"Question: You know what I mean. The Ray-Mac thing.

"Answer: I don't know nothing about it.

"Question: Don't know a thing about that?

"Answer: No."

Did you, sir, give those answers to those questions in that case before Your Honor?

A. Yes.

Q. And were those answers you gave true, sir?

A. Yes.

Q. You say they were true?

A. Yes, sir.

Q. All right, sir. I beg your pardon?

A. Yes, sir, they were true.

Q. All right, sir.

MR. KEHRLI: Your Honor, for the

record, the Government contends that was covered before the jury yesterday.

THE COURT: That was covered before the jury.

MR. HARWELL: Your Honor, my recollection is that that was late in the examining and we were talking about an avowal at that point in time. I was under the impression that I didn't cover that, but I could well be in error, Your Honor.

THE COURT: Well, the daily copy will show it.

MR. HARWELL: Yes, sir, it will.

THE COURT: Review the daily copy.

MR. HARWELL: All right, sir.

THE COURT: If I'm in error ...

MR. HARWELL: All right, sir.

Q. Let me ask you this, sir. Is it not true that on January 28 of 1981 in Floyd County, Kentucky, you and Phillip Booth mixed two gallons of gasoline and diesel fuel, and poured it in the back bedroom of the Arlie Potter house in McDowell, Kentucky, and set fire to that house?

A. I claim my rights on the Constitution.

Q. Fifth Amendment, sir?

A. Uh-huh.

Q. The Fifth Amendment sir?

A. Yes.

Q. Okay. - -

THE COURT: (Interrupting) Now, whose house was this?

MR. HARWELL: Arlie Potter's, Judge.

Q. Mr. Moore, you got your function in this case and I've got mine and as I said to you a moment ago, I am going to ask you some more questions and if you and your counsel deem it necessary to take the Fifth Amendment, I understand that for the record I will ask some more questions in regard to this matter, okay? You consult - -

THE COURT: (Interrupting) Let's do this - -

MR. HARWELL: (Interrupting) I've got about six more, Judge.

THE COURT: Does your client intend to take the Fifth Amendment with regards to any matters regarding the Arlie Potter thing?

MR. BURCHETT: Yes, sir, Your Honor.

THE COURT: All right.

MR. HARWELL: May Your Honor please, I believe that the law is such that I need to do a particularized inquiry in order to make my record.

I'm not arguing with Your Honor but I'm asking, given the fact that this is avowal that I be allowed Judge to ask my line of questions so that the record is complete on it. It won't take long, Your Honor.

MR. KEHRLI: Your Honor, may the Government suggest if Mr. Harwell is going to ask the questions, we know what the witness is going to - -

MR. HARWELL: (Interrupting) May I cite my questions and then ask the witness if he would take the Fifth on each of them, Your Honor, after the advice of counsel?

THE COURT: All right, I think I am anticipating, you want to get all of this in and then at the conclusion say the entire testimony of the witness should be stricken.

MR. HARWELL: I don't think I am entitled to do that, Your Honor. To be very candid with the Court, unless - - unless Your Honor addresses the Jury on the Fifth Amendment right, in that this is not in the presence of the Jury, I don't intend to do that. I may be entitled - -

THE COURT: (Interrupting) Go ahead and ask your questions, read off the questions you are going to ask and he can state at the conclusion.

MR. HARWELL: All right, sir.

I would ask this witness may the Court please the following questions.

THE COURT: All right.

Q. Is it not true, Mr. Moore that you and Phillip Booth and Pearl Booth agreed with Arlie Potter over in Floyd County to commit arson?

I would further ask is it not a fact, sir that Arlie Potter was as a result of that arson fraudulently receiving insurance benefits and you and Phillip and Pearl Booth were to get appliances, furniture, clothing, and whatever you wanted out of the house in exchange for burning it down?

I would further assert. Was it not a fact that you and Phillip and Pearl Booth obtained a stereo, some clothes, an RCA television set, a rocking chair, an electric coffee pot, some knives, some sheets, some linens and a loveseat as a result of your agreement?

I would also ask if as a matter of fact you and Phillip and Pearl Booth did burn the house down?

I would also ask if it's not a fact, sir that in addition to the pieces of

property which you got, you also were paid five hundred dollars for your role in that arson by Mr. Phillip Booth?

I would also ask if, as a matter of fact, you had not discussed this and made a full disclosure of this under oath on December 28th, 1982, to Mr. James Barry McKensie right here in the United States Courthouse in the United States Attorney's Office?

Those are the questions I would pose - - and one other, Your Honor.

I would also ask if it is not a fact, in the course of your interview with James Barry McKensie, is it not a fact that that interview and your sworn statements of those of Phillip Booth's were taken?

I would also ask, may the Court please, if it's further not a fact that you and Phillip Booth were guaranteed immunity from further prosecution of crimes occurring prior to you being taken into Federal custody?

May the Court please, those are the questions that I would pose this witness.

A. I claim my rights under the Constitution.

Q. As to all of those I've asked, sir?

A. All of those, yes.

Q. All right, sir.

I would also ask the last two questions on that, Judge -- I would also ask is it not the truth of the matter, sir, that part of your plea agreement with the United States Attorney's Office involved you telling about times you had knowledge of and you were guaranteed immunity from further prosecution in regards with matters about which you told them?

I would also ask if it's not a fact, sir, if that's one more benefit, that is immunity from this prosecution which you have gotten as a result of the plea agreement that you had with the Government and that which you have done from that point forward in terms of communicating with various law enforcement officials?

Those are the questions, Your Honor.

THE COURT: All right.

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

A. I don't remember what was completely in that agreement.

MR. HARWELL: Judge, could we hand the witness that which was marked for identification and not admitted -- I believe it was Government's Exhibit 119, Your Honor -- excuse me, Judge. May I go to my table just a moment and get some water?

THE COURT: Yes, sir.

THE CLERK OF THE COURT: Judge, may I state a correction for the record that the exhibit marked yesterday I incorrectly stated it, it was identified as NPM No. 23. It is NPM No. 24. And then marked as Government 119.

THE COURT: Let's do this, let's make that as an exhibit as part of this avowal.

MR. HARWELL: Yes, Your Honor.

THE COURT: I'm not going to have the jury speculate on the legal affect of a plea agreement.

MR. HARWELL: Yes, sir.

May I make a statement briefly for the record?

THE COURT: Yes, sir.

MR. HARWELL: With all due respect to Your Honor, we submit, may the Court please, that that is an exhibit which should go to the jury.

THE COURT: Fine. It's before the jury.

MR. HARWELL: Yes, sir.

THE COURT: He has the plea agreement.

MR. HARWELL: Yes, sir.

THE COURT: The Court feels that for evidentiary purposes that the plea agreements, Mr. Harwell, is sufficiently covered.

MR. HARWELL: Yes, Your Honor.

THE COURT: I feel to permit the jury to read the plea agreement may tend to have the jury become lawyers and decide what was the Fifth Amendment and what's what, that is a question of law, that's not a question of fact.

MR. HARWELL: Yes, Your Honor.

THE COURT: All right. Let me suggest this. It's in -- let me say just also, isn't there a copy of an interview or something?

MR. HARWELL: We have a copy, Judge.

THE COURT: Let that be filed as

part of the avowal too.

MR. HARWELL: Thank you, Your Honor, but not go to the jury.

THE COURT: It does not go to the jury, and it's not in evidence, it's just a part of the avowal.

MR. HARWELL: Yes, sir.

May I hand this to Madam Clerk through the Marshall, Judge?

THE COURT: Yes, you certainly may.

MR. HARWELL: May I inquire of Madam Clerk if she has a stapler, Your Honor? I pulled this out of some others.

THE COURT: She has a stapler.

MR. HARWELL: If we could have that stapled, Judge, it's two pages.

THE COURT: Let's move on, gentlemen.

THE CLERK OF THE COURT: Your Honor, shall I mark this 119A?

THE COURT: Yes, ma'am.

THE CLERK OF THE COURT: This will be marked for the purposes as Government Trial Exhibit 119A.

THE COURT: No, this is Defendant Jones filed by way of avowal.

THE CLERK OF THE COURT: Defendant Jones not previously marked for identification No. 13 and for the purposes of trial Defendant Jones' Trial Exhibit No. 15 by avowal.

THE COURT: All right, now, do we need an answer on this thing?

MR. HARWELL: I think he was talking to his attorney, and we need an answer, Your Honor, as to my last couple of questions.

MR. BURCHETT: I would request that he repeat the question, Your Honor.

THE COURT: I believe you better repeat that.

MR. HARWELL: All right.

Q I asked if it's not a fact, Mr. Moore, that as part of your plea agreement with the Government -- part of your plea agreement with the Government involved --

THE COURT: (Interrupting) He answered that, he said he does not know.

MR. HARWELL: Yes, sir, and then he looked at the plea agreement, Your Honor, and if he still says he doesn't know or he takes the Fifth--

do you need me to restate the question, Mr. Moore?

A. Yes, sir.

Q. The truth of the matter is, is it not Mr. Moore, that part of your plea agreement with the United States involves you telling about times you had knowledge of and your being guaranteed immunity from further prosecution of crimes prior to being taken into Federal custody, isn't that correct?

Isn't that correct?

****

A. It was limited to the Ray-Mac incident.

Q. You're saying it was limited to Ray-Mac?

A. That is what it says there.

Q. Yes, sir. My last question was and the truth of the matter is that isn't it one of the other benefits that you received from your plea agreement and your cooperation with the Government the fact that you will not be prosecuted in regards to the Arlie Porter fire.

A. No.

MR. HARWELL: Okay, may the Court please that completes my avowal.

THE COURT: All right, point out to the Court, just don't say - - I mean specifically tell me how the drugs matter will apply as to bias, in order to falsify, specifically point that out.

MR. HARWELL: May I get my rules, Judge?

THE COURT: Yes.

MR. HARWELL: May the Court please, insofar as the first questions that I was asking, which concern taking the drugs - -

THE COURT: (Interrupting) This will be the involvement of this witness in the drug business.

MR. HARWELL: Yes, sir. This witness testified, sir, that he was not taking any drugs the week of March 19th of 1982. There was a number of statements which would indicate that he was and it was for that purpose, may the Court please, that I question him in regards to that matter.

I believe, Judge, that basically is a prior inconsistent statement. I think it's admissible under 613. I also think it goes to credibility under 611B. And I think also, Judge, it probably is admissible under 608B as a specific instance.

In addition to that, drugs obviously may the Court please, would with this man or anybody relate to the witness's ability to remember events of February of 1982.

I also think, may the Court please, this goes to the witness's credibility given the examination about the ATF form 4473 when the no box was checked in regards to the use of drugs.

He said in that box that he had not used drugs, been addicted thereto included was marijuana and several others.

For that reason I think that's admissible, Judge Unthank.

THE COURT: All right.

MR. HARWELL: Do you want me to move on to other topics Judge?

THE COURT: Yes, go ahead.

MR. HARWELL: All right.

May the Court please, in regards to the statements that were made concerning Ray-Mac, I believe that those statements are inconsistent with the witness's testimony on direct and for that reason, they should go to the Jury in this case - -

MR. KEHRLI: (Interrupting) Your Honor, may I inquire, are you referring to the statements in the Morris Joe Hall trial?

MR. HARWELL: I'm referring to the statements in the Morris Joe Hall trial - -

MR. KEHRLI: (Interrupting) Well, that was covered in cross-examination and I intend to redirect on that point.

MR. HARWELL: May the Court please, I'm advised that Your Honor's memory and that of Mr. Kehrli is correct, that was covered in cross-examination yesterday. It was covered, Judge and I apologize to the Court.

THE COURT: All right.

MR. HARWELL: May the Court please, in regards to the other question concerning conversations with Agent Kemp concerning Ray-Mac, I believe that they are inconsistent statements and they go to credibility. I asked about buying an Uzi and did you say you bought an Uzi.

THE COURT: All right, now, on the Potter thing.

MR. HARWELL: Beg your pardon?

THE COURT: I think we're ready for the Potter thing next, aren't we?

MR. HARWELL: Yes, sir.

THE COURT: All right.

MR. HARWELL: In regards to the Potter thing, may the Court please, I believe, Your Honor, that that goes - - that should be admissible under 404B, 608B, 611B and I think may the Court please that that ought to go to the Jury.

Obviously that the witness is taking the Fifth Amendment, that creates a problem. Judge, I think that any time there is a conspiracy to commit fraud it falls directly within 608B and goes to credibility, Judge.

THE COURT: Let that be noted in the record and it's by way of avowal.

MR. HARWELL: Yes, Your Honor.

THE COURT: The Court is of the opinion that this matter should not be permitted to go to the Jury.

*** *** ***

MR. WALBOURN: Your Honor, please, yesterday at one of the Bench conferences the Court in a ruling that the cross-examination of Mr. Harwell as to specific prior statements, whether this witness had made a truthful statement or not, the Court ruled that excluding those because they were prejudicial. I would ask the Court to delineate for the record who the prejudice is to.

THE COURT: Well, it's prejudicial in this sense. It's twofold, one it unduly prolongs this trial. The other is that it may tend to very well divert the attention of the jury from the real issues of this trial.

I can use this as an example, I think this was a statement which was related by Judge Swinford. The attorneys interjected in the trial a statement that John Paul Jones made the statement I've just begun to fight. And the other side came back and said John Paul Jones didn't say that. Admiral Perry said that. And this went on all during the trial and the jury went out and came back and the verdict of the jury was we think Admiral Perry was the one that made the statement.

Now, we feel that this evidence, that Mr. Harwell is within his right to

have it placed in by avowal. And the other evidence would very much tend to divert the attention of the jury from the real issues of this trial.

Now, this witness here in answer to his question, in answer to Kemp and he said, he said yes, I lied to Kemp. If you admit you are a liar how many times do you have to do it. It's already in evidence, the jury has heard it and just to repeatedly do that it's prejudicial.

MR. WALBOURN: Your Honor, in all due respect I submit that prejudice is not the proper one here. When a witness takes a stand as an unindicted coconspirator and makes statements in involvement or noninvolvement of defendants on trial it's absolutely essential for specific inquiries as to this witness's propensity to tell the truth or not to tell the truth and I think that's of the most relevant nature. And the inquiries as to all prior statements made at the time other than during the courtroom which could show that this witness has on prior occasions not been truthful should be permitted to be heard by the jury because it goes to the very nature of this witness's ability or capability of telling the truth on the stand.

THE COURT: All right, it's in the

record.

This Court has not deleted all evidence of that. This Court as a matter of fact feels it's been rather liberal in permitting evidence regarding the credibility of this witness. But, gentlemen, there is a point where you get there is just too much.

All right, we'll be in recess five minutes, then we will proceed.

(Reporter's Note: Court recessed at 9:55 a.m.)

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

Your Honor, all Defendants, all attorneys, with the exception, I believe, of Mr. Burchett, is here, and the jury is present.

THE COURT: All right. Are we ready to proceed, sir?

MR. KEHRLI: Thank you, Your Honor.

THE COURT: I think the record ought to reflect that all counsel for the Defendants are through with cross-examination.

MR. PAFUNDA: Yes, Your Honor.

THE COURT: All right. You may proceed.

REDIRECT EXAMINATION

BY MR. KEHRLI:

Q Good morning, Mr. Moore. I am going to be asking you just a few questions this morning concerning cross-examination yesterday.

During that cross-

examination, you were asked about your testimony at the Morris Joe Hall trial; do you recall that?

A. Yes.

Q. I believe Mr. Harwell asked you about some specific questions and specific responses you made to an attorney named Larry Webster during the trial?

A. Yes.

Q. Do you recall Mr. Webster -- and he asked you specifically about a question concerning, "you know, the Ray-Mac thing." And you answered, "no, I don't know nothing about it."

Do you recall whether or not Mr. Webster asked you other questions that day as well, did he?

A. Yes.

Q. All right. Did he also ask you, just prior to those questions, "did you have the" --

THE COURT: (Interrupting) All right. Approach the Bench, gentlemen.

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

THE COURT: Let me ask you. Where are we going? Are you going to ask him if he was asked another question, and then come back and say, "well, before those questions, did he ask you some other questions?"

MR. KEHRLI: Well, Your Honor, we objected yesterday to this testimony being elicited yesterday. The defense counsel got their bite of the apple, and we have the right to put it in context. And I am talking about the immediately preceding questions.

THE COURT: No, sir. I will permit the questions that he says he didn't know anything about it, and he said he didn't. And this jury can conclude, you know, -- now, I am not going to permit you to come in and ask three questions before that, and then deny them the right to come in and ask the three questions before that.

I don't care if the Government wants to do it or if the defense wants to do it.

MR. SELF: But can I ask him the immediately preceding question to place that answer in context, Your Honor?

THE COURT: Okay. You might ask

him -- I don't know. Let's see that.

(Mr. Kehrli passing document to the Court)

MR. KEHRLI: Here are the questions. These are the questions I want. I started right here. (indicating) But I am willing to ask -- that is the immediately preceding question.

THE COURT: Okay, I will permit -- I will permit from twenty-two through this, and that's all.

MR. HARWELL: Do what, Your Honor? What is your number?

THE COURT: I will permit question twenty-one and question -- question twenty-one -- question and answer to twenty-one, and the question and the answer to twenty-two, and that is as far as I am going.

MR. HARWELL: Would you be willing to go through question twenty-three to give the jury the full view.

THE COURT: No, sir.

MR. SELF: I think, Your Honor, that would be appropriate.

THE COURT: Let's see that twenty-three.

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

THE COURT: Okay, twenty-three.

MR. HARWELL: Thank you, Judge.

MR. WALBOURN: Your Honor, to save time, while we are up here, I am going to ask the Court at the completion of all the examination to advise the jury that during the avowal that this witness took the Fifth Amendment regarding certain areas of inquiry, particularly, fraud.

THE COURT: Okay, I am overruling that, and I am not asking for any further comment. Has anybody got anything else they want to add?

I am overruling that for the reason of the fact that evidence regarding the conviction of a crime, which was more than ten years old, was permitted to go to this jury. This jury knows that this Defendant is a convicted felon.

MR. WALBOURN: Your Honor, that has nothing to do with the assertion of the Fifth Amendment right.

THE COURT: All right. That's it.

(At this time the Bench conference was concluded.)

THE COURT: You may proceed, sir.

MR. KEHRLI: Thank you, Your Honor.

Q. Mr. Moore, concerning this testimony, do you recall Mr. Webster asking you: "Question: Well, prior to this time that powder and that magazine had been used for highly illegal purposes that he has nothing to do with, and you knew about it, and your boss knew about it; is that true?" And you responded: "What do you mean, hauling it on the hill in my car?"

And then Mr. Webster questioned you: "You know what I mean, the Ray-Mac thing?" And you answered: "I don't know nothing about it."

And he questioned you again: "You don't know anything about that?" And you said, "No".

Do you recall that testimony?

A. Yes.

Q. All right. What didn't you know about? What were you referring to in answering Mr. Webster's question?

A. He was trying to say that I furnished the dynamite to blow up that equipment

of Ray-Mac, and I didn't know nothing about it. I told him I didn't.

Q. Mr. Moore, also yesterday during your cross-examination, you were questioned about your previous Grand Jury testimony and your recollection of that testimony. And Mr. Harwell asked you if you recall being asked - - the question was: "Was the purpose of trying to stop Ray-Mac to organize them?" And you answered: "They was going to try that morning. They wanted them to sign a UMWA contract, so that they would have to sell the coal the same as Edgar."

Do you also recall the immediately preceding question: "What was Edgar Jones's tenor? Was he just listening or talking or - -" And you answered: "He listened more than he talked, but he said that he had to stop Ray-Mac, or nobody - - said there was enough coal there that he had that every man he had working there could retire; but if he didn't - - but if we didn't stop him, nobody wouldn't have a job."

Question again: "Was any mention of the union involved?" And you answered: "No".

Do you recall that testi-

mony before the Grand Jury?

A. Yes.

Q. Is that truthful testimony and accurate?

A. Yes.

Q. You also testified at a mini-hearing before this Court in December - - or, pardon me. I believe it was the month of November, 19 - - of last year. Do you recall that testimony?

A. What?

Q. Do you recall testifying before this Court during a mini-hearing during the month of November of last year?

A. Yes.

Q. Do you recall a question by Mr. Harwell during that mini-hearing: "Am I correct in understanding then that your opinion changed during the course of that meeting in terms of what was happening; that is you believed there had been a union organization goal or object, and that switched in your mind to where you believed the goal was to shut down Ray-Mac?"

MR. HARWELL: May the Court please. We respectfully note an objection. This is not proper redirect, Your Honor.

THE COURT: Okay, let it be noted and overruled.

MR. HARWELL: We would also ask, may the Court please, that if Mr. Kehrli is going to make reference to the transcript, that they abide by Your Honor's ruling, and they let us know as to the page and the line before the question is asked.

THE COURT: That is a good point.

MR. KEHRLI: I am sorry, Mr. Harwell. It is on page 2 dash - - 72-71.

*** *** ***

Q. And your answer to that question was: "Well, I don't know. Here was me, Phillip Booth, Pearl, German, Edgar Jones, and none of us belonged to the Union. There was two Union men in there." And then Mr. Harwell asked: "Yes, sir. I may not - - I may not be making myself clear to you, sir." And your answer was: "You are not".

And the question again was: "I am asking you if, as a matter of fact,,I am correctly interpreting your testimony in that while you were in that meeting on that Tuesday morning that a light bulb sort of clicked on, and you thought: 'wait a minute. This whole thing is about shutting down Ray-Mac', whereas before you had thought it was UMW organizational effort as to Ray-Mac?"

And your answer was: "Well, I didn't know what it was. They told me they had to shut Ray-Mac down because they were underselling the coal $3 a ton, and Edgar was going to loose his orders and that if he lost his orders, we would loose our job and wouldn't have no job. If we didn't shut them down, we wouldn't have no job." Do you recall that testimony?

A. Yes.

Q. Is that a true and accurate

reflection of your testimony?

A. Yes.

Q. Is that testimony - - do you believe that testimony that you gave that day to be true today?

A. Yes.

MR. HARWELL: May the court please. Under the Federal Rules of Evidence, we respectively submit that, to give the jury the full view, the next question, and answer - - the next question and answer - - the next three sentences ought to be read. It's three lines, Judge.

THE COURT: All right. Well, I will let you do that on cross examination.

MR. HARWELL: Yes, Your Honor.

THE COURT: Well, to save time, you go ahead and read the next three lines.

MR. HARWELL: Three lines, Judge, about twenty words.

THE COURT: Read the next three lines.

MR. KEHRLI: All right, Your Honor.

The next question was: "That was what you had been told on the telephone by Phillip Booth on Monday night?" And your answer was: "Correct".

A. Yes.

Q. There have been some questions about your plea agreement with the United States; do you know what your obligations under that plea agreement, as far as testimony are - - your testimony here today?

A. Yes.

Q. What is that?

A. Just to tell the truth, the whole truth.

Q. Now, I would like to ask you. On cross examination,you were asked about the shooting on Tuesday morning when the coal trucks came off the hill.

I believe you said that you saw Phillip Booth aim his gun. Did you actually see Phillip Booth's gun discharge ?

A. No. I seen he had it pointed.

Q. But did you see it discharge?

A. No.

Q. You also indicated that at some time during that incident that you saw three men above you with, long guns; when did you see those men?

A. Just -- it was just after the

shooting - - after everybody stopped shooting.

Q. After you had run out of bullets?

A. Yes.

Q. Did you hear those men fire their guns?

A. No.

MR. KEHRLI: Your Honor, I would like to have the Marshall hand the witness Government's Exhibit 91, please.

(The Marshall complied)

Q. Do you have that in front of you, Mr. Moore?

A. Yes.

Q. And that is the firearms transaction record concerning the model 59 that you purchased at Donahue Halbert's; is that correct?

A. Correct.

Q. Now, you were asked questions about the answers to the questions in the middle section of that form. Do you see that sections A thru H there?

A. Yes.

Q. Do you know who wrote those - - the word "No" in response to all of those answers on this form?

A. No, I don't.

Q. Okay. Is that your writing?

A. I couldn't say it is, and I couldn't say it is not.

Q. And do you see down below that, that section underneath your signature? Do you see the section "B", "to be completed by transfer of the seller"? It says - - and there is a section that says, "the person described in section A"? And there is a box that is checked there. Do you know who checked that box?

A. No, I don't.

Q. What does that box say next

to it?

A. It says, "Is known to me".

Q. Did you check that box?

A. I don't think so. I don't remember.

Q. Did Mr. Halbert check that box?

A. I couldn't say.

Q. Now, you indicated that you went to Donahue Halbert twice, on Tuesday night and Wednesday night?

A. Yes.

Q. Now, which night was it that you had the discussion with him concerning McDowell being shot up?

A. Wednesday night.

Q. So, you had two discussions with him; is that correct?

A. Yes.

MR. KEHRLI: Your Honor, I would like to have the witness shown Government's Exhibit Nos. 6 and 7, please, if the Marshall would assist us.

Mr. Marshall, would you, please place those on the easel?

(The Marshall compies)

MR. KEHRLI: Your Honor, may the witness step off the stand and approach the photographs.

THE COURT: Yes, sir.

(The Witness complies)

Q. Now, Mr. Moore, I believe on one of those exhibits yesterday you traced your - - the route that you and the other men followed when you went up on the hill on Wednesday and shot at Ray-Mac.

A. Yes.

Q. Does either one of those photographs depict the area you were in when you shot at Ray-Mac on Wednesday?

A. Right in here. And right in here. (Indicating).

Q. All right. Could you - - I believe there is a red pencil there on that easel or on the witness stand, Mr. Moore. Would you take that pencil and mark with an "X" approximately where that group of men were that you were with when you shot at Ray-Mac on Wednesday?

A. (No response)

(The Witness complies)

THE COURT: How is that going to be

noted on the record?

Q. Would you please place your initials by your - - that "X" that you marked there.

A. (No response)

(Witness complies)

Q. What have you done to that photograph, Mr. Moore, for the record?

A. Do what?

Q. What have you just done to the photograph for the record?

A. Initials.

Q. Did you put your initials on it?

A. Yes.

Q. Where are your initials next to?

A. The "X" where we were at.

THE COURT: What is the number of that exhibit, gentlemen?

THE MARSHALL OF THE COURT: Exhibit No. 7, Your Honor.

THE COURT: All right.

Q. All right. Now, Mr. Moore, yesterday you indicated that two of the men that

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

were in that group were - - were separate from you and acting as lookouts; is that correct?

A. Yes.

Q. Which two men were those?

A. Raymond Hall and Bo Moore.

Q. All right. Would you take that same pencil, and on that same exhibit, would you mark with an "O" the approximate area where Raymond Hall and Bo Moore were, if is on that photograph, when you were shooting at Ray-Mac?

A. (No response).

(The Witness complies)

Q. And would you put your initials next to that "O" after you indicate?

A. (No response)

(Witness complies)

Q. All right. Mr. Moore, for the record, is it accurate that you have just placed on Government's Trial Exhibit No. 7 an "O" and your initials where the location of those two men were?

A. Yes.

Q. That's Bo Moore and Raymond Hall?

A. Yes.

MR. KEHRLI: All right. You may resume the stand, Mr. Moore.

(Witness complies)

Q. You indicated that you were a frequent visitor, at the home of Phillip and Pearl Booth. Mr. Moore, which of the other Defendants - - the Defendants in this Courtroom were also frequent visitors of Phillip and Pearl Booth?

A. Oh, several of them.

Q. Would you name them, please?

A. Eugene Tackett, Ranny Blankenship, Hermit Newsome, Harold Moore, Benny Caudill, almost everybody that worked for Phillip.

Q. Did you know all of the employees that worked for Phillip and Pearl on the other shifts other than your shift?

A. Yeah. I knew - - yeah, I'd say I did, yes.

Q. All right. Did you know the employees of Ricky and Tilton Dye, or the Dye Coal Company?

A. Yes.

Q. Did you know all of them?

A. Pardon?

Q. Did you know all of them?

A. All of them?

Q. Yes.

A. No. No.

Q. Did you know all of the employees of the Adkins Coal Company, or the AA Coal Company?

A. No.

Q. Now, you indicated on cross-examination, that shortly after the trouble at Ray-Mac that you became familiar with who you later learned was ATF Agent Richard Kemp; is that correct?

