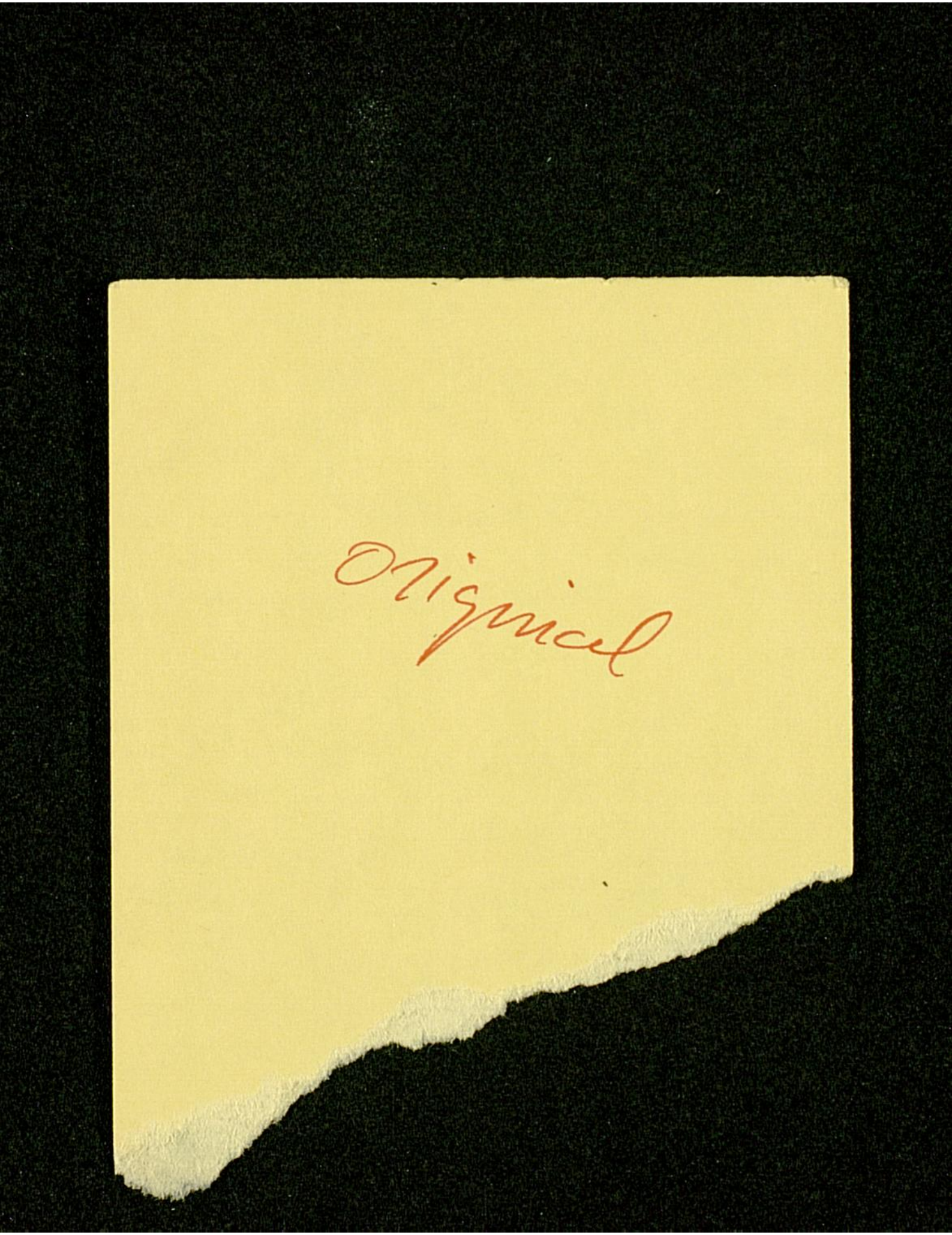
Original

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, MORRIS RAY HALL, VAN B. PATTON

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TRANSCRIPT OF TRIAL

BEFORE: THE HONORABLE G. WIX UNTHANK
DATE: JANUARY 12, 1984

VOLUME FIVE

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

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A P P E A R A N C E S

For the United States of America:

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

For the Defendant Edgar A. Jones:

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

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

E. J. WALBOURN, III

For the Defendant Tim Milan:

DAN ROWLAND, ESQ.

For the Defendant Eugene Tackett:

DAVID THOMAS, ESQ.

For the Defendant Pebo Gayheart:

THOMAS K. HOLLON, ESQ.

For the Defendant Morris Ray Hall:

FRANCIS DALE BURKE, ESQ.

For the Defendant Donahue Halbert:

HERSHEL BRANSEN, ESQ.

For the Defendant Linville Mosley:

LOWELL E. SPENCER, ESQ.

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

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

BERNARD PAFUNDA, ESQ.

For the Defendant Ranny Blankenship:

ELDRED E. ADAMS, JR., ESQ.

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

WILLIAM D. KIRKLAND, ESQ.

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

THE COURT: Madam Clerk, please call the roll of the Jury.

THE CLERK OF THE COURT: Yes, Your Honor. Ladies and gentlemen, as I call your name, please stand up very briefly and then you may be seated.

Juror No. 93, Jean Marie Dorton.

MS. DORTON: Present.

THE CLERK OF THE COURT: Juror No. 95, Clifford Spencer.

MR. SPENCER: Present.

THE CLERK OF THE COURT: Juror No. 100, Wilma L. Moore.

MS. MOORE: Present.

THE CLERK OF THE COURT: Juror No. 104, Jeanetta Adkins.

MS. ADKINS: Present.

THE CLERK OF THE COURT: Juror No. 105, Anna Koerner Lykins.

MS. LYKINS: Present.

THE CLERK OF THE COURT: Juror No. 106,

Marie C. Vance.

MS. VANCE: Present.

THE CLERK OF THE COURT: Juror No. 108, Etta Brewer Walker.

MS. WALKER: Present.

THE CLERK OF THE COURT: Juror No. 109, Timothy Damron.

MR. DAMRON: Present.

THE CLERK OF THE COURT: Juror No. 111, Jackie Justice Adkins.

MS. ADKINS: Present.

THE CLERK OF THE COURT: Juror No. 112, James E. Addison.

MR. ADDISON: Present.

THE CLERK OF THE COURT: Juror No. 115, Aaron Salyer.

MR. SALYER: Present.

THE CLERK OF THE COURT: Juror No. 117, Mary Lee Curry.

MS. CURRY: Present.

THE CLERK OF THE COURT: Juror No. 118, Ollie M. Wallen.

MS. WALLEN: Present.

THE CLERK OF THE COURT: Juror No. 119, James Ray Blankenship.

MR. BLANKENSHIP: Present.

THE CLERK OF THE COURT: Juror No. 122, Doris Butcher.

MS. BUTCHER: Present.

THE CLERK OF THE COURT: Juror No. 124, Eddie Caudill.

MR. CAUDILL: Present.

THE CLERK OF THE COURT: Juror No. 125, Darrell Edward Anderson.

MR. ANDERSON: Present.

THE CLERK OF THE COURT: Juror No. 159, N. B. Bailey.

MR. BAILEY: Present.

THE CLERK OF THE COURT: Juror No. 161, Rose Mary Wallace.

MS. WALLACE: Present.

THE CLERK OF THE COURT: Juror No. 167, Betty J. Brandenburg.

MS. BRANDENBURG: Present.

THE CLERK OF THE COURT: Juror No. 172, Elmer Crace.

MR. CRACE: Present.

THE CLERK OF THE COURT: Juror No. 183, Gerald D. Thomas.

MR. THOMAS: Present.

THE CLERK OF THE COURT: Juror No. 185, Glen Charles Slone.

MR. SLONE: Present.

THE CLERK OF THE COURT: Juror No. 188, Norcie Jervis.

MS. JERVIS: Present.

THE CLERK OF THE COURT: Juror No. 189, Vivian Tackett Miller.

MS. MILLER: Present.

THE CLERK OF THE COURT: Juror No. 190, Kenneth Mullins.

MR. MULLINS: Present.

THE CLERK OF THE COURT: Juror No. 191, Joe M. Combs.

MR. COMBS: Present.

THE CLERK OF THE COURT: Juror No. 193, Rosa Holliday.

MS. HOLLIDAY: Present.

THE CLERK OF THE COURT: Juror No. 194, Jennifer D. Hobson.

MS. HOBSON: Present.

THE CLERK OF THE COURT: Juror No. 202, Netta Jean Francis.

MS. FRANCIS: Present.

THE CLERK OF THE COURT: Juror No. 207,

A. J. Snyder.

MR. SNYDER: Present.

THE CLERK OF THE COURT: Juror No. 221, Earl Thompson.

MR. THOMPSON: Present.

THE CLERK OF THE COURT: Juror No. 224, Charles E. Boyd.

MR. BOYD: Present.

THE CLERK OF THE COURT: Juror No. 226, Dennis Clark.

MR. CLARK: Present.

THE CLERK OF THE COURT: Juror No. 228, Mary Ann Bowen.

MS. BOWEN: Present.

THE CLERK OF THE COURT: Juror No. 235, Mary A. Brandenburg.

MS. BRANDENBURG: Present.

THE CLERK OF THE COURT: Juror No. 236, Clyde DeRossett.

MR. DeROSSETT: Present.

THE CLERK OF THE COURT: Juror No. 237, Gatha R. Justice.

MS. JUSTICE: Present.

THE CLERK OF THE COURT: Juror No. 244, Michael D. Freeman.

MR. FREEMAN: Present.

THE CLERK OF THE COURT: Juror No. 246, Jackie Deskins.

MR. DESKINS: Present.

THE CLERK OF THE COURT: Juror No. 247, Ricky D. Charles.

MR. CHARLES: Present.

THE CLERK OF THE COURT: Juror No. 248, Larry Longworth.

MR. LONGWORTH: Present.

THE CLERK OF THE COURT: All forty-two Jurors have answered as being present, Your Honor.

THE COURT: Thank you, Ma'am. I wish I could say something nice to make all of you feel better. I am very proud of the fact you are here this morning.

I realize the adversity that some of you might have undergone in order to be here.

A friend of mine who I play golf with, who for a period of time seemed like his family had considerable difficulty, children being in the hospital, we were playing one day and I looked over and I said, "Well, how are things going with the family?" He said, "Don't say a

word." He said, "They have been going so well, just don't say anything I am afraid something might happen."

But because of the weather and everyone answered here this morning, I started to look up and say thank you.

I am certainly proud of all of you this morning, I am glad to see you here.

Now, gentlemen, are we ready to proceed?

MR. SELF: May it please the Court, let the record reflect I think all counsel and Defendants are present this morning.

THE COURT: I think we should do that or I don't know whether many of you are familiar with the back of these bars and all these little stores that used to have these things, little ducks that lean over and get a drink of water and come back up and then they would be there and then would lean down and get another drink of water, That I am sure all of us having to stand and sit down so much feel like we are like one of those little ducks.

Does Counsel - - does anyone disagree with this, the record reflecting

that all counsel are here, without everyone having to stand up?

REPORTER'S NOTE: No response.

THE COURT: I believe, Mr. Pafunda, you were in the process of closing the last time.

MR. PAFUNDA: Yes, sir. May it please the Court, yes, sir, Your Honor, I have no further questions.

THE COURT: Mr. Spencer.

MR. SPENCER: Your Honor, if the Court doesn't hold it against me and the Jury, I don't think I will have any questions.

THE COURT: Thank you.

Mr. Adams.

MR. ADAMS: Yes, sir. I believe I would have some questions, but if the Court please, I would like to approach the Bench.

THE COURT: Yes, sir.

REPORTER'S NOTE: At this time there was a Bench Conference and the following was heard:

*** *** ***

MR. ADAMS: Your Honor, in the Court's opening comments, you mentioned briefly to the thing about drinking and also about the defendants not testifying.

THE COURT: Some being for it and some not.

MR. ADAMS: And also about the defendants not testifying. I thought the explanation was good. But I assume it would be permissible with the Court to go ahead and ask about the drinking.

THE COURT: What do you want to do?

MR. ADAMS: More or less what I asked before.

THE COURT: Would that be repetitious?

MR. ADAMS: I don't believe it is, Your Honor. But I don't have--

MR. KEHRLI: (Interrupting) It seems to me that your prior comments about that are appropriate as to whether or not if anyone has any strong feelings concerning drinking, whether that would interfere with anyone being a fair and impartial juror.

MR. ADAMS: That would be the nature of the question.

THE COURT: All right.

MR. ADAMS: Also, Your Honor, I want to

touch briefly, if it pleases the Court, about--about the witnesses not taking the stand just a little bit on that. I don't feel it violates the Court's ground rules. But I want to touch on that.

THE COURT: Well, I feel like basically I've gone into that enough. I am not wanting to gag counsel. I realize counsel would like to get acquainted with the jury. But I will permit a brief on the thing. But let's don't--

MR. ADAMS: I will go straight to the point.

THE COURT: Mention it, and get out of it.

MR. ADAMS: Yes, Your Honor.

THE COURT: Okay.

MR. ADAMS: Ladies and gentlemen, my name is Eldred Adams. I am from Louisa, Kentucky, and I represent the defendant, Mr. Ranny Blankenship. Ranny, would you please stand up?

And like the other counsel, I have a few questions; and if you don't understand, just speak up; and I will try to make it clear.

As some of the other counsel have told you, the purpose of this is certainly not to embarrass you or put you on the spot. But I

think you do understand we do have a duty to our clients to find out these things. And I'm sure if you were sitting where they were, you would feel it is appropriate.

Now, we have talked some about firearms. There is going to be some evidence about firearms in this case.

Now, has any member of the jury or member of your immediate family ever been injured by a firearm under any circumstances?

Yes, ma'am. You would be Ms. Wallace? Ms. Tackett?

MS. TACKETT: My little brother was killed by a gun.

MR. ADAMS: Ms. Tackett, does that have any--do you have any strong feelings about firearms as a result of that?

MS. TACKETT: No.

MR. ADAMS: Again, ma'am, not to bring back unpleasant memories, was he just playing with it?

MS. TACKETT: Uh-uh.

THE MARSHAL OF THE COURT: Ladies and gentlemen, any time you respond to a question, stand up and say your name and number.

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MR. ADAMS: It was somebody else?

MS. TACKETT: (Inaudible)

MR. ADAMS: All right.

THE COURT: Ma'am, what is your number?

MS. TACKETT: 189.

THE COURT: Thank you.

MR. ADAMS: Thank you very much, Ms. Tackett.

Anyone else, any other member of the respective jury panel who have either been injured by a firearm? Yes, Mr. Blankenship.

MR. BLANKENSHIP: 119. I have been shot.

MR. ADAMS: With a firearm yourself?

MR. BLANKENSHIP: No. Somebody else done it.

MR. ADAMS: Sir?

MR. BLANKENSHIP: Somebody else done it.

MR. ADAMS: All right. Now, does that--do you have any feeling as a result of that about firearms or people who use firearms as a result of being injured?

MR. BLANKENSHIP: Yeah.

MR. ADAMS: Would that affect-- If there was evidence in this case that some of these defendants may have used firearms, would that

influence your opinion or verdict?

MR. BLANKENSHIP: No.

MR. ADAMS: That would not-- You could still go by the evidence?

MR. BLANKENSHIP: Uh-huh.

MR. ADAMS: If they used firearms, would that make you go contrary to the evidence?

MR. BLANKENSHIP: No.

MR. ADAMS: Again, Mr. Blankenship, I don't want to get into your personal life you understand. Was there any criminal action that came out of that? Did you prosecute anybody or they prosecute you?

MR. BLANKENSHIP: Yeah, put him in prison.

MR. ADAMS: You testified for the prosecution then?

MR. BLANKENSHIP: Yeah, I tried against him.

MR. ADAMS: Now, again, Mr. Blankenship, I am not trying to put you on the spot, but I have got a duty. This is important today in my client's life.

Now, the fact that you testified against him on firearms, if there is evidence that some of these men used firearms, do you

think maybe subconsciously that would influence your verdict?

MR. BLANKENSHIP: No.

MR. ADAMS: You could try it?

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

MR. ADAMS: All right. Thank you, Mr. Blankenship.

All right, anyone else, any other member of the respective jury panel that was injured by a firearm or had a member of their immediate family injured by a firearm under any circumstances? Anyone?

All right, ladies and gentlemen, there again, for the purposes of this, I am not trying to embarrass anybody. This is very important as I know you are well aware. Now, there is going to be evidence or possibly evidence in this case that when some of the incidents that were supposed to have occurred in this case took place that some of the defendants may have been drinking alcoholic beverages. Now, some people-- And again, we are not here to criticize anybody or look at people's beliefs. But some people very sincerely and very honestly have very strong feelings about alcoholic beverages. That

is obvious because we have a lot of dry counties. I live in a dry county, in Lawrence County.

Now, the fact that maybe some of the defendants were using alcoholic beverages when some of these incidents were supposed to have taken place, would that influence the verdict of any juror in any way? Would that influence you the fact there may have been alcohol involved--think about it--if that came out? Like I say, it is nothing to be embarrassed about. Some people have sincere feelings about it. Anyone at all?

Yes, Mr. Blankenship.

MR. BLANKENSHIP: 119.

MR. ADAMS: Yes, Mr. Blankenship.

MR. BLANKENSHIP: That man that shot me, he was drinking alcohol, and I was, too.

MR. ADAMS: All right. Would the fact that there may be evidence of some of the defendants were using alcoholic beverages, would that influence your verdict in any way?

MR. BLANKENSHIP: No.

MR. ADAMS: Thank you. I appreciate your being candid. All right. Thank you, Mr. Blankenship.

Anybody else on the

prospective jury panel that have any strong feelings about alcoholic beverages?

Ladies and gentlemen, I will just try to be very quick about this. As the Judge told you, the defendant or any of these defendants has no duty once the Government puts on their case to take the witness stand. Now, there is a lot of reasons why the defendant might not take the witness stand that has absolutely nothing to do with his guilt or innocence. The attorneys who represent him may feel the Government just plain did not make their case. The attorney who represents him may feel that this particular individual would just simply not impress a jury. Some people just don't come across very impressively. Some people-- And I have had this happen in cases. People tell me--

MR. KEHRLI: (Interrupting) Your Honor, the Government is going to object. If counsel wants to ask him some questions--

THE COURT: (Interrupting) Approach the Bench.

The purpose of voir dire is not to school or educate.

MR. ADAMS: Yes, sir, I understand.

THE COURT: In a sense, you are

trying to explain away.

MR. ADAMS: Well, Your Honor, I am not trying to argue. This point is very important.

THE COURT: I realize it is important. Don't do it in such a manner as to--you know, to--

MR. ADAMS: (Interrupting) Yes, Your Honor. I will go right to my question.

THE COURT: Right.

MILLERS FALLS
EZERASE
COTTON CONTENT

THE COURT: Please proceed, Mr. Adams.

MR. ADAMS: Thank you, Your Honor.

Ladies and gentlemen, if at the conclusion -- I'm sorry, if I decide not to put my client on the witness stand is there any member of this prospective jury panel that would think -- would that influence or think that that -- that must mean that he is guilt. Would that -- anybody, would that influence them if they -- he did not take the stand, anyone?

Some people it does, but does anyone feel that that would influence their verdict, in any way?

I take it that since there's no response that you all are telling me that if one of the Defendants does not take the witness stand that would have no bearing on your decision.

Mrs. Moore, is your husband James Moore?

MS. MOORE: My ex-husband.

MR. ADAMS: Your ex-husband?

MS. MOORE: Yes.

MR. ADAMS: Ms. Moore, you may not

remember me and again I'm certainly not trying to remember you, but I represented in a lawsuit you and your husband were involved in?

MS. MOORE: Yes.

MR. ADAMS: Lawsuits are unpleasant things. Now, because I'm up here representing this man, do you think you could consciously or subconsciously hold that against my client?

MS. MOORE: No.

MR. ADAMS: Thank you, ma'am.

May it please the Court, may I consult Mr. Harwell a second?

THE COURT: Yes, sir, please do.

MR. ADAMS: Ms. Moore, you indicated that the fact that I represented the other side on a case would not effect me or my client?

MS. MOORE: No, it wouldn't.

MR. ADAMS: Would that effect your opinion of the Government?

MS. MOORE: No.

MR. ADAMS: It wouldn't effect it either way?

MS. MOORE: No.

MR. ADAMS: Thank you, Your Honor.

THE COURT: Yes, Mr. Rowland.

MR. ROWLAND: May it please the Court, I'm Dan Rowland on behalf of Tim Milan and I believe the areas of questions that I would have considered or feel that should have been pursued have been or will be in just a few moments, so I have no questions.

THE COURT: Thank you, sir.

MR. BRANSEN: I'm Hershel Bransen, I represent Donahue Halbert and I have no questions, Your Honor.

THE COURT: Thank you.

MR. HOLLON: Your Honor, I'm Thomas Hollon and I represent Morris Ray Hall and Pebo Gayheart and I join with Mr. Rowland's statement.

THE COURT: Thank you.

Yes, sir.

MR. THOMAS: Your Honor, David Thomas for Eugene Tackett and I have some questions.

THE COURT: Yes, sir.

MR. THOMAS: Ladies and gentlemen, my name is David Thomas and I represent Eugene Tackett, and I would ask Mr. Tackett to stand up, please, Eugene.

I thank you.

I'd like to ask people,

mainly because I feel nervous up here, I'd like to ask people if they feel nervous out there. If any of you feel like lawyers come up here to a podium or sitting in the chairs with these big folders or yellow pads and taking down notes, does that bother any of you? Do you want to know what's going on? Does that bother any of you that we're prying into your personal affairs and you philosophies and your opinions on matters?

Would you like for us to explain what's going to happen in this trial? I know about twelve or fourteen of you all have never had any experience in a trial before. Do you want to know what's going to happen, how the procedures goes, raise your hand if you'd like to know that --

MR. KEHRLI: (Interrupting) Your Honor, the United States will object to the defense counsel explaining, instructing, or educating the jury as to legal proceedings with regard to this matter, that is the province of the Court.

THE COURT: Well, let's do this. Of course, this proceeding is not to school the jury -- in one sense, in another sense it is. The purpose

of a voir dire is to educate and train the jury with regards to the procedures. And with that -- with regards to the case. However, it's not to train the jury as to any way of thinking in considering the evidence. The purpose of this voir dire is to obtain a fair and impartial jury. Now, if we've got to hear such as O'Grady said, you don't stand up to say O'Grady until we get you trained to standing up and standing up and standing up, we're schooling you. That's not the purpose of this. The purpose of this is to see if we can get a fair and impartial jury, not as to train you in how to consider the evidence so you will do something which would prevent you from being a fair and impartial jury.

Go ahead.

MR. THOMAS: Thank you.

What we're doing right now has been explained to you and I would not have explained this if someone else had of. But the procedure we're doing right now is called voir dire. And that means to speak the truth, tell the truth. We do this, both sides ask questions so that we can get fair jurors. After this is over, we more or less knock off who we don't think can be

fair jurors, both sides do that. You can understand that. You might be a fair jury in this case and not in the other case and vice versa. So, after we finish with this we get the real jury and the alternates in, then the U.S., these people over here, these lawyers, they'll get up and make an opening statement, as to what they think the evidence is going to prove.

And then the defense lawyers can get up and make their opening statements or they can wait until later after the Government has finished their case and make their opening statement or they can just waive it entirely. They don't have to say anything.

Then, after both sides eithermake an opening statement, then the Government will put on its case in chief, that's where they'll bring in the witnesses to tell you what happened.

And the lawyers over here, after the Government's finished asking their witnesses questions, these lawyers, we get to cross examine their witnesses and ask them questions about what they saw or did. After that's done and the Government has finished their case, then the defense

will put on their case. As Mr. Adams said the Defendants don't have to take the stand, but they can bring on witnesses and they can take the stand and the Government here will have a chance to cross examine them. See, we're having -- it's sort of a fair play on both sides. Then after we finish then the Government comes back and they put on rebuttal, it's called rebuttal. They bring on more witnesses and say what our witnesses said wasn't true.

After that's finished then the Judge will read instructions to you which more or less set forth the law.

MR. SELF: Your Honor, I'm going to object. That is not the procedure that's used in Federal Court.

THE COURT: Well, whether the arguments go before the -- I mean go before the -- the instructions before the arguments, or vice versa, go ahead, Mr. Thomas.

MR. THOMAS: I guess that's why I explain it sometimes, I don't understand it, it's so complicated. So, I think if we're doing it on the next panel I hope they explain it. Anyway, you'll get the law and you will get the arguments

from both sides. They're going to argue why their case is right and we're going to argue why ours is right. After that, you just go back and make up your minds.

Now, I know that's a short overview and everything, but I think it's important that you understand that. Let me ask you something, the Judge talked to you about the -- we're a family, you're a family out there and these men are family and everybody's a family of the United States. You understand, of course, let me ask you this question, you understand that these men are part of the family right now. Is there anybody that doesn't understand that?

They're presumed as innocent in this courtroom right now. Everybody understands that, does anybody disagree with that?

Do you understand that as a family you have parents and you have kids. The parents usually make the decisions, I think the Judge alluded to that. But you're chosen as jurors you all accept the fact that all of you are clothed with equal authority as jurors? You understand that there's no parents and no kids in the jury room, everybody has an equal voice, do you

understand that? Is there anybody out there that is willing -- let me ask it this way, is there anybody in this room if chosen as a juror that will not act in accord with equal responsibility?

Now, Mr. Adams asked you about some of them taking the stand and some of them not taking the stand. Who of you think that just because we're here today that something illegal has gone on? Please raise your hand.

How many of you out there would like to see the Defendants take the stand and explain their side, any of you? Any of them out there request them to?

I take it by your silence that you need a request or desire to see these men take the stand, is that correct? And please be honest with us, okay? I know you're nervous and everything.

Yes, sir.

THE COURT: Let's approach the Bench.

(Reporter's Note: At this point there was a Bench discussion.)

THE COURT: Mr. Thomas, let me ask you, don't you think you're pushing it a little bit?

I mean the attorney before you got up and said the same thing.

MR. THOMAS: Your Honor, he did not ask that question.

THE COURT: Well, Mr. Adams did.

MR. THOMAS: He never did ask the question if they wanted to see them take the stand --

MR. KEHRLI: (Interrupting) The Government is going to object.

MR. THOMAS: This man has already answered.

THE COURT: Well, Mr. Thomas, let's finish this. I don't want to embarrass you. Let's get over this thing.

MR. THOMAS: Well, if someone else raises their hand to answer, after this man. Is it okay?

THE COURT: Well, no.

MR. THOMAS: Your Honor --

THE COURT: (Interrupting) I'm afraid that what you're getting on this thing just has the wrong effect. If they answer this question it might influence the entire panel --

MR. KEHRLI: (Interrupting) That's a statement.

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THE COURT: Well, if you ask them the question following -- if they're going to take the stand -- regardless of what they would like for them to do, does -- do they recognize they don't have to take the stand and the fact that they don't, would they hold that against them. I think that would be enough.

MR. THOMAS: I can't ask him why he wants them to take the stand?

THE COURT: No.

MR. THOMAS: Your Honor, I was allowed to do that the other day.

THE COURT: Well, let's don't do it here now. Just ask him or the rest if they don't take the stand would they hold that against them. Okay?

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

THE COURT: Let the juror stand and state his name and number.

MR. ADDISON: James Addison, No. 112. I would like to ask just one question. If the client would not get an opportunity to stand and answer questions, wouldn't that be kind of difficult for a jury to decide whether he was innocent or not innocent?

THE COURT: Explain to him what the Law is.

MR. THOMAS: You are Mr. Addison.

MR. ADDISON: Yes.

MR. THOMAS: Thank you for your question. Mr. Addison, you understand that these Defendants do not have to take the stand, you understand that?

MR. ADDISON: Yes.

MR. THOMAS: They can't be required to take the stand, and you can't hold it against them if they don't, you understand that?

MR. ADDISON: Yes, sir.

MR. THOMAS: Okay, thank you.

THE COURT: Just a moment, sir.

Now, let me ask you this. If he elected - - if he took the option to not take the stand, would that in any way affect your services as a Juror where you would not fairly and impartially consider the evidence whether he did or he didn't?

MR. ADDISON: No, sir. Not if there was enough proof from the other witnesses it would not have no effect.

THE COURT: In other words, you are willing to accept the standards that the evidence

itself must convince you as a Juror to the exclusion of a reasonable doubt that he is guilty, whether or not he takes the stand?

MR. ADDISON: Yes, sir.

THE COURT: Thank you, sir.

MR. THOMAS: Thank you, Your Honor. Just one more question in the way of explanation.

There are nineteen Defendants here, do you understand that each of them is to be judged according to this burden of proof the Court has already put forth to you; that each one of them has that presumption of innocence?

REPORTER'S NOTE: No response.

MR. THOMAS: Do you all out there know the Defendants by name yet? Do any of you know them by name?

REPORTER'S NOTE: No response.

MR. THOMAS: Yes, sir.

MR. BOYD: Charles Boyd, 224. Yes, I know Mr. Hollon - -

MR. THOMAS: (Interrupting) I'm sorry, I made the question unclear.

Have any of you - - thank you.

Have any of you remembered

all their names by now? Do you know them all?

REPORTER'S NOTE: No response.

MR. THOMAS: Would you do me a favor and learn all their names by the time this trial is out if you are chosen as a Juror?

REPORTER'S NOTE: No response.

MR. THOMAS: Thank you.

THE COURT: Mr. Kirkland.

MR. KIRKLAND: If it please the Court.

THE COURT: Yes, sir.

MR. KIRKLAND: My name is Bill Kirkland, and I represent five of these fellows that are more or less related to each other, brothers-in-law, and that sort of thing.

You will get to know them, they are back over in the middle there. (Indicating)

Let me ask you a few specific questions. Have any of you ever crossed a picket line? I don't necessarily mean a picket line as a strike, one that is an informational picket line maybe.

I know when I was a kid - - yes.

MR. CHARLES: Ricky Charles, 247.

MR. KIRKLAND: All right.

MR. CHARLES: Crossed a picket line several times.

MR. KIRKLAND: What kind of a picket line did you cross?

MR. CHARLES: Strike.

MR. KIRKLAND: Have you ever crossed an informational picket line?

MR. CHARLES: No, sir.

MR. KIRKLAND: Never have.

Did you have any problem as a result of crossing the picket line?

MR. CHARLES: Yes, sir.

MR. KIRKLAND: Would that problem affect your judgement in this case, or affect how you might vote if you were to be selected as a Juror in this case?

MR. CHARLES: I will take the evidence into consideration, Your Honor.

MR. KIRKLAND: All right. You will take the evidence into consideration, but would it affect your judgement, in your opinion, because you have crossed a picket line and because you have had some problems, or would you put all that aside completely?

MR. CHARLES: Put it aside, sir.

MR. KIRKLAND: Okay, thank you.

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I know I grew up in an area where there were not strong Unions. The Telephone Company always had a strike going some time, it seemed like.

Have you all seen that kind of strike where people have cards and so forth?

Have any of you all crossed that kind of a picket line, maybe a hospital or a dime store?

Yes, Ma'am.

MS. BUTCHER: Doris Butcher, 122. Going to the high school, parents who were marching along that didn't want us to go into school, and I went in because I wanted to know what the principal wanted me to do.

MR. KIRKLAND: Did that cause you any problems?

MS. BUTCHER: No.

MR. KIRKLAND: Did anybody spit on you or throw a rock at you?

MS. BUTCHER: No, they just gave me a dirty look.

MR. KIRKLAND: But you got over it, is that right?

MS. BUTCHER: They wouldn't hurt us, they didn't want us to go in.

MR. KIRKLAND: They were upset about something.

MS. BUTCHER: Yes.

MR. KIRKLAND: Do you recognize that as fundamental rights developed in this country to show your beliefs, picket line, or with signs, called the First Amendment?

Do you recognize that and accept that as a right that people have?

MS. BUTCHER: Yes. I think they have to get a permit to do so.

MR. KIRKLAND: In some situations.

MS. BUTCHER: Well yes, they were mad about something, and they wanted to show us.

MR. KIRKLAND: All right. Now - -

MS. BUTCHER: (Interrupting) That was the only way they could tell us.

MR. KIRKLAND: Did you suffer any permanent consequences as a result of crossing the picket line?

MS. BUTCHER: No. They weren't angry very long.

MR. KIRKLAND: Okay. So would that fact that you confronted and crossed a picket line, would that affect your judgement in this case at all?

MS. BUTCHER: No.

MR. KIRKLAND: You would put that totally aside.

MS. BUTCHER: Well sure.

MR. KIRKLAND: Okay, thank you.

I am told that in this Jury division of several counties there are areas that are heavily Union, and areas that are heavily nonunion. Would those of you that come from areas that are generally nonunion raise your hand?

All right. Let me - - let's see, is there anybody on the front row? You all have moved around since the day before yesterday.

MS. DORTON: No. 93, Jean Dorton. I really don't know, you would have to - - I don't know whether my area is Union or nonunion or anything. You will have to rephrase your question.

MR. KIRKLAND: That answered it pretty well. It doesn't affect your judgement one way or the other where you live or what the people around you do or they are involved, is that right?

MS. DORTON: (Nodding head affirmative)

MR. KIRKLAND: Thank you. Let me ask you this. Without going into where you live or whatever, would the fact that you live in either a

nonunion area or in a union area, would that affect your judgement or your feelings at all in this case, or would you put that totally aside?

Is there anybody that feels that they might lean in one direction or the other because of where they live, and because who their neighbors are?

REPORTER'S NOTE: No response.

MR. KIRKLAND: I take it none of you would lean either way?

REPORTER'S NOTE: (No response)

MR. KIRKLAND: Do all of you understand that there are State Courts in which State crimes are prosecuted, and this is a Federal Court in which only Federal crimes can be prosecuted?

Do all of you understand that? That you can't cross back and forth, that you can only prosecute the kinds of crime that is a violation in that Court?

Does anybody object to that? Do you feel like you ought to be able to prosecute State crimes in this Federal Court, does anybody feel that way?

REPORTER'S NOTE: (No response).

MR. KIRKLAND: Would any of you have a

tendency, and this is where you will have to reach way down and think, do any of you feel like you might have a tendency to want to convict a person on general principles?

If you thought they had been up to no good, or did something they shouldn't have done, no matter what they are charged with, that you would want to convict them just on general principles?

Does anybody feel that way?

REPORTER'S NOTE: No response.

MR. KIRKLAND: If you do, you don't want to say, is that right?

REPORTER'S NOTE: No response.

MR. KIRKLAND: Probably not.

Would any of you, and you understand that there will be witnesses on both sides, some of the Federal Government witnesses will be sworn law enforcement officers, some of them will be in uniform, some of them will be Deputy Sheriffs, State Police, and that sort of thing.

It is doubtful that any of the Defendants will call any law enforcement officers, though they may.

Would any of you believe a witness that is called by the prosecution merely because - - would it believe them more than a defense witness merely because they are called by the United States?

Would you have a tendency, put it this way, would you have a tendency to believe the Government witnesses more than you would the Defense witnesses?

Do any of you feel that way?

REPORTER'S NOTE: No response.

MR. KIRKLAND: I guess what I am saying is, would you listen to both sides equally and give the testimony from both sides the weight you thought they ought to have?

Is there anybody that feels that they would not do that?

REPORTER'S NOTE: No response.

MR. KIRKLAND: Is there anybody here that would prefer that labor not have the right to organize?

REPORTER'S NOTE: No response.

MR. KIRKLAND: Again, you come from different backgrounds, I come from a nonunion area,

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and that is my family background.

Do any of you come from such a nonunion background that you feel that labor should not be permitted to organize if it wants to?

Does anybody feel that way?

REPORTER'S NOTE: No response.

MR. KIRKLAND: That's all the questions I have.

THE COURT: Thank you, sir.

MR. SELF: May it please the Court, based on the conversation this morning that Mr. Pafunda had with the Court, your Honor, may I ask one additional question?

THE COURT: Well, let me ask it, if you will.

Now, we have heard some evidence, this is on, I take it, this is on counsel having represented someone who is a member of the panel.

MR. PAFUNDA: That is correct, Your Honor.

It is not evidence, it is just my attorney-client relationship.

THE COURT: Let me ask you this, and get it this way.

Now, I realize - - the Court explained to you, that these counsel are professionals, it is their duty to represent the client, and they have to represent more than one person.

What I am wondering about, in this instance, I think Mr. Spencer who was on the Jury, he is one - - someone else, but will those who are on the Jury panel who have been or are now being represented by one of the attorneys here today please stand again.

All right.

MR. PAFUNDA: Your Honor, may I interrupt if it pleases the Court. The individual may have forgotten, but I have an individual, or at least Mrs. Vivian Tackett Miller was represented by my partner, Herbie Deskins.

THE COURT: That would be one of their attorneys or their firms, would you please stand, Ma'am, I want to ask you this, and after you state your name and your number, please state for purposes of the record if this is an ongoing representation, or was a representation two years

ago, one year ago, and after you have done that, then I may ask another question.

Mr. Spencer, we will start with you, state your name, and your number, sir.

MR. SPENCER: Clifford Spencer, No. 95.

THE COURT: You were represented by Ed Spencer.

MR. SPENCER: I am right now.

THE COURT: You are at the present time.

MR. SPENCER: Yes, sir.

THE COURT: Thank you, sir. Well, one other thing. What was the - - I guess I am asking - - I am not asking for specifics, just the general nature, whether it is a mortgage, real estate, or a suit or an automobile accident, or divorce, I am just - - what is the general nature of this - -

MR. SPENCER: (Interrupting) It is an automobile accident.

THE COURT: Automobile accident, thank you, sir.

All right.

MR. ADDISON: James E. Addison, 112, and Mr. Hollon just got through working up a mortgage for me on a piece of property.

THE COURT: Now, is that concluded, it's over with?

MR. ADDISON: Well, I have got to sign the final papers.

THE COURT: It's still going.

MR. ADDISON: Yes, sir. (Nodding head affirmative)

THE COURT: Thank you, sir. Ma'am.

MS. MILLER: Vivian Miller, 189. He handled my divorce.

THE COURT: Is it over with, Ma'am? Or is it - -

MS. MILLER: (Interrupting) Yes.

THE COURT: Or is it still - - when - - has it been over with a month?

MS. MILLER: I would say about six or eight months.

THE COURT: Thank you, Ma'am.

MR. CHARLES: Ricky Charles, 247. Mr. Pafunda is currently handling a civil suit for me.

THE COURT: What kind of suit?

MR. CHARLES: Suit on an individual where I was injured in his gas station.

THE COURT: All right. And it is

still going on?

MR. CHARLES: Yes, sir.

THE COURT: All right. Do any of you gentlemen have any additional questions you want to ask on this matter?

REPORTER'S NOTE: No response.

THE COURT: Thank you, sir.

Ladies and gentlemen of the Jury, you will be in recess until 10:30. Do you think, gentlemen, we can handle this by 10:30?

MR. SELF: Maybe it depends on whether the lawyers get to get a break or not.

THE COURT: The lawyers will get a ten minute break.

MR. SELF: I think it may be a little bit longer.

THE COURT: All right. For the Jury, this Court will be in recess until 10:30.

For the Attorneys and the parties, this Court will be in recess for ten minutes.

THE MARSHALL OF THE COURT: All rise. The Court will now be in recess.

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THE MARSHAL OF THE COURT: All right. The United States District Court is in session. Be seated and come to order.

THE COURT: All right, first we will hear from the United States.

MR. KEHRLI: Randy Kehrli for the United States, Your Honor.

The United States challenges the following jurors for cause: Juror No. 95, Clifford Spencer; Juror No. 112, James Addison; Juror No. 247, Ricky Charles; Juror No. 224, Charles Boyd; Juror No. 246, Jackie Deskins.

All right, the basis for challenge of Juror No. 95, Mr. Clifford Spencer is that he has a pending matter where he is represented by attorney, Ed Spencer. As you will recall, he was just recently--Mr. Spencer was apparently just recently retained within the last two weeks. It is a car accident case. We believe given that attorney/client relationship that there is no possible way that Mr. Spencer can be objective.

Juror No. 112, Mr. Addison, again the grounds for challenge for cause in that situation is that Mr. Hollon is currently working on a pending legal matter. He apparently has a mortgage

where he represents Mr. James Addison. Again, we believe that is a basis for challenge for cause.

The same grounds for Juror No. 247, Mr. Ricky Charles. Mr. Pafunda is currently handling a civil suit that is pending at this time, and apparently there are some important discussions and a possible resolution of that matter taking place in the immediate future.

Juror No. 224, Mr. Boyd. Mr. Boyd stated that he knew and grew up with Jerry Patton and Dan Rowland. He also has known Morris Ray Hall for a period of time. He has known the defendant, Donahue Halbert, and the defendant, Van Patton, on a personal basis. We believe, given that magnitude of personal contacts and involvement with the defendants and the defense counsel in this case, there is sufficient grounds to challenge Mr. Boyd and strike him from the panel.

Juror No. 246 has an employment relationship with District 30. He stated that he works for and knows Ernie Justice. He knows a witness to be called for the defense, Mr. Richard Trumpka. Mr. Jackie Deskins also said that he was a member of an organizing committee and a UMWA committee man. We believe that given his direct involvement with UMW

organizing, that his presence on the jury will impermissibly taint their consideration, prejudice the Government's case; and given the nature of the defense we expect to be made in this case, that that provides sufficient grounds for Mr. Deskins to be challenged for cause.

THE COURT: Thank you, sir. We will go through the defendants. Mr. Harwell.

MR. HARWELL: Judge Unthank, do you want to go through the defendants responding to the Government, go through the defendants' challenges for cause, or both?

THE COURT: Well, I want your responses and I also want the ones that you-- First, let's have your responses.

MR. HARWELL: Judge, I learned that yesterday not to assume what this Court is going to do.

THE COURT: Give me responses as to 95, 112, 247, 224, and 246.

MR. HARWELL: Yes, sir. May the Court please, I believe that those five individuals of this panel should not be challenged for cause, but rather should be challenged peremptorily if that is what the Government wants to do. The Court inquired on two separate occasions with regard to representation by

various defense counsel as I remember. On Tuesday, the Court inquired on that issue, and again today. And my understanding was that each of these people said that that would not influence them. They would put this aside.

But certainly, insofar as Mr. Addison is concerned, drawing a mortgage is sort of perfunctory thing that all of us in private practice do.

In regard to 247, Mr. Charles--he said it would create no problems for him. Mr. Pafunda represented him.

Mr. Boyd said he knew Jerry Patton and Dan Rowland, but I don't think that creates any bias or any prejudice in him.

As to Mr. Deskins, the fact that he knows two witnesses and works for District 30 does not come up by his own statements, make him a biased or a prejudiced witness.

May the Court please, we oppose those. I respectfully suggest maybe the Government is trying to challenge for cause those which should be peremptory challenged.

Insofar as Mr. Jones is concerned, I can't in good faith challenge any of the

remaining members of this panel for cause. But that doesn't mean that I want them all, but I don't think there are good faith cause challenges left for me.

THE COURT: In other words that is your responses, and you have no further challenges for cause.

MR. HARWELL: That is correct, Judge.