A. Yes.

Q. Now, how did you know him when you were first familiar with him? What was his name?

A. Rick Kemper.

Q. And what did you believe him to be?

A. Well, I thought he was some kind of con man - - you know, dope runner or something.

Q. When did you first learn that Rick Kemper was actually ATF Agent Richard Kemp?

A. The night I was arrested.

Q. You indicated that you had some conversations with Agent Kemp while he was on this undercover capacity, and you also indicated on cross-examination that you weren't always truthful with Agent Kemp; is that correct, when he was undercover?

A. That is true.

Q. Why did you tell Agent Kemp, when he was undercover, those statements that weren't true?

MR. ROWLAND: Your Honor, I object. He has already answered those questions. It is not re-direct.

THE COURT: Overruled.

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

A. Well, I thought maybe I'd get a job working with him or something, you know, make some more money.

He was all the time talking about some big jobs he's done or something, and I thought I might get a job with him, work for him.

Q. All right. And work for him in the capacity as a con man; is that correct?

A. True.

MR. KEHRLI: Your Honor, I have no

further questions of this witness.

THE COURT: Okay.

MR. HARWELL: May I approach the podium, Judge.

THE COURT: Yes, sir.

*** *** ***

RECROSS EXAMINATION

BY MR. HARWELL:

Q. Mr. Moore, there was some reference made, sir, while Mr. Kehrli was examining you about your plea agreement. As a matter of fact, I think you indicated, sir, that part of that plea agreement involved a commitment that you would tell the truth.

I ask you, sir, isn't it also part of that agreement that the United States committed to dismiss--promised to dismiss five counts out of a six-count indictment that was at that time pending against you?

MR. KEHRLI: Objection, Your Honor. That's already been covered on cross-examination.

THE COURT: Overruled.

MR. HARWELL: They opened the door, may the Court please.

THE COURT: Overruled.

Q. The Judge says you can answer, sir. Isn't that part of what the Government committed to do?

A. They'd drop five counts, plead guilty to two.

Q. All right, sir. Didn't the

Government further agree they wouldn't bring any charges against you as a result of any involvement you might have had in the Ray-Mac activites?

A. Yes.

Q. All right, sir. Sir, you also indicated that you had made some statements to Mr. Kemp when he was undercover that were untrue in an effort to get a job, is that right?

A. Yes.

Q. Is it not a fact, sir, that you and he discussed the possibility of you all working together, you and Mr. Kemp, isn't that correct?

A. We talked a lot.

Q. And you did too, did you not, sir?

A. I can't remember what all we talked about.

Q. Is it not--

A. We talked eight months. I knew him eight months.

Q. Yes, sir. Is it not true that some of those jobs that you and he discussed your doing for him or with him involved highly illegal acts?

A. I never did get a job. We just discussed them.

Q. My question is, did your discussion about jobs, you and Mr. Kemp were going to do or talking about doing together, did they involve illegal acts, involve crimes?

A. Yes.

Q. Sir?

THE COURT: He answered yes.

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

THE COURT: All right. Are we through with this witness?

MR. PAFUNDA: No.

THE COURT: All right.

RECROSS EXAMINATION

BY MR. PAFUNDA:

Q. With regard to those photographs, Mr. Moore, with the Court's permission, would you mark on those photographs with a--with your initials next to a letter Y where you believe the beltfed machine gun was located on the Ray-Mac site, sir.

MR. PAFUNDA: Is that all right, Your

Honor, if the witness leaves the stand and marks that on that particular photograph?

****

THE COURT: There is no objection. He may do it.

Q Would you go ahead and do that, Mr. Moore, where the belt fed machine gun -- you believe it to be located at the Ray-Mac job. Put the letter Y and your initials next to that letter.

(The witness complied)

Q Have you done that, sir?

A Yes, sir.

MR. PAFUNDA: Thank you, sir.

THE COURT: Anything else from this witness?

MR. WALBOURN: I have nothing further, Your Honor.

THE COURT: All right.

MR. KEHRLI: Your Honor, I have one question in response to Mr. Pafunda's. I think I can do it from here at the table.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. KEHRLI:

Q When you heard that --

THE COURT: Go back to the stand, sir.

MR. KEHRLI: I'm sorry.

Q. Mr. Moore, when you heard that automatic weapon, that you just indicated the location of in the photograph, did you hear any other guns at that time?

A. No.

Q. That's the only sound that you heard?

A. Yes.

MR. KEHRLI: Nothing further, Your Honor.

THE COURT: All right.

MR. PAFUNDA: One more, Your Honor, if it please the Court.

THE COURT: Go ahead. Do you want to consult with cocounsel before you go back?

MR. PAFUNDA: There's too many of them, Your Honor.

THE COURT: All right.

RECROSS EXAMINATION

BY MR. PAFUNDA:

Q. Is that, Mr. Moore,

because the sound of that machine gun drowned out all other sounds?

A. It sounded like one gun.

Q. Extremely loud then, correct?

A. No louder than any other gun.

Q. All right.

A. Just one gun.

Q. All right. Rapid fire?

A. Yes.

MR. PAFUNDA: Thank you, sir.

THE COURT: All right.

MR. KEHRLI: Nothing further, Your Honor.

THE COURT: Are we through with this witness?

(No response)

THE COURT: All right. The witness may stand down.

THE MARSHALL OF THE COURT: Is the witness finally excused?

THE COURT: Is this witness

finally excused?

MR. KEHRLI: No, Your Honor. We reserve the right to call the witness.

THE COURT: All right.

(Witness excused)

THE COURT: Call your next witness.

MR. SELF: Phillip Gene Booth.

PHILLIP GENE BOOTH, a witness herein, being called on behalf of the United States, after having been first duly sworn was examined and testified as follows:

THE MARSHALL OF THE COURT: Give her your name and address.

THE WITNESS: Phillip Booth, Box 259, Hi Hat, Kentucky.

MR. SELF: May I proceed, Your Honor?

THE COURT: Yes, sir, please do.

****

DIRECT EXAMINATION

BY MR. SELF:

Q. Sir, would you state your full name for the record, please.

A. Phillip Gene Booth.

MR. SELF: Mr. Marshall, would you move the microphone over.

(The Marshall complied)

Q. Mr. Booth, would you keep your voice up so that everybody in the courtroom can hear you quite clearly.

A. Yes.

Q. And Mr. Booth, how old are you?

A. Thirty-four.

Q. And where do you live?

A. I live with my father right now, Hi Hat, Kentucky.

Q. Is that in Floyd County?

A. Yes.

Q. Where were you born and raised?

A. In Floyd County.

Q. You've lived there all your life?

A. Yes.

Q. Mr. Booth, how much education do you have?

A. Tenth grade.

Q. Any vocational school or training after that?

A. No.

****

Q. Can you read and write?

A. I can write but I can't read too good.

Q. Can you read if you take your time?

A. Yeah, if I think a long time.

Q. Where did you go to school at?

A. McDowell.

Q. Did you go to McDowell High School?

A. Yes.

Q. Did you graduate?

A. No.

Q. You married, Mr. Booth?

A. No.

Q. You ever been married?

A. Yes.

Q. How long were you married?

A. Twelve years.

Q. And you wife's name?

A. Pearl Booth.

Q. When did you get divorced?

A. In March of '82--'83.

Q. Only been married one time?

A. Twice.

Q. When did you first get married?

A. In-- I was fifteen years old.

Q. Mr. Booth, what kind of work experience have you had?

A. Coal mines.

Q. Okay. Have you ever done anything else besides work or run coal mines?

A. Worked about a year in an auto factory in Detroit.

Q. Other than that, where has your coal mining experience been?

A. Island Creek Coal Company, Newman Coal Company and for JRM Mining.

Q. Mr. Booth--

MR. SELF: Mr. Marshal, if you would, would you hand the witness what's been introduced as Government's Exhibit No. 11.

(The Marshal complied.)

MR. WALBOURN: Your Honor, may we briefly approach the Bench. I don't know that everyone needs to aside from Mr. Self and myself.

THE COURT: Yes.

(Reporter's Note: At this time Mr. Self and Mr. Walbourn approached the Bench; whereupon the following was heard.)

MR. WALBOURN: My only observation is that yesterday Mr. Justice was here, Mr. Booth's lawyer. Today he isn't here.

I don't want to get into a situation where Mr. Self is permitted to question him without his lawyer being there, then as soon as cross begins his lawyer shows up. I think that's impermissible.

If Mr. Self is going to waive any objection he has to his lawyer not being here and testifying then I'm perfectly acceptable to go on. I--I think in abundant fairness to all sides that that's improper.

THE COURT: Gentlemen, I guess we'd better advise the--advise him of that.

Let's do this, let's--

MR. SELF: Mr. Justice advised me that he would be here during cross-examination.

THE COURT: I know.

MR. SELF: I didn't tell him to be here or not be here. I don't have that authority, Your Honor.

THE COURT: But the thrust that he's making is you might ask this witness something--

MR. SELF: Yes, sir.

THE COURT: --which-- Let's see if the witness wants it.

MR. WALBOURN: Could we have the jury dismissed before we do that, Your Honor?

THE COURT: Oh, yes.

MR. WALBOURN: Thank you. I thought maybe you were going to have the witness come up here. I didn't want that.

THE COURT: All right.

MR. SELF: Thank you, Your Honor.

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

THE COURT: Mr. Marshal, would you take the jury to the jury room for five minutes. You will remain there.

Just a moment. You understand while you're in the jury room that the not now admonition is in effect.

(The jury left the courtroom at 10:37 a.m.)

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

THE COURT: All right. Mr. Booth, the

Court's been advised that you have an attorney, Mr. Justice.

THE WITNESS: Yes.

THE COURT: He's your independent attorney. I've further been advised that Mr. Justice will be present during your cross-examination to advise you with regard to your Fifth Amendment rights. But I want to advise you that you have the right to have your personal attorney both during the Government's examination and the cross-examination if you so desire, in order that he may advise you as to your Fifth Amendment rights.

Do you understand that?

THE WITNESS: I thought he was supposed to be here now.

****

THE COURT: Well, you can step down.

Call your next witness. Then when Mr. Justice gets here then we can proceed with this witness.

MR. SELF: Yes, Your Honor.

THE COURT: All right. You stand down, sir. This witness --

MR. SELF: Let me state for the record --

THE COURT: Unless you want to waive Mr. Justice being here. Now, you may waive it if you want to, or we'll wait until he gets here before you get on the stand. He isn't here.

THE WITNESS: I thought yesterday he'd be here.

MR. KEHRLI: Your Honor, we could have someone attempt to contact him immediately to see if he can get here as soon as possible, if the witness is willing to waive his presence.

THE COURT: Well, this I don't mind, but I'm not going to delay this trial for ten minutes, gentlemen, for Mr. Justice to get here.

MR. KEHRLI: No. I'm talking about the witness continuing testifying while Mr.

Justice is en route.

THE COURT: This is for the witness. This witness can do that if he wants to. It's up to him.

MR. SELF: Mr. Booth, do you wish to have Mr. Justice here at all times while you're testifying?

THE WITNESS: Yes.

MR. SELF: Thank you.

THE COURT: Okay.

(Witness excused)

THE COURT: I want this witness to remain in the courthouse.

MR. SELF: Yes, Your Honor.

I advised Mr. Justice he was going to be on the stand today, and I'd take probably most of the day during direct examination. He stated that he didn't think it was necessary to be there. I can't --

THE COURT: You better get Mr. Justice here.

MR. SELF: Yes, sir.

THE COURT: Call your next witness and let's go. We'll have the jury brought back.

Yes, sir.

MR. KEHRLI: The United States would call Philman Caudill.

THE COURT: That'll be fine.

MR. PAFUNDA: Judge, with regard to this witness difficulty that's occurred in the last couple of days, I was wondering if the Court would direct the Government to notify us at least twenty-four hours in advance or whatever before they close their case in chief. I want to avoid the situation where say on a particular afternoon they say we're closed in chief, and then their --

THE COURT: They can advise you -- Well, you advise them when you're near the time and such that we're not going to have a delay, gentlemen. That's all.

MR. PAFUNDA: That's what I was trying to avoid, Your Honor.

THE COURT: I don't want delays, gentlemen. We've had too many delays.

MR. KEHRLI: Your Honor, I don't mean to add to the delay, but may I have a couple of minutes to get my notes for this witness.

THE COURT: Yes, sir, you certainly may.

THE MARSHALL OF THE COURT: Your

Honor, he's on his way up.

MR. SELF: Is Your Honor going to tell the jury anything about why we're switching witnesses in the middle?

THE COURT: Just tell -- I'll tell the jury we weren't ready to proceed with this witness.

MR. SELF: Okay.

THE COURT: I'll tell them he's been withdrawn and we're going to proceed with another witness.

Mr. Caudill, just sit right there (indicating). We'll call you. Just sit down, sir.

THE MARSHALL OF THE COURT: The jury's on its way, Your Honor.

THE COURT: Fine.

(Reporter's Note: At this point the jury came back into the courtroom at 10:42 A.M.)

THE MARSHALL OF THE COURT: The jury's back in the courtroom, Your Honor.

THE COURT: Thank you, Mr. Marshall.

Ladies and gentlemen

of the jury, the witness Phillip Booth has been withdrawn, and they're going to call another witness. Mr. Booth will testify later. Do you understand?

They weren't ready to proceed with Mr. Booth so he's withdrawn, but to prevent any undue delay they're calling another witness and we'll proceed with another witness.

All right, sir. Call your next witness.

MR. KEHRLI: All right, Your Honor. The United States calls Philman Caudill.

PHILMAN CAUDILL, a witness herein, being called by the United States, after having been first duly sworn was examined and testified as follows:

THE MARSHALL OF THE COURT: Give the reporter your name and address.

THE WITNESS: Philman Caudill, East McDowell.

DIRECT EXAMINATION

BY MR. KEHRLI:

Q. Mr. Caudill, as you

know, my name is Randy Kehrli and I represent the United States in this trial. A couple of preliminary things. You have somewhat of a soft voice. There's a microphone in front of you. Please, if you can, try and speak--sit up and try to speak in fairly close proximity to the microphone and keep your voice up that the ladies and gentlemen of the jury can hear you, as well as the other people in the courtroom.

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

A. Philman Caudill of East McDowell, Kentucky.

Q. And how long have you lived in East McDowell, Kentucky, Mr. Caudill?

A. About all my life.

Q. How old are you at this time?

A. Thirty-six.

Q. And how far did you go in school, sir?

A. Sixth grade.

Q. What is your current occupation?

A. I'm unemployed.

Q. How long have you been

unemployed, Mr. Caudill?

A. Since '73.

Q. I'd like to direct your attention to the week of February 15, 1982. Do you recall that week, Mr. Caudill, the events of that week?

A. Repeat that again.

Q. Do you recall the events of the week of February 15, 1982?

A. Yeah.

Q. During that week, at that time, did you know a man by the name of Ed Panhandle Moore?

A. Yeah, I did.

Q. Would you tell the jury who Ed Panhandle Moore was? How did you know him?

A. Well, he was a friend and we was making some timbers together, just ...

Q. Were you making timbers with Mr. Moore at approximately this time, the week of February 15, 1982?

A. Off and on.

Q. Do you know how Mr. Moore was otherwise employed, if at all?

A. He wasn't employed nowhere

that I know of, just odd jobs.

Q. Do you know whether at the time Ed Panhandle Moore was a member of the United Mine Workers of America?

A. No, I don't.

Q. When you say you don't, do you know--does that mean he wasn't or you don't know?

A. I don't know.

Q. During that week of February 15, 1982, did you have occasion to do any work for Ed Panhandle Moore?

A. Yes.

Q. All right. Would you tell us and tell the jury how you first learned about this work that you were to do for Mr. Moore?

A. Well, he come up to my house. He said that we could make--make some easy money doing this and that.

Q. All right. Now, when did he come to your house and tell you this?

A. It was in the evening.

Q. Do you recall what day? Was it early in the week?

A. I don't remember what day

it was.

Q. Now, are you familiar with the events surrounding the violence at Ray-Mac Coal Company?

A. Yeah.

Q. Is that-- Did those events occur the same week I'm speaking of, February 15, 1982?

A. Yeah, some events did.

Q. All right. Did you become aware of some shooting that took place during that week?

A. Yeah.

Q. All right. How long before the first shooting did Mr. Moore come to your house and tell you about this work?

A. It was a day or two, something like that.

Q. Was it a day before the first shooting?

A. Well, there had been some shooting up there before that--that he come to me and talked to me.

Q. Now, he came to you. What time of day was it that he came to you?

A. I don't know about what time it was. It was sometime in the evening.

Q. Sometime in the evening?

A. Yeah.

Q. And where were you when Mr. Moore arrived?

A. I was there at the house.

Q. Was there anyone there with you?

A. My family.

Q. Now, would you tell the members of the jury what exactly Mr. Moore said to you during that conversation that evening.

MR. PAFUNDA: Your Honor, I'm going to object, hearsay and on the confrontation clause, also.

THE COURT: All right. This is tentative evidence, go ahead.

****

A. Will you repeat that?

Q. What did Mr. Moore say to you when he came to your house that evening concerning this job?

A. He said that we could make some easy money at little odd jobs here and there, doing some stuff back on the hill.

Q. All right, what did he mean by doing stuff back on the hill?

MR. WALBOURN: Objection to what he meant.

Q. Did you have an understanding as to what he meant at that time of doing things back on the hill?

A. Well, not exactly right at that time, but I know pretty well what was going on.

Q. What did you know was going on?

A. About Ray-Mac and them having trouble back there.

Q. Did Mr. Moore say anything about you being paid at that time?

A. Yeah, he said we would get paid for it.

Q. Did he tell you how you were to be paid?

A. He said -- the morning he was talking he said don't you worry about no money, they'll pay me and I'll pay you. And he let German Stumbo's name slip.

Q. Now --

A. (Interrupting) So, I figured that's where the money came from, I don't know.

Q. Did he tell you that German would pay him and he would pay you?

A. That was the impression I had.

Q. Do you know German Stumbo?

A. Yes, I do.

Q. Do you see German Stumbo here in the courtroom today?

MR. KIRKLAND: We'll stipulate that he knows German.

THE COURT: Let the record so reflect.

Q. Is that the German Stumbo Panhandle was speaking of when he came to

your house?

A. Yes, it was.

Q. Do you have any -- did you do anything that night with Mr. Moore with regards to this work that you were to do for him?

A. No, I didn't.

Q. All right. When was the first time that you helped Mr. Panhandle Moore?

A. The first time that I done anything, he came around before daylight in the morning.

Q. All right, when was that in comparison with this conversation you just told the jury about? Was it the next morning?

A. I believe it was.

Q. And he came to your house?

A. Yeah.

Q. Did he bring anything with him when he came to your house?

A. He brought two guns and a battery light.

Q. All right, do you recall what kind of guns they were?

A. A .35 Remington and

an 8 mm Mauser.

Q. What did Mr. Moore do when he arrived at your house that morning?

A. He woke me up and he said I guess you're nominated to go with me. And he said I brought you a gun to take with you. I drank a cup of coffee and we went back up on the hill.

Q. What hill are you speaking of?

A. Bill Hall Branch hill.

Q. Now, where is that hill, Bill Hall Branch -- the Bill Hall Branch hill in comparison to your house?

A. Would you repeat that?

Q. Where is the Bill Hall Branch hill in comparison to your house?

A. It's left headed straight on up Bill Hall Branch.

MR. KEHRLI: Your Honor, I'd like to have Mr. Marshall hand to the witness Government Exhibit 5, please.

THE COURT: Mr. Marshall.

MR. SELF: May I see that a moment, please?

(Reporter's Note: The Marshall is handing a document to Mr. Self.)

THE MARSHALL OF THE COURT: Hand it to the witness?

MR. KEHRLI: Yes, please.

(Reporter's Note: The Marshall is handing a document to the witness.)

MR. KEHRLI: Your Honor, may the witness step off the stand and examine the exhibit?

THE COURT: Yes, sir.

Q Mr. Caudill, would you please step off the stand and look at that photograph which has been posted.

First of all, have you seen that picture before?

A. I saw some of it.

Q All right, do you recognize that photograph?

A. Yeah.

Q What is it -- would you turn around so the jury can hear you and tell the jury what that's a picture of.

A. That's a picture of

Bill Hall Branch and Mud Creek.

Q. All right, Mr. Caudill, do you see your house in that photograph?

A. I can't see the house.

Q. Do you see the location of approximately where your house is in that photograph?

A. It should be right in here.

Q. All right, Mr. Caudill, there should be a red pencil up there on the easel, do you see that marking pencil?

Would you take that red pencil and place an X approximately where your house is in that photograph, please, on Government Exhibit 5?

If you know, if you can find it.

(Reporter's Note: At this point the witness marked the exhibit.)

Q. Have you done that, sir?

A. Huh?

Q. Pardon me, sir, I

interrupted you. What were you going to say?

A. From the way this picture looks, my house would be down in here somewhere.

Q. All right. Would you show -- would you trace with your hand where Bill Hall Branch hill is?

****

A. It would be in here.

Q. Would you repeat that again so the reporter could hear you?

A. It would be right around through here.

Q. All right. Would you place - - would you trace - - strike that.

First of all on the top of Bill Hall Branch hill if you see it in that photograph, would you place an O and your initials?

REPORTER'S NOTE: Show that the witness is marking on the document.

MR. KEHRLI: All right, for the record, the witness has placed on Government Exhibit Five an O and his initials at the top of Bill Hall Branch hill is.

Mr. Caudill, you may resume the witness stand.

A. My house is on here.

Q. All right, would you show the Jury approximately where your house would be?

A. It would be setting off over in here, if you went up in the hollow.

Q. All right, you can resume the witness stand - -

MR. WALBOURN: (Interrupting) Your Honor, I apologize. Might Mr. Caudill point and step away so we can see where he's pointing?

THE COURT: Mr. Caudill, when you show it to the Jury, show it to them too, so they'll know.

Q All right, Mr. Caudill, would you go back to the photograph for the benefit of the gentlemen - - the defense counsel would you step aside so that they can see. And indicate again where the top of the hill is and approximately where your house is?

A The top of the hill is right in there. My house is down in the hollow here.

MR. WALBOURN: Thank you very much, sir.

Q All right, Mr. Caudill, you may resume the stand.

THE COURT: Please proceed.

Q After Panhandle Moore brought the guns to your house that morning and woke you up, what did you and Mr. Moore do?

A We went to the top of the hill.

Q How did you get to the top of the hill?

A Just straight up the side

of my house and around the top of Branch.

Q. Did you walk?

A. We walked.

Q. How long did it take you to walk from your house to the top of the hill?

A. I guess an hour and a half, maybe two hours.

Q. At this time, did you know why you were going to the top of the hill with Panhandle Moore?

A. He said he was going down through there to scope things out.

Q. To scope what things out, Mr. Caudill?

A. Ray-Mac Mines and stuff.

Q. What did you do or what did you see when you got to the top of the hill?

A. You could see the mines after we got around on top of the point there, where we were sitting.

Q. All right, where you were sitting, are there any distinguishing - - strike that.

Where you were sitting, was there anything unusual about that area?

A. There was some rocks there

and some pines.

Q. Some rocks, would you describe the rocks to the Jury, please?

A. Well, around that point there was great big rock setting almost right on the point and there was some more over to the side.

Q. Is that what is known as a rock line?

A. Yeah.

Q. Where were you and Panhandle Moore in relation to that rock line?

A. I was around toward the point behind the biggest rock.

Q. Where was Panhandle Moore?

A. He was right around front of me.

Q. Could you see the Ray-Mac Mine site from where you were?

A. Yeah.

Q. How far were you from the Ray-Mac Mine site at that time?

A. I'd say three or four hundred yards.

Q. What happened after you reached this rock line, what did you do and what did

Panhandle Moore do?

A. We sat there for a little bit. I watched on the other side of the hill over there and he shot four or five times over that way.

Q. What did he shoot at?

A. I don't know what he was shooting at.

Q. Did you see his gun fire?

A. I could hear it crack. I was back behind that rock around from him.

Q. What did you do?

A. I done what he told me to, I watched down the other side.

Q. What exactly did he tell you to do, what were you watching for?

A. Anybody coming up the hill.

Q. Did you have those two guns with you that he brought earlier that morning when you went to the top of the hill?

A. Yeah, we did.

Q. Okay, what kind of gun were you carrying?

A. I was carrying a .35 Remington.

Q. What kind of gun did

Panhandle Moore have?

A. An 8mm Mauser..

Q. Is that the gun that Panhandle Moore shot?

A. Yeah.

Q. How many times did he shoot?

A. Four or five times.

Q. Did he tell you why he was shooting?

A. Stopped them from working.

Q. When did he say that?

A. When we were coming back around the hill.

Q. Now, when you said stop them, who do you mean?

A. Repeat that?

Q. When you say to stop them from working, who is them?

A. Over there at Ray-Mac Mines.

*** *** ***

Q. Do you not - - strike that.

What could you see at the Ray-Mac mine site from where you were?

A. You could see a loader, some of the trucks, a fuel tank, augers, you could see just about all of that.

Q. How long were you up there at the top of the Bill Hall Branch hill?

A. I actually don't remember how long it was that we stayed up there, but it was around noon when we came back and got to my house.

Q. Now, after Panhandle shot his gun, where did you go?

A. We went back around the hill and back off at my house. He took the guns and went home or went somewhere.

Q. He took those two guns with him?

A. Yeh.

Q. What did you do after you got to your house?

A. I stayed around the house awhile and I might have went down the road that evening, I don't remember if I did or not.

Q. Did you have anything more to do that day concerning any of the activity at Ray-Mac?

A. Not that day I didn't.

Q. When was the next time something happened with relations to the Ray-Mac Mining site?

A. Well, they had a big shooting the next day or something or other afterwards. And that's when they hid in the top of the barn out at my house.

Q. Now, you're speaking of the next day, this is the day after you and Panhandle went up on the hill?

A. I believe it was.

Q. Will you tell the jury what was the first thing that happened that morning that you recall?

A. There was a Chevrolet truck came up to the edge of my yard there and dropped some men off.

Q. What time was this, when was this?

A. It was before daylight.

Q. And did you see the Chevro-

let truck?

A. It was a Chevrolet truck, I could tell by the taillights.

Q. Do you know whose truck that was?

A. I don't know whose it was for sure, but I thought it was Jason Moore's.

Q. Do you see Mr. Moore, Jason Moore here in the courtroom today?

A. Repeat that?

Q. Do you see Mr. Jason Moore here in the courtroom here today?

A. Yeh, I do.

Q. Where is he?

A. Setting in the last one next to the window.

MR. KIRKLAND: We'll stipulate that Judge, he knows him well.

THE COURT: Let the record so reflect.

MR. KEHRLI: Thank you Your Honor.

Q. All right, after this truck arrived early in the morning - - first of all, where was this truck in comparison to your house?

A. Right out in front of my house.

Q. How did you happen to see that truck so early in the morning?

A. I looked out the window.

Q. And what did you see when you looked out the window?

A. I seen the truck and I seen a man get out and go up the hill and the truck went back out of the hollow.

Q. Now, at that time could you tell how many men got out of the truck?

A. I couldn't tell right then, later on that day I learned.

Q. All right, AT that time in the morning could you tell who those men were that got out of the truck?

A. No, I didn't know who it was.

Q. Did you see - - did you see where they went after they got out of the truck?

A. They went up the hill, almost beside my house.

Q. And where did they leave the truck?

A. The truck went back out of the hollow.

Q. What was the next thing - - did you ever see those men again that day?

A. Yeh, I saw them out in my barn.

Q. All right, how - - tell the jury how you came to see these men out in the barn?

A. Panhandle came out to my house and he told me that they were out there.

Q. All right, when did Panhandle come into your house and tell you they were there?

A. Sometime in the afternoon, around two I guess.

Q. Between the time you saw the truck in the morning and the man leave and the time Panhandle came back, did anyone else come to your house?