THE COURT: Thank you.

MR. SELF: Let me supplement the record, and I think Mr. Pafunda can back me up with regard to Mr. Charles. Mr. Pafunda made some statements--

THE COURT: (Interrupting) Well, let's let Mr. Pafunda--he can--

MR. SELF: (Interrupting) As to the basis of that relationship and whether it is-- A whole case is just lying there.

THE COURT: Let's let Mr. Pafunda supplement.

All right, Mr. Walbourn.

MR. WALBOURN: E. J. Walbourn, Your Honor. I would have to concur in the remarks of Mr. Harwell. And I am not privy to matters concerning Mr. Pafunda. And perhaps after those matters are revealed on the record, that may change the situation with

Mr. Charles. But I do not believe in good faith that these five jurors or prospective jurors named by Mr. Kehrli are susceptible to a challenge for cause. The bottom line question is could they fairly and truly try this case. And each one said notwithstanding the relationships they may have with the various parties or their past experience, that that would not affect their ability to sit as fair and impartial jurors. I believe that is the test that is made in seeking a challenge for cause. So I would oppose the request of the United States to strike those five individual jurors for cause.

THE COURT: Do you have any additional ones?

MR. WALBOURN: I do not, Your Honor.

THE COURT: Thank you, sir.

Mr. Pafunda.

MR. PAFUNDA: May it please the Court, Mr. Self has indicated and as I have indicated previously to the Court, I was contacted last night by Juror No. 247, Ricky Charles, on a matter that is pending in the Virginia State Court. It is a civil action as Mr. Charles indicated. It is in the process of being settled. My difficulty in that regard is would I be able to communicate with my client

during these settlement negotiations while this trial is in progress. And in that regard, that is my concern.

I don't want the appearance of any impropriety.

THE COURT: Yes, sir.

MR. PAFUNDA: And I certainly don't want my attorney/client conversations monitored by either the Court or the Federal Government or by even a defense attorney in this matter.

However, I would point out that it appears to be the law that any unauthorized communication or contact among jurors or between jurors and trial participants may result in a mistrial or reversal.

That is what I am trying to avoid. I don't want this matter to proceed all the way to trial, and then these things come up after a verdict either way has come in.

However, if such contact is either incidental and not prejudicial, then that person may be able to sit as a juror.

My question to the Court in all fairness is-- I also have another attorney that is working on the case, Mr. Thomas Goodman, here

in Pikeville. We have a meeting scheduled with Mr. Charles this evening at five o'clock. I would like to invite everybody down, but am not going to give you a cut of the money if we get it. It is just that simple. And to be honest, I mean if he gets some money during the course of this trial, you know, that would be a determination for Mr. Charles to make. He may not like his lawyer.

I object to the challenge for cause, but I do have a problem communicating with my client. And I simply don't want the appearance of an impropriety to be there.

THE COURT: Do you have any additional--

MR. PAFUNDA: (Interrupting) I have no other additional challenges.

In regard to Mr. Jackie Deskins, I would also join Mr. Harwell--I mean Mr. Harwell's remarks and point out that he has not an employee of District 30, but I believe he indicated that he was an employee at one time of District 17.

THE COURT: Thank you. Mr. Spencer.

MR. SPENCER: Your Honor, there is one juror here that I don't particularly--207, A. J. Snyder. I believe he is a cousin or something to Gary Rowe is going to testify here today. I don't

care if the Government wants to challenge him for cause, but I would like to just on that fact. If he is a relative--going to be a witness here.

And about Mr. Spencer, it is a fact that I have spoken with Mr. Spencer about the accident case; but he has not signed any contingency fee agreement or anything else. I have talked to him twice about the case. And I will take the case. But that is a fact. It looks like a pretty good case.

THE COURT: This is humorous, but will you take these other defendants here, the other counsel here as cocounsel.

MR. SPENCER: I have no intention of splitting any fee with anyone except Ed Spencer and Mr. Spencer. And that is a fact.

THE COURT: All right. Thank you, sir. Yes, sir, Mr. Adams.

MR. ADAMS: Your Honor, I would have to echo the other defense counsel. I don't think the Government has set forth any reasons that authorize a challenge for cause on the other jurors. Thank you.

THE COURT: Thank you.

MR. ROWLAND: Your Honor, as a point of

information, I'm not sure that I want to challenge this juror for cause. But I would like to remind the Court and those of us who have overlooked this. Juror No. 202 has an eighteen-year-old son who is intellectually deficient. I guess that is about the best way to put it. The child is in special classes. She said this would work a hardship for her to be on this jury. And I just wonder what the feeling is about her. He is eighteen years old, and is still in special classes. Some people I think may know that child, maybe one of the other attorneys. I am not sure. But the child is a moron.

And also, for the record, Mr. Boyd may know me; but if I see him on the street, I wouldn't know him.

THE COURT: Thank you, sir.

MR. BRANSEN: May it please the Court, I would like to join with the other defense counsel, and I have nothing further.

THE COURT: Thank you, sir.

MR. HOLLON: Your Honor, Tom Hollon. I think one of the jurors, Mr. Addison, communicated that I represent him and how I represented him. I drew a mortgage up for him and examined a title. Basically how I get these things is the bank, the

bank at Jackson sends them to me.

THE COURT: What number is that?

MR. HOLLON: 112, Your Honor. I have had very little contact with Mr. Addison. I will inform the Court that he did come to my office Saturday, the preceding Saturday. He did inform me that he was going to be on this jury panel, and I, of course, replied that I would be here as well. But that is the extent of our conversation in regard to that.

But I would object to him being struck for cause and join Mr. Harwell as did the others.

THE COURT: Thank you, sir.

MR. THOMAS: Your Honor, David Thomas. And I concur with Mr. Harwell.

MR. KIRKLAND: William D. Kirkland. I have no comment, Your Honor.

THE COURT: Thank you, sir. Gentlemen, give me just a moment.

MR. PAFUNDA: Your Honor, if it please the Court, this is the first time this has come up. I would like to object to Mr. Rowland's challenge for cause, with all due respect to Mr. Rowland. I didn't know if it was in the form of a cause or not.

THE COURT: Do you all want a trial by combat?

MR. PAFUNDA: It is going to happen sooner or later, and it has happened today. I thought we would give it a dry run.

THE COURT: All right, gentlemen. The Court has considered the objections and the responses. Juror No. 95, 112, 247, 246, and 202 will be excused for cause.

MR. PAFUNDA: Your Honor, if it please the Court, with regard to Juror No. 202, if she has a handicapped child which I believe there was a reference made by one of the jurors, and I didn't recall her name or number.

THE COURT: I was advised, and I think her response was she has a handicapped child. He is eighteen. But I think she has to take him to school or something every day.

MR. PAFUNDA: If it please the Court, I don't know that that is necessarily accurate. Certainly I am not questioning the woman's truthfulness. But the school would have to provide the child, if the child is in school, with transportation to and from school should he have no transportation and have to pay for that transportation. Maybe the child's

mother could be apprised of that fact.

MR. ROWLAND: For the record, I withdraw my comments. I didn't phrase it in the form of a motion to strike that person. And if it bothers Mr. Pafunda, I would like to have that woman stay on the panel.

THE COURT: Well, let's do it this way then, gentlemen: In addition to that, I think the lady said she was a teacher. I am not being consistent. Some teachers I am keeping on, and some teachers I am excusing. But I am going to excuse this juror. I think this is -- she is the teacher with other causes. So yes, I think -- yes, sir.

MR. WALBOURN: Your Honor, there was an additional teacher I believe.

THE COURT: Right. As I say, Mr. Walbourn, I am not being consistent in this case. But I will not excuse Mr. Snyder, nor will I excuse No. 224.

Now, Madam Clerk, how many does that leave us on the panel?

Now, let me get back -- yes, sir.

MR. WALBOURN: Your Honor, at the

appropriate time, would the Court, please, for the record, articulate the reason why the jurors were excused for cause?

THE COURT: Yes, sir. We are excusing 95, 112, and 247 because there is a present attorney and client relationship. The Court feels that there is a present attorney and client relationship with one of the attorneys in the case. The Court is of the opinion that that would be in light of bias. As stated by Mr. Pafunda, attorneys have to talk to their clients. It would be improper for an attorney to talk to a member of the jury. And this is something -- the jury is supposed to go a month. And these attorneys -- the Court doesn't feel that it would be proper to gag the counsel if he couldn't talk to his client for a month. In Mr. Pafunda's particular case, they're going to discuss settlement this evening.

But Because of the present relationship -- and the Court would even extend it passed present relationship, if there was an attorney/client relationship within the past two or three months or within the past four or five months the Court might feel that that's enough close relationship where perhaps it would be better that this person not be accepted on the jury.

MR. BRANSEN: May it please the Court, Your Honor. Something that has slipped my mind and I'm sure it slipped Mr. Longworth's, No. 228. I have an action pending for his mother-in-law which I forgot until right now, but I do have an action pending for his mother-in-law.

THE COURT: All right, you have an action pending for his mother-in-law?

MR. BRANSEN: For his mother-in-law, Yes.

THE COURT: Then the question is going to be how close is he to his mother-in-law.

MR. BRANSEN: Well, they live about three houses down the road. He sees her quite often, I know that.

MR. KEHRLI: Your Honor, the Government would challenge that juror for cause on that basis.

THE COURT: Well, let's excuse No. 248. Without making you go on the record on how well he likes his mother-in-law.

Now, that's going to leave us with sixty-five jurors.

How many do we have -- do we have to have before we get -- for the panel of peremptory challenge?

MR. WALBOURN: Your Honor, you did not finish explaining your cause for strikes.

THE COURT: All right, now, I think 246 at one time was an employee, I think you said or someone said, of District Seventeen and District Thirty. That's Mr. Deskins, is that correct?

MR. ROWLAND: Yes, Your Honor.

THE COURT: 246 is Mr. Deskins.

I feel by reason of Mr. Deskins' affiliation and by reason of the fact that we're going to have in the Enmons defense raised and it's going to be a substantial part of this controversy. I feel that this witness should be excused.

MR. SELF: Your Honor, a note of humor. We don't want to bring him anymore bad luck. Mr. Deskins was a juror right in the middle of the

criminal case here and he got a call that his house was on fire and he had to be excused right in the middle of the case. And I don't want to bring him any more bad luck.

THE COURT: Well -- Now, the 202 of course is the teacher that has the retarded child and has to go to a special school each day.

MR. WALBOURN: Your Honor, if appropriate I would at this time make a challenge to number 221, Mr. Earl Thompson. He is a teacher and he said it would create some hardships initially. He indicated initially that he had formed an opinion in this case after talking to several people. He did think that he probably could set it aside but he showed some ambivalence toward that. And out of an abundance of caution I would move to strike him for cause.

MR. PAFUNDA: If it pleases the Court, and as an addendum to Mr. Walbourn's remarks, I believe that Mr. Thompson also indicated when he was questioned by Mr. Harwell, possibly Mr. Walbourn, that when they mentioned several Van B. Pattons he was certain that he knew the Van B. Patton that would be called in this trial.

THE COURT: Well, the Van B. Patton

that he testified -- he thought it was going to be but when he got to talking the Van B. Patton he was talking about was six foot five and it's not the Van B. Patton that's going to be a witness in the case.

MR. ROWLAND: My client says so.

MR. PAFUNDA: Your Honor, he --

MR. ROWLAND: (Interrupting) He says he's a basketball player and he's six foot five.

THE COURT: All right, let the motion be overruled as to 221.

Now, I think --

MR. PAFUNDA: (Interrupting) Excuse me, Your Honor.

THE COURT: Yes.

MR. PAFUNDA: There's one further matter, just for the record, I'd like to object to the Court's striking No. 246, Jackie Deskins.

THE COURT: Yes, sir. I don't believe you have to object to it.

MR. PAFUNDA: Just for the record.

THE COURT: All right. Now, let's see, that leaves us sixty-five. Now, Madam Clerk, I think said a peremptory panel must be ninety something, but I believe the United States says it

must be eighty-eight. Let's see if we can resolve that.

THE CLERK OF THE COURT: I'm saying ninety, Your Honor, unless you decide --

THE COURT: (Interrupting) What we're going to do, gentlemen, is we're allowing two additional challenges, two additional alternate challenges to the pool. I'm allowing the Government two additional alternate challenges. What we're going to have is a jury plus six alternates. Now, let's see, we have two challenges --

MR. PAFUNDA: Your Honor, I believe each Defendant at the present time has two challenges. The defense has ten challenges collectively.

THE COURT: All right. The Defendants have two challenges and how many collectively?

MR. PAFUNDA: Ten, Your Honor.

THE COURT: And an addition of two would be twelve.

MR. PAFUNDA: I believe that's correct, Your Honor.

THE COURT: Then how many will that be, how many Defendants do we have?

MR. SELF: Well, I think there's a total -- eighty-eight, there'd be fifty-eight to

the panel and two --

THE COURT: (Interrupting) How many Defendants do we have?

MR. SELF: We have nineteen Defendants, Your Honor.

MR. HARWELL: Nineteen Defendants.

THE COURT: There's nineteen Defendants.

MR. SELF: That would be fifty challenges to the panel.

THE COURT: It would be thirty-eight, wouldn't it?

MR. SELF: Thirty-eight plus ten plus two.

THE COURT: That's thirty-eight plus twelve, it would be fifty.

MR. SELF: You previously indicated that the United States was entitled to eight -- he was giving that United States eighteen challenges to the panel plus two to the alternates would be a total of twenty, Your Honor.

THE COURT: The U.S. has what now?

MR. SELF: The Court previously ruled that the United States -- was entitled to eighteen peremptory challenges. The Court's order

I think said eighteen, Your Honor, plus two additional to the alternates, if my recollection of the matter is correct.

THE COURT: Which would be a twenty, correct?

MR. SELF: I've deferred the matter to the Clerk, but I was under the impression the Court had previously indicated that we were going to have the eighteen, Your Honor.

THE CLERK OF THE COURT: Your Honor, I had that they had eighteen and in addition to that they had four challenges as to the alternates and that the Defendants had four challenges to the alternates and with the additional two given to the Court that makes a total of six challenges as to alternates.

MR. HARWELL: That's what the transcript reflects, it's a little ambiguous, but you said eighteen, Judge, to the United States and then there would be a total of four alternates.

THE COURT: Well, let's this first. Fifty takes care of the defense.

MR. HARWELL: Yes, sir, on the panel, not on the alternate.

MR. SELF: Well, forty-eight for the

people. That is the twelve main jurors, the way I understand this Court has handled in the past the alternates are selected separately from the main panel. We have six alternates plus the Defendants are entitled to two challenges to the panel which makes eight and we are entitled to two additional challenges to the alternates which makes ten. I don't know where the four comes into it.

THE CLERK OF THE COURT: By order of the Court, Mr. Self.

MR. SELF: Well, I'm deferring to you.

THE COURT: Now, let's get this right here. The defense has thirty-eight peremptory challenges, that's individually. They have ten challenges as a group collectively. This is not taking -- that does not take care of the alternates, that's where the discrepancy comes in is on the alternates.

So, it's not twelve. He was going to have thirty-eight and ten because the two additional ones are to the alternates. So we've got forty-eight -- this is as to the panel, forty-eight to the defense and the Government has what now?

MR. SELF: The Clerk previously ruled that the Court was going to give us eighteen.

THE COURT: Eighteen. All right, so that's sixty-six. The panel is twelve which would be seventy-eight. Now, that's as to the petit jury. Now, the alternates were going to have six alternates. Now, what is it you're allowing -- the defense is getting six and the U.S. six, so that's going to be eighteen, isn't it?

That would be ninety-six, we have got sixty-six; we've got thirty jurors to go.

MR. SELF: Your Honor, my miscalculation was coming in to not allowing the total of six challenges on alternates. That's eighteen people on the alternates, the Court's never gone to that extreme in picking alternates. Normally we have two to each side -- two alternates, one to each side.

THE COURT: Well, but I think we need ninety-six jurors to make a panel, is that correct, gentlemen?

MR. HARWELL: Yes.

MR. SELF: That potentially could be less because there may be -- if the Court would

so instruct in the proceedings that if anyone is not struck by both sides they could be considered for the alternate panel. It may not necessitate a total of ninety-six, but theoretically with us all exercising our own and total challenges we do have ninety.

THE COURT: All right, well let's go. Are we ready for panel number three?

MR. HARWELL: May I make one objection for the record. I think according to Mr. Moore it's covered in the pretrial motion. And I know I've commented on it but I think given the Government's statement this morning I should make one more objection. May I do so?

THE COURT: Yes, sir.

MR. HARWELL: May the Court please, comes now the Defendant, Edgar Jones, respectfully objects to the Court's ruling in terms of the number of peremptory challenges provided for the Government and we respectfully submit, Your Honor, that it's contrary to rule 24B of the Federal Rules of Criminal Procedure. All that I'm sure Your Honor knows has been briefed and argued, but we got into it this morning and I wanted to make that objection.

THE COURT: Any response to that?

MR. SELF: May it please the Court I think Mr. Dause or one of us would like to respond to that. We've done a little bit of research into this, Your Honor, not nearly with the resources Mr. Harwell has, but maybe we should take a look at it. The rules specifically applies that the United States is entitled to six and the Defendants are entitled to specific number but the Court may allow more for the Defendants. There's a lot of cases on this, and I'll ask Mr. Dause, do you have that?

MR. DAUSE: No.

MR. SELF: There's a lot of them, and there's several cases in the area that say that the Court has the discretion to allow the United States additional challenges when it allows the Defendants additional challenges. That if no objection is made to the challenges to the United States by the Defense during the course of the trial they would waive that objection. Now, Mr. Harwell is making an objection to the United States being given additional challenges. But the law also is that the Court can condition a withdrawal of that or an agreement with the United States having additional challenges by giving the Defendants

challenges additional to ten. So -- And the Court has that prerogative, the Court can hold the Defendants to ten challenges and I'll cite the case of the United States versus Hoskins which is a Sixth Circuit case with Judge Siler and we had five defendants and he **gave** them two collectively. As a proposition the two collectively -- the Court has the discretion to give or not give additional challenges. But the case law also makes it clear that the Court can condition the giving of additional peremptory challenges to the Defendants on giving additional peremptory challenges to the United States. The Court may want to take a look at that, Your Honor. And specifically the case in mind, I don't have the case in front of me, but the language of the statute does leave the impression that the Court can give the United States more than six. But the case law is that it can condition that -- can give the United States additional challenges and condition that upon giving the Defendants additional challenges. So if he wants to hold us to the words of the statute I think we can hold this ninety-six to quite a lower number of jurors.

THE COURT: Well, of course, here's

what we're doing. Mr. Harwell I guess is probably getting it on the record. He wants his additional ones but he wants to object to the Government getting their additional ones. He is not going to waive his additional ones if the Goverment gets theirs. Of course, it's by reason of the fact that we have so many Defendants that we're giving the Defendants additional challenges. But solely because of that is the reason I'm giving the United States more, it's not condition on it, if the -- if it was a lesser number the Defendants would not be entitled to it and the Government would not be entitled to it. But because the Defendants are getting more the Court can only consider in its equity that the justice would require the United States to get more. That's why I'm giving the United States more. But I understand Mr. Harwell saying -- he says the rule is not that. In his interpretation of the rule it's not that and he's making his objection into the record.

MR. HARWELL: Judge, might we inquire of the Court at some point as to Your Honor's thoughts concerning Mr. Self's comment when he said, Judge, if the Defendants and the Government strikes the same for three or four or five strikes --

THE COURT: (Interrupting) That we could use one of those?

MR. HARWELL: Yes, could we have the Court's directives on that issue?

THE COURT: He doesn't -- what he means is by reason if you people strike the same that would leave some of the jurors not passed on.

MR. HARWELL: Yes, sir, but that would leave potentially, Judge, out of your ninety plus here that would leave say thirteen, fourteen, fifteen or sixteen that were not struck peremptorily --

THE COURT: (Interrupting) Then we could go back and put them with the alternates. We could reconsider and put them in the alternate pool. I realize that you gentlemen --

MR. HARWELL: (Interrupting) But Your Honor is not saying that they would automatically become alternates, if as a matter of fact you end up with sixteen out of the panel that has not been peremptorily struck.

THE COURT: Not unless you gentlemen want it to be that. I understand in considering the jury, and you do too, that we have our first choice become our second choice, and our third choice. If we can't -- you know, when we come down and strike

a jury you have to decide sometimes the lesser of two evils.

MR. HARWELL: If Your Honor pleases, may we respectfully ask the Court not to make a ruling on that until the prosecution and the defensen counsel could talk about it, that might be the simplest -- I don't know. I would like to think about it, I've seen it done.

THE COURT: Well, let's see who's going to be present on the third panel. I think that would be the best thing to do.

MR. HARWELL: Yes,sir.

THE COURT: Okay, let's stay open. All right, call the jurors in and we'll tell them who's excused.

MR. PAFUNDA: Your Honor.

THE COURT: Yes, sir.

MR. PAFUNDA: May it please the Court merely because I don't want to assume anything. I take it Mr. Harwell's objection stands for the remainder of the defense counsel?

THE COURT: Yes, sir.

MR. PAFUNDA: Unless it's pointed out --

THE COURT: For your objection is for the rest of the panel unless it's contradictory

to someone.

MR. PAFUNDA: Thank you.

THE COURT: It's for your benefit, Mr. Rowland, unless it's contradictory.

All right, bring the jury back in and Madam Clerk you may tell the jurors who's excused and you may advise this panel to report back on Monday morning at nine o'clock.

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

MR. KEHRLI: May we approach the Bench.

REPORTER'S NOTE: Mr. Kehrli, Mr. Dause, Mr. Harwell, Mr. Walbourn, Mr. Adams, Mr. Moore and Mr. Pafunda approached the Bench and the following was heard:

MR. KEHRLI: Your Honor, the Government noted that the Jurors were not placed under oath this morning, and it was not noted by the Court.

THE COURT: Yes, they were placed under yesterday.

MR. KEHRLI: This is a matter of procedure, that there is no question that we ask the Court to remind them or ask that they be put under oath this morning.

MR. HARWELL: That makes no difference.

THE COURT: All right.

MR. PAFUNDA: May it please the Court, myself and Mr. Self, he and I both conferred when the Jury was last excused they were not admonished by the Court, and I bring it to the Court's attention.

THE COURT: We can do it, I believe, gentlemen, until the Jury is sworn to actually well and truly try the case, I don't - -

MR. PAFUNDA: (Interrupting)(Inaudible).

THE COURT: All right, that will be

fine.

REPORTER'S NOTE: (End of Bench Conference).

THE MARSHALL OF THE COURT: The Jurors are present in the Court, Your Honor.

THE COURT: Madam Clerk.

THE CLERK OF THE COURT: Ladies and gentlemen of the Jury will you please stand for a question.

When you came in this morning, did all of you recognize that you were still under a continuing oath to truthfully answer any questions for the Court?

If not, did everyone recognize that, please answer in the affirmative if you do.

REPORTER'S NOTE: All Jurors answered affirmatively.

THE CLERK OF THE COURT: All right. I will announce to you who is excused, you may be seated. Thank you very much.

Juror No. 95, Clifford Spencer.

Juror No. 112, James Addison.

Juror No. 202, Netta Jean Francis.

Juror No. 246, Jackie Deskins.

Juror No. 247, Ricky Charles.

Juror No. 248, Larry Longworth.

You are excused from further service of this trial. Now, if your name was not called, you are excused for the remainder of the day, but you are to report back here on Monday morning at 9:00 A.M.

Please be sure to check your message now before reporting in. Always check that message any time that you are told to come back in, check before reporting in.

Okay. Is there any other instructions, Your Honor?

THE COURT: No.

THE CLERK OF THE COURT: Thank you very much for your cooperation, ladies and gentlemen, and you are free to leave the Court Room at this time.

THE MARSHALL OF THE COURT: The Jurors

are out of the Court Room, Your Honor.

THE COURT: Gentlemen, on panel three, what time were they advised to report in, Madam Clerk?

THE CLERK OF THE COURT: Your Honor, we advised them by recorded message to be here at 11:00 A.M. That would give us some additional time to have them fill out the necessary informational forms, as well as the questionnaire issued by Mr. Harwell. You requested twelve, Your Honor, and I asked them to come in an hour early.

THE COURT: We can do this, gentlemen, we can recess until 12:00 o'clock, and I - - here is what I don't want to do. I don't want to get in a position where we are going to be over say a half day tomorrow. I would like to keep tomorrow free because we have been, but nevertheless, I would like to get this third panel so we can - - do you want to recess until 1:00 o'clock?

MR. SELF: Do you mean tomorrow or Monday?

MR. PAFUNDA: If it please the Court, I thought the - - I had asked the last time when we were here if the Court was going to meet on Friday, and the Court indicated to me - -

THE COURT: (Interrupting) I have other hearings set for tomorrow.

MR. ROWLAND: So do we.

THE COURT: And I am sure you do.

Well, let's see, how do - - well, let's see how we come out on this third panel.

MR. PAFUNDA: If it please the Court, if this should be carried over, then I take it by the Court's comments that the Court will continue to go into this matter tomorrow?

THE COURT: I don't know. I don't want to.

MR. PAFUNDA: I don't either, Your Honor.

THE COURT: And I am sure you gentlemen have plans at 5:00 o'clock this afternoon to get in the car and go home, and I can understand that.

But let's do this, do we want to come back at 12:00?

MR. HARWELL: If it please the Court, I have no feeling, Your Honor, you mentioned 1:00 and I am like everybody else including the Court, I would like to get through.

I wonder though, given the paperwork Ms. England made reference to, at

lunch, whether that is possible with the panel, I don't know.

We have no feeling, whatever the Court wishes.

THE COURT: Well, let's do it this way. We are going to be in recess until 12:30, we will come back with panel number three at 12:30, gentlemen.

THE MARSHALL OF THE COURT: All rise. The Court will stay in recess until 12:30.

REPORTER'S NOTE: The Court recessed at 10:48 A.M. to be reconvened at 12:30 P.M.

*** *** ***

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 HAYHEART, LINVILLE MOSLEY, RAYMOND HALL, MORRIS RAY HALL, VAN B. PATTON

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TRANSCRIPT OF TRIAL

BEFORE: THE HONORABLE G. WIX UNTHANK

DATE: JANUARY 12, 1984

****

VOLUME SIX

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

VOIR DIRE EXAMINATION

MR. DAUSE:	pgs. 213-226
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MR. PAFUNDA:	pgs. 246-253
MR. SPENCER:	pgs. 254

A P P E A R A N C E S

For the United States of America:

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

For the Defendant Edgar A. Jones:

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

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

E. J. WALBOURN, III

For the Defendant Tim Milan:

DAN ROWLAND, ESQ.

For the Defendant Eugene Tackett:

DAVID THOMAS, ESQ.

For the Defendant Pebo Gayheart:

THOMAS K. HOLLON, ESQ.

For the Defendant Morris Ray Hall:

FRANCIS DALE BURKE, ESQ.

For the Defendant Donahue Halbert:

HERSHEL BRANSEN, JR., ESQ.

For the Defendant Linville Mosley:

LOWELL E. SPENCER, ESQ.

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

BERNARD PAFUNDA, ESQ.

For the Defendant Ranny Blankenship:

ELDRED E. ADAMS, JR., ESQ.

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

WILLIAM D. KIRKLAND, ESQ.

REPORTER'S NOTE: The Court reconvened at 12:35 P.M.

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

THE COURT: Madam Clerk, will you call the roll of the Jury.

THE CLERK OF THE COURT: Yes, Your Honor.

THE COURT: Just a moment. I think the record better reflect the Defendants and their counsel are present, first.

MR. HARWELL: Yes, Your Honor.

THE COURT: Yes. May the record reflect that all Defendants together with their counsel are present?

MR. HARWELL: Yes. May the Court please, and so reflect.

THE COURT: All right.

MR. SELF: Let the record further reflect the United States is present by counsel, Your Honor.

THE CLERK OF THE COURT: Ladies and gentlemen - -

THE COURT: (Interrupting) Wait just a moment, gentlemen, by me doing that, I will swear

if someone is absent he certainly couldn't say he is present, I'd better find some affirmative method of establishing - -

MR. KIRKLAND: (Interrupting) If the Court please, I looked around and all Defendants are here, and all counsel are here.

THE COURT: Thank you.

MR. SELF: Do as Judge Moynahan does, Your Honor, just make a statement for the record. I have never seen anybody question that.

THE COURT: All right.

Well, the Jury looks nervous, let me tell one of my stories and maybe that might ease them up.

My grandfather was known as being the Harlan County most famous drunk, and his brother was the County Judge, and they had had a trial for a fellow for being a drunk. For some reason or another, they had my grandfather on the Jury, and the Defendant got on the stand and admitted that he was drunk, and the Jury went out and considered and it came back and it was a hung Jury.

They determined that my grandfather was the one that hung the Jury, and his brother, who was the Judge said, "How in the world

can you hang the Jury when the Defendant admitted it?" He said, "I wouldn't believe him under oath. I know him and I wouldn't believe him under oath."

All right. So all the Defendants and the counsel are here, if the Clerk will please call the roll of the Jury.

THE CLERK OF THE COURT: Yes, Your Honor. Ladies and gentlemen, as I call your name and number, just stand very briefly and then you again may be seated, and please answer present when I call your name so I will know you have heard your name.

No. 127, John Creech.

REPORTER'S NOTE: No response.

THE CLERK OF THE COURT: No. 127, John Creech.

REPORTER'S NOTE: No response.

THE CLERK OF THE COURT: No. 128, Norma Laureen Craft.

REPORTER'S NOTE: No response.

THE CLERK OF THE COURT: No. 128, Norma Laureen Craft.

REPORTER'S NOTE: No response.

The Clerk approached the Bench and had a discussion with the

Court.

THE CLERK OF THE COURT: Your Honor, I have noted in the - -

THE COURT: (Interrupting) Will you please start over again.

THE CLERK OF THE COURT: Yes, Your Honor.

No. 127, John Creech. It is noted here, Your Honor, that all of these Jurors called were summoned by phone. Mr. Creech did not have a phone listed on his questionnaire, therefore he was not reached by the Clerk's office.

No. 128, Norma Laureen Craft, the number that was listed was incorrect, and was shown as disconnected; therefore Mr. Craft was not reached by phone, Your Honor.

No. 129, Gary W. Campbell, Your Honor, Mr. Campbell's home was contacted, his employment sends him out of town for six to eight weeks at a time, and at this time he was out of town and not subject to return until February; therefore he was not reached even though we did make connections with his home.

THE COURT: Thank you.

THE CLERK OF THE COURT: No. 130, Douglas

L. Brown.

MR. BROWN: Here.

THE CLERK OF THE COURT: Thank you. No. 131, Lorraine Castle.

MS. CASTLE: Present.

THE CLERK OF THE COURT: Thank you. No. 132, J. B. Stephens. Your Honor, the record reflects that the phone listed on the questionnaire that Mr. Stephens previously filled out was an incorrect phone number, and Mr. Stephens was not reached.

No. 133, Teddie C. Hamilton. Again, Your Honor, the questionnaire contained an incorrect phone number and no connection was made.

No. 134, Ola Collins.

MR. COLLINS: I am here for her, Your Honor. I am her husband, she wasn't able to make it, and I sent in some Doctors' reports to the Clerk yesterday.

THE COURT: Let me see those.

THE CLERK OF THE COURT: Your Honor, I passed those to your secretary yesterday.

THE COURT: I would say they are

back in my office.

THE CLERK OF THE COURT: I think I have a copy, Your Honor.

THE COURT: Let me see.

*** *** ***

THE COURT: Now, let me explain this for the purpose of the jury and the purpose of the counsel. These jurors were notified by telephone, some of the jurors said over the telephone that they could not be here. Of course, the Court explained to them that when a person's name was drawn from the list, that's writing it in stone, and there must be something shown likewise in stone why they could not be here. That's why you were requested, sir, to appear and bring that so we have some record. It appears here that this lady has had four discs removed from her spine and she just can't be here, so the Court will accept that and let this excuse be made as a matter of record. The Court will accept that excuse, sir, and thank you for coming here.

MR. COLLINS: May I be excused, sir?

THE COURT: Yes.

THE CLERK OF THE COURT: No. 135, Denver L. Wells.

MR. WELLS: Present.

THE CLERK OF THE COURT: Juror 137, Russell Wisecup.

THE COURT: I think we didn't mention No. 136.

THE CLERK OF THE COURT: Yes, Your Honor, because the Court had finally excused that witness yesterday we did not include it on the list. Would you like me to call that?

THE COURT: Yes, ma'am.

THE CLERK OF THE COURT: No. 136, Roland Meyers.

THE COURT: Gentlemen, this gentleman has a terminal illness and he is unable to be here so he was excused.

All right.

THE CLERK OF THE COURT: Your Honor, Russell Wisecup was contacted by the telephone and he gave an excuse that he was in charge of a brother that was crippled and that he would make arrangements to call the Court -- the Clerk's office as he had no further contact, that's the Lexington office.

THE COURT: All right, Mr. Marshall, make a note of that.

THE CLERK OF THE COURT: No. 138, Ricky Nickell.

They were unable to contact Mr. Nickell, Your Honor. They did call and there was never any answer so he was not

contacted.

THE COURT: All right.

THE CLERK OF THE COURT: No. 139, Jesse A. Taylor.

MR. TAYLOR: Present.

THE CLERK OF THE COURT: No. 140, James Flinchum, Jr.

MR. FLINCHUM: Here.

THE CLERK OF THE COURT: I thank you. No. 141, Helen Walls.

MS. WALLS: Present.

THE CLERK OF THE COURT: No. 142, Lowell Dean Johnson.

MR. JOHNSON: Present.

THE CLERK OF THE COURT: No. 143, Barbara Lee Justice.

MS. JUSTICE: Present.

THE CLERK OF THE COURT: No. 144, John D. Small.

MR. SMALL: Present.

THE CLERK OF THE COURT: No. 145, Brenda Gail Owens Looney.

MS. LOONEY: Present.

THE CLERK OF THE COURT: No. 146, Sally Elizabeth Young.

Your Honor, the report on this says an attempt was made to call Ms. Young and her phone was out of service at this time and they were unable to contact her.

THE COURT: Thank you, ma'am.

THE CLERK OF THE COURT: No. 147, Patricia Sparks.

MS. SPARKS: Present.

THE CLERK OF THE COURT: No. 148, Michael Fugate. There was no phone number listed on this questionnaire, Your Honor. Therefore we were unable to call Mr. Fugate.

No. 149, Burla Damron.

MS. DAMRON: Present.

THE CLERK OF THE COURT: No. 150, Chester Mullins.

MR. MULLINS: Present.

THE CLERK OF THE COURT: No. 151, John M. Stephens.

MR. STEPHENS: Present.

THE CLERK OF THE COURT: No. 152, Donnie Hayse Robinson.

Donnie Hayse Robinson, No. 152.

Your Honor, our notes

reflect that they did reach the home of Mr. Robinson's father so he was contacted, and the message was left.

THE COURT: All right.

THE CLERK OF THE COURT: No. 153, Peggy L. Halfhill.

MS. HALFHILL: Present.

THE CLERK OF THE COURT: No. 154, Fayetta Daugherty Blankenship.

Our records reflect that there was not a phone listed on the questionnaire on Miss Blankenship and they were unable to contact her.

THE COURT: Thank you.

THE CLERK OF THE COURT: No. 155, Jay T. Daniels.

MR. DANIELS: Present.

THE CLERK OF THE COURT: No. 156, L. D. Sexton.

No. 156, L. D. Sexton.

The notes show, Your Honor, there was a number and they attempted to call Mr. Sexton and the phone was disconnected.

THE COURT: Thank you.

THE CLERK OF THE COURT: No. 157,

Berchie H. Slone.

The note reflects here that someone had given the information that possibly this juror might be in West Virginia.

THE COURT: Thank you, ma'am.

THE CLERK OF THE COURT: No. 158, Terry Gene Kinzer.

Your Honor, Mr. Kinzer reported in this morning and he was on his way to serve as juror in the Pike Circuit Court having been previously impaneled there and we told him to go on and report to Pike Circuit Court and we would advise you and if necessary we could get him a message there.

THE COURT: If he's on duty as a juror in the Pike Circuit Court at the present time, I don't believe he is available to be called in this case, gentlemen. Does anyone question that?

MR. HARWELL: No.

THE COURT: He's excused.

THE CLERK OF THE COURT: NO. 159, Dewayne Taylor.

The records reflect, Your Honor, an attempt was made but he had no phone listed on his questionnaire and he did not have

one listed through information and we had no address.

160, Harriet S. Johnson.

MS. JOHNSON: Present.

THE CLERK OF THE COURT: No. 161, Retta S. Shackelford.

The records reflect, Your Honor, an attempt was made at the number listed on the questionnaire and it was out of order and they were not able to reach Ms. Shackelford.

No. 162, Elizabeth Ann Wakeland.

MS. WAKELAND: Present.

THE CLERK OF THE COURT: No. 163, Gary W. Damron.

MR. DAMRON: Present.

THE CLERK OF THE COURT: No. 164, James R. Lyons.

MS. LYONS: Present.

THE CLERK OF THE COURT: No. 165, Magdaline Johnson.

The records reflects, Your Honor, there was no phone listing on Ms. Johnson and we were not able to contact her.

No. 166, Danny D. Fleming.

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The record reflects, Your Honor, that the number they received from information was not the Danny D. Fleming that was on the questionnaire, and that there was no known listing on the questionnaire other than the one that was listed. That was not a local phone number.

THE COURT: All right.

THE CLERK OF THE COURT: No. 167, Goldina McCown.

MS. McCOWN: Present.

THE CLERK OF THE COURT: No. 168, Isom Poe.

MR. POE: Present.

THE CLERK OF THE COURT: No. 169, Bessie Pennington.

Your Honor, they did contact Ms. Pennington. She said there was illness and that her husband was scheduled for surgery today or yesterday. When we initially contacted her she was to report to court yesterday so she was told to send in a notarized excuse, Your Honor.

THE COURT: Okay, Mr. Marshall, make a note of that.

THE MARSHALL OF THE COURT: Yes, Your Honor.

THE CLERK OF THE COURT: No. 170, Eddie L. Ratliff.

MR. RATLIFF: Present.

THE CLERK OF THE COURT: No. 171, James R. Mercer.

The record reflects, Your Honor, there was contact made from Mr. Mercer and the number was a work number and there was no answer and we never received information that contact was made.

No. 172, Mable Hensley -- No. 172, Mable Hensley.

They did contact Ms. Hensley, Your Honor, I think she informed Lexington that she would be calling Your Honor in order to be excused. The Clerk's office and our office have no further contact.

THE COURT: Well, she advised the Court that she is seventy-seven years of age and because of her health she just -- her physical condition she was just unable to make it. What does the record reflect with regards to her age?

THE CLERK OF THE COURT: Your Honor, I don't have that questionnaire. They're still in the chambers.

THE COURT: Where is it at?

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THE COURT: She is Juror what?

THE CLERK OF THE COURT: 172, Your Honor.

THE COURT: What does the record reflect, Madam Clerk, with regard to her age and her address?

THE CLERK OF THE COURT: Your Honor, the record reflects that Ms. Hensley was born June 8, 1907. Her age at this time was seventy-three. And the date of filling out this questionnaire was March of '81. And the record reflects her address as Box 96, Langley, Kentucky, Juror No. 172.

THE COURT: What county is Langley in?

MR. ROWLAND: Floyd County.

THE COURT: Floyd County. All right, gentlemen, because of the lady's age and distance from the court, the Court is disposed to excuse her. Is there any objection to any of the counsel here?

MR. SELF: On behalf of the United States.

THE COURT: There is an objection?

MR. SELF: No, there is no objection.

THE COURT: All right.

MR. HARWELL: With regard to Mr. Edgar Jones, no objection.

THE COURT: Is there any objection,

gentlemen?

All right, there being no objection shown Ms. Hensley may be excused.

THE CLERK OF THE COURT: Yes, Your Honor.

Juror No. 173, Billie Oliver. Your Honor, the record reflects that Mr. Oliver's residence was contacted. The message was left. But this is Mr. Oliver's son who reported here today. He is also Billie Oliver.

THE COURT: All right. What does the qualifications sheet show which one is supposed to be here?

THE CLERK OF THE COURT: The father, Your Honor. We did check it when Mr. Oliver reported in. And he did-- I think Mr. Oliver can relate to the Court that he called home and checked, and that his father is the one who was initially to report.

THE COURT: You will be excused. But will you ask your father to report here Monday, sir?

MR. OLIVER: Yes, sir. What time?

THE COURT: Nine o'clock.

MR. OLIVER: Yes. Thank you.

THE COURT: Thank you, sir.

THE CLERK OF THE COURT: And I have given Mr. Oliver the questionnaire to take to his father,

Your Honor.

THE COURT: Will you take those back, Mr. Oliver, and have your father to fill those out so he can have those with him when he comes.

MR. OLIVER: Yes, sir.

THE COURT: Thank you very much, sir. We apologize for the inconvenience.

THE CLERK OF THE COURT: Number 174, William Darwin Slone. Your Honor, an attempt was made at the number listed on the questionnaire, and there was not any answer at any of the attempts made on Mr. Slone.

Number 175, Ed R. Moore. An attempt was made to Mr. Moore, Your Honor, at the number listed on the qualifications questionnaire. There was not any answer to any of the attempts of Mr. Moore.

176, Melvin Clay Collins. An attempt was made, Your Honor, at the number listed, and a recording was received that the number was no longer in service. And information did not reveal a new listing.

Number 177, Gerald Wayne Johnson.

MR. JOHNSON: Present.

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THE CLERK OF THE COURT: Number 178, Carolina Stanley May.

MS. MAY: Present.

THE CLERK OF THE COURT: Thank you. Number 179, Wanda Faye Watts. There were two numbers listed on the questionnaire, Your Honor. Both numbers were attempted. There was not any answer at either of the numbers listed on the questionnaire. Unable to reach Ms. Watts.

Number 180, Lonnie Bush. There was no numbers shown on the questionnaire, Your Honor, and the information did not reveal any number. Unable to reach Mr. Bush.

Number 181, Inez Justice.

MS. JUSTICE: Present.

THE CLERK OF THE COURT: Thank you. Number 182, Terry Neil Trimble.

MR. TRIMBLE: Present.

THE CLERK OF THE COURT: Thank you. Number 183, Ray Lexter Barnett.

MR. BARNETT: Present.

THE CLERK OF THE COURT: Thank you. Number 184, Guy J. Bond. A number was listed on the questionnaire, Your Honor, and an attempt was made. They were unable to reach Mr. Bond. They received

no answer.

Number 185, Irene Slusher.

MS. SLUSHER: Present.

THE CLERK OF THE COURT: Number 186, Donna Kaye Roberts. Number 186, Donna K. Roberts. Your Honor, they did reach Ms. Roberts. Ms. Roberts contacted our office yesterday--her father. He said she had no transportation. I related that the government does pay twenty cents a mile for transportation. He said she would make an attempt to be here. And he further called back this morning and said she could not get anyone to bring her.

THE COURT: Okay. Mr. Marshal.