A. Yes, Linville Mosely came to my house.

Q. What time did Linville get there?

A. I don't remember what time it was when he came or when he left either. I know we sat there and watched TV for awhile. We talked about an old jeep that I had setting there. And I gave him a stovetop and he stayed around a pretty good

while.

Q. Was Linville there when Panhandle came to the house?

A. No, he wasn't, he had already left.

Q. What did Panhandle say to you when he came to your house later on that day?

A. Well, he said I'm going to leave these guns out here in the barn and stuff when I leave. Later on you bring them up to my house.

Q. Now, what guns was he speaking of Mr. Caudill?

A. The guns that they had with them back on the hill.

Q. How did you know that, that those were the guns they had with them back on the hill?

A. Because he had told me.

Q. It is Panhandle?

A. Yeh.

Q. Was anyone with Panhandle? when you had this conversation with him?

A. Tim Milan came out to the house with him.

Q. Did Mr. Milan say anything to you at that time?

A. Would you repeat that?

Q. Did Mr. Milan say anything to you at that time?

A. He might have said howdy or something like that, I don't remember.

Q. Did you do anything?

A. I walked back out to the barn with them.

Q. You walked out to the barn with Panhandle and Tim?

A. Yeah.

MR. SPENCER: Your Honor, the them and the they, I would object until they identify them and they. I don't know who them and they are. It's been during this whole examination.

THE COURT: All right.

Q. Who did you walk out to the bar with?

A. Ed and Tim.

Q. And whose barn was that?

A. It was my barn.

Q. Do you see Tim Milan

here in the courtroom today?

A. That's Tim right there.

THE COURT: The record may reflect that the witness has identified Mr. Milan.

Q. That man was with Panhandle Moore when he came to your house?

A. Yes, he was.

Q. Was that the same man that you walked from your house to the barn with?

A. Yes.

Q. What did you see when you got to the barn?

A. There was a bunch more out there.

Q. Who was there, as best you can recall?

A. Harold Moore, Eugene Tackett, Panhandle, Ranny Blankenship, Van Patton, Pebo Gayheart.

Q. Where were these men when you first saw them?

A. What -- would you repeat that question?

Q. Where were these men

when you first saw them?

A. They were in the top of the barn.

Q. And what were they doing when you saw them in the barn?

A. They were sitting around talking.

Q. Did they have anything with them?

A. They had guns laying around there in the barn.

Q. At that time do you know why they were in the barn?

A. Yeah, I knowed why they were out there.

Q. Why were they out there?

A. Hiding from the law.

Q. How did you find that out?

A. Well, Ed told me when he came out there to the house.

Q. Do you see Harold Moore here in the courtroom today?

A. Yes, I do. I see him.

Q. Is that the same person you've identified as Harold Moore that was in the barn?

A. Yes, it is.

MR. KEHRLI: Your Honor, may the record reflect that he's identified Harold Moore.

MR. WALBOURN: Certainly, Your Honor.

THE COURT: The record may so reflect.

Q. Now, you said Eugene Tackett was in the barn, do you see Eugene Tackett here in the courtroom?

A. Yes, I do, that's Eugene.

Q. Is that the individual you saw in the barn that day?

A. Huh?

Q. Is that the same individual you saw in the barn that day?

A. Yeah.

MR. KEHRLI: Your Honor, may the record reflect that he's identified the Defendant Eugene Tackett?

MR. THOMAS: No objection, Your

Honor.

THE COURT: The record may so reflect.

Q. Now, you've indicated that you saw Ranny Blankenship in the barn that day. Do you see Ranny Blankenship here in the courtroom?

A. That's him right there.

MR. KEHRLI: Your Honor, may the record reflect that he's identified Ranny Blankenship?

MR. ADAMS: No objection.

THE COURT: Let the record so reflect.

Q. You also indicated that a man named Pebo Gayheart was in that barn. Do you see Pebo Gayheart here in the courtroom today?

A. That's him right there.

THE COURT: The record may so reflect.

MR. KEHRLI: Thank you, Your Honor.

Q. What were these men talking about in the barn?

A. I don't remember what all they were talking about.

Q. What were they doing?

A. They were sitting around there talking.

Q. Where were the guns?

A. They were laying around there.

Q. Were the men doing anything with the guns?

A. After a bit, they started oiling them and stuff.

Q. Now, who'd you see oil the guns?

A. I saw Ed oil his and about that time I left and went back towards the house.

Q. During the time when you were in the barn, did you talk with any of these men about the guns, was anything said about any of the guns that was there?

A. Pebo said something or another about a .22 Hornet belonging to Ballard

being in trouble, so I don't know what -- remember the rest of what he said.

Q. Now, this is Pebo Gayheart you're speaking of?

A. Yes.

Q. And who is Ballard?

A. Ballard Mosley.

Q. Was Ballard Mosley in the barn?

A. No.

Q. Was there a .22 Hornet in the barn?

A. Yes.

Q. Now, what did Pebo Gayheart say about that gun?

A. It was something like he had Ballard's .22 Hornet in trouble.

Q. Did you understand what he meant by that at the time?

A. I know they been back up on the hill shooting and stuff so I figured it was from that.

Q. Did you know at that time what they were shooting at on the hill?

A. No, I don't know what

they were shooting at.

Q. Did you know whether or not it had anything to do with Ray-Mac?

A. Yeah, I knowed they been back there.

Q. Back where?

A. At the top of the hill, overlooking the Ray-Mac mine site.

Q. How did you find that out?

A. Well, that's what Ed said.

Q. Panhandle Moore?

A. Yeah.

Q. Did Panhandle Moore tell you to do anything that day?

A. He told me to bring the guns to his house later on that evening and I done that.

Q. What guns are you speaking of?

A. The guns that were hid in the barn.

Q. All right, what time did you take those guns to Panhandle's house?

A. Right about the edge of dark.

Q. Now, you said those guns were hid in the barn. Where were they hid?

A. They were stuck back in the hay.

Q. When -- did you see anyone stick them back in the hay?

A. No, I didn't.

Q. Were they stuck back in the hay the first time you went to the barn with Tim Milan and Panhandle Moore?

A. No, they weren't. They were laying around then.

Q. When was the first time you saw them stuck back in the hay?

A. When I went and got them to take them to Ed.

Q. Do you recall what kind of guns those guns were that you took from your barn to Ed "Panhandle" Moore's house?

A. I know a .35 and an 8 mm Mauser.

Q. Now, let's back up a little bit. A .35 what?

A. A Remington.

Q. Is that a rifle or a pistol?

A. That's a rifle.

Q. And an 8 mm Mauser?

A. Yes.

Q. Is that a rifle or pistol -- is that a rifle or pistol?

A. Rifle.

Q. What other guns did you take from your barn to Panhandle Moore's house?

A. A .22 Hornet.

Q. Is that a rifle or pistol?

A. That was a rifle.

Q. What other guns did you take?

A. There was some more rifles and one pistol.

Q. What were the other rifles, do you recall?

A. I don't know exactly what they was. I think it was a 30.06 and stuff like that.

Q. Do you believe one of the rifles was a 30.06?

A. I think so.

Q. You said there was a pistol, you recall what kind of pistol it was?

A. It was a .44 or something.

THE OFFICIAL REPORTER: Your Honor, I need to change paper.

THE COURT: Yes, ma'am.

MR. KEHRLI: May I proceed, Your Honor?

THE COURT: Yes, sir.

Q. How many guns in total did you take from your barn to Ed "Panhandle" Moore's house that night?

A. Seven rifles and one pistol.

MR. KEHRLI: Your Honor, I'd like to have the witness shown what's been marked for identification as Government Trial Exhibit 106.

(Reporter's Note: The Marshall passed exhibit.)

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

A. Yes.

Q. What is it?

A. That's my barn.

Q. Is that the barn that these seven men were hiding in when you saw them the day in question?

A. Yes, it is.

Q. Does that photograph accurately and truly depict your barn and the contents of your barn at the time these seven men were in it?

A. Yes, it does.

****

MR. KEHRLI: Your Honor, at this time the Government moves Government's Trial Exhibit 106 into evidence.

MR. PAFUNDA: No objection, Your Honor.

THE COURT: Let that which has been marked as Government's Trial Exhibit 106 be finally admitted into evidence as Government's Trial Exhibit 106.

MR. SELF: Your Honor, if I could, I would like to have the witness shown Government's Trial Exhibit 107.

THE COURT: All right.

MR. KEHRLI: What has been marked for identification as Government's Trial Exhibit No. 107.

(The Marshal complied.)

THE MARSHAL OF THE COURT: Your Honor, this weapon has been cleared.

THE COURT: Thank you.

Q. Mr. Caudill, do you recognize that gun?

A. That's Ed Moore's gun.

Q. What kind of gun is that?

A. That is a .35 Remington.

Q. Is that one of the guns you took from your barn to Ed Moore's house?

A. Yes, it is.

Q. Is that also one of the guns that you and Ed Moore had with you the day before when you went to the top of Bill Hall Branch hill?

A. Yes, it is.

Q. Is that the one you carried?

A. Yes, it is.

MR. KEHRLI: Your Honor, at this time the Government moves it into evidence, Government's Trial Exhibit No. 107.

THE COURT: Being no objection, let that which has been marked as Government's Trial Exhibit 107 be finally admitted into evidence as Government's Trial Exhibit No. 107.

Q. Now, after you--when you went to Panhandle Moore's house that night with the guns, who was there?

A. I knocked on the door, and Ed come to the door, and one of his boys and me and him carried the guns in the house, and I left and went back to the house.

Q. Did you have any discussions with Panhandle Moore at that time about the guns?

A. All I said was, "I brought these guns up here." And he said, "Well, just a

minute, and we'll get them." And he unloaded them, and I went back to the house.

Q. Did you have anything else to do with the Ray-Mac situation--the Ray-Mac incident during that day or night?

A. No, I didn't.

Q. Did you ever have, later on that week, anything to do with the violence at the Ray-Mac mine site?

A. The next time I had anything to do with it was I dropped them boys off up there at the tipple around Simpson Branch.

Q. All right. There were two incidents of violence you were involved with; is that correct?

A. Would you repeat that?

Q. Were there two incidents of violence you were involved with?

A. Yes, back on the hill. I was back--I was back there when the equipment was blowed up.

Q. All right. What was the other time? Was there an additional time? You also mentioned the burning of the tipple; is that correct?

A. Yes, I did.

Q. All right. Which happened first, the equipment being blowed up, or the tipple being burned?

A. The equipment blowed up.

Q. All right. Is that the next time then when the equipment was blowed up that you had anything to do with the Ray-Mac violence, after you took the guns to Panhandle?

A. Yes.

Q. When you either first learned about what was to happen with the equipment?

A. When he had come running through and told me about it.

Q. And how long after you saw the men hiding in your barn did this happen--did Ed come and tell you about the equipment?

A. On a Sunday.

Q. Was it the following Sunday?

A. I don't remember for sure.

Q. But it was on a Sunday?

A. It was on a Sunday.

Q. When did Ed come to your house about this matter?

A. On Friday or Saturday, one.

Q. What did Panhandle Moore

say to you at that time?

A. He said he had another little job to do and if we was going to help him. He told us to be at his house early Sunday morning.

Q. Now, when you say, "He told us," who is "us"?

A. Me and Mose Mead.

Q. Do you see Mose Mead here in the courtroom?

A. Yes, I do.

(Mr. Mead stood.)

THE WITNESS: That's Mose.

MR. KEHRLI: Your Honor, may the record reflect the witness identified the defendant, Mose Mead?

THE COURT: Mose Mead's attorney?

MR. WALBOURN: Oh, that's Mose, certainly.

THE COURT: All right, I just wanted the record to so reflect.

Q. Was Mose there when Panhandle came to your house that evening talking about the equipment?

A. He didn't--he didn't go all through the details what was going to come off, but--

Q. All right. So, was Mose

there when you had this conversation with Panhandle Moore?

A. I believe he was there somewhere around.

Q. Did you do anything that night with regard to the job that you were supposed to do with Panhandle Moore?

A. No.

Q. When was the next time you did anything in relation to that?

A. On Sunday we went up to Ed's house.

Q. Who went up to Ed's house?

A. Me and Mose.

Q. How did you get to Ed Panhandle Moore's house?

A. Rode my Jeep.

Q. Who drove?

A. I did.

****

Q. What time of day was this when you went to Panhandle's house on Sunday?

A. I guess it was 8:00 or 9:00 o'clock in the morning.

Q. What did you see when you arrived at Panhandle Moore's house?

A. When I got up there, Ed was there in the yard and looking around. And he was looking for an inner tube.

Q. Okay. How did you know he was looking for an inner tube?

A. He told me.

Q. What did you do?

A. I helped him look for it.

Q. What did Mose Mead do?

A. I don't know if Mose looked around or not.

Q. Did you find an inner tube?

A. Yeah, we did.

Q. Where was the inner-tube?

A. It was laying under some old wood, tin laying there.

Q. Laying where?

A. In his yard.

Q. In Panhandle Moore's yard?

A. Yeah.

Q. Why were you looking for an inner tube?

A. To put that dynamite in and put it on that equipment.

Q. Now, how did you find out that you were going to be using an inner tube with dynamite and put it on equipment?

A. Ed told me.

Q. When did Ed tell you that?

A. At the time he was looking for the inner tube.

Q. Did you look for anything else, or did you locate anything else other than the inner tube at that point?

A. Would you repeat that?

Q. Did you obtain anything else, or did you look for anything else besides the inner tube when you were at Ed's house?

A. No.

Q. What did you do after you found the inner tube?

A. First of all, Linville come down, had pulled in Ed's yard and talked a few minutes what time we was looking for the inner tube.

Q. By "Linville", who do you mean?

A. Linville Mosley.

Q. Do you see Linville Mosley here in the Courtroom?

A. Yes, I do.

MR. KEHRLI: All right. Your Honor, I think he has already previously identified the Defendant.

THE COURT: There isn't any need to do it again.

MR. KEHRLI: All right.

Q. What did Linville say when he got there in the yard?

A. He talked to Ed a little bit and asked him what he was going to do or something. Ed said, "If I tell you what I know, you'll know what you know and what I know too." Something in those words.

And, Linville, he didn't stay around long. I short time after that we left and went up to German's barn or garage.

Q. German. By German, who do you mean?

A. German Stumbo.

Q. Now, who went up to German Stumbo's garage with you?

A. Me and Ed and Mose.

Q. Now, how - - what vehicle did you go in?

A. I drove my Jeep, I think, if I ain't mistaken. And I don't know if anybody rode up there with me or whether they rode with Ed or what now. It's been a long time. I don't remember.

Q. Did you take - -

A. Huh?

Q. Did you take anything with you?

A. We took the inner tube and case of dynamite.

Q. Where did you get the dynamite?

A. I don't know where Ed got the dynamite.

Q. It came from Ed?

A. He already had it.

Q. Did you - - who hauled the dynamite from Ed Moore's house to German Stumbo's house?

A. Ed.

Q. When you arrived at German Stumbo's, what did you see?

A. Well, we stood around there for a while, and there was a whole bunch of guns in the garage there - - shells.

And we fooled around there for a while.

Q. When you say "we", who are you talking about? Who was there?

A. Myself, Ed, Mose, and German, and Raymond, and Teddy Kinney.

Q. When you say "Raymond", who are you speaking of?

A. Raymond Hall.

Q. And were they all there when you first got there?

A. No, they - - they wasn't. German come out - - when we pulled up there, German come out, and it wasn't long until the rest of us started coming in there. Van Patton was there too.

Q. Anyone else you can recall?

A. I believe Kenneth Rolland was there.

Q. Does Mr. Rolland have a nickname?

A. "Postman" is all I knowed him by then. That's all I heared him called.

Q. Do you see Kenneth Rolland in the Courtroom today?

A. Yes, I do.

(Kenneth Rolland standing)

Q. Is that Kenneth Rolland?

MR. KIRKLAND: We will stipulate that, Your Honor.

THE COURT: All right. Let the record so reflect.

Q. Do you see Raymond Hall here in the Courtroom today?

MR. KIRKLAND: We will make the same stipulation.

A. Yes, sir.

THE COURT: Let the record sho reflect.

Q. Do you see Teddy Kinney here in the Courtroom?

A. Yes, I do.

MR. KIRKLAND: Same stipulation, Your Honor.

THE COURT: Let the record so reflect.

Q. At the time you went from Ed Moore's house to German Stumbo's garage, do you know why you went to German's?

A. We went up there to get together and pick out the guns and shells and stuff we was going to carry in the hills with us.

Q. Do you recall any other individuals other than the individuals you named that were there and present at the time in German's garage?

A. Would you repeat that.

Q. Was there anyone else there other than the people you have named at German's garage?

A. I don't remember if there was anybody else there, but there was some more went on the hill. I don't remember if they was all there or - -

Q. Was Jason Moore there?

A. Yes, Jake went on the hill. I don't remember if he was up there at the garage or we picked him up down the road or what.

Q. All right.

A. I believe he was at the garage though.

Q. Now, you told us he was there at the garage. What did these people do while you were there at the garage? What did you see them do?

A. Well, they picked out what shells they was going to take with them. We got the dynamite out of the truck, and I put some in a hunting coat, and picked out what shells I was going to take for the gun I was to carry.

Q. When you say you put some in the hunting coat, are you talking about the dynamite?

A. Do what?

Q. When you say you put some in the hunting coat, did you put dynamite in your hunting coat?

A. Yes.

Q. Why were you looking for shells, and why were you putting dynamite in your coat at the time?

A. To carry to the top of the hill.

Q. Did you, in fact, go to the top of the hill?

A. Yes, I did.

Q. Did anyone go with you?

A. Yes, they did.

Q. Who went with you?

A. Ed Moore, Mose Mead, Jake

Moore, Teddy Kinney, Kenneth Rolland and myself.

Q. Did you go frequently to the hill from German's garage?

A. No. We went back down to the graveyard. We went down to German's dad's there around the barn there. Then we went back up Graveyard Road and went up to the point.

Q. And do you know what German's father's name was?

A. Stiffy Stumbo.

Q. How did you get from German's garage to Stiffy Stumbo's barn?

A. We rode Raymond's Jeep down there.

Q. Raymond Hall?

A. Yes.

Q. All of you rode in the Jeep?

A. There was a whole lot of us. I don't remember if all of us rode in the Jeep or not.

Q. What did you do after you arrived at Stiffy Stumbo's?

A. We fooled around there just for a few minutes, and turned and went up to the

Graveyard Road and started going uphill.

Q. Were you walking up the hill?

A. Yeah.

Q. All right. Now, who all walked up the hill?

A. Me and Jake and Teddy and Mose and Kenneth Rolland. And Ed and German come behind us.

They was a little bit behind us, but they caught up with us at the time we got on the top Branch.

Q. Did you take anything with you while you were walking up the hill?

A. I had the gun and what shells I picked out to take with me, and a coat full of dynamite.

Q. Did these other men have anything with them when they were walking up the hill?

A. They had their guns and shells.

Q. Do you recall what kind of gun each man had?

A. I had a new 30.06.

Q. You had a 30.06?

A. Kenneth Rolland had one just like the one I had.

Q. So, Kenneth Rolland had a 30.06?

A. Yes. Mose Head had a .303 British rifle.

Ed had that .35 Remington.

Q. Panhandle Moore?

A. Yes.

Q. That .35 Remington?

A. Yeah.

Q. Is that the same as Government's Exhibit No. 107 that you were shown earlier?

A. Yes.

The others had carbines - - .30 caliber carbines.

Q. What others?

A. German and Jake and Teddy and Kenny.

Q. Were these men carrying these guns with them as they walked up the hill?

A. Yeah, they carried them.

Q. Where did you get these guns?

A. Picked them up at German's

garage.

Q. Do you know where those guns came from?

A. Not all of them, I don't.

Q. Do you know where some of them came from?

A. I know where Ed's come from, and that's all.

Q. The .35 Remington?

A. Yeah.

Q. Do you know where any of this ammunition came from?

A. No, I don't.

Q. Did the other men besides yourself have any ammunition with them?

A. Yes, they did.

Q. Did you see them obtain that ammunition?

A. Yes, I did.

Q. Where did they get it?

A. Right there in German's garage.

Q. All right. Besides the gun, I think you indicated you had some dynamite with you; is that correct?

A. That's correct.

Q. All right. Is there anything else that was brought up that hill?

A. An inner tube, and a basketball we picked up in the ditch there.

Q. All right. Is the inner tube the one you got at Panhandle Moore's?

A. Yeah.

Q. And you mentioned a basketball. Where did you get the basketball?

A. Right down in under German's house and garage in the ditch.

Q. Who picked up the basketball?

A. I don't remember who got out and picked it up. One of them.

*** *** ***

Q. Do you recall who carried the basketball up the hill?

A. We all took turns at carrying this and that, you know, carrying the dynamite and stuff up the hill.

Q. Who took turns carrying the dynamite?

A. Everybody that was going up the hill.

Q. All right. Would you describe what hill you're talking about for the ladies and gentlemen of the jury.

A. The hill in Frasure Creek. It's between Bill Hall Branch and Prater Creek.

Q. Where did you do when you started walking up the hill?

A. We went up the point to the top branch, and around the top flat. We cut a knob or two and--back down in the hollow, and back up to Ray-Mac's equipment.

Q. All right. Who was leading you up the hill?

A. Panhandle and German was in front, you know, after we got on the top branch.

Q. And you were all walking

together in a group, or how were you walking?

A. Going up there we was all pretty well in a line.

Q. What did you do when you reached-- Strike that.

When did you first see the Ray-Mac equipment?

A. When we come back up out of the hollow, upon the point right out front.

Q. All right.

THE COURT: At this point let's have our recess for lunch.

We're going to be in recess until one o'clock. During this recess the not now admonition is in effect.

Any corrections or objections to the form of the admonition?

MR. ROWLAND: No, sir.

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

THE MARSHAL OF THE COURT: You're excused until one o'clock.

(Reporter's Note: The jury left the courtroom at 11:43 a.m.)

THE MARSHAL OF THE COURT: The jury's out

of the courtroom.

THE COURT: Please excuse the witness and the remainder of the court until one o'clock.

MR. PAFUNDA: Your Honor, on my earlier objection with regard to Ed Panhandle Moore's statements, I'd like to make that a continuing objection.

THE COURT: Okay.

THE MARSHAL OF THE COURT: All rise, please. This Honorable Court will be in recess until 1 p.m. this afternoon.

(Reporter's Note: Court recessed at 11:44 a.m.)

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

UNITED STATES OF AMERICA

-vs- CASE NO. 83-8

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

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TRANSCRIPT OF TRIAL

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BEFORE: THE HONORABLE G. WIX UNTHANK

DATE: FEBRUARY 29, 1984

VOLUME FORTY-FIVE

DALE SOERGEL MOORE SHAW & ASSOCIATES
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I N D E X

PHILMAN CAUDILL

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For the Defendants 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
COTTON CONTENT

(Reporter's Note: The Court was called to Order at 1:04 P.M.)

THE MARSHALL OF THE COURT: Your Honor, all attorneys and Defendants and jury are present in the courtroom.

THE COURT: Thank you, sir. Are you ready to proceed?

MR. KEHRLI: Yes, sir.

Q. Mr. Caudill, before we broke for lunch, your testimony was that you were on your way up from the graveyard to the Ray-Mac equipment with this group of men that you identified, in single file. What happened at that point?

A. We got up to the point right out from the equipment.

Q. Could you see the equipment?

A. Yeah, you could see it from the point there. Me and German sat there --

Q. (Interrupting) Before you get into that, how far away was the Ray-Mac equipment from you at the point where you stopped?

A. About one hundred

yards I guess.

Q. What happened when you stopped at the top of the point?

A. Some of the boys got up on the point and watched out through there.

Q. Which boys?

A. Jake Moore, Mose, Teddy Kinney, and Postman.

Q. Now, where did they go?

A. They scattered up and down the point there and watched out there at the equipment.

Q. Why did they do that?

A. To see if anybody was around.

Q. And who decided that they were to do that?

A. Would you repeat that?

Q. How did they know they were supposed to do that?

A. Ed told them to.

Q. Panhandle Moore?

A. Yeah.

Q. Did they take their

guns with them when they went to -- at the lookout?

A. Yes.

Q. What did you do at that juncture?

A. Me and German sat back down on the side of the point and put dynamite in the inner tube and a basketball.

Q. How much dynamite did you put in the inner tube and in the basketball?

A. We filled them up.

Q. And where was Panhandle Moore when you were doing this?

A. He was there part of the time and he walked back up through there I guess to talk to them boys. He come back after we got the inner tube and basketball filled up with dynamite. He put the caps and fuses in them and he went around to the equipment in front.

Q. All right, before Panhandle approached the equipment, did you and German Stumbo have any conversation while you were filling the basketball and the inner tube with dynamite?

A. We were talking about going around to the equipment and German said I

don't think we ought to go around there, it's awful dangerous. I believe we ought to go above it and throw it down on it. And Ed said I'll show you just in a few minutes. He went on out there in front and then we took the inner tube and basketball around there.

Q. Who took the inner tube and basketball around there?

A. Me and German.

Q. What did you carry, do you recall?

A. I carried the basketball.

Q. What did German carry?

A. He carried the inner tube.

Q. And you took it around where?

A. Around to the dozer, right beside the dozer.

Q. Is this a bulldozer you're referring to?

A. Yeah.

Q. Is there any other equipment there?

A. Just on passed the dozer was the auger.

Q. A coal auger?

A. Yeah.

Q. Whose equipment was this?

A. It's Ray-Mac's.

Q. How do you know it was Ray-Mac's equipment?

A. Well, Ray-Mac is the ones that were running the mines back there.

Q. What did you do as you approached the equipment, after you got to the equipment?

A. German give the inner tube to Ed and he took it around and put it on the dozer -- the auger.

Q. Who took it around and put it on the auger?

A. Ed.

Q. All right. What --

A. (Interrupting) He gave me his gun to hold till he came back.

Q. Pardon me, I didn't hear that.

A. He gave me his gun to hold till he got back around to where I was at.

Q. Who gave you his gun?

A. Ed Moore.

Q. What gun was that?

A. A .35 Remington.

****

MILLERS FALLS
EZERASE
COTTON CONTENT

Q. What did you do with the basketball?

A. I give it to German and he put it on the side of the dozer, next to the high wall.

Q. All right, what happened after the basketball and the inner tube was placed on the bulldozer and the coal auger?

A. I stood there for a few minutes and German said let's go I done lit that. And I said something or other about Panhandle and he said he'll catch us before we get to the point.

Q. Could you see at any time during this conversation you just spoke of, with German Stumbo, could you see Panhandle Moore?

A. What time he was placing the inner tube on the auger I couldn't see him.

Q. All right, could you hear him, did he say anything?

A. I was - - where I was standing I couldn't see him but I never heared him say nothing.

Q. All right. What happened after German said to you I lit it?

A. We took off back for the

point.

Q. Who took off for the point?

A. Me and German.

Q. Did Panhandle Moore do?

A. Well, we were running back around through there and Panhandle caught up with me before I got to the point.

Q. Was Panhandle running?

A. Yeh.

Q. And what took place then, if anything?

A. When we got back out to the point the dynamite went off.

Q. How do you know that?

A. We heared it and we didn't know whether both of them went off or just one of them. The next day I learned that one of them hadn't went off.

Q. How did you learn that?

A. On the news.

Q. Did anyone - - did you have any conversation with either Panhandle Moore or German Stumbo as you were running away from the equipment.

A. No, I didn't

MR. KEHRLI: At this time Your Honor

I'd like to have the witness shown what's been introduced into evidence as Government's Exhibits 56, 57, 58.

Reporter's Note: (The Marshall passes exhibit)

Q. Mr. Caudill, I'd like for you to examine those exhibits and tell the jury whether you recognize any of them?

A. That's the basketball that German put on the side of the dozer.

Q. Do you see an exhibit tag there on that basketball?

A. Do what?

Q. Do you see an exhibit tag on that basketball, is there a marking or a tag on there, a yellow tag?

A. I see it.

Q. Does it have a number on it, what exhibit number is that?

A. 56.

Q. Do you recognize any of the other exhibits?

A. That's wrappers off the same kind of dynamite that we put in the inner tube and the basketball.

Q. That is Government's Exhibit 57?

A. Yeah.

Q. All right. Do you recognize the third exhibit?

A. Yes, I do.

Q. What is that?

A. That is tape and fuse and a piece of dynamite wrapper.

Q. And what tape and fuse and dynamite wrapper are those? How do you recognize those particular exhibits?

A. That's the kind of fuse we used, or the kind of fuse that Ed put in the basketball and inner tube, same kind of wrapper.

Q. Do you know where that fuse came from?

A. No, I don't.

Q. Do you know where the dynamite came from?

A. The only thing I know about the dynamite, Ed is the one that had the dynamite that morning.

Q. And that is the basketball that you found near German Stumbo's garage?

A. Yes.

MR. KEHRLI: All right. Mr. Marshal, I am through with those exhibits.

Your Honor, may the witness step off the witness stand and examine what has been posted up there as Government's Exhibit 6 on the easel?

THE COURT: Yes, you may.

MR. KEHRLI: Mr. Caudill, will you step down and walk over to Government's Exhibit No. 6?

(The witness complied.)

MR. KEHRLI: It is the photograph on the left. Yes, that one.

Q. Would you look at that photograph and tell the jury whether or not you recognize it?

A. Yes. That is the photograph of Frasure's Creek and Bill Hall Branch.

Q. You referred to a graveyard earlier; do you see that graveyard on that photograph?

A. Right in there.

THE COURT: Mr. Caudill, stand on the other side. Stand on the other side when you are pointing to it.

(The witness complied.)

THE COURT: That's it, right in there.

Q. All right. Would you take that red pencil that is up there and mark a "G" where you have indicated the graveyard is on that photograph, Government's Trial Exhibit No. 6.

A. (The witness complied.)

Q. Does that photograph show the route that you and these other men took from the graveyard up to the Ray-Mac equipment on the day it was blown up?

A. Yes.

Q. Could you take that same pen and trace that route on that photograph, please. Put your initials next to it.

THE COURT: Take the pen, sir.

Q. Take the pen, please, sir, and trace it on the photograph, and put your initials next to it.

A. (The witness complied.)

MR. KEHRLI: All right, sir, you can resume the witness stand, please.

(The witness complied.)

Q. Mr. Caudill, what did you and the other men do after you heard the explosion?

A. We came back around the same way we went around there. We came back off there behind Stiffy's old house, and out from his barn there.

Q. And did someone pick you up at that time?

A. I think Mose went back up there and got my Jeep, and come back and picked me up, and we went home.

Q. Did you have any other involvement after the explosion at the Ray-Mac equipment with regard to the violence at Ray-Mac?

A. No, not--not back on the mountain, I didn't.

Q. All right. What about--did you have any involvement elsewhere?

A. I dropped Mose Mead, Basil Ray Moore and Panhandle Moore off at Simpson Branch to burn the tipple.

Q. To burn whose tipple?

A. It was Clarence Martin and Turner and Julius Martin's tipple, but Ray-Mac had had it leased or something.

Q. Did you know that at that time?

A. I didn't, but--

Q. (Interrupting) Did someone else tell you?

A. (Continuing) --someone else did.

Q. Who did?

A. Ed did.

Q. Did he tell you that?

A. Yeah.

****

Q. Did he tell you that?

A. Yeah.

Q. When did you first learn that you were to do something with regard to this tipple?

A. Ed come up to the house and said that he had a little job to do.

Q. Now, when you say "Ed", is this Ed Panhandle Moore again?

A. Yes.

Q. Whose house did he come up to?

A. He come up to my house.

Q. And, sir, can you recall and tell the Jury when this was? How long after the equipment was blown up did Ed Panhandle Moore come to your house to talk about the tipple?

A. I don't remember what time, or how long a period of time it was in between there.

Q. Was it - - it was after the equipment was blown up?

A. I think so.

Q. All right. What did Panhandle Moore say to you when he got to your house?

A. Well, he said he wanted me

take him down the road and drop him off. But first he wanted Basil and Mose to take some stuff down the road in the truck.

And they took some old tires and stuff down there.

Q. All right.

A. And they come back, and then I took them down there and dropped them off. About twenty or twenty-five minutes later, I picked them back up.

Q. Were Mose and Basil Ray present when Ed Panhandle Moore first came to talk to you about this?

A. I don't remember if they was or not.

Q. All right.

A. I believe they was still down in the hollow there. We run into them coming up the hollow or something.

Q. Did you go directly from your house to the tipple when Ed Moore came to talk to you?

A. No. It was a little while after that.

Q. Do you know approximately

how long?

A. An hour and a half, two hours, I guess.

Q. And who left with you?

A. When I dropped them off?

Q. Yes. Who did you take with you?

A. Ed Moore, Basil Ray Moore, Mose Mead.

Q. And in what vehicle did you take them?

A. Took my car, a 1973 Oldsmobile.

Q. Did you have any conversation -- well, strike that.

First of all, where did you take them?

A. I took them to Simpson Branch and dropped them off.

Q. How did you know that you were supposed to go to Simpson's Branch?

A. Well, that's what he told me.

Q. Who told you that?

A. Panhandle.

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Q. Did you take anything with you at that time?

A. Nothing except them. They had - - them boys had already hauled the tires and stuff down there.

Q. How did you know that?

A. They took Ed's truck and went down there, and then they come back. Then I took them and dropped them off.

Q. Who took Ed's truck?

A. Basil Ray and Mose.

Q. Do you know if they took anything with them?

A. Not from the house, they didn't, but they got some tires somewhere.

Q. On the way to Simpson's Branch, when you were taking these men with you, did you have any conversations with them at that time?

A. I don't remember what was said, only that he said: "When you drop us off, stay gone twenty-five, thirty minutes, and pick us back up."

Q. Who said that?

A. Panhandle.

Q. Did he tell you what he was going to do?

A. He was going to burn the tipple.

Q. Did he say why he was going to burn the tipple?

A. No, he didn't.

Q. What did you do after you arrived at Simpson's Branch with these men?

A. I dropped them off. I went on up the road a little bit and turned, and then drove back down the road about - - I figured about twenty, twenty-five minutes. And then I went back and picked them up.

Q. What did you see when you went back and picked them up?

A. There was a small light at the tipple.

Q. I didn't hear that, sir.

A. A small light at the tipple. It looked like a fire.

Q. Were there any men there when you came back to pick them up?

A. Would you repeat that?

Q. Were there any people there when you came back to pick these men up?

A. They was down in the creek.

Q. Who was down in the creek?

A. Panhandle and Bas and Mose.

Q. All right. Did they - - did you, in fact, pick them up at that point?

A. Right across from the tipple, a little bit below it.

*** *** ***

Q. How far from the tipple were you when you saw the tipple burning?

A. Might be seventy-five yards from the road to the tipple.

Q. Did you see anything on the tipple? Other than the fire itself, did you see anything?

A. No, I didn't.

Q. Did you see any of those three men, Mose Mead or Basil Ray Moore, or Ed Moore, carrying anything at any time?

A. No, I didn't.

Q. Did they get in your car when you returned to pick them up?

A. When I turned and started back down the road, they come and got me in the car, and we went on back home.

Q. All three of the men?

A. Yes.

Q. Did they say anything to you?

A. What was that? Would you repeat that last --

Q. Did they say anything to you when they got in the car?

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A. They never said nothing direct to me, but, Ed, he said: "You didn't hardly give us enough time."

And there was some other stuff said, but I don't remember what it was.

Q. Did you understand what he meant by that remark, "you didn't hardly give us enough time"?

A. Well, I come back a little bit too early to have suited him, or what he was doing.

Q. Where did you take the men after you picked them up?

A. Took them back. They all three rode back to the mouth of the hollow there to my house.

MR. KEHRLI: All right. Your Honor, I would like the Marshall, if he would, please, to show the witness Government's Exhibits Nos. 19 and 20.

(The Marshall complies)

Q. Mr. Caudill, do you recognize those photographs in Government's Exhibits Nos. 19 and 20?

A. Some of them, I can,

and some of them, I can't.

Q. Would you tell the jury what you recognize? What do you see that you recognize?

A. The tipple. Some of these pictures, they are not -- they show the tipple in better shape than what it was in the last time I saw it.

Q. Is that the tipple that was burned?

A. Yes, that's the tipple that was burned.

MR. KEHRLI: Your Honor, I would like to have the witness shown what has been introduced into evidence as Government's Exhibits Nos. 61 and 62.

(The Marshall complies)

Q. Do you recognize either of those exhibits, Mr. Caudill?

A. I never -- I never saw what they had over to the tipple.

Q. So you don't recognize either one of those exhibits?

A. Neither one of them two I didn't see.

Q. All right. Thank you. Mr. Caudill, you indicated earlier in your testimony that Panhandle Moore said that he knew how--of an easy way for you to make some money. Did you ever get paid for any of this activity involving Ray-Mac?

A. Yes, I did.

Q. Tell the jury when you got paid or how many times you got paid.

A. I got paid twice.

Q. How much did you get paid each time?

A. I made a hundred dollars each time I done anything.

Q. All right. How much money were you given each time?

A. Once I was given two hundred dollars. I give Mose fifty dollars. I give Bas fifty dollars. I kept a hundred of it myself.

Q. All right. What were you given the other time?

A. The next time I was give

a hundred dollars.

Q. All right. Which came first? Were you paid the two hundred dollars first or the hundred dollars first?

A. I don't exactly remember that.

Q. All right. What were you given the two hundred dollars for?

A. For burning the tipple.

Q. Is that the money you in part passed on to Basil Ray Moore and Mose Mead?

A. Yes.

Q. Who gave you that two hundred dollars?

A. Ed Panhandle Moore.

Q. Do you recall how long after the tipple was burned that Panhandle Moore gave you that money?

A. I don't remember that.

Q. Do you recall what happened when Panhandle Moore gave you that money?

A. Me and him had been down to Kenny Joe Moore's making some timbers, and we came back up through by--by McDowell Hospital, the restaurant.

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Q. When did you see or who did you see at the McDowell restaurant?

A. He stopped and talked to Benny Caudill. It looked to me like Benny give him some money. I don't know if he did or didn't.

Q. And what happened at that point? When you said it looked to you like Benny gave Panhandle some money--

A. I said--

Q. --tell the jury exactly what you saw.

A. Panhandle and Benny was standing there talking. I was sitting in the truck. It looked like to me he reached him something.

Q. Who? Who reached?

A. Benny reached something.

Q. All right.

A. And he put it in his pocket.

I don't know for sure it was money. I don't know it wasn't.

Q. What happened at that point?

A. We went on to the house. Later on that evening or the next evening is when I

got paid.

Q. Whatever-- Whatever Benny gave Panhandle Moore, where did he get it? Did you see Benny get that somewhere?

A. He pulled his hand out of his pocket and he reached him something. He put it in his pocket. They talked for a little bit.

Then we went on up the road.

****

Q. Now, how long after that incident were you given two hundred dollars by Panhandle Moore?

A. It was that evening or the next evening one.

Q. What did Panhandle say to you when he gave you the money?

A. He says, here's this money. You do -- You do what you want to with it. Give them boys what you want to, keep what you want to.

Q. Who did he mean by the boys?

A. Bas and Mose.

Q. This was the money that you were paid to burn the tipple?

A. Yeah.

Q. Did you, in fact, give some money to Basil Ray Moore and Mose Mead?

A. Yes, I did.

Q. How much?

A. Fifty dollars a piece.

Q. Now, you testified that you'd been paid another time, one hundred dollars, I believe. What was that for?

A. That was for blowing up equipment.

Q. Who gave you that money?

A. Panhandle Moore.

Q. And do you recall -- Were you given that money -- the one hundred dollars before you were paid the two hundred dollars?

A. I don't remember that.

Q. All right. Do you recall the circumstances when you were given the hundred dollars for blowing up the equipment?

A. I don't remember what day it was that he give me the money.

Q. Do you remember where you were?

A. I was at the mouth of the hollow there at my mother's, in the yard. He -- He stopped. He was going by, and he stopped to give me the one hundred dollars.

Q. Did Panhandle Moore saying anything to you when he gave you that hundred dollars?

A. He said, here's you

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some money. That's all he said.

Q. How did you know it was for blowing up the equipment?

A. Because he told me.

Q. When did he tell you that?

A. When he stopped.

Q. At any time during this week or around this week of the Ray-Mac violence did you have conversations with any of the other Defendants in this case?

A. I probably talked to a whole lot of them, but I don't -- I don't remember what was said.

Q. Did any of them give you anything or buy you anything?

A. Teddy Kinney bought me a tank of gas for my Jeep.

Q. All right. Would you tell the jury the circumstances of when Teddy Kinney bought you a tank of gas and what he said to you.

A. He bought me the tank of gas. He give me twenty dollars. He took it out of his pocket.

He said it wouldn't -- it won't be coming off of me, it'll be coming off them other fellers.

Q. Did you know who he meant when he said them other fellers?

A. No, I didn't.

Q. Did you take the money?

A. Yeah, I did.

Q. What did you do with it?

A. I filled the Jeep up with gas.

Q. Is that the only time Teddy Kinney bought you some gasoline?

A. Yes, it was.

Q. At the time, what did you believe that was for?

A. What, the twenty dollars?

Q. Why did you think that Teddy Kinney bought you that gasoline?

A. For what I'd been helping them do.

Q. With the equipment?

A. Yes.

Q. At the tipple?

A. Yeah.

Q. Now, you testified that you knew Mose Mead. Where was Mose Mead living at the time of this week, during the Ray-Mac violence?

A. He was living with me.

Q. And is he any relation to you?

A. He's my wife's boy.

Q. Did he -- Did you work with him or in any way did he help you, other than what you've testified about concerning the --

A. He was helping make some timbers.

Q. All right. Who were you making those timbers for?

A. For Dale Howell.

Q. Were you -- And Panhandle Moore was helping you make these timbers, as well?

A. Yes.

Q. Were you making these timbers for Phillip Booth?

A. No, I didn't.

Q. Were you working for Phillip Booth during this time?

A. No, I wasn't.

Q. Was Mose Mead working for Phillip Booth?

A. No.

Q. Was Phillip Booth with you at any time when you and the other men went up to blow up the equipment at Ray-Mac?

A. No, he wasn't.

Q. Was Phillip Dale Moore with you at any time when you went up to blow up the equipment at Ray-Mac?

A. No, he wasn't.

Q. Was Phillip Booth with you when you went to burn the tipple that Ray-Mac was going to use?

A. No, he wasn't.

Q. Was Phillip Dale Moore with you when you went to burn the tipple?

A. No.

Q. I'd like to return to one thing that I asked you about this morning.

When the men were hiding in your barn, after they came off the hill,

did you see those men leave your barn that day?

A. Yeah, I did.

Q. How -- How did they leave your barn?

A. German and Morgan Stumbo come around there and picked them up. I drove up Frasure Creek, and Pebo Gayheart rode with me.

Q. Who got in with German Stumbo?

A. I don't remember that.

****

Q. What kind of vehicle did German Stumbo have?

A. He had a black four-wheel drive Ford. It didn't belong to him. It belonged to his sister or brother-in-law or something.

Q. Did the men other than Pebo Gayheart get in with German Stumbo and leave with him?

A. Pebo Gayheart rode up Frasure Creek with me.

Q. Yes. Other than Pebo, did the other men that were there in your barn leave with German?

A. Yeah, with German and Morgan.

Q. Do you know at that time whether Mose Mead did anything with regard to the men in that barn?

A. Mose went and got some lunchmeat or something to make sandwiches out of, and got them men a case of beer.

Q. And did you see what Mose did with that food and beer?

A. He took it out there to the barn to them.

Q. So that--they consumed that beer and food in your barn?

A. Would you repeat that?

Q. Did those men eat that beer and food in your barn?

A. I'd say they did.

MR. KEHRLI: May I have just a second to consult with cocounsel?

THE COURT: Yes.

(Mr. Kehrli complied.)

Q. A couple of final things. What time did you leave to go up to Frasure Creek and walk up the hill to bomb the equipment? Do you recall? What time of day was it?

A. What do you mean?

Q. When did you leave German's garage to head for Frasure's Creek to go up to bomb the Ray-Mac equipment?

A. It was around ten o'clock, I guess.

Q. In the morning?

A. In the morning.

Q. One final question. Were you ever-- Did you

enter into a plea bargain with the United States concerning your activity regarding Ray-Mac?

A. Yes, I did.

Q. And what did you do as a result of that plea bargain?

A. I pleaded guilty.

Q. What offense did you plead guilty to, sir?

A. One charge of conspiracy.

Q. Conspiracy to violate what law?

A. Hobbs Act.

MR. KEHRLI: Your Honor, I have no further questions of this witness at this time. I tender him for cross-examination.

CROSS-EXAMINATION

BY MR. KIRKLAND:

Q. Mr. Caudill, my name is Bill Kirkland. I represent some of your neighbors and friends there in and around McDowell.

I take it that you know my clients pretty well. You've known them pretty much all your life, is that right?

A. I guess.

Q. You know German. You've known him and his family, his brother, his daddy, his brothers and sisters for fifteen or twenty years at least, correct?

A. Yes, I have.

Q. You probably know that Raymond's his brother-in-law?

A. Yes, I know that.

Q. Teddy's his brother-in-law?

A. I know that.

Q. Let's see, Postman's his wife's cousin. Do you know that?

You didn't know Postman very well, did you?

A. No, I didn't.

Q. He lived out of the community for a long time?

A. (Nodded his head in the affirmative.)

Q. Is that right?

A. I guess. I don't know where he lived.

Q. Now, Panhandle Moore, he's not related in any way to Jason Moore, is he, as far you know?

A. I don't know.

Q. Just a whole different Moore family, is that correct?

A. I'd say Panhandle and Jason is cousins.

Q. Some kind of distant cousin?

A. I'd say they are.

Q. Now, Jake is what relation to Panhandle?

A. Jake is Panhandle's brother.

Q. What about Basil Ray, what kin is he to Panhandle?

A. He's Panhandle's boy.

Q. All right. Of course, Panhandle is no longer alive. He was later murdered, wasn't he?

A. Yes, he was.

Q. Some kind of a dispute over weapons, something like that?

A. I don't know what it was over.

Q. Was Panhandle pretty much a take-charge person who when he took out to do something that he did it?

A. Pretty well.

Q. Sort of a strong-willed fellow?

A. Yeah.

Q. And a little on the dangerous side, too, is that right?

A. That's right.

Q. In fact, you had maybe just a little fear of him even though you worked with him, is that right?

A. That's right.

Q. You didn't want to cross him?

A. That's right.

Q. In fact, not very many people at McDowell did cross him, did they?

A. If they did they had trouble.

Q. And it was out of that kind of trouble that Panhandle was killed, wasn't it?

A. I guess it was.

Q. He's been referred to as the General. Had he been in the military service, as far as you know?

A. Yes, he had.

Q. And he liked military-type operations, didn't he?

A. Now that I don't know.

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Q. Well, planning and executing and doing things for people and getting a little money for it.

A. I guess you could say that.

Q. All right. And, to some extent, you participated in some of those from time to time too, didn't you?

A. What do you mean?

Q. Well, little odd jobs here and there and helping Panhandle do a few little odd jobs here and there.

A. Well, me and Panhandle was making some timbers, and -- and I got messed up in the Ray-Mac scrape. But other than that I never done nothing with him, if that's what you're getting at.

Q. All right. But he did come to you when he wanted somebody to help him in this task, is that right, sir?

A. Yeah. The only reason -- because we was already associated with one another about everyday.

Q. I see.

A. We was making timbers

together.

Q. How long had you known Panhandle?

A. I've known Panhandle fifteen, twenty years.

Q. Do you know the source of the money that he made for these little jobs? Do you have personal knowledge of it?

A. No, I don't.

Q. Did you ever have occasion to talk to Phillip Booth during this period of time?

A. No, I didn't. After all the trouble was over I went down to Phillip's and talked to him.

Q. Did he tell you that he'd been offered ten thousand dollars to blow up the auger?

A. I don't remember if he did or not.

Q. Had you heard that he said that or maybe not -- didn't say it to you, but said it to somebody else?

MR. KEHRLI: Objection, Your Honor. It calls for hearsay, unless he establishes time and

place.

THE COURT: Sustained.

Q During the period that this problem was going on did you hear any of these people, Phillip Booth or Jason Moore or Panhandle Moore, say that Phillip Booth was to get ten thousand dollars for blowing up the auger?

A. I don't remember hearing nobody say that.

Q. Did you ever work in the mines?

A. No, I haven't.

Q. So you were never a UMWA member, were you?

A. No, I wasn't.

Q. You said that you had been unemployed since 1975. What did you last do in 1975?

A. I worked for Sonny Ford Construction here in Pike County on a strip job.

Q. What have you been doing to feed your family for the last nine years?

A. I've been drawing food stamps.

Q. You're not disabled,

are you?

A. Not that I know of.

Q. Had you had any other gainful employment where you were sort of self-employed?

A. Sort of self-employed, what little bit of work I done.

Q. Did you just choose not to work at a job?

A. Well, when I quit work on the strip job it was nonunion, and me and the boss had a few words. I just quit.

Q. You were working on a nonunion strip job in Pike County, is that right?

A. That's right.

Q. Were you aware that in the McDowell area most of the people didn't appreciate nonunion jobs, particularly strip jobs?

A. That's right.

Q. Everybody knew that around McDowell, didn't they?

A. That's right.

Q. Was it pretty well known that Teddy Kinney was a strong union man?

A. I heard Panhandle

laughing about it and called him president. So...

Q. President of the union?

A. I guess that's what he was talking about.

Q. At one time Panhandle had been a member of the union, hadn't he?

A. I don't know.

Q. You don't know. Was it also pretty well known that Jason Moore was a strong union man?

A. I guess so.

Q. At one time German Stumbo, until he became an operator, was a union operator, wasn't he?

A. I don't know if he was or not.

Q. What about Stiffy Stumbo, his poor old daddy.

A. I'd say Stiffy was a union man.

Q. He's been a union man for forty or fifty years, hasn't he?

A. I don't know how long he had been.

Q. And proud of it?

MR SELF: Objection, Your Honor.

THE COURT: Sustained.

Q. How many children did your present wife have from another union or another association or marriage before you married her?

MR. KEHRLI: Objection, that's beyond the scope of direct. This is irrelevant and immaterial.

MR. KIRKLAND: It is not. He asked him about how many kids he had. I think he did.

MR. KEHRLI: I don't recall.

MR. KIRKLAND: He asked Phillip Moore that.

THE COURT: Well, they talked about -- I think it's Mose Mead being his wife's son.

Go ahead.

Q. How many kids did she have before you married her?

A. Six or seven, I think.

****

Q. Did some of her other children live with you all during this period of time, from 1975 up through the present? Are most of her kids from earlier times and they're up and on their own now?

A. Most of the time.

Q. How old is Mose's mother?

A. Fifty years old.

Q. Did you ever go back to the Simpson Branch tipple after the night you described?

A. No, I didn't.

Q. Were you aware that they put it back in--into operation within a few days or a few weeks?

A. Yeah.

Q. Moved a portable job in there and got it working pretty quick, didn't they?

A. I don't know how quick they got it working.

Q. And I believe you testified on direct that these pictures showed the old wooden tipple to be in better shape than it really was, is that right?

A. That's right.

Q. Tell what the tipple really looked like when you saw it on the day or night in question?

A. Would you repeat that?

Q. Would you tell the jury the difference between what the pictures show and what you saw of that tipple.

You said that the pictures make it look a lot better than it really was. Tell what was different about what you saw then from the pictures that you saw?

A. The tipple was rundown more than what the picture shows.

Q. Do you know if a lot of the copper wire had been stolen and cut out of it?

MR. KEHRLI: Objection, unless he lays the foundation.

THE COURT: Let him answer it.

Q. Go ahead.

A. I don't know. I never was on the tipple.

Q. You didn't go right up to it and look at it, is that right?

A. No, I didn't. I looked at it from the road.

Q. Were timbers falling down loose from it?

A. Would you repeat that?

Q. Were timbers falling down loose from the tipple that you could see?

A. Not that I could see.

Q. All right, you said it looked rundown, in what way did it look rundown? Was it sagging in places?

A. Yeah, there wasn't nothing - - the last time that I had been close to it before that happened there was nothing on it it didn't look like.

Q. It looked like it had been vandalized and stripped maybe?

A. Yeah.

Q. Certainly it was not capable of operation when you last saw it, was it?

A. No, I don't think so.

Q. Would it have been to the advantage of the coal company to get rid of that tipple?

MR. KEHRLI: Objection.

THE COURT: Sustained.

Q. Now, the auger was later

fixed, wasn't it, the damage that was done to it later fixed and repaired?

A. I don't know.

Q. Now, I believe you testified that Teddy Kinney gave you a tank of gas, is that right?

A. Yeah, he did.

Q. And I believe that during the strike he gave a lot of those people a tank of gas, isn't that right?

A. I don't know.

Q. You don't know whether part of the strike fund money went to pay for the people's gas up there that participated?

MR. KEHRLI: Objection, he said he didn't know.

MR. KIRKLAND: Well, he might know.

Q. Didn't he indicate to you that he had given a lot of other people a tank of gas?

MR. KEHRLI: Objection.

THE COURT: Overruled.

Q. Did he ever tell you that, Mr. Caudill?

A. No, he never told me that.

Q. All right, did he indicate that he was doing anything special for you that he had not done for other people?

A. No, he didn't.

Q. When you went up on the hill to the auger did you have any idea that what you were involved in - - would turn out to be as serious as what we've seen here today?

A. No, I didn't.

Q. Did you even think about it?

A. No, I didn't.

Q. It wasn't a frolic or anything like that, was it?

A. I don't reckon. I thought it was a union strike to start with, but evidently it must have not have been.

Q. That's what people have told you?

A. That's right.

Q. Do you think those union men that went up there thought the same thing, that it was a union strike?

MR. KEHRLI: Objection.

THE COURT: Sustained.

Q. Did you talk about that being a union strike?

A. When I first got involved in it the union was mentioned a lot.

Q. There was a lot of talk about the fact that Ray-Mac was nonunion, wasn't there, around McDowell in early 1982?

A. There was a lot of talk.

Q. In fact, hadn't there been a lot of talk as early as the fall of 1981 among the union people about Ray-Mac operating up there non-union?

A. I don't know about that now, I don't know all that was going on.

Q. When is the first time that you heard that the union people were upset about Ray-Mac operating nonunion up on the hill?

MR. KEHRLI: Objection, it calls for hearsay.

MR. KIRKLAND: It's not offered for the truthfulness, Your Honor. That's not hearsay, it's an exception to the hearsay rule. We're not offering it for the truthfulness.

THE COURT: Well, what is the purpose of offering it then?

MR. KIRKLAND: The purpose is to show that the union had been upset, Your Honor, for a long time with Ray-Mac. It had been a foaming and it had been going on in a UMWA community for weeks and weeks if not months and months and this was a culmination of the UMWA effort.

THE COURT: Sustain the objection.

Q Mr. Caudill, the five men that I represent in your judgement, are they racketeers or gangsters?

MR. KEHRLI: Objection, Your Honor.

THE COURT: Sustained.

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Q. With respect to Panhandle Moore I believe you testified that I done what he told me to, is that pretty much true throughout this whole period of several days?

A. From the time we started making timbers, yeh.

Q. Was he the boss at all the times that you testified about?

A. Yeh.

Q. He was the head man that made the decisions and told everybody else what to do, pretty much, is that correct?

A. He told what to do.

Q. Did you have any fear that if you'd tried to cross him might try to take it out on you somehow.

A. Yeh, I did.

Q. Did that have anything to do with why you did exactly what he told you to do?

A. That's right.

MR. KIRKLAND: That's all I have Your Honor.

MR. BRANSON: No questions Your Honor.