THE MARSHAL OF THE COURT: Yes, Your Honor.

THE CLERK OF THE COURT: Number 187, Theresa Fannin. Your Honor, this is a student. She was contacted by the Lexington office. She requested to be excused. And they instructed her to contact the Court.

THE COURT: I understand she was on her way to the court, and she had a car wreck. Mr. Marshal, check on that.

THE MARSHAL OF THE COURT: Yes, Your Honor.

THE CLERK OF THE COURT: Number 188,

Helen Ann Francis Vickers.

MS. VICKERS: Present.

THE CLERK OF THE COURT: Thank you. Number 189, Janet Lou Jarvis. Your Honor, there is no phone number listed on the questionnaire. They did obtain a phone number. They attempted the phone number that they obtained, and there was no answer. Ms. Jarvis was not contacted.

Number 190, Ulysses G. Horn.

MR. HORN: Here.

THE CLERK OF THE COURT: Thank you. Number 191, Bessie Arnold Pinion. Your Honor, the only thing that we note on the record is for some reason, Ms. Pinion was unable to complete the questionnaire. And they did not have a proper means to try and contact her further. Evidently she returned an incomplete questionnaire.

THE COURT: All right, that is 191.

THE CLERK OF THE COURT: Yes, Your Honor.

THE COURT: All right. 191.

THE CLERK OF THE COURT: 192, Sharon Tackett.

THE COURT: Let's get back to 191, gentlemen. Juror No. 191 never filled out the

qualifications sheet to show that she was qualified to be a juror.

MR. HARWELL: If the Court please, we move that she be excused from the panel.

THE COURT: All right. She is excused. All right, go ahead, Madam Clerk.

THE CLERK OF THE COURT: Yes, Your Honor. Number 192, Sharon Tackett. Your Honor, an attempt was made on Sharon Tackett. There were two numbers listed on the questionnaire, and they received a recording on both numbers; one stating it was disconnected and one that it was no longer in service. So they were not able to reach Ms. Tackett.

Number 193, Edna Looney. The note reveals, Your Honor, that there was no phone number listed on the questionnaire, and the information did not reveal a phone.

Number, 194, Darrell Gene Bartley. Darrell Gene Bartley. It shows a number was attempted at a Pikeville number, Your Honor; but it does not show any further comment. So there was an attempt made, but I cannot determine by the comment if he was contacted.

THE COURT: All right.

THE CLERK OF THE COURT: Number 195,

Mildred L. Childers. No phone again, Your Honor, was listed on the questionnaire, and they were not able to obtain a number. So Ms. Childers was not contacted.

THE COURT: All right. How many do you have in the prospective panel?

THE CLERK OF THE COURT: Your Honor, we have an earlier count, and the Clerk said thirty-three. I am counting thirty-one.

THE COURT: Why the discrepancy?

MR. SELF: Two gentlemen-- The gentleman whose wife is here and the gentlemen whose father--

THE CLERK OF THE COURT: (Interrupting) Yes, Your Honor, they are probably counting the two in the representative capacity.

THE COURT: Okay, that will be fine. Gentlemen, approach the Bench.

Let me state this. I have been advised by the Clerk that they are going to need about twenty minutes or so additional time to copy something. Is that correct?

THE CLERK OF THE COURT: Your Honor, I have the short form questionnaire which is an information sheet that is normally furnished to counsel

during trials. And they can be copied for each here at the trial. We are in the process. We may have them completed since I have come in. But the long forms are available for them to review.

THE COURT: I need to talk to counsel about a method of selecting the petit jurors and possibly them selecting the alternates from this and possibly striking for cause--or not cause. I mean challenged on selection of that.

Let me ask you, as you know, we have an attorney on this thing. Does anyone object to this attorney?

MR. HARWELL: I do, Your Honor, on behalf of Edgar Jones.

THE COURT: Okay.

MR. HARWELL: Historically it has been contrary to the standards.

THE COURT: You are objecting to him being excused?

MR. HARWELL: I am objecting to his being on the panel.

THE COURT: I want to know if anyone objects to him being excused.

MR. HARWELL: No objection to him being excused.

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MR. SELF: The United States has no objection.

THE COURT: Well, anyway, he is represented by Bernie.

MR. PAFUNDA: That was concluded a month ago, and he will be back in here on another matter.

THE COURT: Okay. So what I am going to do is I am going to excuse this jury. But can I tell the Marshal to advise Mr. Stephens that he is excused. And I guess I am reluctant to get up and tell the rest of the jury that he is excused because he is an attorney because they might think there is some hanky-pankying against the rest of them which isn't it.

Okay, you gentlemen may be seated.

All right, you may return. Let's go back.

Ladies and gentlemen, we are going to be in recess for fifteen minutes. The jury will be excused for fifteen minutes. Then you will return to the courtroom.

Mr. Marshal.

THE MARSHAL OF THE COURT: The jury is excused at this time.

The jury is out of the courtroom, Your Honor.

THE COURT: Okay. Now, Mr. Stephens, all the jurors are out. The record reflects this was the subject of the discussion at the Bench--was excusing an attorney. And the reason for doing it at the Bench was I was afraid that the sum of the laymen might not understand this.

MR. STEPHENS: I understand, Your Honor, and I appreciate it.

THE COURT: The other counsel was the one-- I laid it to counsel if they wanted you excused, you could be excused.

MR. STEPHENS: Well, I thank counsel.

THE COURT: All right. Now, here is what we have, gentlemen, is this.

As you know, we first must select twelve members of the Jury, and then we select the alternates.

It's been stated to the Court that we may take whatever the panel is going to be after we finish with this group and let you exercise your peremptory challenges, and the remainder of the panel after you have exercised your peremptory challenges for the Petit Jury, we give it to the Clerk, she will place those names in the box, shake it up, and draw twelve from it and that is the Petit Jury.

Now, those persons whose names were placed in the box and do not constitute the Petit Jury may constitute the panel, or the selection of the alternate Jurors.

Is there any - - ordinarily what the procedures of this Court are, when they do go out they pick from the same panel, they pick the Petit Jury, and then they have the alternate Jurors which they select.

In other words, you have a panel for Petit Jury, you have a panel for alternate

Jurors.

MR. SELF: Still keeping in mind we are entitled to six challenges per side for alternates.

THE COURT: No, sir. I think the Rules provide, what is it, three - -

MR. SELF: (Interrupting) One, I think Your Honor.

THE COURT: No. It was twenty-four - - I think it's Federal Rule Twenty-Four, Mr. Kirkland. If there is - - if it is five to six you allow three, isn't it?

MR. KIRKLAND: Would you like for me to read it?

THE COURT: Yes.

MR. KIRKLAND: "Twenty-Four C, alternate Jurors. The Court may direct that not more than six Jurors in addition to the regular Jury being called and paneled to sit as alternate Jurors. All Jurors in the order in which they are called shall replace Jurors - - " - - Alternate Jurors shall be drawn in the same manner - - shall have the same qualifications - -"

Now we get to numbers.

"Each side is entitled

to one peremptory challenge, in addition to those otherwise provided by Law if one or two alternate Jurors are being paneled, two peremptory challenges if three or four alternate Jurors are being paneled, and three peremptory challenges if five or six alternate Jurors are being paneled."

"The additional peremptory challenges may be used against an alternate Juror only when the other peremptory challenges allowed by these Rules may not be used against an alternate Jurors."

THE COURT: Now, what I am going to do is ask for the peremptories for alternates, I'm revising and going to allow three for the defense side, and three for the Government's side. That is on the alternates only.

Now, we stated the other way is the same. I think that is what reduces it, it's going to reduce it what, two?

MR. SELF: Six.

THE COURT: Reduces six.

MR. HARWELL: Judge, you will excuse my maybe apparent stupidity, but if I understood what Your Honor said a moment ago, we would have to have at least twelve - - we would have to have twelve Jurors

left after the selection, twelve in the box, and it would be from those twelve, assuming there were twelve, that we would draw - - that would be the mini-panel from which we draw alternates, right?

THE COURT: Right. Now, we can do this, we can reduce the number of alternates that we are going to have, possibly to resolve this, or we can reduce the number of challenges that we have to resolve it.

We don't know how many Jurors are going to come out of this panel.

MR. HARWELL: That is what I am getting at. What if we have say six or seven Jurors left, if the Court please, after twelve in the box, they have got three, the defense has got three challenges, and there are only say seven to strike from, where do we get the balance of those?

THE COURT: Then we are going to have to recess or adjourn this matter, let the Marshall go out from this eighty here persons who weren't reached by telephone, go out and personally serve a subpoena on them to come in to obtain alternates.

MR. HARWELL: May the Court please, Mr. Walbourn whispered over to me a minute ago, I haven't done the math myself, but I understood him to say

that if you take the remaining Jurors from panel one, the remaining Jurors from panel two, and the remaining Jurors from panel three, Mr. Walbourn, assuming no challenges for cause on panel three, we don't have that magic number that we need to draw this Jury.

Am I - - I will ask Mr. Walbourn if I'm right?

MR. WALBOURN: Your Honor, my calculations, based on what we went over this morning was that for the Petit Jury alone, we needed to have eighty-eight Jurors, is that correct, Madam Clerk?

The Defendants have a total of forty-eight challenges, peremptory challenges, and the United States has eighteen, and we need twelve to serve.

My arithmetic is that that is eighty-eight.

THE CLERK OF THE COURT: That is seventy-eight.

MR. WALBOURN: You are right, my arithmetic is wrong, we need seventy-eight plus twelve, so we need ninety.

THE COURT: No, we need ninety-six altogether in order to get the alternates and

Petit Jury, exercise all the challenges - -

MR. WALBOURN: (Interrupting) We need ninety, wouldn't we?

MR. KEHRLI: Your Honor, we just need ninety now, since you changed the number of alternates.

THE COURT: Ninety, all right.

MR. HARWELL: My question to the Court is, do we - - maybe more properly to Ms. England, do we have enough when you count the remaining non-struck Jurors from panels one and two?

MR. KEHRLI: Your Honor, our calculations are that it's ninety-five.

MR. HARWELL: I guess my concern is, Your Honor, I would hate to see because we are running kind of tight on numbers, I would hate to see, and I say this very respectfully, but I would hate to see the Court tighten up on the cause challenges on this last panel, we have come so far.

THE COURT: Let's do this, let's get through this last panel. Monday we are going to get the twelve Jurors in this case, that is going to save all these people from coming back to town.

Now, if we have got to delay to get the alternates, we can delay.

Monday we are going to get

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the twelve Jurors.

MR. HARWELL: Yes, sir, Your Honor.

MR. SELF: It is a matter of procedure, I am aware of the Court's normal procedures in qualifying Jurors. The Court usually does it on its own, qualifying Jurors without any parties present.

Does the Court plan on qualifying this Jury panel?

THE COURT: Yes, sir.

MR. SELF: Without the attorneys present here?

THE COURT: No, they can be here it doesn't matter.

REPORTER'S NOTE: The Clerk conferring with the Court.

THE COURT: Madam Clerk suggests this, and you might want to do it.

While I am qualifying them, you might be looking at the questionnaires.

MR. HARWELL: If we can be excused, if the Court please, we have no desire on having Mr. Jones being here while they are being qualified.

THE COURT: It is up to you, gentlemen.

Be here after we qualify them. We are going to have to start into this thing today, gentlemen, and we would like to get this over with today if we can.

All right. Gentlemen, are we - - do you want five minutes before we get the Jury back in, or are you ready to bring the Jury back in for further qualifications?

MR. SELF: Your Honor, I think the proper matter of this Court - - this case need not be in session while the Court is qualifying the Jurors.

If the Court wishes to invite them to stay, I think that is up to the Defendants and the defense counsel if they so wish.

THE COURT: Mr. Marshall, this matter will be in recess for fifteen minutes except for the Court, and the Clerk, and the Reporter, the other gentlemen, you may leave, or you can stay here.

Mr. Marshall, bring the Jury in, and you gentlemen may go out first, you are excused, go ahead.

THE MARSHALL OF THE COURT: This Court will be in recess for fifteen minutes.

*** *** ***

THE COURT: Mr. Marshall, you can tell -- they still have six minutes, I'm sorry.

Court is in recess until quarter till two.

(Reporter's Note: At 1:39 P.M. court was recessed.)

(Reporter's Note: At 1:45 P.M. court was called to session.)

THE COURT: I understand that there is a request for a conference at the Bench, is that correct?

MR. HARWELL: Yes.

THE COURT: Now, Madam Clerk, will you please state the jurors who are excused. The Court finds that they are not presently qualified and they are excused temporarily. Will you do that, Madam Clerk?

THE CLERK OF THE COURT: Yes, Your Honor.

These jurors have been temporarily excused for a period of six months. After six months you will be notified to report for service, but these jurors are temporarily excused for a period of six months.

No. 139, Jesse A. Taylor;

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No. 177, Gerald Wayne Johnson; Juror No. 182, Terry Neil Trimble. You are temporarily excused for a period of six months.

THE COURT: They may leave. You may leave at this time. Thank you for your cooperation. Now, you may start. You're finally excused.

THE CLERK OF THE COURT: Yes, Your Honor, these jurors have been finally excused, you will not be called back for service. You have not been found qualified as jurors. You will not be needed.

No.155, Jay T. Daniels and No. 185, Irene Slusher.

You are free to leave at this time. Thank you for coming in today.

THE COURT: Now, we will have the Bench conference. Will the remaining jurors, they will be on panel three.

You gentlemen may approach the Bench.

(Reporter's Note: At this time all counsel approached the Bench for conference where the following was heard.)

MR. PAFUNDA: Your Honor, on behalf of

Drexil Moore and Austin "Bo" Moore, we ask that this panel be struck, this jury panel be struck because we feel it is an unfair cross section of the community.

MR. MILAN: Tim Milan, Judge. I second that motion.

MR. PAFUNDA: I think the record actually reflects after it's added up that the total number of jurors being excused from this panel for one reason or another at the present time, the record actually reflects that the number of jurors called were unable to come for various reasons, like transportation or the money -- they didn't have transportation to get here or they did not have phones at their residence and they couldn't be contacted. I think the record indicates--

THE COURT: (Interrupting) They only subpoenaed the ones that has telephones.

MR. PAFUNDA: Not only that, Your Honor, but I think even more accurately and more stringently some of these individuals in the community which would represent a fair cross section are at a disadvantage because they can not either afford transportation or they don't have means of transportation or even have the financial

ability to have this. I believe the Clerk indicated some of the jurors' phones have been disconnected which may or may not be the final argument.

THE COURT: Okay, of course, you realize this group is an emergency group.

MR. PAFUNDA: In what sense, Your Honor, are they an emergency group. We've already gone through two panels, and contacted a third panel, even though it might be an emergency group, I think under 28U.S.C. Section 1861 it still has to be a cross section of the community.

THE COURT: All right, it's on the record.

MR. HARWELL: Does that motion lie for all of us, Judge?

THE COURT: It lies for all of the Defendants and the Government, too.

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

THE COURT: All right, gentlemen. The Clerk will call the roll of the Jury at this time, and this consists of the prospective panel for Petit and alternate Jurors in the case of -- what is the criminal action number?

THE CLERK OF THE COURT: 83-8, Your Honor.

THE COURT: All right, let's do this. We will let you state the case and let the attorneys state their names and their clients for purposes of the record.

THE CLERK OF THE COURT: Yes, Your Honor.

THE COURT: You call the roll of the Jurors.

THE CLERK OF THE COURT: Yes, Your Honor. As I call your name, please answer present and just stand very briefly, and then again be seated.

Juror No. 130, Douglas L. Brown.

MR. BROWN: Present.

THE CLERK OF THE COURT: Juror No. 131, Lorraine Castle.

MS. CASTLE: Present.

THE CLERK OF THE COURT: Juror No. 135, Denver L. Wells.

MR. WELLS: Present.

THE CLERK OF THE COURT: Juror No. 140, James Flinchum, Jr.

MR. FLINCHUM: Present.

THE CLERK OF THE COURT: Juror No. 141, Helen Walls.

MS. WALLS: Present.

THE CLERK OF THE COURT: Juror No. 142, Lowell Dean Johnson.

MR. JOHNSON: Present.

THE CLERK OF THE COURT: Juror No. 143, Barbara Lee Justice.

MS. JUSTICE: Present.

THE CLERK OF THE COURT: Juror No. 144, John D. Small.

MR. SMALL: Present.

THE CLERK OF THE COURT: Juror No. 145, Brenda Gail Owens Looney.

MS. LOONEY: Present.

THE CLERK OF THE COURT: Juror No. 147, Patricia G. Sparks.

MS. SPARKS: Present.

THE CLERK OF THE COURT: Juror No. 149, Burla Damron.

MR. DAMRON: Present.

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THE CLERK OF THE COURT: Juror No. 150, Chester Mullins.

MR. MULLINS: Present.

THE CLERK OF THE COURT: Juror No. 153, Peggy L. Halfhill.

MS. HALFHILL: Present.

THE CLERK OF THE COURT: Juror No. 160, Harriet S. Johnson.

MS. JOHNSON: Present.

THE CLERK OF THE COURT: Juror No. 162, Elizabeth Ann Wakeland.

MS. WAKELAND: Present.

THE CLERK OF THE COURT: Juror No. 163, Gary W. Damron.

MR. DAMRON: Present.

THE CLERK OF THE COURT: Juror No. 164, James R. Lyons.

MR. LYONS: Present.

THE CLERK OF THE COURT: Juror No. 167, Goldina McCown.

MS. McCOWN: Present.

THE CLERK OF THE COURT: Juror No. 168, Isom Poe.

MR. POE: Present.

THE CLERK OF THE COURT: Juror No. 170,

Eddie L. Ratliff.

MR. RATLIFF: Present.

THE CLERK OF THE COURT: Juror No. 178, Carolina Stanley May.

MS. MAY: Present.

THE CLERK OF THE COURT: Juror No. 181, Inez Justice.

MS. JUSTICE: Present.

THE CLERK OF THE COURT: Juror No. 183, Ray Lexter Barnett.

MR. BARNETT: Present.

THE CLERK OF THE COURT: Juror No. 188, Helen Ann Francis Vickers.

MS. VICKERS: Present.

THE CLERK OF THE COURT: Juror No. 190, Ulysses G. Horn.

MR. HORN: Present.

THE CLERK OF THE COURT: Twenty-five jurors, Your Honor.

THE COURT: All right. Will counsel for the respective parties please state their name and the person whom they represent?

MR. SELF: May it please the Court, Thomas L. Self, Assistant United States Attorney, on behalf of the United States.

MR. KEHRLI: Your Honor, Randy Kehrli, representing the United States.

MR. DAUSE: Your Honor, Charles Dause, Assistant United States Attorney for the United States.

MR. HARWELL: May the Court please, Aubrey Harwell on behalf of Mr. Edgar Jones.

MR. MOORE: Albert F. Moore, with Neal & Harwell, on behalf of Mr. Jones.

MR. WALBOURN: E. J. Walbourn, on behalf of Mose Mead, Benny Caudill, Hermit Newsome, and Harold Moore.

MR. PAFUNDA: May it please the Court, Bernard Pafunda on behalf of Drexil Hall and Austin Moore.

MR. PATTON: May it please the Court, Jerry Patton on behalf of Mr. Jones.

MR. SPENCER: May it please the Court, Ed Spencer, Your Honor, on behalf of Linville Mosley.

MR. ADAMS: Eldred Adams, Your Honor, on behalf of Ranny Blankenship.

MR. ROWLAND: May it please the Court, Dan Rowland on behalf of Tim Milan. Tim, stand up. This is Tim.

MR. BRANSEN: May it please the Court, Hershel Bransen on behalf of Donahue Halbert.

MR. HOLLON: May it please the Court, Thomas Hollon on behalf of Pebo Gayheart and Morris Ray Hall.

MR. THOMAS: Your Honor, David Thomas on behalf of Eugene Tackett.

MR. KIRKLAND: May it please the Court, I am William D. Kirkland. I represent Jason Moore, German Stumbo, Kenneth Rolland, Teddy Kinney, and Raymond Hall.

THE COURT: Now, Madam Clerk, this record may reflect that this is a voir dire proceeding in what case?

THE CLERK OF THE COURT: Criminal Action No. 83-8, United States of America v. Edgar Jones, Jason Moore, German Stumbo, Drexil Hall, Teddy Kinney, Benny Caudill, Kenneth Rolland, Ranny Blankenship, Eugene Tackett, Harold Moore, Hermit Newsome, Tim Milan, Mose Mead, Donahue Halbert, Austin Bo Moore, Pebo Gayheart, Linville Mosley, Raymond Hall, and Morris Ray Hall, Your Honor, for a trial by jury.

THE COURT: Will you please administer the oath or affirmation to the members of the prospective panel to well and truly answer the questions propounded to them on voir dire.

THE CLERK OF THE COURT: Yes, Your Honor.

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Would any jurors who prefer to affirm please stand.

You do solemnly affirm that you will true and perfect answers make to the questions that will now be asked of you during the voir dire touching upon your qualifications to sit as jurors in the case of United States of America v. Edgar Jones, Jason Moore, German Stumbo, Drexil Hall, Teddy Kinney, Benny Caudill, Kenneth Rolland, Ranny Blankenship, Eugene Tackett, Harold Moore, Hermit Newsome, Tim Milan, Mose Mead, Donahue Halbert, Austin Bo Moore, Pebo Gayheart, Linville Mosley, Raymond Hall, and Morris Ray Hall, under the pains and penalty of perjury, do you so affirm?

THE PROSPECTIVE JURORS: I do.

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THE CLERK OF THE COURT: Please be seated.

All right, will the rest of the members of the panel please stand and raise your right hand.