CROSS EXAMINATION

BY.MR. ADAMS:

Q. Mr. Caudill, my name is Eldred Adams and I represent Ranny Blankenship.

Now Mr. Caudill do you remember making a statement on October 6, 1982, to Special Agent John Simms and Frank Eddy of the Bureau of Alcohol, Tobacco, and Firearms at McDowell?

A. Yeh.

Q. You remember that statement?

A. No, I don't remember it.

Q. I'm sorry, you do or you do not?

A. I do not remember it.

Q. You remember giving your statement to them?

A. I remember giving it but I don't remember what all I said.

Q. Do you remember swearing to that statement?

A. Yeh.

Q. That was under oath?

A. Yeh.

Q. And it is part of that statement, isn't it a fact sir that you swore that

it was a complete and accurate record to the best of recollection?

A. That's right.

Q. And isn't it further a fact sir that in that statement you made no reference whatsoever to Ranny Blankenship being involved in the Ray-Mac trouble?

MR. KEHRLI: Your Honor, the witness has indicated that he does not recall the statement.

MR. ADAMS: Well, if the court please I'd like with the court's permission to give this to the Marshall and he can refresh his recollection.

THE COURT: Hand it to the witness so he can refresh his recollection.

How long does it take to read it?

MR. ADAMS: I don't know, it's a two page statement.

THE COURT: Well, it shouldn't be that long.

I thought maybe we could go into recess.

MR. ADAMS: No, Your Honor - - well, whatever the court pleases. It's about two pages.

May it please the court,

may I approach the Government?

THE COURT: Yes, sir.

MR. ADAMS: May it please the court do you think we could take a short break on this matter I think he may need that for some time to read, five minutes.

THE COURT: Well, let's see if the witness needs it.

Mr. Caudill, do you need any time to read that or can you just look it over here now?

THE WITNESS: I can look it over but I can't read that good.

THE COURT: Well, is the Government familiar with it?

MR. SELF: Your Honor, I am familiar with it and I also know that Mr. Caudill has problems reading maybe we could get someone to read it to him.

THE COURT: All right. We'll be in recess for ten minutes. During this recess the not now admonition is in effect.

THE MARSHALL: The jury is out of the court-room Your Honor.

MR. ADAMS: May it please the court, would the court like to read it to him, or the lawyer

for the Goverment.

THE COURT: No, you can read it to him--you and maybe one of the U.S. attorneys can read it to him during this recess.

MR. ADAMS: All right.

THE COURT: We'll be in recess for ten minutes.

Reporter's Note: The court was recessed at 2:00 P.M.

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

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

THE COURT: Thank you. Are we ready to proceed?

MR. ADAMS: Yes, Your Honor.

THE COURT: Please do.

Q Mr. Caudill, now, during the recess, I read the statement to you in the presence of Mr. Randy Kehrli, the Government's Attorney; isn't that correct, sir?

A Yes.

Q And that is the statement you gave to the ATF agents on that day, isn't it, sir?

A Yes.

Q And isn't it a fact, sir, that in that statement you made no mention whatsoever of Ranny Blankenship being involved in the trouble with Ray-Mac, did you, sir?

A They was supposed to be more to that statement than what's there.

Q. This is the statement I got from the government. In the statement I read to you, sir, there was no mention of Ranny Blankenship being involved in any trouble, was there?

A. No, not in the statement that you read.

MR. ADAMS: All right, sir. I would just like for the record to reflect, Your Honor, that this is what I got from the Government.

THE COURT: All right.

Q. Also in that statement that I read to you which, I believe, you earlier indicated that you swore to, the statement said that you had read the foregoing statement; isn't that correct, sir?

A. Yes.

Q. So, in other words, the Government agents - - Government agents - - Government Agent Simms and ATF Agent Eddy had you swear you read it when, in fact, you were incapable of reading it; is that right, sir?

A. Would you repeat that again?

Q. All right, sir. On the statement that I read you, part of that statement says that you have read the statement and that you

understand it; is that correct, sir?

A. Yeah, I read some of it.

Q. All right. It says here you read all of it; is that right, sir?

A. (No response)

Q. The statement says - - and I read it to you over the recess - - "I have read the foregoing statement consisting of three pages, each of which I have signed, and I fully understand this statement, and it is true, accurate and complete, to the best of my knowledge and belief."

Now, that is what is contained in the statement you signed, isn't it, sir?

A. Yeah.

Q. And the agent, Agent Frank Eddy, and Agent Simms, had you swear to that statement, didn't they?

A. Yeah, I swore to it.

Q. All right. When, in fact, you weren't able to read all of it, were you, sir?

A. It would take me a while to read it. There's a lot of words I don't understand.

Q. All right. So, the agents had you swear to this statement, but you really didn't understand that, did you, sir?

A. I guess so.

MR. ADAMS: Thank you.

THE COURT: Next.

CROSS EXAMINATION

BY MR. SPENCER:

Q. Mr. Caudill, my name is Ed Spencer, and I represent Linville Mosley, and I want to ask you a few questions. And I will try to get it over with as soon as possible.

You know Linville quite well; is that correct?

A. I have known Linville a long time.

Q. And can you -- and you do not remember the dates, do you -- I mean the events from the 15th and the 22nd? Do you remember the events that took place on a certain date?

A. I don't remember what-- what event --

Q. Okay.

A. (Continuing) -- took place on what day.

Q. Okay. And Linville -- there was some people that went up on the hill early in the morning; had they already left your place when Linville arrived up there?

A. Yes.

Q. Approximately what time did Linville come to your house?

A. That I don't remember.

Q. Do you remember what he did when he was at your house?

A. We sat around there and watched T.V. He was drinking beer.

Q. Did he help you fix

some kind of chain saw or something, or do you remember?

A. I don't remember if we fooled with a saw or not.

Q. Did you all look at an old stove, or have something to do with an old stove?

A. I gave him a stove top that I had there.

Q. Was it up in the day when he come there, or -- just general. I don't expect you to remember the exact time, but I want the general. Was it early in the morning, or about what time?

A. It was in the morning time sometime, but I don't know exactly what time.

Q. Did he stay long enough to watch the complete T.V. program?

A. We watched a Western on T.V.

Q. Was it a movie or just a short -- a short sixty minutes, about an hour and a half, or what?

A. I don't know how long a show it was.

Q. Okay. Did you all talk about anything happening at Ray-Mac or anything on this particular occasion?

A. No. We talked about an old Jeep I had sitting there.

Q. An old Jeep. What did you all talk about that old Jeep? What did you say?

A. I don't remember what all was said.

Q. And did Linville leave after he got through drinking his beer and watching the T.V. program?

A. Yes.

Q. But he had nothing to do with the men that went on the hill and come off; is that correct?

MR. KEHRLI: Objection, Your Honor, unless he can establish the testimony.

THE COURT: Overruled.

Q. Did he have anything, to your knowledge, to do with the men that was on the hill and come off and was in your barn?

A. No, not to my knowledge.

Q. Did he ask about those men?

A. He never said nothing about them.

Q. Now, let's go to the -- when you was up at Ed Moore's house -- or Panhandle's house. You said Linville drove past Panhandle's house and stopped -- drove down and stopped; is that correct?

A. Yes, he did.

Q. Or the road there they use going up and down the hill passing Ed Moore's house?

A. Yes.

Q. And Ed Moore was looking for a tube, and Linville spoke to him; is that correct?

A. He stopped there in the yard for a while.

Q. What did they talk about, if you heard anything?

A. I don't know what they talked about.

Q. Did he practically run Linville off?

A. He got smart with Linville.

Q. And as best that you can, tell us what he said to Linville.

A. Linville asked him what he was doing or something, and he said: "If I tell you what I know, you will know what you know and what I know too."

Q. And Linville got in his vehicle and drove on down the road; is that correct?

A. Yes.

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Q Then you all went on up to Stiffy's barn - - you all went somewhere, didn't you?

A Yes.

Q Linville didn't go with you, did he?

A No.

Q Linville had nothing - - did Linville have anything else to do with hunting the tube for any dynamite or anything on this occasion?

A No.

Q Okay. Then, I believe, comes the time of the tipple; is that correct, that you went and hauled them off and dropped them off at the tipple; is that correct?

A Yes.

Q Was Linville around while this was going on?

A No.

Q Did Linville ever talk to you all about this tipple or anything?

A Not what time the trouble was going on, he didn't.

Q When you went to German's barn, Linville wasn't - -wasn't there, was he?

A. No.

Q. So, when you mention Linville's name here, you're not mentioning it in connection with Ray-Mac, are you?

A. No. I can't say that Linville had nothing to do with it, because if he did, I don't know nothing about it.

Q. So, you are saying that to the best of your knowledge Linville had nothing to do with anything dealing with Ray-Mac; is that correct?

A. Best of my knowledge, he didn't.

MR. SPENCER: No more questions. Thank you.

THE COURT: Next.

MR. WALBOURN: Please, Your Honor.

CROSS-EXAMINATION

BY MR. WALBOURN:

Q. Mr. Caudill, my name is E. J. Walbourn. Mose Mead is your stepson, is he not?

A. Yeah.

Q. And during February of 1982,

he was living at the house where you and his mother live?

A. He stayed at my house some, and he stayed at his grandma's house some.

Q. Okay. So, it wasn't unusual for him to be up there at your house, was it?

A. No.

Q. Now, Mose hadn't always lived with you and his mother, had he?

A. No, he didn't.

Q. He spent quite a bit of time at his grandmother's house?

A. Yeah.

Q. Now, part of the time he was also working, was he not?

A. Yeah.

Q. You know that he works for R & S Construction Building Pre Plant; you knew that, didn't you?

A. He was working for somebody. I don't know who it was.

Q. Okay. And you knew at the time that he was a member of the United Mine Workers of America, didn't you?

A. No, I didn't.

Q. All right. Turning your attention to the two hundred dollars, I understood your testimony to be that Panhandle Moore gave you that two hundred dollars.

A. That's right.

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RELEASED
SUBJECT CONTENT

Q. I further understand your testimony to be that sometime prior to the time you got your money, you saw Panhandle and Ben Caudill having a conversation?

A. That's right.

Q. And you said you saw Benny reach or hand something to Panhandle; is that correct?

A. That's correct.

Q. Now, you're not prepared to state under oath, are you, what was handed?

A. No, I ain't.

Q. Okay. Now, after you saw this conversation between Benny and Panhandle, where did you go?

A. We went on to the house.

Q. All right. Were you in a vehicle?

A. We was in Ed's truck.

Q. All right. How long did it take you to get from that restaurant to your house?

A. I don't know, ten,

fifteen minutes, something like that.

Q. During that period of time, Panhandle didn't give you any money, did he?

A. No, he didn't.

Q. After you got to your house, did Panhandle leave?

A. Yes, he did.

Q. About how long was he gone before the next time you saw him?

A. That evening or the next evening one.

Q. Okay. What time of day was it that he let you out at your house?

A. I don't remember that.

Q. Do you recall if it was the morning or the afternoon?

A. It was in the afternoon.

Q. All right. And you're not sure if it was that evening or the next day when you got your money?

A. That's right.

Q. But this was after -- after you got your money after Panhandle had been away from you for a while; isn't that true?

A. It is.

Q. Now, Panhandle came over to your house quite often, didn't he?

A. He was there about every day, every other day.

Q. Okay. Now, regarding your testimony here today, we have at least four different occasions when Panhandle was over at your house. You say the first time he came over one evening and said: "I've got a little job for us involving this and that"; is that your testimony?

A. I guess so.

Q. And then the next morning -- early the next morning, he showed up, and that's when you all went into the hills?

A. That's right.

Q. And it was just you and Panhandle that went into the hills, isn't it?

A. That's right.

Q. Now, did I understand your testimony to be, Mr. Caudill, that when you went into the hills there had already been some shooting taking place?

A. Yes.

Q. Now, you indicated

another time, when Panhandle came to your house, and you understood that he and some other men had been up in the hills; is that correct?

A. That's right.

Q. Did I understand your testimony to be that Van Patton was present at that time?

A. Yes.

Q. Is there any question in your mind about that?

A. (No answer).

Q. That Van Patton was in your barn?

A. No, he was in the barn.

Q. Okay, thank you.

Now, you indicated another time Panhandle came over to your house, and I believe it was on a Saturday night, and he told you and Mose to come over to his house on Sunday; is that correct?

A. Yes.

Q. And at that time he didn't tell you why you were to come over?

A. Not at that time, he

didn't.

Q. All right. And it wasn't until the next morning that you were over there that you found out why you were there.

A. We went up to Ed's house.

Q. And I believe at that time you indicated Ed was looking for an inner tube?

A. Yeah, when we got up there.

Q. And you joined in the search for the inner tube?

A. Yeah.

Q. But you are not sure if Mose looked for the inner tube or not, are you?

A. I'm not.

Q. Now, you indicated that you all met up there at Stiffy Stumbo's, or German Stumbo's garage, and Mose was with you; is that correct?

A. That's correct.

Q. All right. And you further indicated that you picked up a weapon and that the other individuals picked up a weapon?

A. Yes.

Q. Were any of those weapons fired that day?

A. No, they wasn't.

Q. All right, you didn't fire one?

A. No.

Q. Now, it is a fact, is it not, that Mose Mead had nothing to do with putting dynamite in an inner tube?

A. That's true.

Q. He had nothing to do with putting dynamite in a basketball?

A. That's true.

Q. Now, where was Mose during all this time?

A. He was standing out on the point below the other fellows watching out towards equipment.

Q. Okay. And, sir, to the best of your knowledge, about how far away was he?

A. What do you mean, from the equipment or --

Q. (Interrupting) Distance-

wise. How far was he from you distance-wise?

A. I don't know. He wasn't too awfully far.

Q. But he -- you say he was down below?

A. He was down below everybody else.

Q. All right, sir.

Now, let's turn our attention to the day regarding the tipple. Now, I understand your testimony to be that you were the one that took Panhandle, Basil, and Mose to the tipple?

A. That's right.

Q. No question about that?

A. That's right.

Q. Now, you didn't stay at the tipple, did you?

A. No, I didn't.

Q. You stayed gone about twenty to twenty-five minutes?

A. That's right.

Q. How far away did you go?

A. I drove back over to

Drift.

Q. About how far is that, Mr. Caudill?

A. It might be two -- mile and a half to two miles, something or another.

Q. Okay. So, from Simpsons Branch you drove over to Drift, and then drove back; is that correct?

A. That's what I drove.

Q. All right. Then is this the distance and the areas that you were gone-- you were gone twenty to twenty-five minutes?

A. Yes.

Q. All right. So, you weren't present when anything happened at the tipple that you personally saw, were you?

A. No, I wasn't.

Q. All right. Mr. Kehrli asked you if you had entered into a plea agreement in this case, and I believe that you indicated that you had; is that correct?

A. That's right.

Q. And Mr. Kehrli further asked you if you -- what you had pled guilty to, and you indicated that you had pled guilty to

conspiracy to violate the Hobbs Act; is that correct?

A. That's correct.

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Q. And you are aware of what the possible sentence that you could get in that case - - the possible maximum sentence, are you not?

A. Yes, I was.

Q. And you are aware that you have not been sentenced yet, have you?

A. No, I haven't.

Q. Okay. And you are aware that the possible maximum sentence you could get for the charge to which you pled guilty is twenty years incarceration or a ten thousand dollar fine or both; you are aware of that, are you not?

A. Yeah, I am.

Q. All right. And you weren't - - you pled guilty to no other charges, did you?

A. No, I didn't.

Q. You pled guilty to only one count?

A. Yeah.

Q. And that was conspiracy to violate the Hobbs Act?

A. Yeah.

Q. And you knew what you were doing when you pled guilty; is that correct?

A. I guess I did.

Q. All right. Now, would you explain to the members of the Jury what the Hobbs Act is?

MR. KEHRLI: Objection, Your Honor.

MR. WALBOURN: Your Honor, if he has pled guilty to it, I am entitled to ask him.

MR. KEHRLI: It calls for a legal interpretation.

THE COURT: Well, let this - - let this witness tell what he thinks the Hobbs Act is, and he can say what it is.

Q. Do you know, sir?

A. It is a law for a bunch of gangsters.

Q. Okay. And that is what you pled guilty to; that you conspired to be a gangster?

A. I guess I did.

Q. All right. Now, part of the plea agreement you entered into, the Government agreed also at the time of your sentencing to tell Judge Unthank, who has the sole discretion in sentencing, to advise them how you helped the Government; isn't that true?

A. Yes.

Q. And they also agreed to

charge you with no other Federal violations; isn't that correct?

A. I was charged with one count of conspiracy.

Q. They also agreed to dismiss a whole other indictment against you, didn't they?

A. I don't know about that.

Q. Do you recall being brought into this Court and arraigned on charges that you and Jake Moore, in August and September of 1982, did certain acts with dynamite and blasting caps?

A. Yes.

Q. And they agreed to forget about that case, didn't they?

A. They dropped a whole bunch of charges.

Q. They came in here and asked Judge Unthank, as is their perfect discretion - - asked Judge Unthank to dismiss that case, didn't they?

A. I don't know if they asked him or not.

Q. Well, you understand that you are not going to be prosecuted for that, don't you?

A. Yeah.

Q. And in exchange for that, you agreed that you would testify?

A. Yeah.

Q. Now, those other matters that you were charged on, you were charged in four different counts, weren't you?

A. I don't know how many there was.

Q. Well, if the record would reflect in Criminal Indictment No. 8219 that you and Jake Moore were charged with four counts, would that be correct?

A. I don't remember how many counts it was.

Q. Do you recall that each count in that carried a maximum possible penalty of ten years incarceration or ten thousand dollars fine or both?

A. Yes.

Q. Okay. And those charges had nothing to do with the activities at Ray-Mac, did they?

A. No, they didn't.

Q. This was something that was

charged against you and Jake Moore; is that correct, sir?

A. That's right.

MR. WALBOURN: All right. I believe that's all I have, Your Honor. Thank you.

THE COURT: Next.

CROSS-EXAMINATION

BY MR. ROWLAND:

Q. Mr. Caudill, my name is Dan Rowland, and I represent Tim Milan.

You testified on direct that Tim Milan came out to your house with Panhandle Moore; is that correct?

A. That's right.

Q. And just exactly what was it that Tim said to you?

A. I don't remember what he said.

Q. Did he say anything more than "Hello"?

A. I don't - - I don't remember.

Q. Did he come inside your house?

A. No, he stood out in the

yard.

Q. Did he appear to be hiding?

A. Not when he was out to the house, he wasn't.

Q. Okay. All right. Then he went back to the barn; is that right?

A. That's right.

Q. And you said Panhandle was oiling a gun out there; is that correct?

A. That's right.

Q. Did you see Tim handle any guns out there or oil any guns out there?

A. I don't remember if I did ot not. I don't - -

Q. And you say that they were there on one day; is that correct?

A. Yeah.

Q. Do you know exactly what day that was?

A. It was the day that all the big shooting was back on top of the hill.

Q. Do you know if it was Thursday February the 18th, 1982?

A. I don't remember what day it was.

Q Was he there on any other day during the week of the 15th thru the 22nd?

A Not that I seen him.

Q So, he was at your house on only one occasion; is that correct?

A Only one occasion.

MR. ROWLAND: Thank you, sir.

MR. THOMAS: Your Honor, I looked outside, and I don't have any questions.

MR. PAFUNDA: Likewise, Your Honor.

MR. HARWELL: Likewise, if the Court please.

THE COURT: All right. Any redirect?

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MR. KEHRLI: With the Court's indulgence, Your Honor.

THE COURT: Yes, sir.

(Reporter's Note: Mr. Kehrli conferred with prosecution counsel.)

REDIRECT EXAMINATION

BY MR. KEHRLI:

Q. Mr. Caudill, during the recess Mr. Adams read you a copy of your statement that you previously gave to the ATF agents, is that correct?

A. Would you repeat that?

Q. During the recess Mr. Adams read you that statement that you'd previously given to the ATF agents?

A. Yeah.

Q. All right. Was that statement that-- Was there anything in that statement that was read to you that you--that you believed to not be true?

A. No.

Q. And is that-- The statement that was read to you today, is that a true and accurate reflection of the statement that you gave to the ATF agents when they interviewed you?

A. There was some-- Some of the statement wasn't there, from what I thought.

Q. You believe you told them something that was omitted from the statement, is that correct?

A. Yes.

Q. And what is that?

A. There wasn't nothing in that statement about nobody being in the top of my barn.

Q. And do you believe you told those--the ATF agents who was in your barn?

A. I think I did.

Q. Other than that, is there any inaccuracy in that statement?

A. How do you mean?

Q. Is there anything that Mr. Adams read to you that you believe is not true?

A. No.

MR. KEHRLI: Your Honor, I'd like to have the Marshal hand the witness a copy of an exhibit that's not previously been marked.

Hand it first to the Clerk to be marked.

(The Marshal complied.)

THE CLERK OF THE COURT: This will be one exhibit, Mr. Kehrli?

MR. KEHRLI: Yes, ma'am.

THE CLERK OF THE COURT: Your Honor, the exhibit which was not previously marked for identification has now been marked for identification as Government's NPM No. 25; and has now been marked for purposes of trial as Government's Trial Exhibit No. 120.

MR. SELF: Your Honor, may I be excused for just a moment, please.

THE COURT: Yes, sir.

Let's see, those two are reading it. It looks like by the time the rest of them--

MR. HARWELL: May counsel approach the Bench just for a moment. I think we can explain.

THE COURT: Okay. They're entitled to read it.

MR. HARWELL: Yes, sir. I think I can clarify it for Your Honor maybe and save a little time.

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

THE COURT: Is that a prior consistent

statement?

MR. HARWELL: It's a handwritten statement. What we're trying to do is check it with this one. (Indicating) We've never seen this before. It appears to be the same statement.

MR. KEHRLI: It's the same.

MR. HARWELL: This is the one he's been examined on. It's a duplicate, only this (Indicating) has been typed. The one we're reading--

THE COURT: Is the original?

MR. KEHRLI: That's correct.

MR. HARWELL: We want to compare them.

THE COURT: I thought if it was going to take long it would be better to recess.

MR. HARWELL: I don't think it will take much longer.

THE COURT: It's the original.

MR. WALBOURN: I don't know what they intend to introduce this under.

THE COURT: A prior consistent statement.

MR. WALBOURN: It's the same one.

THE COURT: 801(d)(1)(B).

MR. ADAMS: I agree with Mr. Walbourn about introducing that. It's bolstering his testimony.

I think it gives undue emphasis in the jury room to his testimony. They can take that with them-- That's just, apparently, exactly what I examined him on.

The Government is unfairly trying to put in exhibits in to bolster this witness's testimony.

MR. KIRKLAND: Your Honor, the Government has established its inconsistency. They've established that what he said is not the same as what the statement says.

THE COURT: Right.

MR. ROWLAND: Right.

MR. KIRKLAND: It's not consistent.

MR. WALBOURN: If this were a statement made prior to the time--

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THE COURT: Just a moment. We're going around through here. We're not going to come back. Has everybody said their piece?

MR. ADAMS: Yes.

THE COURT: Let's go.

MR. WALBOURN: This was made by this witness prior to the time this statement Mr. Adams examined him on, and if it had in there the reference to Ranny Blankenship I would concede that would probably be a prior consistent statement used for some reason, however, it's the same statement . If this is admitted as a prior consistent statement the court has, in effect, said you can never cross examine on a prior inconsistent statement, but yet they have carte blanche liberty to introduce that statement to say, yes, but everything else is consistent.

Just because there is an absence in that statement they can't introduce that statement as a prior consistent statement. The rest of the statement was not touched upon by any of the counsel.

THE COURT: Okay. Next.

MR. ROWLAND: No, sir.

THE COURT: Okay, gentlemen. The witness was questioned about the plea bargaining. The

witness was questioned about the much better deal which he got, that he was presently pending sentencing.

The implication is he's testifying here in order - - to appeal to the court to not give him the maximum sentence. It appears that the - - that a question is raised as to the credibility of this witness.

I'll permit the prior consistent statement to be introduced into evidence. I will admonish the jury pursuant to the in trial admonition.

I will not permit the prior consistent statement to go to the jury room as an exhibit.

MR. WALBOURN: Are you saying they will read the whole statement or just the one portion Mr. Adams questioned about?

THE COURT: If they want to read the whole thing they can do that. If they don't read it--

MR. KEHRLI: Since this witness has some difficulty reading it would take him a great deal of time. We'd ask the clerk to read it.

MR. WALBOURN: I object. Your Honor, if he signed it and read the statement then he can read

the statement now.

THE COURT: Okay. Anyone else have anything to say on that?

MR. ADAMS: Only to say I agree with Mr. Walbourn.

THE COURT: Okay. Overruled.

MR. SELF: Your Honor, when they get through I want to say something.

THE COURT: What do you want to talk about?

MR. SELF: I just called the State Police to see what the road conditions are. I just got a call in to the State Police to see what the road conditions are going to be.

THE COURT: But you can look outside. I don't think it's accumulating anything.

Now, if it is we'll tell them to come in at 10:00 tomorrow. We'll take care of that.

MR. HARWELL: Give us about another two minutes to compare this handwritten statement.

THE COURT: If you want a recess we'll have a recess.

MR. HARWELL: We're on the second page, I think, Mr. Pafunda.

MR. WALBOURN: I'm going to request when it gets around to recross, if that's the word, I'm going to ask the witness to read the statement.

THE COURT: Well, I think the witness has said he can't read, and there's a bunch of words he can't read. Hasn't he already said that?

MR. WALBOURN: He said that. If he signed it - -

THE COURT: Well, let that be noted and overruled. That matter was already gone into.

All right. Okay, gentlemen.

Reporter's Note: The Bench conference ended.

MR. SELF: Mr. Kirkland, would you come off the record - - may we approach the bench, Your Honor? May we approach the bench off the record in regard to another matter I mentioned to you?

THE COURT: All right.

Reporter's Note: Mr. Kirkland and Mr. Self had an off the record conference at the bench.

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THE MARSHAL OF THE COURT: Your Honor, Government's Exhibit No. 120 has been shown to opposing counsel.

THE COURT: Thank you, sir.

(Reporter's Note: The Marshal handed the exhibit to the witness.)

Q. Mr. Caudill, would you examine that exhibit, please. See if you see your signature on that exhibit.

Does that appear to be the statement that you gave to the ATF agents?

A. What?

Q. Does that appear to be the statement that you gave to the ATF agents?

THE COURT: Do you want time, Mr. Caudill, to read that or to have someone read it to you?

THE WITNESS: It'll take me a while to read it myself.

THE COURT: Do you want a recess like you had before?

THE WITNESS: Yeah.

THE COURT: We'll be in recess for seven minutes. During this recess you're not--you're under the not now admonition.

(Reporter's Note: The jury left the courtroom at 2:53 p.m.)

THE MARSHAL OF THE COURT: The jury's left the courtroom.

THE COURT: Let me ask you a question. Was that read back to you by the agents before you signed it?

THE WITNESS: Yes.

THE COURT: All right. We'll be in recess for seven minutes.

THE MARSHAL OF THE COURT: Yes, Your Honor. This Honorable Court will be in recess for seven minutes.

(Reporter's Note: Court recessed at 2:54 p.m.)

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(Reporter's Note: The Court was called back to order at 3:02 P.M.)

THE MARSHALL OF THE COURT: Your Honor, all Defendants, all counsel and the jury are present in the courtroom.

THE COURT: Thank you. You may proceed.

MR. KEHRLI: Thank you, sir.

Q. During the recess, Mr. Caudill, in Mr. Adams' presence I read you that exhibit that's in front of you, did I not?

A. Yeah.

Q. And that statement was taken from you by the ATF Agents on October 6th, 1982?

A. Yeah.

Q. And it was written down by one of those agents, isn't that correct?

A. That's right.

Q. And you signed it, did you not?

A. Yes.

Q. And one of those agents read that statement back to you on that date, did they not?

A. I think so.

MR. KEHRLI: All right, Your Honor, at this time the United States moves Government Exhibit 120 into evidence.

MR. ADAMS: May it please the Court, I object and I would like to voir dire this witness with one question, may the Court please.

THE COURT: All right.

MR. ADAMS: Should I stay here or move to the podium?

THE COURT: Move to the podium.

VOIR DIRE EXAMINATION

BY MR. ADAMS:

Q. Mr. Caudill, do you remember during the recess when Mr. Kehrli and I was up there and he was reading the statement to you?

A. Yes.

Q. Isn't it a fact, sir, that you said in the presence of Mr. Kehrli's and I "you don't really remember whether or not the agents -- or the agent read it back to you or not", didn't you?

A. Yes, I did.

MR. ADAMS: I thank you.

On those grounds, Your Honor, I would object to its introduction.

THE COURT: All right. Let the objection be noted and overruled and let that which is marked as Government NPM-25 be finally admitted into evidence as Government Trial Exhibit 120.

MR. HARWELL: Judge, excuse me. May I ask a question of the Court for clarification?

THE COURT: Yes, sir.

MR. HARWELL: Is that admitted with the restrictions that you commented on earlier?

THE COURT: Yes, sir.

MR. HARWELL: Thank you, Judge.

MR. KEHRLI: Your Honor, at this time the United States would ask that the Clerk read the exhibit to the jury.

THE COURT: You finish your redirect and then it will be read.

MR. KEHRLI: All right.

FURTHER REDIRECT EXAMINATION

BY MR. KEHRLI:

Q Mr. Caudill, you testified on cross examination that you were not personally aware of what Panhandle -- strike that.

You were not personally aware of Panhandle Moore's source of the money that was eventually given to you.

During the first conversation that you had with Panhandle Moore about this work that you were to do, what did he tell you concerning the source of that money?

A. I don't remember what all he said.

Q. Do you recall him mentioning any person or any name that might be the source of that money?

MR. SPECNER: Your Honor, show my objection --

A. (Interrupting) The only person that he ever mentioned was German Stumbo.

Q. And what did he say about German Stumbo --

THE COURT: (Interrupting) Sustain the objection, I think he's already said that before.

MR. KEHRLI: All right, Your Honor.

THE COURT: Just a moment.

That was covered in

direct.

MR. KEHRLI: All right, Your Honor, I'll withdraw the question.

Q. Did -- during any of this time when you did this work that you were eventually paid for by Panhandle Moore, did Panhandle Moore ever threaten you physically if you didn't do any of this?

A. The first time that he came to the house when he wanted me to go with him he said if anybody tells on me he said I'm killing them.

Q. All right. What was that statement again?

A. He said if anybody tells on me, he said, I'm killing them.

Q. Did he say anything else?

A. He didn't call no names or nothing.

Q. Did he threaten you in any other way?

A. No, he didn't.

Q. Did he make any other threats to you at any time during this week?

A. No, he didn't.

Q. Do you recall your testimony about Linville Mosley and Mr. Mosley's presence at your house on the morning when the men were in your barn, is that correct?

A. Yes.

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Q. Based on what you saw Linville do while he was at your house that morning, did your form an opinion at that time as to the reason why he was there?

A. No, I didn't.

Q. When Mose Mead went with you and the other men to bomb the equipment, did he help you carry the dynamite up the hill?

A. I don't know who all helped carry it.

Q. One last question.

Mr. Walbourn asked you about these other offenses that were dismissed in connection with your plea bargain and plea agreement?

A. Yes.

Q. And there was four other offenses concerning--I believe you testified the sale of dynamite?

A. Yes.

Q. Would you tell the jury basically who you were going to sell that dynamite to and what you were arrested for at that time?

A. Myself?

Q. Yes.

A. I went down to Phillip

Booth's with Jake Moore. Jake is the one that sold the dynamite.

Q. And who was Jake going to sell that dynamite to?

A. I didn't know his name and Jake didn't say nothing about it.

Q. Did you ever learn his name later?

A. Yes, I did.

Q. What was that, what was his name?

A. Rick.

Q. Do you know his last name?

A. No, I don't.

Q. Did you ever learn in what capacity he was acting at the time?

A. He was an FBI agent.

Q. FBi or ATF?

A. Whichever which one, I don't know for sure which.

MR. KEHRLI: Your Honor, at this time--

THE COURT: (Interrupting) All right, let's let them recross. We're going to read that statement last, the last thing after the recross.

MR. KEHRLI: Yes, Your Honor. I've got

one more thing before we read the statement.

This time I'd like to have the Marshal mark this an exhibit which has not been previously marked and handed to the Clerk and have it marked as a trial exhibit.

THE COURT: Let me see it first, Mr. Marshal.

MR. WALBOURN: Your Honor, while Madam Clerk is doing that might we briefly approach the Bench?

THE COURT: Yes.

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

MR. WALBOURN: Your Honor, with regard to this exhibit the Government is marking, I have no objection to them introducing it. However, I would ask the Court to redact paragraph no. 8 since it made reference to a polygraph examination.

THE COURT: That's the plea agreement.

MR. WALBOURN: Yes.

THE COURT: What's the plea agreement have to do with this witness?

MR. KEHRLI: Well, we're entering this in response to the cross-examination concerning the witness's bias or cooperation with the Government and

the promises the Government may or may not have made with regards to that cooperation. It's in response to cross-examination.

MR. WALBOURN: If Mr. Kehrli thinks I misstated or misrepresented the plea agreement, I wish he would advise me.

MR. SELF: Mr. Walbourn didn't fully state the nature of it, Your Honor.

THE COURT: Well, what is it that he didn't state?

MR. SELF: Specifically, a part of the plea agreement that the Court would be advised of his total involvement in this--

MR. WALBOURN: (Interrupting) Your Honor, the man has taken the stand and he spilt his guts, I figured they wouldn't need to know much more.

THE COURT: Let me see that page.

MR. SELF: Your Honor, the complaint is very similar to the other--

THE COURT: (Interrupting) Yes, but as far as the polygraph, I'm going to do this, what paragraph is that?

MR. WALBOURN: That's eight, Your Honor.

MR. HARWELL: It's paragraph 8, Your Honor.

THE COURT: Okay, we'll redact no. 8.

MR. SELF: Well, that's fine. Is that going to the jury?

THE COURT: Well, I have not made up my mind on it yet whether I will allow it to go to the jury or not.

MR. SELF: Well, we would move for its introduction after proper foundation is laid and have it read to the jury with the Court's ruling that paragraph 8 may not be read.

MR. WALBOURN: If it's going to be read, YOur HOnor, I respectfully request that this witness read it, he signed it.

THE COURT: Well, it's already obvious to the jury, he's told it four or five times that he can't read.

MR. SPENCER: There's no need to embarrass anybody.

THE COURT: No, that's right.

MR. WALBOURN: Your Honor, also in regards to the statement that's already gone in, there's some incompetent material in that statement, in that he says I later learned from Jake Moore that he got the same money. Now, under that theory the Government may have taken the statement and had the man say I

further want to state that I regularly attended church for the last five years and he lived at the foot of the Cross and he will never, never regress again.

****

And under a bootstrap like this, they can put that before the Jury and that's incompetent.

THE COURT: Okay, I'll read the statement over and see.

MR. ADAMS: May it please the Court on this statement, I'm not arguing with the Court's ruling but from my observation, the only thing I crossed him on was it not mentioning Ranny Blankenship which is in about the third paragraph and the last paragraph.

I didn't ask him anything about anything in between. Now respectfully I present to the Court that the only portion that should be read to the Jury are those portions that I cross-examined him on which would be, I think, the third paragraph and the last paragraph.

THE COURT: Anything else, gentlemen.

It will be overruled.

(The Bench Conference was concluded.)

THE CLERK OF THE COURT: For the record, Your Honor, the exhibit which is not previously marked for identification has now been marked for identification purposes as Government NPM No. 26 and has now

been marked for purposes of trial as Govenment Trial Exhibit 121.

REPORTER'S NOTE: Let the record show that the Marshall is now showing the document to the defense counsel.

THE MARSHALL OF THE COURT: The document has now been shown to the witness, Your Honor.

THE COURT: Thank you. Mr. Kehrli and Mr. Kirkland, please come up here.

REPORTER'S NOTE: At this point a Bench Conference was held between Mr. Kehrli, Mr. Kirkland and the Court.

THE COURT: I'm going to let the Clerk read it. I didn't want him to blurt it out.

MR. KIRKLAND: Does he know what it is as opposed to a lie detector test?

THE COURT: Well, we'll find out.

(The Court is conferring with the Witness)

THE COURT: All right.

(End of Bench Conference)

THE COURT: You may proceed.

MR. KEHRLI: Thank you, Your Honor.

Q Mr. Caudill, is that the plea agreement between you and the United States?

EXPASE COTTON CONTENT

A. Yes, I believe it is.

Q. Would you turn to the last page of that agreement, is that your signature?

A. Yes, it is.

Q. At the time you entered into this plea agreement, did your attorney explain it to you?

A. Yes.

MR. KEHRLI: Your Honor, at this time the United States moves Government Exhibit 121 into evidence and ask that it be read to the Jury.

THE COURT: Any objection?

MR. KIRKLAND: Yes, Your Honor.

THE COURT: Let the objection be noted and be overruled and that which is marked as Government Trial Exhibit No. 121 be finally admitted into evidence as Government Trial Exhibit 121 upon the conditions of this Court that will later be imposed.

MR. KEHRLI: Your Honor, with the exception of the reading of those two exhibits, I have no further questions of this witness.

THE COURT: All right, is there any recross?

MR. PAFUNDA: I have no questions.

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

MR. WALBOURN: Your Honor, I have one, but I think the Clerk should read the exhibits before we - -

THE COURT: (Interrupting) All right, let the - - the Clerk will read the prior consistent statement which is contained in 120. And I think we better approach the Bench, gentlemen.

*** *** ***

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

THE COURT: I'm going to permit the plea agreement except for paragraph eight to be read to the jury, but neither the prior consistent statement nor the plea agreement will be permitted to go to the jury.

MR. WALBOURN: Your Honor, I'm requesting -- I object to the Court advising the jury that it's a prior consistent statement. I believe that's a legal determination not a factual determination.

Your Honor, regarding my prior concerns about the incompetent matter, is the Court ordering them excised?

THE COURT: I'm going to permit it to be introduced into evidence as read.

MR. WALBOURN: As read?

THE COURT: Yes, as is.

MR. KIRKLAND: Your Honor, I'm so convinced that the Court is in error on this prior inconsistent statement that I would like to have that statement --

THE COURT: (Interrupting) Prior

inconsistent statement?

MR. KIRKLAND: Yes.

THE COURT: Prior inconsistent statement?

MR. KIRKLAND: That's what it is, because this witness says the statement does not reflect what he told the agent so it has to be a prior inconsistent statement. I would like to have time to memo this with a short memo to set out how this statement denies what he reflects he told the agent. It does not in fact prove what his prior consistent statement was. It can't be a prior consistent statement, Your Honor. I'd like to have an opportunity to a two-page memo on that. I really think it's in error.

MR. ADAMS: Well, I think in this statement -- they're trying to enter matters which I never cross-examined him on.

MR. KIRKLAND: It has to go to refute the charge of recent fabrication and there has been no charge or recent fabrication. It's been generalized charges of one kind or another, but it certainly denotes charge of recent fabrication. This prior inconsistent statement doesn't go to show that he told something at a prior date prior to the

fabrication. In my judgement, Your Honor, it's not admissable and I'd like to have an opportunity to give the Court a two-page memo on that. If you overrule me, tomorrow you can read it to the jury, but I think once the Court thinks about this matter you'll change your ruling.

THE COURT: Anything else, gentlemen.

Let the objection be noted and overruled.

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

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THE COURT: All right. Before she commences, let me state this to the Jury.

Mr. Caudill here has testified in the Government's case during this trial. You can recall that it has been brought out that before this trial he made statements which were the same as, or were similar to what he has said here in the Courtroom.

These earlier statements, which is the exhibit which is going to be read, is brought to your attention to help you decide whether you believe Mr. Caudill's testimony.

If Mr. Caudill said essentially the same thing on more than one occasion, in your discretion, it may or may not be reasonable for you to believe Mr. Caudill's testimony. This is within your discretion.

All right. Madam Clerk, please read the prior - - the statement there first.

MR. WALBOURN: Your Honor, prior to that, might the record show my objection to the Court's admonition.

THE COURT: Yes, sir.

THE CLERK OF THE COURT: For the record, this is Government's Exhibit 120, entitled "Affidavit

page one of three pages."

THE CLERK OF THE COURT: Yes, Your Honor.

"Plea Agreement."

"I, Philman Caudill, reside at McDowell, Floyd County, Kentucky."

"Before I was asked any questions, I was advised of my rights. I was advised of my right to remain silent, anything that I said c could be used against me in a court or other proceedings;

"That I had the right to talk to a lawyer for advice before answering any questions, and have him with me during questioning; if I could not afford a lawyer and wanted one, a lawyer would be appointed for me by the Court.

"It was explained that if I decided to answer questions now without a lawyer present, I still have the right to stop the questioning at any time.

"And I also have the right to stop the questioning at any time for the purpose of talking to a lawyer.

"These rights

have been read to me, and I understand what my rights are."

"I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me, and no pressure or force of any kind has been used against me."

"I hereby voluntarily and intentionally waive my rights, and I am willing to make a statement and answer questions."

"I have read the foregoing statement consisting of three pages, each of which I have signed. I fully understand this statement, and it is true, accurate and complete to the best of my knowledge and belief."

"I made the corrections shown and placed my initials opposite each. I made this statement freely and voluntarily without any threats or rewards, or promises of reward having been made to me in return for it."

"Signature of affiant, Philman Caudill."

"Subscribed and sworn to before me this 6th day of October, 1982, at Pikeville, Kentucky. Signature, John D. Simms, Special

Agent, AFT. Witness, Frank E. Eddy, Special Agent, ATF."

"Page two of three pages."

"I was not present on the hill during the shooting at the Ray-Mac pickets or the Kentucky State Police, but after the first shooting, Ed Moore told me he had hid some guns in my barn, and he told me to bring them to him that night."

"I found seven rifles hidden in my barn and took them to Ed Moore the night of the first shooting. I remember one of the guns was a .35 caliber, and the other was an 8 millimeter Mauser."

"My next involvement in the Ray-Mac troubles was on the day we put bombs on a bull dozer and an auger belonging to Ray-Mac Mining."

"On that evening a tall man with gray hair, whose name I can't remember, went with German Stumbo, Teddy Kinney, Mose Mead, Jake Moore, Ed Moore and myself to the top of Bill Hall Branch in Floyd County, Kentucky."

"We carried explosives with us and found an auger and a bulldozer belonging to Ray-Mac Mining; and we went up there to blow this equipment up."

"German Stumbo, Ed Moore and I made the dynamite bombs. German and I put dynamite into a scoop, inner tube and an old basketball. Ed Moore put the fuses and blasting caps in the bomb."

"The fuse and blasting caps were nonelectric, and we used about two feet of fuse on each bomb."

"We put two blasting caps into the inner tube bomb, and one blasting cap into the basketball bomb."

"German Stumbo lit the basketball bomb, and Ed Moore lit the inner tube bomb."

"After the fuses were lit, we left and had walked some distance when I heard one explosion."

"We never went back to look at the damage, and I later heard from the news that one of the bombs did not go off. Two or three days later, Ed Moore paid me about one hundred dollars for my help in" - - and this is signed "Philman Caudill. Date, 10-6-82."

"(Continuing) the bombing of the Ray-Mac Equipment. I learned later from Jake Moore that we both got about the same amount of money

for the bombing of the equipment."

"Sometime later I became involved in a burning of a coal tipple being used by Ray-Mac Mining. On the night the tipple burned, I drove my 1973 Oldsmobile and dropped Ed Moore, Basil Ray Moore, and Mose Mead off just below the tipple."

"I then drove away while they walked up towards the tipple to burn it."

"I came back about thirty minutes later and picked them up."

"At that time the fire was just starting, and I could see a small amount of light at the tipple."

"The next evening Ed Moore talked to Benny Caudill at the restaurant in McDowell, Kentucky, and then took me home."

"A short time later Ed Moore came back to my house and paid me two hundred dollars to divide with Basil Ray Moore and Mose Mead for burning the tipple."

"Ed told me that he had got three hundred dollars for the tipple fire and that he kept one hundred dollars for himself."

"I kept one hundred dollars

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and gave Basil Ray and Mose Mead fifty dollars apiece."

"Basil Ray and Mose told me that they and Ed tied old tires on the tipple and set it on fire to burn the tipple."

And this is signed, "Philman Caudill. Date, 10-6-82."

THE COURT: All right. Read the Plea Agreement as instructed.

THE CLERK OF THE COURT: Yes, Your Honor.

"Plea Agreement."

"This plea agreement entered into between the United States of America, by and through Thomas L. Self, Assistant United States Attorney for the Eastern District of Kentucky, and Philman Caudill, in person and by his attorney, Lawrence Webster. This agreement constitutes the entire plea agreement between the United States and Philman Caudill."

"1. Philman Caudill agrees to enter a plea of guilty to one count of conspiracy to interfere with commerce by threats or violence in violation of Title 18, United States Code, Section 1951."

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"Philman Caudill hereby agrees to waive formal indictment as to said charge and to proceed on the basis of an information if the United States Attorney agrees to so proceed rather than by indictment."

"2. Philman Caudill hereby acknowledges that he understands that if his plea of guilty to such a charge is accepted, he may be sentenced to a term of imprisonment of not more than twenty years or fined not more than ten thousand dollars, or both."

"3. The United States agrees to move the Court to dismiss without prejudice Criminal Indictment 82-19 as to Philman Caudill, and agrees not to bring further criminal charges against Philman Caudill concerning his involvement in the activities at Ray-Mac Coal Company beginning in February 1982, except as set forth above in paragraph one (1)."

"4. The United States agrees to advise the Court at the time of sentencing as to the nature and extent of any and all cooperation by Philman Caudill with the United States in regard to matters under investigation by it."

"5. The United

States agrees to recommend to the Court that Philman Caudill be allowed to remain on a ten thousand dollar bond with surety pending sentencing or the execution thereof."

"6. Philman Caudill acknowledges that he understands that at the time of sentencing, the United States may advise the Court of the nature and extent of Philman Caudill-'s involvement or non-involvement in activities concerning Ray-Mac Coal Company."

"7. Philman Caudill agrees to cooperate with the United States in this investigation of the activities concerning violations of State and Federal laws involving activities at the Ray-Mac Coal Company, including, but not limited to, providing a full statement of his activities and those of others who may have been involved in such activities beginning in February 1982."

"8. Philman Caudill agrees to undergo a polygraph examination if requested by the United States regarding his knowledge of the activities in question."

"9. Philman Caudill agrees to testify truthfully under oath

if requested to do so, in any and all proceedings involving the charges now pending against him and others in Criminal No. 82-19 and any and all future proceedings either by the United States or the Commonwealth of Kentucky concerning events beginning in February 1982 concerning Ray-Mac Coal Company."

"10. The United States agrees that no testimony, statements, or other information given by Philman Caudill or any information directly or indirectly derived from such testimony, statements, or other information furnished by him, while cooperating with the United States in the course of its investigation of the occurrences involving the violence at Ray-Mac Coal Company, will be used against Philman Caudill in any criminal case, except a prosecution for perjury or giving a false statement, or except as pertaining to the charge to which he agrees to plead guilty as provided in paragraph one (1) above."

"11. The parties hereto agree and understand that a violation of any part of this agreement by either of the parties hereto will result in this entire agreement being null and void at the option of the other party."

"Entered into

on this the 16th day of February, 1983."

By Thomas L. Self, Assistant United States Attorney, Philman Caudill, Defendant, Lawrence Webster, Attorney for Defendant Caudill."

THE COURT: Gentlemen, may this witness be permanently excused.

MR. KEHRLI: Yes, Your Honor, as far as the United States is concerned.

MR. HARWELL: We have no objection, may the Court please.

THE COURT: All right, Mr. Caudill, will you step down. You are permanently excused, sir.

Call your next witness.

MR. DAUSE: Ballard Mosley.

*** *** ***

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

DIRECT EXAMINATION

BY MR. DAUSE:

Q Sir, would you give the Jury and the Court your name?

A Ballard Mosley.

Q Where do you live?

A Minnie, Kentucky.

Q How long have you lived there?

A Well, all my life off and on, McDowell and Minnie.

Q What county is that in?

A Floyd.

Q I want to ask you, Mr. Mosley, if you know a fellow by the name of Pebo Gayheart?

A Yes, I do.

Q Is the person that you know by that name in Court today?

A Yes.

(Mr. Mosley standing)

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Q. Is it the gentlemen that just stood up?

A. Yes, sir.

MR. DAUSE: Your Honor, I would ask that the record reflect that the witness identified the Defendant.

MR. HOLLON: No objection, Your Honor.

THE COURT: All right, let the record so reflect.

Q. Have you had an occasion to - - where Mr. Gayheart has asked to borrow a weapon that you owned?

A. Yes.

Q. What weapon was that?

A. A .22 Hornet.

Q. What kind of weapon is that?

A. It's a varmint gun. It will be just a little bit bigger than a .22 rifle. It is more powerful than a .22 rifle.

Q. It is a rifle?

A. Yes.

Q. Did you, in fact, loan that gun to Mr. Gayheart?

A. I loaned it to him, yes, I did.

Q. Did he tell you why he wanted it?

A. Well, I traded a power saw for the gun just to groundhog hunt with really.

Q. What did Mr. Gayheart say he wanted to do with it?

A. He wanted to groundhog hunt with it, what time I had the gun.

Q. All right. Did Mr. Gayheart ever give the gun back to you?

A. No, Pebo never did give it back.

Q. Did you get the gun back?

A. Yes, I did.

Q. From whom?

A. His - - Sammy Moore, Jake Moore's stepson.

MR. DAUSE: That's all I have, Your Honor.

THE COURT: Any questions?

MR. HOLLON: A few, Your Honor.

CROSS-EXAMINATION

BY MR. HOLLON:

Q. Mr. Mosley, you say you got that gun back from Sandy Moore; is that correct?

MILLERS FALLS
EZERASE
GOTHON CONTENT

A. Sammie Moore.

Q. Sammie Moore.

A. Sammie Moore or Sammie Mead one. I know it is Jake Moore's son-in-law - - stepson.

Q. Had that gun been shot? Had it appeared that it had been shot?

A. Well, there was five or six shells with it when I bought the gun, and there was five or six old, tarnished shells with it when I got the gun back.

Q. Were they still in the clip?

A. They were still in the clip.

Q. So, it didn't appear to you that that gun had ever been fired; is that correct?

A. No.

Q. How long was it after you loaned the gun to Pebo Gayheart that you got the gun back from Sammie Moore?

A. I got it on Easter Sunday about, maybe, 10:00 or 11:00 o'clock in the morning.

MR. HOLLON: That's all, Your Honor.

THE COURT: Anything else? Is there any redirect?

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MR. DAUSE: No redirect, Your Honor.

THE COURT: Thank you, sir. May this witness be finally excused?

You may step down. Call your next witness.

MR. SELF: Your Honor, the United States would call Phillip Gene Booth.

THE COURT: Phillip Booth.

MR. SELF: Your Honor, may we approach the Bench just a moment before Mr. Booth testifies.

THE COURT: Okay.

REPORTER'S NOTE: At this point all the attorneys for the Government and the defense approached the Bench and the following was heard:

MR. SELF: Your Honor, I called Mr. Justice this morning, and he said that he was going to be here by 3:00 o'clock, and now I have been advised by the witness that he won't be here until 4:00 o'clock.

However, he wishes at least to testify preliminarily without his attorney. The Court may want to inquire with him. It is up to the Court.

I don't want to waste the

Court's time waiting on an attorney who said he would be here at 3:00 o'clock, and now being advised that he won't be here until 4:00 o'clock.

MR. WALBOURN: Your Honor, I didn't object to him testifying this morning without a lawyer, but I just thought since he had one, and if he was going to want to use him, he ought to have him here on direct as well as cross.

THE COURT: Well, I agree with you. Come around here and sit right here.

MR. BOOTH: Up there?

THE COURT: Yes. Come around here and sit right here.

(Mr. Booth complies)

THE COURT: Evidently, Mr. Justice won't be here until - -

MR. SELF: (Interrupting) He called and said that he wouldn't be here until 4:00 o'clock.

THE COURT: Do you want to go ahead?

MR. BOOTH: Uh-huh.

THE COURT: Do you understand?

MR. BOOTH: Uh-huh.

THE COURT: Let's go.

REPORTER'S NOTE: At this point the Bench Conference was concluded.

THE COURT: Proceed, sir.

MR. SELF: Madam Clerk, would you hand the witness what has been previously introduced into evidence as Edgar Jones Exhibit No. 11.

(The Clerk complies)

DIRECT EXAMINATION

BY MR. SELF:

Q Mr. Booth, do you recognize that document?

A Yes.

Q Does your signature appear on the last page of that document?

A Yes.

Q Is that a copy of the plea agreement that was entered into between yourself and your attorney and the United States?

A Yes.

Q And is that - - is that the total plea agreement between us?

A Yes.

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Q. Is it not a fact that pursuant to that agreement, you pled guilty to the charge of conspiracy to engage in the business of dealing in dynamite without a license?

A. Yes.

*** *** ***

MILLERS FALLS ENERGY SET cotton cotter

Q. And are you presently awaiting sentencing on that charge by this court?

A. Yes.

Q. You can lay that aside, Mr. Booth, at this time.

By virtue of your plea, you are a convicted felon, are you not, Mr. Booth?

A. Yes,

Q. Mr. Booth, would you tell the ladies and gentlemen of the jury how you were employed in February of 1982?

A. I was a contract miner for JRM Mining.

Q. And what is a contract miner?

A. I got paid so much just to put the coal outside.

Q. And for whom were you working?

A. Edgar Jones.

Q. Do you see that person that you stated as Edgar Jones in this courtroom?

MR. HARWELL: May the court please. We will stipulate he knows him and can identify him, and Mr. Jones has stood up.

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THE COURT: May the record so reflect.

Q. Is that the man you worked for?

A. Yes.

Q. And how long had you worked for him?

A. About two and a half years.

Q. And approximately when did you start working for Mr. Jones?

A. About June - - about June in '80. That is as a contract miner. I worked for him before then.

Q. Let's go back to then. When did you first work for him?

A. '78.

Q. What were you doing then?

A. Working in the coal mine for him.

Q. Was he operating the mines himself?

A. Him and Carson Akers and his son Carson Akers.

Q. Who is Carson Akers?

A. Edgar's son-in-law.

Q. And was there some other

individual that was involved back in '78, or just Mr. Jones and Mr. Akers?

A. No, his son.

Q. What is his son's name?

A. Gregory Jones.

Q. Pardon?

A. Gregory Jones.

Q. And you did what for them back in '78?

A. Run a cutting machine.

Q. In the coal mines?

A. Yes.

Q. And from '78 to '80,,is that how you were employed?

A. Off and on, yes.

Q. Did you run the cutting machine the entire time, Mr. Booth?

A. Yes.

Q. Now, a cutting machine, for the purposes of the record, is what?

A. You cut coal with it.

Q. Is that like a continuous miner?

A. Well, it's a little on the same principle.

Q. In 1980 you began doing what?

A. Running mines.

Q. And how did you get into the mining business?

A. Edgar just paid me so much to put the coal outside.

Q. Where was the mines at, Mr. Booth?

A. Frasure's Creek .

Q. Did it have a name in 1980?

A. Yes.

Q. What was it?

A. Bryan Coal Company.

Q. And the coal that you were mining, do you know who it belonged to?

A. Edgar had it leased off of Elkhorn Coal Corporation.

Q. And what form - - if you had one, what form of contract did you have with Edgar Jones to mine that coal?

A. He just paid me so much to put it outside, and I paid the labor and supplies.

Q. And was this a written contract?

A. It is a verbal contract.

Q. And that contract was between whom?

A. Me and Edgar.

Q. You and Edgar Jones?

A. Yes.

Q. HOw long did you operate Bryan Mine?

A. Two in September, 83.

Q. During this period of time, did you operate any other - - have any other business relationship with Mr. Jones other than Bryan Mining?