Do you and each of you solemnly swear that you will true and perfect answers make to questions that will now beasked of you during the voir dire touching upon your qualifications to sit as jurors in the case of Criminal Action Number 83-8, of the United States of America versus Edgar Jones, Jason Moore, German Stumbo, Drexil Hall, Teddy Kinney, Benny Caudill, Kenneth Rolland, Ranny Blankenship, Eugene Tackett, Harold Moore, Hermit Newsome, Tim Milan, Mose Mead, Donahue Halbert, Austin "Bo" Moore, Pebo Gayheart, Linville Mosley, Raymond Hall, and Morris Ray Hall, as you shall answer unto God, do each of you so swear?

THE PROSPECTIVE JURORS: I do.

THE CLERK OF THE COURT: Please be seated.

THE COURT: All right, will Juror No. 143 please stand?

MS. JUSTICE: Yes, Your Honor.

THE COURT: Now, Ms. Justice, it is

my understanding that you have been subpoenaed as a witness in this case.

MS. JUSTICE: I have been approached with the possibility, sir.

MR. PAFUNDA: May it please the Court, Bernard Pafunda, on behalf of Drexil Hall and Austin Moore. I have approached Ms. Justice.

THE COURT: All right. Is there a good potentiality --

MR. PAFUNDA: (Interrupting) Excellent.

THE COURT: All right. I think there would be no reason --

MR. PAFUNDA: (Interrupting) Your Honor, and the reason she is not on the particular list, and I think the Court knows what I am speaking of, it all depends on what comes out.

THE COURT: All right. Gentlemen, since there is a possibility she may be a witness in the case, the Court doesn't believe it should be necessary for her to even be here for the remainder of this voir dire. So Madam Clerk, you may excuse her.

THE CLERK OF THE COURT: Thank you, Ms. Justice, for coming in. And you will be notified of your next service by mail. Thank you

for your cooperation. You are free to leave at this time.

MS. JUSTICE: Thank you. Thank you, Your Honor.

THE COURT: All right. Gentlemen, are we ready to proceed with the remainder of the voir dire.

All right. Ladies and gentlemen of the jury, this is what is called a voir dire proceeding.

It means to tell the truth. The jury in this proceeding will be asked questions. Some of them may be perhaps considered personal by you. If you feel that something is -- sometimes your answer may be so personal it would be embarrassing you, you may approach the Court; and we will discuss it.

But this is a criminal trial which is coming up. Of course, you are brought here, and questions will be asked of you. Proceedings, legal proceedings will be explained to you.

The purpose of this proceeding, it is a school in the sense that you'll learn information regarding the proceedings. You,

of course, must have this information before you can answer. And, of course, in making your answers counsel who are present, the attorneys who are present here will become acquainted with you because in making a selection of the jury, this is pretty much like a beauty contest. You remember in Miss America, they bring in all the candidates from all of the states. They ask them questions. And then after the questions are over, they reduce the number to certain amounts. And then they come back and ask them further questions, and then they reduce the amount further.

Well, this voir dire is pretty much that way. Our first proceeding, which we have in any voir dire, we have what is called challenges for cause, peremptory challenges. Those are various levels.

The purpose of the voir dire isn't to school you so that you are going to think as a group one way and act in accordance with the desires of anyone. The sole purpose of any voir dire proceeding or any other proceeding in court to obtain someone who will make a fair and impartial decision only.

When I said a decision,

that is the purpose for which you have been called here today is to determine whether or not you will be selected to make a decision.

We have all types of decisions. We have personal decisions, business decisions -- business decisions, social decisions. We have all types of decisions.

Now, we have what we call family decisions. Family decisions where a father or mother makes a decision regarding the conduct of the family. You may have arguments between two sons. The father and mother must resolve that argument.

You may have a decision in the family as to how the money is going to be spent. But this is a family decision which is made by the father or mother or the members of the family in accordance with education, experience; and ordinarily, once this decision is made in the family, that is the end of it.

The United States, all the way from the East to the West, South to the North, is a collection of families. We call it a government, but it is a collection of families. These collections of families have agreed among

themselves by what we call laws. They have agreed to rules and regulations as to how these families will operate and their conduct with regard to each other.

Now, disputes arise with regard to the agreement of rules and regulations or laws which these families use to govern its conduct. Disputes arise. And that is such a dispute that we have here today. It is a dispute by a member of one family which is accused. And this is merely an accusation that this member of one family has violated the rules and regulations which this collection of families have agreed to deal.

Now, not only have the collection of families agreed as to the rules and regulations as to which conduct will be governed, but they have agreed to the rules and regulations as to how these disputes will be settled. And they have agreed as to who will settle these disputes.

Now, their agreement of the rules and regulations governing how these--where and how these disputes are to be resolved between the families would be what we have here today is in a court of law. And as I say, you are a representatives from other families who will be selected to resolve these alleged disputes.

Now, we have some basic principles as to how these disputes will be heard and resolved. And I want to state now what some of these

basic principles are.

Of course, the first one of these that will be heard in the court by a Court which is fair and impartial, and it is heard in a court by a jury which is fair and impartial.

In every proceeding, there are two judges: one is a judge of the law; and the other is a judge of the facts.

I, as the judge, have the sole responsibility to make a fair and impartial decision with regard to the law which will be the rules and regulations by which the proceeding is heard and also the law regarding the rules and regulations to which the person is accused of violating.

The jury which is selected has the duty to make a fair and impartial finding of fact, a decision with regard to the facts.

Now, let's get back to the basic principles of the matter that takes place in the courtroom with regard to the defendant or the person who is accused.

A defendant accused of a violation is presumed to be innocent. The accused in a criminal case is presumed to be innocent until proved guilty beyond a reasonable doubt.

This presumption stands unless it has been removed by evidence proving the defendant guilty beyond a reasonable doubt. This is one of the strongest presumptions known to law and attends the accused throughout the trial until overcome by evidence establishing guilt beyond a reasonable doubt.

The presumption of innocence is founded upon the first principle of justice. It is not to protect the guilty, but to prevent, so far as human agencies can, the conviction of the innocent.

During a proceeding, this Court, when the jury has been accepted and sworn to hear the case. During the proceedings, this Court, when we have proceedings for lunch, what have you during the trial, I admonish the jury first during this recess not to discuss the case among yourselves, nor are you to permit anyone to discuss the case with you. You are not to finally make up your mind upon the issues of this trial until you have heard all of the evidence together with the Court's instructions.

The reason for that is that in the proceeding of a trial someone must go first; and of course, someone is last in the regulation of the proceeding.

The one who goes first in our proceeding is the one who has the burden of proof. The one who has the burden of proof is the one who makes the accusation. In this case, this is the Government. They have the burden of proof. They go first. That doesn't mean that after you hear the Government's case, you make up your mind right then or you make up your mind after you hear the first witness. You must hear all the evidence together with the Court's instructions what the law is regarding the offense before you may make up your mind.

After you have heard the evidence together with the Court's instructions, then you go to the jury room. Then you deliberate to consider the evidence which you have heard; and weigh that and compare it to the rules which would be the law which the Court takes in its instruction.

A defendant, as I stated, is presumed innocent. This presumption is not to protect the guilty, but is to protect so far--or prevent as far as human agencies can the conviction of the innocent.

This defendant is presumed to be innocent until you go to that courtroom and consider the evidence. When you consider the evidence

and you are convinced to the exclusion of a doubt that this defendant is guilty of this violation, then the presumption of innocence no longer stands.

THE COURT: Now, we speak of the burden of proof. As I say, one who makes the accusation has the burden of proof.

A Defendant has no burden of proof whatsoever. The Defendant is afforded the opportunity under our system, and may appear in Court with counsel, he can hear the testimony which is presented against him, and he has no duty whatsoever to present any evidence.

And the fact that he doesn't present any evidence, the fact that he doesn't take the stand and testify may not be held against him.

This doesn't mean whether or not you would like for him to take the stand, you think he ought to take the stand, the thing is, he has the right under our system to take the stand or not take the stand.

He can exercise this option, and once he exercises this option, this may not be held against him and considered as evidence or indication of guilt because the burden is upon the United States to prove him guilty to the exclusion of a reasonable doubt.

Now, while this burden which is placed upon the accuser is a heavy burden,

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it doesn't mean that they must prove this case beyond all possible doubt.

It isn't necessary that his guilt be proved beyond all possible doubt, it only **requires** that the Government's proof excludes any reasonable doubt concerning the Defendant's guilt.

A reasonable doubt is what the name says. It is a doubt based upon reason and common sense after careful and impartial consideration of all the evidence in the case.

Proof beyond a reasonable doubt is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs.

While I have said that this case will be tried on evidence, you have two types of evidence.

You have direct evidence, and you have circumstantial evidence. Direct evidence is of the nature where a person stands and sees something happen.

Circumstantial evidence is where the evidence - - you have the evidence but the inferences or deduction which you might make by

reason of - - or ordinary inferences or deductions which a person might deduce.

In other words, let's assume you have a wave coming up on the beach, and as the water goes back down you have a clear beach. If you see footprints going across that beach it is a good circumstantial evidence that someone has walked across that beach, even though you didn't see it.

It's common sense. So that a case is based upon direct and circumstantial evidence, but circumstantial evidence and direct evidence will be heard by you by way of the testimony of the witnesses sitting here which has been placed under oath, and/or exhibits which the Court will permit into evidence.

You try, if you are accepted as a Juror in this case, you are going to try this case solely upon the evidence which is presented here, and the exhibits.

You don't try it on something which might have happened which isn't presented here, such as reading it in the newspaper, hearing it on the radio.

You can't try it on that.

You try it solely upon this, and you don't try it because of sympathy or prejudice, you must exclude that. You try it solely upon the evidence which is presented here.

Now, let me state this. When I say evidence which you hear, evidence that these witnesses give in the Court Room, you will hear me as the Court state what the Law is and sometimes in governing - - making a decision as to the procedures which you will follow, I will make statements in this voir dire proceeding, I will tell you, and I will get to this later, I will say the evidence may reflect in this case that there was drinking.

Automatically you might think well we have got evidence there is drinking, but my making the statement isn't evidence. The evidence is going to be the statement of counsel.

In making this voir dire proceeding, I will make statements with regard to the events, the Attorneys will make statements with regard to the events.

What I say isn't evidence, what the Attorneys say isn't evidence. The evidence is what the witnesses say.

But in stating this, you will not consider as evidence, but we are doing this in order to acquaint you with this to determine if any of you might have some reason why you would not be fair and impartial.

You must remember this. We occasionally have, when we ask a question, a potential Juror who will answer sometimes, and say well I know so and so and something, and you make a statement, and any statement which might be made by anyone in the voir dire proceeding is not to be considered as evidence.

If in making a statement, and these Attorneys are professionals, and the Attorneys on this side of the Court Room are counsel for the Government (indicating), and the Attorneys on this side of the Court Room are counsel for the Defendants (indicating).

They are professionals. All of them have college educations plus law school. They know these rules and regulations.

I would like to state this. The difference between an amateur and a professional is an anateur, he competes and he only sees one side of it. A professional is one who is trained enough

and can compete and who can see both sides of it and still go ahead and follow his obligations on that one side.

Each of these counsel have obligations for their side of the case, and this obligation is to present their evidence in a light most favorable to their client.

Now, after this case is over, it's much the same way like you see the Redskins and the other football teams which play, you see that. They compete, and they try their best to win.

When it is over, the game is over, they are professionals.

These fellows here are trying their best. While you are not to consider what they say as evidence, it doesn't mean you should exclude it, because they may bring something to your attention which might otherwise escape your notice.

Now, in making the statement if it appears that I might have a feeling one way or the other in this case, don't consider it that way, because as a Defendant, is entitled to a fair and impartial Jury, he is entitled to a fair and impartial Court, and I have no feelings one way or the

other in this case.

This is what is called the accusation, which is made in this case, is presented by way of what is called an indictment.

This indictment will be read to the members of the Jury after they have been impaneled.

An indictment is just what it says, it is an accusation, and it isn't evidence of guilt, and the mere fact that the fellow is accused of something shouldn't bring anything in your mind whether he must have done something or he wouldn't have been accused.

There is no such thing. The Defendant is presumed to be innocent.

In an indictment, the law permits for more persons than one to be named in an indictment, and the fact that there are more persons named in the indictment than one, doesn't mean that there is no additional presumption that well there is a group of them, there is bound to have been something done or there wouldn't be a group of them, because each of these are individuals, and each of these persons are entitled to the presumption of innocence.

The Government has the burden of proving each of these Defendants as an individual guilty of the accusation to the exclusion of reasonable doubt, and the Jury must consider each of them separately, and the evidence as was applied to each of them separately.

This indictment contains more than - - now, an accusation is contained in a count.

But this indictment contains more than one count, which means they are accused with more than one violation, and the fact that they are accused with more than one violation doesn't mean they must be guilty of one or they wouldn't be accused of that.

Each count is a separate violation, and each count must be proven independently with regard to each Defendant.

Now, the accusation which is made in this case is what is called a Hobbs Act violation.

A Hobbs Act violation commonly proscribes or prohibits obstruction or delay to Interstate Commerce, obstruction or delay to Interstate Commerce, and that would be a business

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Interstate Commerce, which affect Interstate Commerce by means of a wrongful use of actual or threatened force, violence or fear.

Does anyone on the Jury feel that a law which prohibits or which controls or attempts to regulate business shouldn't be done?

If the United States has no business of trying to regulate business or pass any laws which affects businesses, is there anyone on the Jury which has a mind that such a law is unfair and there should be no such law?

REPORTER'S NOTE: No response.

THE COURT: Getting back to where I said that it is my duty to instruct you as to the Law, when I instruct you as to the Law, a Juror has the duty to accept what I instruct him as being the Law.

They cannot substitute their own opinion as to what they think the law is or ought to be. They must accept what I say the law is.

They cannot single out one part of the Law and ignore the other part of the Law, but they must consider the Law in toto as given by me to the Jury.

This violation, which I am

speaking of - - there are two parts, one is a charge that the Defendants entered into a conspiracy among themselves to attempt to violate the Hobbs Act.

Now, that is an attempt.

Now, a conspiracy is a criminal, in a sense, a criminal partnership. In saying that all of the Defendants, it is alleged, and they deny it, and the burden is on the United States to prove that allegation by competent and sufficient evidence to convince you to the exclusion of a doubt that they did it.

But it is alleged that they enter into a conspiracy among themselves, a partnership, to violate the Hobbs Act.

Now, does anyone on the Jury feel that an attempt, just merely an attempt, should not be a violation, it shouldn't be against the law to attempt to do something?

REPORTER'S NOTE: No response.

THE COURT: Now, the second part of the violation is that they charged them not only with a conspiracy to violate the Hobbs Act, but they charged them even with a completed Hobbs Act violation.

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Now, does anyone on the Jury feel it is unfair to charge a person with attempting to do something and then charging them with having done it also?

Do you feel like that the Government is treating someone unfair by making a law - - making offense to attempt to do it, and making an offense also for having done it?

REPORTER'S NOTE: No response.

THE COURT: All right. I guess stating it in the vernacular, it is charging a fellow with trying to do something and then charging him for having done it.

The Law permits that. If I instruct you as to the Law being that, you have to accept that as the Law.

Now, this alleged violation out of which this indictment arose is a series of events which occurred in Floyd County, Kentucky in the months of January and February of 1982.

It involves, allegedly, two coal companies, one is the JRM Coal Corporation, and the Ray-Mac Coal Company in Floyd County.

It is alleged and denied - - pardon me just a moment.

It is alleged and denied that Edgar Jones was a principal officer - - was the president and principal officer of JRM Coal Corporation; that JRM Coal Corporation was in competition with the Ray-Mac Coal Company.

It is further alleged and denied that Edgar Jones together with Jason Moore, German Stumbo, Drexil Hall, Teddy Kinney, Benny Caudill, Wayne Kenneth Rolland, also sometimes known as Wayne Kenneth Postman, Ranny Blankenship, Eugene Tackett, Harold Moore, Hermit Newsome, Tim Milan, Mose Mead, Donahue Talbert, Austin "Bo" Moore, Pebo Gayheart, Linville Mosley, Raymond Hall, Morris Ray Hall, and Van B. Patton entered into a conspiracy, a criminal partnership, to commit a Hobbs Act violation in that through the use of unlawful force and violence, which is going to be allegedly the shooting of guns, the use of explosive, burning of property to keep Ray-Mac Company from doing its business, or to put it out of business, that is alleged, and as I say, that is denied.

Now, this, as I say, occurred during, allegedly, during the months of January and February of 1982.

Now, has anyone on the

Jury heard this discussed, read about it in the paper, participated in the discussion of it yourself?

Now, when you stand to answer the question, please state your name and Jury number.

MR. SMALL: John Small, No. 144. I am not really familiar with it, but a fellow bowler of mine is a manager of Mr. Jones, and I have heard it discussed.

THE COURT: You heard it discussed.

MR. SMALL: Yes.

THE COURT: Let me ask you this, sir. By reason - - let me state this in the beginning. None of us live in a vacuum. We can't - - all of us are ordinary people, we live in the world and read newspapers, and we listen to the radio and watch television.

By reason of what you have heard, have you formed an opinion one way or the other as to whether these persons did this, or whether or not this occurred, have you formed any opinion ?

MR. SMALL: No, sir.

THE COURT: By reason of what you have heard, you know of any reason that you couldn't sit as a fair and impartial Juror in this case and decide it solely upon the evidence that you hear, and the

Court's instruction?

MR. SMALL: No, sir, I could.

THE COURT: You think you could do that?

MR. SMALL: Yes, sir.

THE COURT: All right, thank you.

MR. SMALL: Sir, I felt compelled to tell you.

THE COURT: Sir?

MR. SMALL: I just felt compelled to tell you.

THE COURT: That is what we want. If you read about it, you heard about it, and that is the purpose of this. That is the purpose of me stating the thing, you remember I said what I said isn't evidence, I am just trying to generally acquaint you with it, the evidence is going to be here (indicating).

What I said isn't evidence.

*** *** ***

MS. HALFHILL: I really don't understand the case that well except that Edgar Jones is my aunt's nephew.

THE COURT: Please state your name and number.

MR. HALFHILL: 153, Peggy Halfhill.

THE COURT: Well, I'll be getting to that later. I'll get to the relations later, but right now I'm just on the hearing. Have you heard about it?

MS. HALFHILL: I heard about it, but I don't understand it.

THE COURT: Just solely upon what you have heard, have you formed an opinion?

MS. HALFHILL: No, sir.

THE COURT: It would not affect your services if you were accepted as a juror or not?

MR. HALFHILL: No.

THE COURT: Thank you.

MR. POE: My name is Isom Poe, No. 168, and I have heard about the situation that we're discussing.

THE COURT: By reason of what you have heard, sir, did you form an opinion, have you got a fixed opinion in your mind as to who is or who is not

or anything whatsoever?

MR. POE: No, I have not.

THE COURT: Thank you.

MS. JUSTICE: 181, Inez Justice. I work for the Kentucky Department of Mines and Minerals and I personally know several of these men, you know, I help license mines and I know them.

THE COURT: Have you heard this case discussed?

MS. JUSTICE: Yes, I have, is that what this is, have I heard?

THE COURT: Yes, it is.

MS. JUSTICE: Yes.

THE COURT: Well -- whether you heard or discussed it or have people talked about it in your presence or you talked to them or you read about it or heard about it, have you heard about it, ma'am?

MS. JUSTICE: Yes, I have.

THE COURT: By reason of what you have heard, have you formulated an opinion?

MS. JUSTICE: No.

THE COURT: Have you got a fixed opinion?

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MS. JUSTICE: No.

THE COURT: So, I assume then by reason of what you said then that what you have heard or what you have read would not prevent you in any way from setting that aside and trying this case solely upon the evidence and the instructions of the Court?

MS. JUSTICE: Right.

THE COURT: I thank you.

MR. HORN: Ulysses Horn, 190. I have read the articles in the Lexington Herald, yesterday and the day before and I vaguely remember reading them when they supposedly occurred.

THE COURT: Would it make any difference?

MR. HORN: No, sir.

THE COURT: Thank you.

Let me explain this as we go along. Remember when I said this selection of the jury would exclude some in one place and you would exclude some on another place. Now sometimes counsel will have to make a decision in exercising his challenge as to which juror is going to be accepted by them. We're going to have approximately ninety-six jurors on this panel, from which

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eighteen jurors are going to be selected. Eighteen jurors is all that's going to be used to try this case. But we have got to have a panel of ninety-six jurors of which to choose.

Many a time in making this selection each side of the courtroom in deciding which juror they want to hear their case, they might be of the opinion this person heard more about the case or this one heard about it and although they could get a fair trial from both of them they would much rather have this juror as to this juror to decide the case. That's why it's necessary for us to get this information so that these counsel here may make the decision.

Now, in this matter, you're going to hear the following names. Let's do this -- you're going to hear the United Mine Workers. Let me state this, some people like the United Mine Workers, some people don't like the United Mine Workers. This trial is not whether you like the United Mine Workers or whether you don't like the United Mine Workers. This question is whether or not the United States proves beyond -- to exclusion of reasonable doubt that these gentlemen committed the acts of which they are

accused. Now, first let's go through and find out which of the members of the prospective jury may belong to the United Mine Workers or if it's a lady, if you have a father or very close friend or relative who belongs to the union, so that may -- it may reflect -- if your husband belongs to the union it's presumed that maybe the wife might have an opinion because of this. Let's find out who has any affiliation with the U.M.W.A.

MR. WELLS: Denver L. Wells, 135. My dad was a member of the United Mine Workers and I have a brother that is a United Mine Worker.

THE COURT: Thank you, sir.

MR. DAMRON: Burla Damron, 149. I draw a United Mine Workers pension.

THE COURT: Thank you.

MS. SPARKS: Patricia G. Sparks, 147. My father is a retired United Mine Worker.

THE COURT: Thank you.

Do all of you understand the purpose for the question we're asking?

MS. JOHNSON: Harriet Johnson, No. 160. My father-in-law is a retired United Mine Worker.

MS. WAKELAND: Elizabeth Ann Wakeland, 162. My father is a retired miner, and I've got two

brothers that work in the union.

THE COURT: Thank you.

MR. DAMRON: Gary Damron, 163. My father is a retired United Mine Worker.

MR. LYONS: James Lyons, 164. My dad is retired from the United Mine Workers.

MS. MAY: Carolina Stanley May, 178. My father is a retired United Mine Worker.

THE COURT: Now, let me ask all of you --

THE MARSHALL OF THE COURT: Excuse me, Your Honor. There's one more.

THE COURT: All right.

MS. CASTLE: Lorraine Castle, 131. My father is a retired United Mine Worker.

THE COURT: Thank you.

The question I have and am going to ask has two sides to it. First is the evidence may reflect many of these gentlemen belong to the U.M.W.A. Would the fact that you have some friend or relative or you belong to the U.M.W.A. before you heard any evidence and the fact that you learned they might be with the U.M.W.A., would this in any way effect your services as a juror in this case in rendering a fair and impartial

verdict, based upon the evidence. Would this be such a sympathy in your mind that you think you could not give a fair and impartial decision in this case. That is one side of it.

The other side is many people don't like the union, I'm sure some of these fellows that have coal companies, they don't like the union. And they would be prejudiced against them. By reason of the fact that they don't like the union or they belong to the union and they could not hear the evidence and give a fair and impartial decision based upon the evidence. Now, is there anyone on the jury panel just by merely -- by the mere fact that the U.M.W.A. is named, and you have members here and possibly you're going to have testimony by official from the union. I think even the president of the United Mine Workers is subpoenaed here as a possible witness in this case. He may or may not testify. But just from those facts alone would any of you have a fixed opinion or such sympathy or prejudices that you can not try this case solely and impartially upon the evidence. Is there anyone?

Mr. Marshall, you may check.

THE MARSHALL OF THE COURT: No, Your Honor.

THE COURT: Thank you. We're going to have these coal companies named now and see if any of you are familiar with them.

Ray-Mac Coal Company, Coal-Mac Coal Company, JRM Coal Company, Circle J Coal Company, JPL Coal Company, RBK Coal Company, Bizzack Coal Company, Bizzack Brothers Construction Company, Biswil, Inc., Bryan Coal Company, Calamity Coal Company, A & A Coal Company, Dye Coal Company, Coal-Mac Sales, Inc., Mack Allen Coal Company, Unit Coal Company, Adkins Coal Company, T & E Coal Company.

Is any member of the jury working for any of those coal companies, as an officer or an employee of that coal company or have any close friend or relative who has been an officer or employee or own any stock in those coal companies, do any of you own any stock or have such a relationship?

Mr. Marshall.

MR. HARWELL: Excuse me, Your Honor.

THE COURT: Okay, we have one more company?

MR. HARWELL: Yes, the Crissie Coal Company.

THE COURT: I'm sorry, Crissie Coal Company.

MR. JOHNSON: Lowell Dean Johnson, 142. The company that I am employed by has done work for Edgar Jones. He's bought equipment there and we service it.

THE COURT: When was the last time this company did business with Mr. Jones?

MR. JOHNSON: I don't know the last time, I'd probably say five or six years ago, maybe, since I've had any association with him.

THE COURT: Let me ask you, sir. By reason of this, would this in any way effect your service as a juror in this case to where you could not try this case solely on the evidence?

MR. JOHNSON: No.

THE COURT: And the Court's instructions?

MR. JOHNSON: No.

THE COURT: Thank you.

MR. RATLIFF: Eddie L. Ratliff, No. 170. The company I work for repairs two-way radios and we service some of those companies that you named,

Bizzack.

THE COURT: Let me ask you this, by reason of that, would that in any way effect your services as a juror or prevent you from trying this case solely upon the evidence alone?

MR. RATLIFF: No.

THE COURT: You think you could try it without prejudice or sympathy?

MR. RATLIFF: Yes.

THE COURT: Thank you.

MR. POE: Isom Poe, No. 168. My company also services some of these people you mentioned.

THE COURT: Would that in any way effect your services?

MR. POE: No.

THE MARSHALL OF THE COURT: That appears to be all, Your Honor.

THE COURT: Thank you.

All right, you're going to hear the following named persons who may or may not be affiliated with these coal companies. I want to see if any of you are related to these persons by blood or marriage or if you go to church with them, belong to the club with them, if you have

any association, economically or socially with these persons.

Earl Adkins, Phillip Adkins, Carson Akers, Greg Jones, Arnold Turner, Jr., Arnold Turner, Sr., Clarence Turner, Nick Cooley, Junior Hamilton, or Earl Hamilton, Jr., Frank Justice, Jim McGee, Lin Parish, Raymond Roger Barker, Danny Blanton, Gene McAdams, Dana Spurlock, Linville Fleming, Danny Newsome, Ralph Mullins, David Stephens, Glenn Hurley, and Abner Justice. Have I ommitted anyone, gentlemen. We're not speaking of witnesses. These are persons that are related or associated with the coal companies, have I ommitted anyone?

MR. HARWELL: Your Honor, I didn't hear you say Lin Parish. I may have missed it.

THE COURT: Lin Parish, anyone else?

Now, is there anyone on the jury related by blood or marriage or is a close friend or relative to this person or acquainted with them?

MR. BROWN: Douglas Brown, No. 130. Business relations.

THE COURT: With whom?

MR. BROWN: Frank Justice.

THE COURT: All right, sir. Let me ask you, sir, I'm sure they want to know the extent, is it just occasional business or what type of business is it?

MR. BROWN: It's a weekly food business.

THE COURT: You supply some of his group with food services?

MR. BROWN: Yes.

THE COURT: By reason of that, sir, do you feel that that would effect your services as a juror in this case, regardless of which side Mr. Justice may be on one way or the other. Would that in any way effect your service as a juror?

MR. BROWN: No.

THE COURT: Sir?

MR. BROWN: No, sir.

THE COURT: Thank you.

THE MARSHALL OF THE COURT: Anyone in this row?

MS. HALFHILL: 153, Peggy Halfhill. Nick Cooley is my cousin.

THE COURT: How much of a cousin, ma'am?

MS. HALFHILL: Half.

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THE COURT: Is he a first cousin or second cousin?

MS. HALFHILL: First.

THE COURT: First cousin?

MS. HALFHILL: Yes.

THE COURT: Do you recognize this relationship -- well, you know it's a first cousin?

MS. HALFHILL: Yes, we're not that close if that's what you mean.

THE COURT: Would this in any way effect your services as a juror in this case?

MS. HALFHILL: No.

THE COURT: Finding against the interests of him, if the evidence is against his interest would be in this case, would that be any problem?

MS. HALFHILL: No.

THE MARSHALL OF THE COURT: Anyone else?

THE COURT: I guess what I should have said, ma'am, if you're convinced that the evidence is against his interests you would have no hesitation in making a decision if it's against his interest?

MS. HALFHILL: If it was against him,

his interest?

THE COURT: If the evidence -- suppose he's interested one way or the other in this case, suppose he appears as a witness and testifies for either this side of the courtroom or the other side. The mere fact that he's interested in it and he's related to you, would that have any bearing on the way you would look at the evidence in this case?

MS. HALFHILL: No, sir.

THE COURT: Thank you, ma'am. Do you understand what I'm asking?

MS. HALFHILL: Yes.

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

THE COURT: Let's do this. The jury will be in recess for fifteen minutes, that will be just the jury.

(Reporter's Note: At this time the Official Court Reporter left the room.)

MR. HARWELL: Your Honor, may it please the Court.

THE COURT: Yes.

(Reporter's Note: At this point the Judge directed the Daily Copy Court Reporter

to keep writing.)

THE COURT: What we have is this: Assuming we don't have enough here we could notify, is it Miss Norris?

THE CLERK OF THE COURT: Yes, Your Honor.

THE COURT: We could notify Miss Norris to start preparing the subpoenas for the jurors that were not reached by telephone so that they could serve those over the weekend and have them come in on Monday.

MR. SELF: Your Honor, on behalf of the United States, we request specifically in that regard.

MR. KEHRLI: Your Honor, we don't have a Court reporter and this is something I think needs to be on the record. The Official Court Reporter is not here. If we get into this and have an argument on this thing.

THE COURT: Well, let's do this. The Clerk tells me those summons have already been prepared and I'm going to direct her to give those to the Marshall. I'm going to direct the Marshall to call Lexington and tell them to get you some assistance up here so that between now and Monday

they will be served.

MR. HARWELL: Judge, as far as Mr. Jones is concerned, there is not going to be any argument. As a matter of fact, this may be one of the few times that I totally agree with Mr. Self's motion. We'd like to get it done.

THE COURT: We've got it on record, gentlemen.

(Reporter's Note: The Official Court Reporter entered the room at this time.)

MS. LINDSTROM: We didn't have it on the record.

THE COURT: I know we didn't. I told you to leave, I sure did.

Now, we'll put it on the record now that the Court has been advised by the Clerk that the persons named on this list who were not contacted by telephone, that she has subpoenas for them and we're going to direct her to hand those over to the Marshall and direct the Marshall to call Lexington and get additional Marshalls to serve these subpoenas and have those persons appear here Monday.

MR. SELF: May it please the Court,

considering that it's now three o'clock in the afternoon -- on Thursday, we will, in all likelihood, we will not even be getting into the voir dire by probably not even the United States. The subpoenas I would imagine call for their appearance on Monday here.

THE COURT: We better say Monday at one.

MR. SELF: I would suggest Monday at one or possibly Tuesday, Your Honor. That's the way it looks like we're going now.

THE COURT: I think we can finish this panel by Monday.

MR. SELF: Your Honor, we have an alternative solution to this, Your Honor. The United States would move at this time to cease the swearing or attempting to qualify a jury in this case and move this case to United States District Court of the Eastern District of Kentucky at Lexington and we can find jurors who have -- a sufficient number of jurors without such a knowledge of the Defendants or matters of this case to try this case. We'd probably pick a jury a lot quicker than we could by trying to get more in here on an emergency basis, --

MR. HARWELL: (Interrupting) Your Honor, may I be heard?

MR. SELF: I'm making this motion in all seriousness, Your Honor. We've been trying to pick a jury for three days and we're in the third day of doing so, Your Honor. And we're still far short of the number of jurors that we need to adequately represent -- adequately pick a jury.

THE COURT: We're wasting time, let the motion be noted and overruled.

MR. SELF: Thank you, YOur Honor.

MR. PAFUNDA: Your Honor, if it pleases the Court with respect to the jury panel, it's the Court's intention to continue questioning the propsective jury panel, and there's one individual, Juror No. 130, Douglas L. Brown. The foreman that returned this Grand Jury indictment, his name is George Brown and I don't want this jury panel that's present here today to be any way tained. And I thought if there was a question to -- any way question No. 130, Mr. Brown, to see if he's related to the foreman that returned the indictment. If he discussed it with him in any manner whatsoever without running the risk of taining the whole panel.

THE COURT: Didn't I ask him if he heard or discussed it in any way?

MR. PAFUNDA: Yes.

MR. SELF: We would hope that the foreman did not discuss anything he heard in the Grand Jury.

MR. PAFUNDA: I would hope so. I am just stating it for the record.

MR. SELF: I realize they're both from the same community, Your Honor.

THE COURT: Didn't I ask the question?

MR. SELF: Yes, you asked him.

MR. HARWELL: Yes, you asked him if he ever heard any discussion, and he said -- I think he said he read it in the newspapers.

May the Court please, I think what Mr. Pafunda may be getting at is what I would like to get at and that is he will be voir dired by the Court's permission by counsel to that relationship and we want to be careful of the facts of the question at that time --

THE COURT: (Interrupting) Well, I think we're getting into this. And before we get into this, we're going to call the list of witnesses

and his name will come up on that.

MR. SELF: Your Honor, I just want to make a note to the Court to ask the jury if they know the counsel or the Defendants in this case.

THE COURT: We've got a long way to go there.

MR. SELF: Yes, we haven't even got to that one and we're talking about witnesses at this point in time.

THE COURT: Well, the witnesses -- let's see, how much time do we have left?

THE MARSHALL OF THE COURT: Three minutes.

THE COURT: Well, let's have five minutes to give everybody a chance to -- the Court Reporter -- let's give everybody a chance to go to the bathroom and get a drink or something like that.

MR. KEHRLI: Your Honor, before we do that, this is a matter of personal preference. I noted this morning that the Court indicated there might be a possibility that we go over till tomorrow. If that happens I need to make some cancellation and hotel reservations.

THE COURT: We are not going over till tomorrow.

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MR. KEHRLI: Thank you.

THE COURT: And I can put this in the record. The world is not going to end if we do not proceed tomorrow.

THE MARSHALL OF THE COURT: This Court will be in recess for fifteen minutes.

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THE MARSHAL OF THE COURT: All rise, please. This court is in session. Be seated and come to order, please.

THE COURT: The evidence may or may not reflect that guns were utilized or used or carried in this matter. Some people may have been injured by reason of the use of a gun or may believe that a person shouldn't carry a gun. Or some people may feel the right to carry a gun is a God-given right, and he has a right to keep a gun, carry it; and there shouldn't be any law restricting the use of guns. Or a person may have the opinion that merely because a person had a gun and fired it that a violation has occurred just from that fact alone.

Now, under our law, a person is permitted to bear arms according to our Constitution. And also under our law we have regulations that a person who has been convicted of a felony may not have a gun and use it. Or a law that a person may not violate the law with a gun, the use of a gun.

Does anyone feel so strongly one way or the other about a firearm that they--that that would affect your services in this case and prevent you from trying this case fairly and impartially and solely upon the evidence and the Court's

instructions? Does anyone have such feelings? Mr. Marshal.

THE MARSHAL OF THE COURT: No response, Your Honor.

THE COURT: Thank you, sir.

Now, just a moment, Marshal. Now, the same way we have with regard to explosives. Some persons may have feelings about dynamite being exploded or something like that. Does anyone have such strong feelings one way or the other about possessing explosives or the use of explosives? Would that taint your consideration of the evidence or affect your consideration of the evidence in any way?

THE MARSHAL OF THE COURT: No response, Your Honor.

THE COURT: Thank you. All right. Let me ask you this. First, we will start this way: Will each of the defendants stand and state your name and your address as a matter of introduction to the members of the prospective jury.

MR. JONES: Edgar Jones, Prestonsburg, Floyd County.

MR. HALBERT: Donahue Halbert, Langley, Kentucky, Floyd County.

MR. MILAN: Tim mIlan, McDowell,

Kentucky.

MR. HALL: Drexil Hall, McDowell, Kentucky.

MR. MOORE: Austin Moore, Meade, Kentucky.

MR. HALL: Morris Ray Hall, Hi Hat, Kentucky, Floyd County.

MR. ROLLAND: Kenneth Rolland, McDowell, Kentucky.

MR. STUMBO: German Stumbo, McDowell, Kentucky.

MR. HALL: Raymond Hall, McDowell, Kentucky.

MR. MOORE: Harold Moore, McDowell, Kentucky.

MR. BLANKENSHIP: Ranny Blankenship, Louisa, Kentucky.

MR. TACKETT: Eugene Tackett, McDowell, Kentucky.

MR. MEAD: Mose Mead, McDowell, Kentucky.

MR. KINNEY: Teddy Kinney, McDowell, Kentucky.

MR. CAUDILL: Benny Caudill, Drift, Kentucky.

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MR. MOSLEY: Linville Mosley, Pikeville, Kentucky.

MR. GAYHEART: Pebo Gayheart, McDowell.

MR. MOORE: Jason Moore, Price, Kentucky.

MR. NEWSOME: Hermit Newsome, McDowell, Kentucky.

THE COURT: Okay, is there anyone on the jury related by blood or by marriage to the defendants, or is anyone on the prospective jury acquainted with the defendants by reason of doing business with them, socially, gone to school to them? We want to know now if anyone knows any of the defendants on the jury.

Mr. Marshal.

MR. JOHNSON: Lowell Dean Johnson, no. 142. I worked for Linville Mosley.

THE COURT: All right. Where did you work with him, sir, and how long did you work with him?

MR. JOHNSON: Eastern Kentucky Mack. And I think it was for about a year.

THE COURT: And how long has it been since you worked for him?

MR. JOHNSON: Oh, probably eight or nine

years ago.

THE COURT: Now, have you had any contact, sir, since that time with him?

MR. JOHNSON: Well, I have met him a time or two at the place of business where I worked, but not within the last four or five years I don't think.

THE COURT: Let me ask you, sir, the fact that you did, would that in any way influence you or affect your services or prejudice you or affect your services as a juror in this case which would prevent you from fairly and impartially deciding this case upon the evidence and the Court's instructions?

MR. JOHNSON: No, sir.

THE COURT: Thank you, sir.

MS. HALFHILL: Peggy Halfhill, 153. Mr. Jones is my Aunt Cooley's brother.

THE COURT: Ma'am, the bottom line.

MS. HALFHILL: Yes.

THE COURT: Would that affect your services?

MS. HALFHILL: I think so honestly, yes.

THE COURT: That is what we are after. Thank you very much, ma'am. Anyone?

MS. JUSTICE: Inez Justice, 181. As I said before, in my work for years, I have known several.

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I am now employed by the Kentucky State Department of Mines and Minerals.

THE COURT: You have known which one of them?

MS. JUSTICE: Several of them.

THE COURT: Which ones specifically?

MS. JUSTICE: Okay, Edgar Jones and several of their faces.

THE COURT: I am not trying to embarrass you, ma'am. These gentlemen, if you know someone, they would like to know how you know them and how long.

MS. JUSTICE: Okay. How I know them is for several years, I worked for Old Republic which was workmen's compensation.

THE COURT: Yes, ma'am.

MS. JUSTICE: And I was connected--and Big Sandy Insurance. I worked there about eight years. So about twenty years I have known some of them and then connected with work and personal. So, you know, I think they are personal friends. And I honestly think it would have a bearing.

THE COURT: You don't think--do you think that would in some way or another hamper you from making a fair and impartial decision?

MS. JUSTICE: I honestly think it would

because I--

THE COURT: (Interrupting) All right, ma'am. Thank you.

THE MARSHAL OF THE COURT: That is all, Your Honor.

THE COURT: Thank you, sir.

Now, will counsel for the various defendants please stand--counsel for the United States--counsel for the various parties please stand, state who you represent and your address.

MR. DAUSE: Ladies and gentlemen, I am Charles Dause. I am Assistant United States Attorney. I work out of the Lexington office. I am a native of Russell County, Kentucky.

MR. KEHRLI: Good afternoon, ladies and gentlemen. My name is Randy Kehrli. I am an attorney for the Department of Justice. I work out of Washington, D.C. I live in Alexandria, Virginia, and I was born and raised near Cedar Rapids, Iowa.

MR. SELF: Ladies and gentlemen, my name is Tom Self. I am an Assistant U.S. Attorney also working out of Lexington. I am originally from Elkhorn City just up the road here.

MR. HARWELL: Ladies and gentlemen, my name is Aubrey Harwell. I practice law currently in

Pikeville, Kentucky; but my office is in Nashville, Tennessee. It is Neal and Harwell. That is where I am from. I was born and raised in a little town south of Nashville called Belt Buckle, Tennessee. I represent Mr. Edgar Jones.

MR. MOORE: Good afternoon. My name is Albert Moore. I work in Nashville, Tennessee with Mr. Harwell's law firm. I live outside Nashville in a town called Hendersonville.

MR. WALBOURN: My name is E. J. Walbourn. I practice law in Ashland, Kentucky, and I live in Ashland. In this case, I represent Mose Mead, Hermit Newsome, Benny Caudill, and Harold Moore.

MR. PAFUNDA: Ladies and gentlemen, my name is Bernard Pafunda. I practice law here in Pikeville, Kentucky, with Deskins and Pafunda. I currently represent Drexil Hall and Austin Moore.

MR. PATTON: Ladies and gentlemen, my name is Jerry Patton. I represent Edgar Jones in this case. My office is in Prestonsburg which is Floyd County. And I am from Maytown which is also in Floyd County.

MR. SPENCER: May it please the Court, my name is Ed Spencer. And I practice law in Paintsville. I was born and raised in Paintsville.

MR. ADAMS: I am Eldred Adams from Louisa, Kentucky. And I was born and raised in Louisa. And I represent Ranny Blankenship.

MR. ROWLAND: Good afternoon, folks. I am Dan Rowland. I practice law in Prestonsburg, Kentucky. I grew up in Floyd County. My client in this case is Mr. Tim Milan.

MR. BRANSEN: Good afternoon. My name is Hershel Bransen. I practice law in Jackson, Kentucky. I am a native of Breathitt County. My client is Donahue Halbert.

MR. HOLLON: Good afternoon, ladies and gentlemen. My name is Tom Hollon. I represent Pebo Gayheart and Morris Ray Hall. I practice law and live in Danville, Kentucky.

MR. THOMAS: Good afternoon, ladies and gentlemen. My name is David Thomas. And I represent Eugene Tackett. And I have an office in Nicholasville, and most of my law is practiced here in Pikeville.

MR. KIRKLAND: I am William D. Kirkland. I grew up in Boyle County at Gravel Switch, Kentucky. My mother's people are from Johnson County. I practice law in Frankfort with the firm of McBrayer, McGinnis, Lindsey, and Kirkland. And I represent Raymond Hall, German Stumbo, Mr. Rolland called Postman,

Teddy Kinney--and who is the other one--Jason Moore, five of them.