A. Yes.

Q. What was that?

A. Calamity.

Q. What is Calamity?

A. Was another coal mine.

Q. And what, if any, relationship did that have with Mr. Edgar Jones?

A. The same as Bryan Mines.

Q. That being what?

A. Us mine the coal and he pay me and I put it outside.

Q. And when did Calamity open up.

MILLERS FALLS EZERASE COTTON CONTENT

A. I couldn't tell you the exact date. It was in '82.

Q. And how long did you operate Calamity Coal Company?

A. About a year.

Q. Approximately when did Calamity - - did you cease operating Calamity Coal Company?

A. In July July of '83.

Q. Now, Mr. Booth, where was Bryan Coal Company located?

A. It was located on Ned Fork and Frasure's Creek.

Q. And where was Calamity Coal Company located?

A. It was on Frasure's Creek.

MR. SELF: Your Honor, with the permission of the court, could Mr. Booth leave the witness stand and approach the - - what has been marked, I think, as Government's Exhibit number 6, Your Honor, the left hand photograph that is posted on the bulletin board immediately to the left- - to the right of the witness.

THE COURT: All right.

MR. SELF: Mr. Booth, would you go over

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and take a look at the photograph on the left over there, and I will ask you if you recognize it.

Reporter's Note: The witness complies.

Q. What is depicted in that photograph?

A. Ned Fork.

THE COURT: Which one are we talking about?

Q. What is the number on that sticker, Mr. Booth?

A. Number six.

Q. Do you recognize anything -- what is depicted in that photograph?

A. The site of Bryan Coal Company.

Q. Do you see in that photograph where Bryan Coal Company is or it was?

A. Yes.

Q. Is there a yellow pen laying there in the tray down there, Mr. Booth, or a pencil?

A. Yes.

Q. Would you draw a circle where Bryan Coal Company is, and write "Bryan" beside it.

MILLERS FALLS ERASE

A. (The witness complies).

Q. Is the location of Calamity Coal Company depicted on that map?

A. No.

****

Q. Where is Calamity in relation to Bryan on that map?

A. Right here. (Indicating)

Q. Off to the right-hand side--left-hand side of that photograph?

A. Yes.

Q. And that's back toward McDowell?

A. Yes.

Q. You may resume the stand, please.

A. (The witness complied.)

Q. Mr. Booth, what was the nature of the--for the purposes of the record, the nature of the coal mining operation that was conducted in Bryan? Was it strip mining or a deep mine.

A. Deep mining.

Q. And was there a particular type of deep mining that was done in Bryan and Calamity Coal Company?

A. We had to shoot from the solid.

Q. And that's terminology that's commonly used in the coal fields for the type of mining that you were doing, as opposed to mining

by continuous miner, is it not?

A. Yes.

Q. And in that type of an operation, Mr. Booth, just for the purposes of the record, would you explain what shooting from the solid is.

A. We don't use a cut machine. With a cut machine you cut from the bottom of it.

You just drill it and shoot it; shooting from the solid.

Q. And how does the coal get out of the mines?

A. You use scoops and load it onto a beltline.

Q. Does the belt convey it to the face of the mine?

A. Yes.

Q. And is it your testimony that your agreement with Mr. Jones was that you were responsible for delivering the coal to the face of the mine?

A. To the outside of the mine.

Q. Now, Mr. Booth, once it got outside whose responsibility was it to get the

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coal to wherever it was going?

A. Mr. Jones'.

Q. And how was the coal taken from the face of your mine?

A. By trucks.

Q. How did it get in the trucks?

A. Endloader.

Q. Okay. Did you have an endloader at Calamity and Bryan mines to load the coal into the trucks?

A. I had one in '83. He furnished it up till then.

Q. He being whom?

A. Edgar Jones.

Q. And were you responsible for employing the drivers to haul the coal out of your mine?

A. No.

Q. Who hired and fired the drivers?

A. Well, I have one truck.

Q. What do you mean, you had one truck?

A. I had one coal truck that

was on the coal haul.

Q. All right.

A. I employed one driver.

Q. Who was that?

A. Eddie Keith Barton.

Q. And who employed the other coal truck operators?

A. Ever who the trucks belonged to.

Q. Were you responsible for hiring or firing the drivers that hauled the coal from your mine?

A. NOt the other ones, no.

Q. Who was, if you know?

A. Ever who owned the trucks.

Q. Who hired the-- Who hired or contracted the coal to be hauled from the various mines?

A. Edgar.

Q. Edgar Jones?

A. Uh-huh.

Q. When you received payment for the coal how was it determined how much you were entitled to as to coal that you produced, Mr. Booth.

A. I got paid for the truck

weights as they went across the scales.

Q. Were there any scales located there at the mine?

A. At the tipple.

Q. And who-- What tipple was this? Was the coal-- Strike that.

Was the coal hauled from your mine to more than one tipple?

A. Yes.

Q. And where were these scales located from 1980 through 1983?

A. There was one at McDowell and one at Martin.

Q. The one at Martin, did it have a name? A corporation? How-- Whose tipple was it?

A. Edgar Jones'.

Q. Did it have a particular name?

A. I think it was Buck Branch Coal Sales.

Q. And the one at McDowell?

A. It was JPL.

Q. Do you know who Buck's-- Buck Branch Coal Sales is or who JPL is?

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A. Edgar Jones'.

Q. Was the coal then weighed at the tipples?

A. Yes.

Q. Who controlled the-- Who hired and fired the weight man, the scale house man?

A. Edgar Jones.

Q. Based on the weight tickets you were then paid for the coal that you produced, is that correct?

A. Yes.

Q. How did you keep it striaght as to what mine the coal was coming from?

A. They marked it down on the tickets. The endloader operator had to give the truckdrivers a ticket for which mine it come from. He had to give it to the man that weighed the coal.

Q. A weight ticket?

A. Yes.

Q. Now, Mr. Booth, at the time you operated, let's say in February of 1982, were Bryan and Calamity Coal Companies signatories to the National--the agreement between the United Mine Workers of America and the National Bituminous Coal Operators Association?

A. Yes.

Q. In other words, they were union mines, were they not?

A. Yes.

Q. Did you sign an agreement?

A. Yes.

****

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Q. Was anyone involved in ownership of Bryan and Calamity other than yourself?

A. Yes.

Q. Who was that?

A. Pearl Booth.

Q. That's your former wife, correct?

A. Yes.

Q. Now, as part of the money that you received, what were you responsible for paying out of the money you received for the coal that you sold?

A. I had to pay the labor and the supply bill.

Q. Is that all?

A. Yes.

Q. And who kept your books during the period of time that you operated Bryan and Calamity Coal Company?

A. Angie Elliott.

Q. Who is Angie Elliott?

A. It's Edgar's secretary.

Q. She keep it the

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entire time?

A. No. About there at the last her sister kept it.

Q. And what functions did Angie Elliott perform as far as the -- keeping the books of Bryan and Calamity Coal Company?

A. She done the payroll and made out the tax deposits.

Q. Who was responsible -- And did you pay her a salary to keep your books?

A. Yes.

Q. Now, Mr. Booth, who had the authority to hire and fire as far as the men that worked for you and Calamity at Bryan and Calamity Coal Company?

A. Me.

Q. You had the unfettered discretion to hire and fire who you wanted to?

A. I had to see Edgar before I could hire anybody if it was a strange person.

Q. How long had that practice been going on?

A. Ever since I was in business.

Q. Were you ever told by Mr. Jones why you had to see him?

A. Yes.

Q. Why?

A. I had to see him -- What do you mean?

Q. Did Mr. Jones ever tell you why you had to come to see him before you could hire somebody new?

A. Because of union problems.

Q. When did he ever tell you that?

A. All the time.

Q. But you were operating union mines, were you not?

A. Yes.

Q. Besides yourself and Bryan and Calamity Coal, were there any other contract miners during February of 1982 that were operating for Edgar Jones?

A. Yes.

Q. And who were they?

A. A & A Coal Company, Dye Coal Company and Crissie Coal Company.

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FEDERAL COMMUNICATIONS COMMISSION CONTENT

Q. Who is A & A Coal Company?

A. Earl and Phillip Adkins own it.

Q. And who is the Dye Coal Company?

A. Ricky Dye, Tilton Dye and Jimmy Dye owned it.

Q. Who is Crissie Coal Company?

A. Robert Tackett and his brothers owned it.

Q. Where were these mines located, Mr. Booth?

A. Two was in Prater's Creek. One was in Spewing Camp.

Q. Where is Spewing Camp?

A. It's about five miles from McDowell.

Q. On up Frasure's Creek?

A. No, it's on up the main highway.

Q. The main highway

running from where to where?

A. Where we're at.

Q. And, to your knowledge, do you know who owned the coal that was being mined in these various mines?

A. Edgar.

Q. Mr. Jones owned the coal?

A. He had it leased off Elkhorn.

Q. The mineral rights were held by Elkhorn Coal Company?

A. Yes.

Q. To your knowledge, did Mr. Jones have those mines -- the minerals and the coal leased from Elkhorn Coal Company?

A. Yes.

Q. Mr. Booth, I want to ask you if you know an individual by the name of Jason Moore?

A. Yes.

Q. Do you see Mr. Moore in this courtroom?

(The Defendant Jason Moore stood)

A. Yes.

Q. Is that the gentleman now standing?

A. Yes.

Q. How long have you known Jason Moore?

A. About ten or twelve years.

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

THE COURT: The record may so reflect.

Q. Mr. Booth, do you know what Mr. Jason Moore was doing in February, 1982?

A. Driving a truck.

Q. Driving a -- What kind of truck and doing what?

A. He was driving a coal truck and hauling coal in it.

Q. Do you know where he was -- where he was driving a coal truck at and where he was hauling to and from?

A. He was hauling from my mine and A & A's and -- every one of JRM's mines.

Q. Was he hauling for anyone else other than for JRM Mines, to your knowledge?

A. No, sir.

Q. Was he hauling it to one of the JRM or Edgar Jones' tipples?

A. Yes.

MR. HARWELL: May Your Honor please, I would respectfully ask the Court to ask Mr. Self not to lead tne witness. I've waited for a while to do this, but I'd be grateful, Judge, if he'd let the witness answer.

THE COURT: He's so instructed. Let us proceed, sir.

Q. Do you know an individual by the name of German Stumbo, Mr. Booth?

A. Yes.

Q. Do you see him in this courtroom?

A. Yes.

(The Defendant German Stumbo stood)

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

A. Yes.

MR. SELF: Let the record reflect

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he identified the Defendant German Stumbo.

THE COURT: Let the record so reflect.

Q. Mr. Booth, how was Mr. Stumbo employed, if you know, in February of 1982?

A. He wasn't. He was waiting on a permit to come in to open the mines up.

Q. What do you mean by that?

A. Well, his other mines had worked out. His other permits hadn't come in from Frankfort.

Q. How long had he been, as you say, waiting on the permit to come in?

A. I don't know that.

Q. And, to your knowledge, the -- the permit that he applied for, do you know who owned or leased the coal that that was for?

A. It was JRM's coal.

Q. And did he subsequently open up a mine?

A. After that, yes.

Q. And what was the name

of that mine?

A. Gina Coal Company.

Q. Prior to February, 1982 do you know how Mr. German Stumbo was employed?

A. JRM.

Q. What employment relationship did he have with JRM?

A. He run a contract mine for him.

Q. How long had he done that?

A. I don't know how long. I don't know the date he started or what year.

Q. Do you know how long Mr. Stumbo had been a coal operator?

A. No, not really. I don't know.

Q. Mr. Booth, going back just a moment, the other mines that you indicated that were mining coal for JRM, were they also what's called union mines in February of 1982?

A. Yes.

Q. All of them?

A. Yes.

Q. Do you know an

individual by the name of Drexil Hall, Mr. Booth?

A. Yes.

Q. Do you see him in this courtroom?

(The Defendant Drexil Hall stood)

A. Yes.

Q. Is that Mr. Drexil Hall?

A. Yes.

MR. SELF: Let the record reflect that he identified the Defendant Drexil Hall, Your Honor.

THE COURT: It may so reflect.

Q. Mr. Booth, in February of 1982 do you know what Mr. Drexil Hall was doing?

A. He was a repairman for A & A Coal Company.

Q. And at that time do you know if he held any position with the local union -- Local UMWA Union?

A. He was the vice-president.

Q. Do you know Mr. Teddy Kinney?

A. Yes.

(The Defendant Teddy Kinney stood)

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

A. Yes.

MR. SELF: Let the record reflect he identified Teddy Kinney, Your Honor.

THE COURT: It may so reflect.

Q. In February of 1982, Mr. Booth, do you know how Mr. Teddy Kinney was employed?

A. He wasn't employed.

Q. Was he drawing unemployment or do you know?

A. I don't know that. I don't know.

Q. To your knowledge, did Mr. Kinney hold a position with the local union in February of 1982?

A. Yes.

Q. And what was that position?

A. President of the union.

Q. Specifically in regard to the week of February 15th, 1982, do you

know -- have any knowledge of how Mr. Teddy Kinney was employed?

A. No.

Q. To your knowledge, was he working for any of the coal companies under contract to JRM?

A. No.

Q. Do you know an individual by the name of Benny Caudill?

A. Yes.

Q. Do you see Mr. Caudill in this courtroom?

A. Yes.

Q. Where is he and what's he have on? Where's he seated?

A. Blue shirt.

Q. Which row of Defendants, Mr. Booth --

MR. WALBOURN: This is Benny Caudill (indicating), Your Honor.

(The Defendant Benny Caudill stood)

MR. WALBOURN: He can identify him and we'll so stipulate.

THE COURT: All right. Let the record so reflect.

Q. Is that Benny Caudill?

A. Yes.

Q. In February of 1982, Mr. Booth, do you know how Mr. Benny Caudill was employed?

A. He run an end loader for the JRM Mines.

Q. And at what mine did he run an end loader at?

A. All of them.

Q. Do you know specifically by whom he was employed?

A. JRM.

****

Q. To your knowledge, was Mr. Caudill a member of the United Mine Workers of America at that time, February of 1982?

A. Yes.

Q. He was?

A. Yes.

Q. Do you know an individual by the name of Kenneth Rolland?

A. Yes.

Q. Do you see Mr. Rolland in this courtroom?

A. Yes.

(Defendant Kenneth Rolland stood.)

Q. Is that the gentleman that just stood up?

A. Yes.

MR. SELF: Let the record reflect he has identified Mr. Rolland, Your Honor.

THE COURT: It may so reflect.

Q. Did you ever know Mr. Rolland by any other name except Kenneth Rolland?

A. Yes.

Q. What was that?

A. Postman.

Q. And in February of 1982 do

you know how Mr. Rolland was employed?

A. He owned a truck.

Q. How was he employed by owning a truck?

A. He'd haul coal from the JRM mines.

Q. Do you know an individual by the name of Ranny Blankenship?

A. Yes.

Q. Do you see Mr. Blankenship in this courtroom?

A. Yes.

(Defendant Ranny Blankenship stood.)

Q. Is that the gentleman that just stood up?

A. Yes.

MR. SELF: Let the record reflect he identified the defendant Ranny Blankenship, Your Honor.

THE COURT: Let it so reflect.

Q. How long have you known Ranny?

A. All my life.

Q. How was Mr. Blankenship employed in February of 1982?

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A. He run an endloader for Calamity Coal Company.

Q. How long had he worked for you?

A. About six or seven months.

Q. Had he ever worked for you before?

A. No.

Q. Other than being an employee of yours, did you have any social relationship with Mr. Blankenship during February of 1982?

A. Yes. He was my first cousin. He come around all the time.

Q. Do you know an individual by the name of Eugene Tackett, Mr. Booth?

A. Yes.

Q. Do you see Mr. Tackett in this courtroom?

A. Yes.

(Defendant Eugene Tackett stood.)

Q. Is that the gentleman that just stood up?

A. Yes.

MR. SELF: Let the record reflect that he identified the defendant Eugene Tackett,

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Your Honor.

THE COURT: It may so reflect.

Q. Do you know what Mr. Tackett was doing in February of 1982?

A. He was a boss on the evening shift for me at Calamity Coal Company.

Q. And what do you mean by a boss?

A. He had first-class mining papers. He was a foreman.

Q. And how long had he worked for you?

A. Six or eight months.

Q. Did Mr. Tackett, to your knowledge, in February of 1982 have a--any nicknames?

A. Yes.

Q. What were they?

A. Blue.

Q. Did he have any other nicknames that you're aware of?

A. No.

Q. How long had you known Mr. Tackett?

A. All my life.

Q. Do you know an individual

by the name of Harold Dean Moore?

A. Yes.

Q. Do you see him in this courtroom?

(Defendant Harold Moore stood.)

A. Yes.

Q. Is that the gentleman that just stood up?

A. Yes.

MR. SELF: Let the record reflect that he identified the defendant Harold Moore, Your Honor.

THE COURT: It may so reflect.

Q. Do you know what Mr. Moore was doing in February of 1982?

A. Run a scoop at Calamity Coal Company.

Q. How long had he worked for you?

A. Oh, I couldn't tell you the exact dates, six months or longer.

Q. Had you known Mr. Moore long?

A. No.

Q. How long had you known him?

A. What time he worked for me.

Q. Do you know an individual by the name of Hermit Newsome?

A. Yes.

Q. Do you see Mr. Newsome in this courtroom?

A. Yes.

(Defendant Hermit Newsome held up his hand.)

Q. Describe where he's seated and what he has on, please.

A. That row, the first person. He has a white shirt--kind of a tan shirt.

MR. SELF: Let the record reflect that he identified the defendant Hermit Newsome, Your Honor.

MR. WALBOURN: I have no objection, Your Honor.

THE COURT: All right. Let the record so reflect.

Q. And in February of 1982, do you know what Mr. Newsome was doing?

A. He was a foreman at the Calamity Coal Company.

Q. And what did his job as a

foreman at Calamity consist of?

A. He was a foreman. He was a boss on day shift.

Q. And how long had you known Mr. Newsome?

A. About twenty years.

Q. Did Mr. Newsome have a nickname in February of 1982?

A. Yes.

Q. What was that?

A. Nose.

Q. Do you mean like n-o-s-e?

A. Yes.

Q. To your knowledge, was Mr. Newsome a member of the UMWA?

A. No.

Q. Do you know why he wasn't?

A. He was a foreman.

Q. Do you know an individual by the name of Tim Milan?

A. Yes.

Q. Do you see him in this courtroom?

A. Yes.

(Defendant Tim Milan stood.)

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

A. Yes.

MR. SELF: Let the record reflect he identified the defendant Tim Milan, Your Honor.

THE COURT: It may so reflect.

Q. In February of 1982, Mr. Booth, how was Mr. Milan employed?

A. He was working at Calamity Coal Company.

Q. Do you know what he was doing?

A. Running a loader.

Q. How long had you known Mr. Milan?

A. About two years.

Q. To your knowledge, did Mr. Milan belong to the United Mine Workers of America?

A. I couldn't tell you.

Q. Do you know an individual by the name of Mose Mead?

A. Yes.

Q. Do you see him in this courtroom?

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A. Yes.

Q. Describe where he's seated and what he has on.

MR. WALBOURN: Stand up, Mose.

(Defendant Mose Mead stood.)

MR. WALBOURN: This is Mose Mead. We'll stipulate he knows him; can identify him; and that's the same one he knew in February of 1982.

MR. SELF: Thank you, Your Honor. I'll accept that stipulation.

THE COURT: The record will so reflect.

Q. Do you know what Mr. Mose Mead doing in February of 1982, Mr. Booth?

A. No.

Q. Was he in any way employed by you?

A. No.

Q. Mr. Booth, in February, 1982, to your knowledge, was Mose Mead employed by any operator or coal mine in relation to the JRM Company?

A. No.

Q. You don't know?

A. I don't know whether he was or not, no.

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

A. Yes.

(Defendant Donahue Halbert stood.)

Q. Do you see him in this courtroom?

A. Yes.

Q. Is that the gentleman that stood?

MR. BRANSON: We'll stipulate that he knows him and can identify him.

THE COURT: Let the record so reflect.

Q. How long have you known Donahue?

A. About three years.

Q. And do you know what Mr. Halbert was doing in February of 1982?

A. He run a gunshop.

Q. Do you know how long he'd run a gunshop?

A. No, I don't know how long.

Q. Where was his gunshop located at?

A. I don't know. I never been there.

Q. You don't have any idea where it's located?

A. Garrett.

Q. City? Town? County? County?

A. Garrett.

Q. Pardon?

A. Garrett or something like that.

Q. And you've never been to Garrett?

A. Yeah.

Q. Have you ever been to Mr. Halbert's gunshop?

A. No.

Q. To your knowledge, in February of 1982 did Mr. Halbert have any employment relationship with JRM Coal Company or any of its associates?

A. No.

Q. To your knowledge, did Mr. Halbert ever work in the coal mines?

A. I don't know. He was a-- run a dozer for Edgar for a long time.

Q. And what do you mean by

that?

A. He worked for JRM; run a dozer and a grader for a while.

Q. Do you know when this was?

A. In '80 I know he was.

Q. 1980?

A. Yes.

Q. Do you know who he paid by at that time? Do you know?

A. I don't know.

Q. Was he running a gun store at the same time?

A. Yes.

Q. Do you know an individual by the name of Austin Bo Moore?

A. Yes.

Q. Do you see him in this courtroom?

(Defendant Austin Bo Moore stood.)

A. Yes.

Q. Is that the gentleman that just stood up and down?

A. Yes.

MR. SELF: Let the record reflect that he identified the defendant Austin Bo Moore.

THE COURT: The record will so reflect.

Q. How long had you known Mr. Moore?

A. About four or five years.

Q. And do you know what he was doing in February of 1982?

A. He was running a loader--driving a truck.

Q. Who was he driving a truck for?

A. Willie Moore.

Q. Do you know who Mr. Willie Moore's trucks were contracted to?

A. JRM Mining.

Q. Did Mr. Moore drive trucks hauling coal from the various JRM mines to the tipples?

A. Yes.

Q. In February of 1982?

A. Yes.

Q. Do you know an individual by the name of Pebo Gayheart?

A. Yes.

Q. Do you see Mr. Gayheart in this room?

(Defendant Pebo Gayheart stood.)

A. Yes.

Q. Is that the gentleman that just stood up?

A. Yes.

MR. SELF: Let the record reflect that he identified the defendant, Your Honor.

THE COURT: Let the record so reflect.

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Q. Mr. Booth, do you know what Mr. Pebo Gayheart was doing in February of '82?

A. No.

Q. Was he employed in any way by you?

A. No.

Q. Has Mr. Gayheart been employed by you?

A. He worked for me before or after one, I don't know when.

Q. At which mine?

A. Calamity.

Q. It's your testimony you don't know whether he was working for you in February of 1982 or not?

A. I don't think he was working for me at the time.

Q. Had you fired him?

A. He was working before or after February. I don't know when it was.

Q. At the time that he worked for you, how long did he work for you?

A. About six weeks.

Q. Did you fire him?

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A. My wife did.

Q. Was that after the incident at Ray-Mac or before or do you remember?

A. I don't remember, sir.

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

A. Yes --

MR. SPENCER: (Interrupting) Judge, we'll stipulate that he knows Linville and can identify him.

THE COURT: Is that all right?

MR. SELF: Yes, Your Honor.

THE COURT: All right, let the record so reflect.

Q. How long had you known Mr. Mosley?

A. About twenty something years.

Q. Did he live -- where did Mr. Mosley live in February of 1982 to your knowledge?

A. Frasure's Creek.

Q. Do you know how long he lived there?

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A. All of his life, I guess, that's the only place I ever known him to live.

Q. And do you know what Mr. Mosley was doing in February of 1982?

A. No.

Q. Do you know how he had been employed prior to February of 1982?

A. He was driving a truck for Jason, I don't know if he was driving it then or not.

Q. Jason being Jason Moore?

A. Jason Moore.

Q. Did Mr. Moore, at this period of time, have more than one coal truck?

A. He had two.

Q. And who were the drivers for him?

A. Jason drove one. I don't know if Linville was driving the other one or not.

Q. Do you know an individual by the name of Raymond Hall?

A. Yes.

Q. How long have you known

Mr. Hall?

A. Six or seven years.

Q. Do you see Mr. Hall in the courtroom?

A. Yes.

MR. KIRKLAND: We'll stipulate that he knows him and he knows him well, and it's the same man he knew in 1982.

THE COURT: Is that okay?

MR. SELF: Yes.

THE COURT: Let the record so reflect.

Q. Do you know what Mr. Raymond Hall was doing in February of 1982, Mr. Booth?

A. He owned a truck and was hauling coal with it.

Q. Do you know who he was hauling coal for?

A. JRM Mining.

Q. Did he haul coal from your mines?

A. Yes.

Q. In regards to the gentlemen I just named, Mr. Booth, have you known

most of them for quite a long time?

A. Most of them, yes.

Q. Any of them you're not acquainted with?

A. No.

Q. Do you know an individual, or did you know an individual by the name of Ed"Panhandle" Moore?

A. Yes.

Q. Do you know what Mr. Panhandle Moore was doing in February of 1982?

A. He just done a lot of jobs for people.

Q. Did he work for you in February of 1982?

A. No.

Q. Did he ever work for you?

A. Well, after February of '82 he had some.

Q. And how did he work -- in what capacity did he work for you?

A. He nightwatched and he built a deck around the swimming pool at the house.

Q. Do you know where Mr. Moore lived in February of 1982?

A. Yes.

Q. Where was that?

A. Frasure's Creek.

Q. Mr. Moore is no longer alive, is he?

A. No.

Q. Do you know when he was killed?

A. Not the date.

Q. Do you know an individual by the name of Jake Moore?

A. Yes.

Q. Who is Jake Moore?

A. It's Panhandle's brother.

Q. And how long have you known Mr. Moore? Jake Moore.

A. Six or seven years.

Q. In February of 1982, how was Mr. Jake Moore employed?

A. A night watchman for Bryan Coal Company.

Q. Employed by you?

A. Yes.

Q. And is he any relation to any of the Defendants in this case or Panhandle Moore?

A. He is to Panhandle, I don't know about the rest.

Q. Do you know an individual named Philman Caudill?

A. I know him now, yes.

Q. In February of 1982, did you know Mr. Caudill?

A. No.

Q. Do you know an individual by the name of Basil Ray Moore?

A. Yes.

Q. Do you know what he was doing in February of 1982?

A. No.

Q. Pardon?

A. He wasn't doing nothing.

Q. Do you know an individual by the name of Van B. Patton?

A. Yes.

Q. And do you know what

Mr. Patton was doing in February of 1982?

A. No -- he wasn't doing nothing.

Q. Did Mr. Patton ever work for you?

A. Yes.

Q. In February of 1982 was he working for you?

A. No.

Q. With regards -- taking you back, Mr. Booth, to JRM Coal Company. Do you know where the coal that was from your mines, once it got to the tipple where it was going?

A. It had been sold to John McCall Coal Company.

Q. What is John McCall Coal Company, do you know?

A. It's a coal broker company.

Q. And do you know the nature -- if there existed any relationship between JRM Coal Company and John McCall Coal Company?

A. That's who Edgar sold his coal to.

Q. Do you know where the

coal that was sold to John McCall was going?

A. South Carolina.

Q. Do you know where it was going in South Carolina?

A. The power plant.

Q. Do you know if there existed any relationship between Mr. Jones and any power plant in South Carolina -- between JRM and any power plant in South Carolina?

A. I don't understand what you mean.

Q. Was there any -- do you know how he -- how Mr. Jones' coal came to go to South Carolina Power Company?

A. That's who John McCall sold it to.

Q. Do you know if there existed any relationship between JRM Coal Company, John McCall and this power plant?

A. They all done business together.

Q. What was the nature of that business, Mr. Booth?

A. Edgar sold the coal to McCall and John McCall sold it to them.

Q. Was this a one-time one-sale basis or what?

A. No, he had a contract with them.

Q. Okay. Who had a contract with whom, Mr. Booth?

A. JRM had a contract with them.

Q. Who did JRM have a contract with?

A. John McCall.

Q. What was that contract for?

A. To buy coal -- to sell coal to them.

Q. John McCall selling coal to JRM?

A. No, JRM was selling coal to them.

Q. Was there a third party to that contract, do you know?

A. Yes.

Q. Who was the third party to that contract?

A. A power company in

South Carolina.

Q. And do you know, Mr. Booth, how JRM went about fulfilling its obligations under that contract?

A. They had to load so much coal a week.

Q. What do you mean by that?

A. We had to ship so many cars of coal to them a week.

Q. Just how many a week in February of 1982 did you have to ship?

A. Unit trains twice a week.

Q. What is a unit train, Mr. Booth, or what was it in February of 1982?

A. It's forty-two cars.

Q. And what did you have to do twice a week in relation to those forty-two cars?

A. We had to fill the order.

Q. You had to fill them with coal?

A. Yes.

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Q. And where were these cars shipped from?

A. Some come out of McDowell's tipple and some come from Martin tipple.

Q. And were they shipped on specific days in February of 1982?

A. Tuesdays and Thursdays.

Q. Forty-two cars each day?

A. Yes.

Q. And is that what was called a unit train?

A. Yes.

Q. And did anybody ever explain that to you?

A. What a unit train is?

Q. Yes.

A. Yes.

Q. Who?

A. Edgar Jones.

Q. Do you know what the nature of the contract -- have you ever seen the contract between Edgar -- between JRM and John McCall?

A. No.

Q Now, to your knowledge, Mr. Booth, in February of 19 --

MR. SPENCER: (Interrupting) May we approach the Bench?

THE COURT: Yes.

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

MR. SPENCER: Your Honor, I make a motion to strike all the testimony here about a contract, Your Honor, because he goes through all these questions about the contract then he asks him if he's ever seen the contract and he says no. He has to have seen the contract to know what the terms of it is and the details of what Mr. Self is asking.

MR. HARWELL: May the Court please, may I be heard on the record on that?

THE COURT: Yes.

MR. HARWELL: I would also object to this line of testimony because as Mr. Self knows, as a matter of fact under discovery the contract is between JRM and South Carolina. It's not JRM and McCall and I think that is very misleading --

THE OFFICIAL COURT REPORTER: Pardon?

MR. HARWELL: I say that that is very misleading because that contract is between the JRM people and the South Carolina Utility, not John McCall. I can understand how you can get an answer out of a witness one time and you know it's wrong and then move on, but he's continually asking him about it, the John McCall -- I mean the John McCall contract and that's just not the way it is. Am I correct, Mr. Self?

MR. SELF: No, the contract that was furnished to us and the contract that was furnished to them under discovery has the signature of a representative of the John McCall Coal Company. It's a three-party contract.

THE COURT: Let the objection be noted and overruled.

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

THE COURT: Please proceed.

MR. SELF: Thank you, Your Honor.

Q. Now, Mr. Booth, prior to the week of February the 15th, 1982, did you ever have any discussions with Mr. Jones in regards to you joining the union?

A. Yes.

Q. When did those discussions occur and what was the substance of those discussions, Mr. Booth?

A. There was some people from District 30 come over to McDowell to try to get the truck drivers to join.

Q. Do you know when this was?

A. I don't know the date, or the week.

Q. In relation to the date of February 15th, 1982, was it before it?

A. Yes.

Q. How much before it?

A. It's been so long I can't remember exactly.

Q. Do you remember the day, though, that it happened as opposed to the date that it happened?

A. Pardon?

Q. Do you have any remembrances of the day of the event as it occurred?

A. It was on a Friday.

Q. What happened?

A. They went over and

tried to get them to sign a contract for the truck --

Q. (Interrupting) Mr. Booth, listen to my question.

How did you first become aware of any involvement by somebody from District 30 in Pikeville?

A. They came up to all the truck drivers and all the truck drivers were talking about them being there.

Q. And what if anything did you do?

A. I went up to Edgar's office.

Q. How did you come to go to Edgar's office?

A. What do you mean?

Q. Did you go down there on your own, Mr. Booth?

A. No, he sent for me to come down there.

Q. Who sent for you to come down?

A. Edgar Jones.

Q. And at the time you

were doing what?

A. At the time I was doing what, I was operating a mine.

Q. And Mr. Jones said what to you?

A. Well --

Q. (Interrupting) Before you got down there? How did you come to go down there?

A. They called up to the mines, there's a telephone there.

Q. And did you answer the phone?

A. No, Joe Stanley answered the phone.

Q. And based on what Mr. Stanley said to you, did you do something?

A. I went on to the office.

Q. That office being?

A. JRM's office.

Q. Located where, Mr. Booth?

A. McDowell.

Q. What happened when you

got there?

A. Edgar told them to make me sign -- make Pearl sign a contract and let me join the union.

Q. Specifically, what did Mr. Jones say to you?

A. If I got in the union that way we know everything that went on in the union hall.

Q. What did he tell you?

A. He told me to tell them people that I took everything out of my name and put it in Pearl's and I drove a truck every now and then and greased a truck every now and then.

Q. Did he tell you why he wanted you to tell them that?

A. To where I could join the union.

Q. Did he say why you should join the union?

A. So we'd know what went on in the union hall.

Q. And after you had the discussion -- was anybody else present when you had

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this discussion with Mr. Edgar Jones?

A. No.

Q. After you had this discussion, what if anything happened at that time?

A. All the truck drivers come into the office.

Q. Who came in the office, Mr. Booth, as well as you can remember?

A. Jason --

Q. (Interrupting) Jason Moore?

A. Jason Moore. Harry Wallen, Postman, and Raymond Hall.

Q. And other than those and yourself, who else was present at that meeting?

A. Pearl Booth and some people from District 30 over there.

Q. Do you know who those people from District 30 was?

A. One was named Justice, I don't know the other one.

Q. And what if anything did you do at that meeting?

A. I told them I put everything out of the mines into Pearl's name and

I greased a truck and helped work on the truck and drove it when my driver was off and I joined the union.

Q. How did you join the union?

A. I signed the check off and paid my initiation fee.

Q. How did you pay the initiation fees?

A. Personal check.

Q. And what if anything happened to that check, Mr. Booth?

A. They mailed it back to me.

Q. Was there any explanation when you received it back in the mail?

A. Due to my job classification I was not allowed to belong to the United Mine Workers.

Q. That classification being what?

A. Mine operator.

Q. Did you ever go back and talk to Mr. Booth -- I mean Mr. Jones about getting your check back?

A. No.

Q. Now, Mr. Booth, prior to the week of February the 15th, 1982 had you ever had any discussions with any of these Defendants about Ray-Mac Coal Company?

A. No.

Q. Prior to the 15th, you never had any such discussions -- did you know prior to February the 15th that there existed anything called Ray-Mac Coal Company?

A. I know there was a strip job up on top the hill, but I didn't know what it was.

Q. Had Mr. Jones ever discussed that strip job up on top of the hill with you prior to the week of February the 15th?

A. No.

Q. Now, Mr. Booth, prior to -- excuse me, Your Honor.

Prior to Monday, February 15th, 1982, where were you that weekend?

A. Winchester, Kentucky.

Q. And when did you come back from Winchester?

A. Sunday afternoon.

Q. And what were you doing in Winchester?

A. I had a house down there.

Q. A house or a trailer?

A. A double-wide trailer.

Q. And what happened when you came back?

A. Well, Sunday evening Benny Caudill come down to the house and said there was going to be a picket line the next morning.

Q. Did he say where the picket line was going to be?

A. On top of the hill.

Q. Do you know what hill he was talking about, there's a lot of hills around here?

A. John Hall Branch hill.

Q. Did he say who was going to be forming a picket line or why a picket line was going to be formed?

A. No, not at that time, no.

Q. What did Mr. Caudill tell you other than there was going to be a picket line?

A. Nothing, that's it. We talked about some other stuff, but not nothing concerning that.

Q. And was Mr. Caudill the only person down at your house at that time?

A. My wife was down there.

Q. Now, Monday, February the 15th, 1982, do you remember that day, Mr. Booth?

A. Yes.

Q. Why do you remember it?

A. Why do I remember it?

Q. Why do you remember that day?

A. That's when the picket line was.

Q. And you and I have discussed that day, have we not?

A. Yes.

Q. Have you gone over

your testimony with me prior to testifying here today, Mr. Booth?

A. No.

Q. You've never gone over it with me?

A. Yes, I went over some papers -- I mean you asked me some questions.

Q. And you and I -- have I not asked you questions on numerous occasions?

A. Yes.

Q. And in any of those occasions have I ever told you what to say?

A. No.

Q. How did we conduct those interviews?

A. You would ask me questions and I'd answer the questions.

Q. And prior to your testimony, have you reviewed any written documents, Mr. Booth?

A. No.

Q. You have not reviewed any written documents?

A. They read the Grand

Jury testimony back to me.

Q. Did they read any other testimony of a mini-hearing back to you?

A. They just went -- the Grand Jury testimony and the mini-hearing.

Q. Have you ever reviewed any of my notes during those discussions, Mr. Booth?

A. No.

Q. And have I ever told you what happened on any day as far as what you did?

A. No.

Q. Now, Mr. Booth, on Monday, February 15th, 1982, would you tell the ladies and gentlemen of the jury beginning early in the morning what you did?

A. I went to all the mines to see where the coal was at and then I went back to my mines.

Q. Why did you go to all the mines to see where the coal was at?

A. To see how much coal was outside and who had the most coal and where the end loader would go to.

Q. Why did you do that,

Mr. Booth?

A. To tell Edgar and Edgar could tell the end loader where to go to.

Q. Is this the first time you've ever done this?

A. No.

Q. Second time?

A. No, I done it all the time.

Q. Is that part of your job with Bryan Coal Company or Calamity Coal Company?

A. No, it wasn't part of my job, I just done it.

Q. And where did you first go to?

A. I went to Calamity and then I went to A & A and Bryan didn't have no coal because they were down getting their belts set up.

Q. You went to A & A, that's not one of your mines, is it?

A. No.

Q. Why did you go there?

A. I always drove up there, every morning, just to see how much coal was

there.

Q. What do you mean by seeing how much coal was there, Mr. Booth?

A. See how many loads of coal was up there. Seeing what could be hauled that day.

Q. How could you tell how many loads of coal was there?

A. I could tell by looking at it.

Q. Where was the coal at?

A. By the belt line.

Q. Now, after you went to Bryan, A & A and Calamity, where did you go?

A. I went to the office.

Q. What office is that?

A. JRM's office.

Q. When you got there, who did you see?

A. Edgar Jones.

Q. What if anything occurred at that time?

A. I told him that Calamity had about eight loads out and A & A might

have had ten.

Q. Did you tell him how many Bryan had?

A. Bryan didn't have none, they were down getting the belts set up.

Q. And what if anything did Mr. Jones say to you?

A. Nothing at that time.

Q. Did you tell Mr. Jones anything else other than how much coal was there?

A. That they said there was going to be a picket line up on top of thehill.

Q. What did you tell him?

A. I told him that there was going to be a picket line up on top of the hill.

Q. Did he say anything?

A. Huh?

Q. Did he say anything in response to that?

A. Not at that time, he was asking me how come Calamity doesn't have no more coal than that.

Q. Did you tell him?

A. I told him we been broke down all the time.

Q. Do you know to your knowledge Mr. Booth why was it necessary other than moving the endloaders down that you report back to Mr. Booth- - Mr. Jones was to report it back other than the strike.?

A. What do you mean?

MR. SELF: Strike that, Your Honor.

Q. As far as that day Mr. Booth was this a normal amount of coal that was out?

A. No.

Q. What was unusual about it?

A. Well, Calamity wasn't producing any coal and Bryan was down. A&A was the only one that had any coal besides what they had in the Fpewing Camp.

Q. Do you know why it's necessary that you have so much coal out?

A. You've got to meet a contract - - he had to meet a contract he shipped - - he held back on Monday what he shipped out on Monday and shipped it on Tuesday with the rest.

Q. I don't understand what you mean Mr. Booth?

A. The tracks will not hold forty-two cars.

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Q. The tracks at the tipple?

A. Yes.

Q. The sidings, the railroad?

A. Yes.

Q. Now, what do you mean by holding back?

A. What we'd run we'd hold the cars back and they sent more cars and we'd load them.

Q. Do you know how many cars had been loaded on Friday - - or how many held back?

A. No.

Q. Do you go by the tipple to look and see?

A. I never did count no cars at the tipple.

Q. Now, after you left Mr. Jones's office, where did you go?

A. I went back to Bryan and I come from Bryan I went - - I went up there and talked to John Mullins.

Q. Who is John Mullins?

A. He was running a scope there at Bryan's.

Q. And what if anything did

Mr. Mullins say to you?

A. He told me there was going to be a strike - -

MR. WALBOURN: (Interrupting) Objection, Your Honor to what Mr. Mullins said.

MR. SELF: I'll withdraw the question Your Honor.

THE COURT: All right.

Q. Based on what Mr. Mullins told you where did you go and what did you do?

A. I went up on top of the hill, John Hall Branch hill.

Q. And the hill you're talking about is between where?

A. Between McDowell and Mud Creek.

Q. And what happened or what did you find when you got up there Mr. Booth?

A. There were four or five people up there on the picket line.

Q. And why did you go up there Mr. Booth?

A. I just went up there to see who all was up there to start with.

Q. And who all was up there?

A. Drexil Hall, Jason Moore, Teddy - - (Inaudible)

Q. (Interrupting) Teddy who?

A. Teddy Kinney. And Drexil's brother, Leslie.

Q. And what were these gentlemen doing Mr. Booth?

A. They just had a big fire built up there at that time.

Q. And what were they doing besides having a big fire built?

A. Just standing there, there wasn't no trucks or nothing coming off the hill.

Q. Did you talk with any of these gentlemen at that time?

A. Yes, I asked them how come there ain't no more people up there.

Q. Who did you talk to?

A. Drexil and Jason.

Q. What did you tell them?

A. I told them if I hadn't signed a contract I'd have four or five hundred up there on me.

Q. What did they say?

A. They just laughed.

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Q. What did you do then?

A. I went back off the hill - - I stood around there for maybe a hour or so.

Q. What were the men doing other than standing around and keeping warm by the fire?

A. Throwing tacks in the road.

Q. What were they throwing in the road?

A. Thumb tacks - - I mean carpet tacks.

Q. What size carpet tacks were they throwing?

A. I don't know, I guess about an inch long.

Q. Where were they throwing them?

A. When you went up the hill to Ray-Mac.

Q. Who was throwing them in the road Mr. Booth?

A. Drexil and his brother.

Q. Did you ask them why they were throwing carpet tacks in the road.

A. No, I didn't ask them why.

Q. Was somebody getting ready to put carpet down?

A. No, but I didn't ask them why though.

Q. Pardon.

A. I didn't ask them why, why they were throwing them.

Q. Did they tell you why?

A. No, they were just throwing them out there. I guess they were going to give them trucks a flat.

Q. Did you ask any of these gentlemen up there why they were up on the hill?

A. They said they were going to stop the mines up there - -

Q. (Interrupting). Who - - What - -

A. (Interrupting) Ray-Mac Coal Company.

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Q. Who told you that, Mr. Booth?

A. Drexil.

Q. What did he say?

A. He said they was picketing. Said they was going to stop them.

Q. Did he say what they were going to stop them from?

A. No. I didn't ask him why he wanted to stop them.

Q. What did he say?

A. I had no business up there to start with.

Q. Is there any mention about the union at that time, Mr. Booth?

A. Not at that time.

Q. Now, you knew three members that were up there were members of the local union--were officials, didn't you?

A. Yes.

Q. Were there any picket signs up there?

A. No.

Q. About what time was this, Mr. Booth?

A. About eight-thirty or nine o'clock.

Q. Other than placing some carpet tacks in the road and standing around the fire, were the men doing anything else?

A. Drinking beer.

Q. Did you drink beer with them?

A. Not that time I didn't.

Q. After you left there, Mr. Booth, where did you go?

A. Back to the office.

Q. Whose office?

A. Edgar Jones' office.

Q. And what happened at that time?

A. Well, when I first went in, he was talking on the phone, and I didn't get to see him.

Q. "He" being whom?

A. Edgar Jones.

Q. What did you do while he was on the phone?

A. Sat there and waited.

Q. Was anybody else in the

office besides you?

A. Angie Elliott.

Q. Is this the same Angie Elliott that you previously referred to that kept the books for you?

A. Yes.

Q. What did you tell Ms. Elliott?

A. That I wanted to see Edgar a minute.

Q. Did you go in and see him?

A. No, not for a while I didn't. He stayed on the phone for a while.

Q. How do you know he was on the phone.

A. You could see him.

Q. Where was he at?

A. In his office.

Q. Could you hear what he was saying on the phone?

A. Uh-uh.

Q. And after he got off the phone, did you see--talk to Mr. Jones?

A. Yes.

Q. Tell the ladies and

gentlemen of the jury what happened at that time, Mr. Booth?

A. I went in the office, and he was real mad about something. He said that they had tried--Ray-Mac had tried to underbid him on his contract--on his orders.

Q. What else did he say?

A. That Nick Cooley and Arnold Turner was behind it. They was mining--that was their coal that they had leased that Ray-Mac was mining.

Q. Did he say how he knew this?

A. He said somebody called him where he sold his coal at.

Q. What did he say, Mr. Booth?

A. He said that he just got a phone call, one of his friends where he sold his coal at, and he told them that they had flew down there.

Q. And what did he say?

A. Said they had underbid--tried to underbid him three dollars and something a ton on his orders.

Q. What did he say about

somebody flying somewhere?

A. That Ray-Mac had flew down there.

Q. Down where?

A. He didn't say where.

Q. What else did he say?

A. And they had tried to underbid him three dollars and something a ton on his orders.

Q. And, again, did he say how he knew this?

A. He said one of his friends had called him where he sold his coal at.

Q. After he said that, what, if anything, did Mr. Jones say?

A. He told me to run on back up the hill and tell two of them to come down there--two of the union officials.

Q. Now, Mr. Booth, did there come a time where you learned or were told who that person was that called Mr. Jones?

A. I don't understand what you mean.

Q. Did you have any discussions later on with Mr. Edgar Jones that he identified the

individual who had called him?

A. I flew to South Carolina with him once to go deep sea fishing.

Q. When was this, Mr. Booth?

A. In June of '80--'83.

Q. June of '83?

A. Yes.

Q. This past year?

A. Well, June of '82.

Q. And who flew down there with you?

A. Jerry Patton, Edgar's CPA.

Q. The Mr. Patton seated over here at this time?

A. Yes.

Q. Who else?

A. His CPA.

Q. Do you know his name?

A. No.

Q. Besides you and Mr. Patton and his CPA, who else?

A. Edgar and the pilot.

Q. Where did you fly to?

A. North Carolina.

Q. And do you know where?

A. I can't pronounce it.

Q. Why were you going down there, Mr. Booth?

A. Supposed to be going deep sea fishing.

Q. When you got there, did you meet anybody?

A. Met some men from John McCall.

****

Q. When you were there, did Mr. Booth - - did Mr. Jones introduce you to any of those people from John McCall?

A. He told me, when we got off the plane and first got to where they was at, shook hands with them and said that was his buddy, and give him a phone call.

Q. Do you remember the man's name that he introduced you to?

A. Berkie or Bertram or something like that. I don't know.

Q. How old a man was he?

A. Forty-nine - - in his forties or fifties.

Q. And what did he say when he introduced you to him?

A. Said that was the man that gave him the phone call. He said that was his buddy.

Q. What phone call - - did he say what phone call he was talking about?

A. When they tried to underbid him on his orders.

Q. As best you can remember, what did Mr. Jones state to you at that time?

A. He said: "This is my

buddy, the one that gave me the phone call that Ray-Mac was trying to underbid me."

Q And that man's name was ?

A Perky - - Perk - -

MR. WALBOURN: (Interrupting) Your Honor, I apologize, but I think if he didn't repeat every question three times, we would move along a little faster.

MR. SELF: Yes, Your Honor. I will withdraw the question.

THE COURT: Well, I never did get the name myself.

MR. SELF: That is why I asked the question, Your Honor.

MR. WALBOURN: I don't think he knows is hwy we haven't gotten the answer.

THE COURT: Well, ask him again, if he can.

Q What was the man's name that he introduced you to, Mr. Booth?

A I don't know his first name. His last name was Perkins or - - it started with a "P". I don't - - I can't remember the name.

THE COURT: Okay.

Q Perkins.

A. Perkins or something like that.

Q. Okay. Was there anybody else there other than the people you have already identified?

A. They was two more people there. I don't know their names though.

Q. Do you know whether they were working, or where they were from?

A. One was John McCall, and the other one was from the power plant, South Carolina Power Plant.

Q. Did you go deep seat fishing?

A. No.

Q. How long did you stay down there?

A. One day.

Q. Now, going back, Mr. Booth, back to February 15th, 1982, after you had been into Mr. Jones's office, and he told you about the call, you indicated, did you not, that he said to go up -- what did Mr. Jones tell you to do?

A. He told me to go up on the hill and tell two of them to come down there.

Q. Did he mention which two?

A. No. He didn't mention no certain two.

Q. What did you take "Two of them" to mean?

A. Well, he told me - - he said three Union officials up there.

Q. How did he know there were three union officials up there?

A. Well, I told him who all was up there.

Q. After Mr. Jones told you that, what, if anything, did you do

A. I went up there.

Q. What did you do up there - - you went up where?

A. I went up on top of the hill at Ray-Mac and told them that Edgar said to come to the office.

Q. Who did you talk to when you got up on the hill?

A. There was Jason, Drexil - - all of them was standing there. Everybody could hear what was being said.

Q. What did you say?

A. I told them that Edgar wanted

to see two of them in the office.

Q And what happened at that time?

A They left.

Q Who left?

A Jason and Teddy McKinney - - Kinney, or whatever his name is.

Q And what did you do?

A I stayed around up there.

Q Okay. Who did you stay around there with?

A Leslie Moore, and some old guy named Pie.

Q Just the two of you stayed up there - - the three of you?

A Drexil stayed up there.

Q Was there anyone else up there other than the four of you?

A If there was anybody else up there, I didn't know it.

*** *** ***

Q. When you told Mr. -- before Mr. Moore and Mr. Kinney left, did you tell them anything other than Mr. Jones wanted to see them?

A. I just told them he wanted to see them in the office.

Q. How long did you stay there?

A. I don't know exactly how long we did stay.

Q. An hour, a year, or ten minutes?

A. Stayed long enough to drink two cans of beer.

Q. And did any more men come up there while you were there?

A. No. They didn't come up there what time I was there.

Q. While you were there, did anything go on at the top of the hill?

A. Men throwing rocks at trucks -- I mean not throwing rocks, throwing tacks -- carpet -- roofing tacks and all.

Q. Who was doing that?

A. Mosley Moore and

Drexil Hall.

Q. And did you have any discussions with Drexil at that time?

A. I told him about what Edgar said about underbidding on the orders and things.

Q. You told who that?

A. Drexil Hall.

Q. What, if anything, did he say?

A. He didn't say anything about it at the time.

Q. Did Mr. Hall tell you anything more about what he was doing up there?

A. No, I never asked him.

Q. After you left there, did any more men come up other than what you have already stated?

A. No, not at that time.

Q. Where did you go, if anywhere, from there?

A. I went down -- started back down the hill.

Q. What happened as you started back down the hill?

A. Met Jason in his truck.

Q. And did you stop and talk to him?

A. Yes.

Q. What, if anything, did you say, or did he say?

A. He said that Edgar told him that everybody had to come out. He wanted to protect his contract. It had to be a legal strike.

Q. Is there anything else he said?

A. That they was going around from mine to mine pulling all the men out.

Q. And who was with Mr. Moore at this time?

A. Teddy Kinney.

Q. And what, if anything, was said at that time?

A. Nothing at that time. I went back to the office then.

Q. Now, did Mr. Moore --

THE COURT: (Interrupting) All right, let's do it for the day.

We are going to be in adjournment until tomorrow morning at nine o'clock. You check with the Clerk.

It looks like the snow which is out there hasn't been any accumulation. It has been snowing all day, but there hasn't been any -- any accumulation on the roads.

But Madam Clerk will check with the State Police, and if it appears there is an accumulation, she will advise you to come in at ten o'clock, otherwise, you are directed to come in at nine o'clock. Do you all understand?

MR. SELF: May it please the Court. Has the Court made a decision as to whether we will be in session on Friday, provided we do have a session tomorrow?

THE COURT: We won't be in session Friday.

MR. SELF: Thank you, Your Honor.

THE COURT: We will not, not be in session Friday. I promised them, as I promised the jury, if we are going to be in, I will give you a week's notice, and I will tell you on Monday we are going to be in this Friday. But we are not

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going to be in session this coming Friday.

During this adjournment, you are under the "not now" admonition.

Remember, no newspapers, radios, televisions, no discussions with anyone concerning this case, nor permitting this case to be discussed in your presence, and not to finally make up your mind on the issues of the trial until you have heard all of the evidence and the Court's instructions.

Are there any objections or corrections, gentlemen?

MR. HARWELL: None, may the Court please.

****

MR. SELF: None, Your Honor.

THE COURT: All right. Marshal, excuse the jury until tomorrow at nine o'clock.

THE CLERK OF THE COURT: Please check your message after 6 a.m. When I called this morning, I got a busy signal, and somebody was already calling.

(Reporter's Note: The jury left the courtroom at 4:55 p.m.)

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

THE COURT: Mr. Booth, are we going to have any problems on your being here at nine o'clock in the morning?

MR. BOOTH: No.

THE COURT: You are sure of that?

MR. BOOTH: Yes.

THE COURT: You understand if there is any problem with your being here at nine o'clock in the morning, I could keep you here.

MR. BOOTH: It wasn't my fault the other time. They told me the time to be here was seven o'clock in the evening.

THE COURT: Okay. I'm telling you ought to be here at nine o'clock. Let's make that a little before nine.

MR. SELF: Your Honor, I am requesting that he be here at eight-fifteen, and I'll make sure he's got some latitude until nine o'clock.

THE COURT: Do you understand?

MR. BOOTH: Yes.

MR. HARWELL: And I am respectfully moving and requesting, may the Court please, under the authority of Jude v. the United States, set forth in 425 U.S. 80 that the Court order the Government and all agents thereof and, of course, if the Court so desires, defense counsel and all agents thereof from having any communications with Mr. Booth since his testimony has now commenced in this case.

THE COURT: Well, yes, I read this Jude but that concerns where the Court held that a defendant--the Court ordered the defendant--the defendant's attorney not to be permitted to talk to him; is that correct?

MR. HARWELL: Yes, sir.

THE COURT And they held that the judge was in error by denying this defendant his right to counsel; is that right?

MR. HARWELL: That's right, Your Honor.

THE COURT: Isn't that the case?

MR. HARWELL: May it please the Court,

My motion does not include Mr. Booth's attorney, it includes the Government and their agents. I think that case stands for precisely the proposition that Your Honor verbalizied, but the Supreme Court said in that case that the judge has got the right to restrict access to a witness, except when it comes to a witness and his personal attorney.

THE COURT: All right, let that be noted and be overruled.

MR. HARWELL: Yes, Your Honor.

THE COURT: We will be in adjournment until tomorrow morning at nine o'clock, gentlemen.

THE MARSHAL OF THE COURT: All rise. Court is now in adjournment until tomorrow morning at nine o'clock.

(Court adjourned at 5 p.m.)

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STATE OF KENTUCKY)
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) SS.
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COUNTY OF JEFFERSON)

We, JAMES E. EDMONDSON, RICHARD L. COULTER, & GEORGE R. CAMERON, Notary Publics, within and for the State at Large, do hereby certify that the foregoing proceedings were taken before us at the time and place and for the purpose in the caption stated; that the witnesses were first duly sworn to tell the truth, the whole truth, and nothing but the truth; that the proceedings were reduced to 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 29th day of February, 1984.

_____
Notary Public

_____
Notary Public

_____
Notary Public