THE COURT: All right. These attorneys, as I say, are professionals. And it is their duty to present the evidence in favor of their client in its most favorable light.

Whether an attorney is male or female, whether he is from Pikeville or is from Floyd County, what county he is from or-- Mr. Harwell, he is from Tennessee. Mr Harwell has been here long enough now that I feel he is like a Pikevillian. But nevertheless, all of you understand that has nothing to do with the evidence. The evidence is the evidence regardless which professional is presenting it.

What we want to know now is who may know any of these attorneys. Maybe you have used them as an attorney.

Is anyone on the jury related by blood or by marriage to one of the attorneys, acquainted with them, or has ever used their services?

MR. WELLS: Denver Wells, 135. Mr. Ed Spencer, about two or three months ago.

THE COURT: Who is that, sir?

MR. WELLS: Mr. Spencer.

THE COURT: Mr. Spencer. You went to

him two or three months ago.

MR. WELLS: Yeah.

THE COURT: Let me ask you this, sir. I don't want to get into what he said to you or you said to him. Just generally I want to know if it was preparing a deed or automobile accident? Just what was the general nature of the services?

MR. WELLS: About a dental problem.

THE COURT: About a dental problem?

MR. WELLS: Yeah.

THE COURT: I take it this would be concerning the--possibly the law with regard to a dentist?

MR. WELLS: Yeah.

THE COURT: All right. Now, does he presently represent you?

MR. WELLS: No.

THE COURT: Now, how long ago was it that you went to him and you discussed this matter?

MR. WELLS: It has been several months ago. I don't remember exactly how long. It was back in the fall.

THE COURT: All right. Let me ask you this: Do you understand, as professionals, he sees many people. He represents many people. When you went to him, you relied upon his advice.

MR. WELLS: Yeah.

THE COURT: He is here in this case representing someone else. Because you relied upon him advice at that time, do you think that would make you to have a tendency to rely upon what he is saying at this time or ignore what he is saying here at this time?

MR. WELLS: No.

THE COURT: You accept him as being a professional?

MR. WELLS: Yeah.

THE COURT: In that case and in this case, and you have the duty in this case to consider nothing but the evidence and the Court's instructions to make a fair and impartial decision based upon that.

MR. WELLS: Yes, I would.

THE COURT: All right. Thank you, sir.

MR. DAMRON: Burla Damron, 149. I have used Herbie Deskins. That is his partner over there. I didn't even see him.

THE COURT: By reason of using his partner, do you know that Mr. Deskins is his partner?

MR. DAMRON: Yes, I have seen him in his office.

THE COURT: All right. Now, I assume

that was a workmen's compensation or something of that nature?

MR. DAMRON: Yeah.

THE COURT: Is it still pending? Is it over with?

MR. DAMRON: No, it is over with.

THE COURT: When did he represent you and when was it concluded?

MR. DAMRON: Well, I got Herbie in '77. That was long before he ever got this fellow for his partner. And it was over in I believe '78.

THE COURT: You recognize these attorneys are professionals, and they can't spend a lifetime representing one person. They must represent different people. Would that in any way affect your services in this case, sir?

MR. DAMRON: No, it wouldn't.

THE COURT: Thank you.

MR. LYONS: James Lyons, 164. I am well acquainted with Mr. Spencer. He purchased an automobile from the dealership where I am employed.

THE COURT: When was the last time he bought an automobile from your dealership?

MR. LYONS: 1982.

THE COURT: 1982.

MR. SPENCER: I can't afford a new one, Your Honor.

THE COURT: All right, sir. I assume you sell many automobiles. Let me ask you would this in any way you think affect your consideration in this case?

MR. LYONS: No.

THE COURT: You realize he is a professional.

MR. LYONS: I do.

THE COURT: He has a client in this case.

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

THE COURT: No way will it affect you?

MR. LYONS: No way.

THE COURT: Thank you, sir.

MS. VICKERS: Helen Vickers, 188. I am acquainted with Jerry Patton and Dan Rowland.

THE COURT: How are you acquainted? I am asking these questions before the attorneys do. And I guess we have ten or more attorneys. And if each one of them asked a question, it would take fifteen times longer than me doing it.

Now, you just tell us how

you are acquainted?

MS. VICKERS: Well, I am acqainted with Jerry. My husband is the president of the Kiwanmis Club in Prestonsburg. And I am acquainted through that.

And Dan and I went to church together back a few years ago.

THE COURT: This is a social acquaintance?

MS. VICKERS: Yes.

THE COURT: Is it a close acquaintanceship, ma'am?

MS. VICKERS: Well, I consider Dan closer than Jerry because I have known Dan longer.

THE COURT: All right. But is it close to the extent that it might influence you or prejudice you in considering the evidence in this case?

MS. VICKERS: I really don't think it would.

THE COURT: Thank you, ma'am.

THE MARSHAL OF THE COURT: That is all, Your Honor.

THE COURT: Thank you, sir. You said no?

MS. VICKERS: I said no.

THE COURT: All right. A lot of times we shake our head yes and no, but we have to get it on the record. Thank you.

Now, let me get this. I am going to give you a list of witnesses of persons who may or may not testify in this case. And then after we do that, we are going to inquire if any of you know these persons or are acquainted with them. Now, as I said, the witness comes in. He is under oath, and he testifies. These witnesses here, as I said, one of them, a potential witness is the president of UMWA.

We are going to have testifying here government agents of ATF. We are going to have various types of witnesses of titles, certain titles. We are going to have some witnesses who might have quite a bit of money to testify. That is the names of these various coal companies. We may have witnesses that don't have any money who are going to testify. We are going to have all types of witnesses.

THE COURT: The Law says that you have to listen, you have to listen and when you listen, that means you must listen, listen to them and consider it.

You can't just exclude it automatically because a person is a rich person and you don't like a rich person.

You can't listen to it and accept it or exclude it because he might be a high official of a Union, or an agent for the Government.

Those things, those titles, those status doesn't automatically entitle evidence to any particular weight.

You are the ones who determine what weight is to be given to the evidence.

Weight is credibility, believability. As these persons testify, you do not have to believe all of them the same, you do not have to give each witness exactly the same weight, you are the ones if accepted as a Juror who will make the determinations, but you cannot exclude merely because of who they are, nor give them more weight merely because of who they are.

You will be given factors and suggested factors which you will use in determining

what credibility you have to give it, and one will be what is the relationship of the witness to the persons who are on trial, what is the relationship of the witness to the person who may have called him to testify, what is the interest of this witness in the outcome of this case.

You may consider the manner in which the witness testifies, whether he is a basic, whether he is forthright in his testimony.

You might consider the opportunity which the witness had to observe that about which he is testifying, or acquire knowledge about which he is testifying.

You may consider the witness's candor, his fairness and intelligence, and mainly the extent to which this witness's testimony is being supported or contradicted by other evidence in the case.

Let me ask you this. Just merely because a person might be an official for the Union, or official with the Government, or because of their financial status, would anyone here just automatically exclude or refuse to consider what their testimony was, or give it more weight just because of the person's status without considering anything

else?

Is there anyone else on the Jury which is of that mind?

Mr. Marshall, will you please.

MR. SMALL: 144, John Small. The company I am employed with, we are nonunion, and I am in management.

THE COURT: Yes, sir.

MR. SMALL: And we have been trained antiunion as far as our management training, and I have formed a strong opinion on Unions, and I am afraid that would possibly have some bearing on my judgement.

THE COURT: Do you think that would prevent you from considering the evidence in this case?

MR. SMALL: Yes, sir.

THE COURT: In making a fair decision?

MR. SMALL: Yes, sir.

THE COURT: Thank you, sir.

Anyone else?

THE MARSHALL OF THE COURT: That is all, Your Honor.

THE COURT: All righty. Now, let me

state this. Merely because the person's name is given to you doesn't mean that this person will testify, it is only the possibility that this person will testify.

Merely because a person was called as a witness by one side doesn't mean that the evidence can't be considered for the other side.

In a sense, a witness belongs to no one, and the witness belongs to the Court, and you will consider the evidence as the evidence is developed and as it appears to you to be.

Now, these persons may or may not be witnesses.

Pearl - - no, Phillip Booth of High Hat; Pearl Booth of McDowell; Jack Moore of McDowell; Basil Ray Moore, East McDowell; Phillip Dale Moore of Price; Van Patton of Floyd County; Phillip Caudill, McDowell; Wendell Ray Newman, Jack's Creek; Sam Bentley, McDowell; Ricky Dye, Hite; Danny Blanton, McDowell; Ralph Mullins, McDowell; Danny Newsome, McDowell; Abner Justice, McDowell; Ed Tackett, McDowell; Lee Jones, McDowell; James Mullins, McDowell; Linville Fleming, McDowell; Doug Tackett, Wheelwright; Doris Osborn, and we already mentioned Van Patton; and Doctor Richard

Granager.

Now, I might call a person-'s name two or three times, but just ignore the duplication because my records are well duplicated.

Raymond Pete Barker of Stopover; Billy Lykins of Pikeville; Duran Adkins, Shelbiana; Robert O. Cole, Pikeville; Ranson Prather, Jr., Phelps; Frank Justice, II., Pikeville; Lawrence Bentley of Teaberry; Heavia Stephens of London; David W. Stephens of Whalen; Eugene Maynard of Pikeville; James Glenn Hurley of Argo; Thurman Woody Barker of Stopover; Allen Jacobson of Pikeville; Billy Jean Hurley of Jamboree; Harrison Hurley of Stopover; James Rowe of Pikeville; Walter Blackburn of Drift; Frank Soctt of Floyd County; Ernie Justice of Pikeville; Louis Burke of Weeksbury; Billy Ray Justice, Pikeville; Donald T. Bohnert, Charleston, West Virginia; Glenn Parrish of Pikeville; Gene Michael McAdams of Pikeville; Frank Justice of Pike-ville; Jim McNee of Pikeville; Arnold Turner, Jr. of Floyd County; Arnold Turner, Sr. of Floyd County; Nick Cooley of Floyd County; Ray Carlson, Floyd County; Junior Hamilton of McDowell; Junius Martin of Martin, Kentucky; Clarence Cob Turner of Martin, Kentucky; Frank Elzer, Floyd County; James - - no,

Jack Folcus of Richmond, Virginia; David Padgett of Columbia, South Carolina; Michael Fulner of Columbia, South Carolina; Dennis McCallister, ATF, Washington, D.C.; Robert T. Farrara, ATF, Ashland, Kentucky; Frank Eddy, ATF, Lexington, Kentucky; Frank Rapier, ATF, Lexington, Kentucky; John Sims, ATF, Lexington; Richard Kemp, ATF, Charleston, West Virginia; Paul Schnaply, ATF, Louisville; Larry McCune, ATF, Washington; Willard Washington, ATF, Washington; Vernon McCloud, ATF, Washington; R. J. Meyers, ATF, Ashland; Robert Forsythe, KSP, Pikeville; Danny Castle, KSP, Pikeville; Allen Emmon, KSP, Pikeville; J.B. McKinsey, KSP, Pikeville; Kenneth D. Board, KSP, Pikeville; Danny Williamson, KSP, Pikeville; James Stephenson, KSP, Pikeville; George C. Brown, Mr. Brown was a Grand Jury Foreman; custodian of records, First Guaranty Bank, Martin, Kentucky; Don Wheatman of Pikeville; the records custodian of the Thomas Hereford Company of Prestonsburg, Kentucky; Ron Whalen and John McCall of Bluefield, West Virginia; Dennis Joe Maynard of Pikeville; Ballard Mosley of Minnie; Irwin Colley of Prestonsburg; Otto Frasier, Anna Rae Hall, Henry Hamilton, Jr., Gary Miller, Lacinder Stewart, Herl Stumbo, Harry Wallen, Angie Elliott, Leslie Hamilton,

James G. Hurley, Dennis Joe Maynard, Henderson Hillen, Jr., P. Geheart, Jake Moore, Phillip Moore, Ricky Moore, Walker Blackburn, Willie Moore, Melford Geheart, Bobby Justice, Ernie Justice, Doug Tackett, Walter Blackburn, Chester Newsome, Frank Justice, James Ramsey, Raymond Seay, Richard Crumpter, and J. B. Traud, Van B. Patton, Phillip Booth, Herl Booth, Betty Little of Price, Elmer Ray Johnson of High Hat; Bob Hamilton of McDowell; Darrell Stanley of Jack's Creek; Jim Price of High Hat; Mary Ellen Wilson of Bypro; Louis Farrer of Bypro, Thomas May of Wheelwright; Wilbur Shorty Jamison of Bypro; Gary Rose Ligon and Gary McCoy of Wheelwright.

Let's see, Bloyce Caudill, Basil Ray Moore, Harold Stumbo.

Hsve I missed any of them, gentlemen?

MR. HARWELL: No, sir. May the Court please, there is one maybe typographical error, Robert O. Cole, Your Honor, that should be Robert D. Cole.

THE COURT: What is his address?

MR. HARWELL: Robert D. Cole, Pikeville, Kentucky.

THE COURT: Robert D. Cole, Pikeville, Kentucky.

Any more gentlemen?

MR. HOLLON: Your Honor, Jim Page of Price.

THE COURT: Jim Page of Price, all right.

Is there anyone on the Jury related by blood or marriage, or acquainted, or acquainted with any of those names of potential witnesses?

Remember, they are potential witnesses only, and merely because a person's name is called and is subsequently developed that they don't testify, there is to be no inference one way or the other.

Raise your hand.

THE MARSHALL OF THE COURT: Yes, sir, Your Honor.

MS. HALFHILL: Peggy Halfhill, 153, Nick Cooley is my first cousin.

THE COURT: I think you previously stated that.

And by reason of the acquaintance that you have, or the relationship you

have with Mr. Jones, you couldn't fairly try the case? I mean, you would have feelings in the case.

MS. HALFHILL: Yes, sir.

THE COURT: And you feel you couldn't give a fair and impartial decision on the evidence?

MS. HALFHILL: Yes, sir.

THE COURT: Thank you.

MR. LYONS: James Lyons, 164. Detective DeBoard, I know him as a customer.

THE COURT: He likewise has done business with you?

MR. LYONS: Right.

THE COURT: What do you sell, Fords, Chevrolets, what?

MR. LYONS: Pontiacs and Buicks.

THE COURT: Pontiacs, all right. Sounds like you do a good business.

Well, let me ask you this, sir. If Mr. DeBoard, regardless which side he presented evidence, he is presenting evidence for the Court, but he may be called by one side or the other, or both sides. Would that in any way affect your services as a Juror in this case?

MR. LYONS: No, sir.

THE COURT: Thank you.

MS. JUSTICE: 181, Inez Justice. I work with Junior Hamilton's sister at the Department of Mines and Minerals and I used to work - - Big Sandy Insurance for Julius Martin, you also mentioned him.

THE COURT: I believe you said previously didn't you say, Ma'am - -

MS. JUSTICE: Yes. I thought you were still talking to all of us, I'm sorry.

THE COURT: No, that is good, that is what we are wanting. We are wanting people to talk in this, but thank you, Ma'am.

Anyone else?

MS. WALLS: Helen Walls, 141 and I know one of the Defendants, I work for an insurance company and he is one of our insureds.

THE COURT: Do you know one of those potential witnesses?

MS. WALLS: Yes, sir.

THE COURT: Who is that, Ma'am.

MS. WALLS: Ricky Dye.

THE COURT: Let me ask you this, Ma'am. What kind of acquaintance is that?

MS. WALLS: It is just through insurance, we have them, he has insurance where I

work.

THE COURT: All right. Would that in any way affect your services as a Juror if accepted, Ma'am?

MS. WALLS: No, sir.

THE COURT: All right.

THE MARSHALL OF THE COURT: Anyone else?

REPORTER'S NOTE: No response.

THE MARSHALL OF THE COURT: That is all, Your Honor.

THE COURT: All right. Now, let's get back to the drinking. I think I mentioned the evidence might reflect, and it is alleged and denied that while this occurred, there might have been some drinking going on. Some people have an aversion to alcohol, and just because they have an aversion to alcohol they don't want anything to do with alcohol.

They don't want anything to do with people that drink alcohol, and they think that anyone that drinks alcohol has done something just by reason ot the fact that they are drinking alcohol.

On the other hand, some people like to drink alcohol and take a social drink, and they don't see nothing wrong with it.

Would anyone, any member of the Jury just by reason of the fact that there is evidence, or that there was alcohol and the person may be drinking, would that prevent you from fairly and impartially considering this case in deciding the case solely upon the evidence and the Court's instructions?

Is there anyone who has such an aversion, one way or the other, that you would think that would color your view of the evidence, or distort your view of the evidence?

THE MARSHALL OF THE COURT: No response, Your Honor.

THE COURT: All right. The last question, then I'm going to permit the Attorneys to ask you questions.

What both sides of the Court Room is wanting in this case in making this decision is a fair and impartial decision.

They are not asking that you be prejudiced in their favor, they are not asking that you be prejudiced against them, they are just asking a fair and impartial decision.

With that in mind, do each of you members of the Jury feel that if this

was the case which is being decided against you, that you would be satisfied with yourself sitting as a Juror to fairly and impartially decide the case?

Do all of you understand what I'm asking you? Are each of you satisfied that you can fairly and impartially decide this case, and are you satisfied to the extent that if you were the one who was the subject of this dispute, would you be satisfied with yourself being a Juror in this case?

REPORTER'S NOTE: (No response)

THE COURT: Do you want five minutes before you start?

MR. HARWELL: If the Court please, do you wish to get into the personal problems or has that been done outside of counsel?

THE COURT: No, it hasn't been. I guess I better do that.

Now, this case, some say it is going to take eight weeks to hear this case, some say it is going to take four weeks to hear this case, and some say it is going to five, and some say it is going to take six.

We don't know how long it is going to take to hear this case.

Do you know there is quite a big list of potential witnesses, they have a number of Defendants, we have several charges, and it's going to take considerable time to try this case.

You know, I told you someone is going to have to try the case and the excuse which you have you are giving to the person who is next to you, and you say well I would like to do it but I think you can do it better than I can, because - - so now, let's hear your excuses, why you think there is something which would prevent you from sitting here and fairly and impartially considering this evidence.

The Court understands this, if you have someone dying, I do understand that, and it would be very difficult to sit here and listen to this case if someone is dying.

But let's at this time, if anyone has an excuse, why they think they can't serve in this case, let's hear it.

MS. WAKELAND: Elizabeth Wakeland, 162. My dad is going in the hospital this weekend for surgery for cancer.

THE COURT: Wait just a moment now.

He is going in the hospital?

MS. WAKELAND: Yes.

THE COURT: This weekend for surgery?

MS. WAKELAND: Yes.

THE COURT: If it isn't too personal, Ma'am, what kind of surgery is it?

MS. WAKELAND: I don't really know.

THE COURT: Well, do you have any idea how long he will be there?

MS. WAKELAND: It will be a week.

THE COURT: How old is your father, Ma'am.

MS. WAKELAND: Seventy-two.

THE COURT: What is your - - did you give your name and number?

MS. WAKELAND: Uhhuh.

THE COURT: All right. Just remain standing, Ma'am. Are you married or single?

MS. WAKELAND: Single.

THE COURT: You live at home?

MS. WAKELAND: Uh-huh.

THE COURT: And is your mother at home, too?

MS. WAKELAND: (Nodding head affirmative)

THE COURT: All right. You don't know the nature of the operation, Ma'am?

MS. WAKELAND: (Shaking head negative)

THE COURT: But you think he might be in the hospital a week?

MS. WAKELAND: Or longer.

THE COURT: Did you say he had cancer, Ma'am?

MS. WAKELAND: Yes.

THE COURT: And he is going in - -

MS. WAKELAND: (Interrupting) But he has already been in there once and had surgery, and he went back to the Doctor and the Doctor is admitting him again.

THE COURT: Thank you, Ma'am.

THE MARSHALL OF THE COURT: Anyone else?

MR. HORN: Ulysses G. Horn, really I prefer to be called Gene, I don't like that first name, but I am stuck with it.

As I indicated earlier, I am a Middle School principal and I do feel an obligation for this Court, but if you have ever fooled with kids, you also feel an obligation to them.

If I understood you correctly, you said this could possibly last three months?

THE COURT: No, sir.

MR. HORN: Three weeks, six weeks?

THE COURT: Three weeks, four weeks, five weeks, six weeks, yes, sir.

Now, let me state this. The case will be tried Monday, Tuesday, Wednesday and Thursday, and we are off Friday.

MR. HORN: Like I said, six weeks possibly, you know, away could, you know, - - I would hate to stay away that long.

I will leave it up to the Court maybe to decide whether I should stay.

THE COURT: Well, in weighing the excuses, you understand we have to get a Jury?

MR. HORN: I understand that.

THE COURT: We have to put the excuses up and make and weigh which is the most extreme, which would be the least inconvenient.

Everyone is going to be inconvenienced.

MR. HORN: That is my only reason is the fact that I would be away from a school of fifteen teachers and three hundred students and with no assistant principal or anything of that nature.

THE COURT: You have no assistant?

MR. HORN: No, sir. And I would ask to be excused, but yet understanding that if I am

selected, I will be here and I will serve.

THE COURT: Thank you very much.

THE MARSHALL OF THE COURT: That is all, Your Honor.

THE COURT: All right. Now, does the members of the Jury, or anyone else desire a recess or do we want to get on with it?

All who would like to have a recess, raise your hand. Does that go for counsel, or just the Jury?

THE COURT: All right. You may inquire on behalf of the United States.

MR. DAUSE: Thank you. If it please the Court, may I turn the podium around?

THE COURT: Yes, sir, please do.

MR. ROWLAND: Your Honor, may I bring one thing to the attention of the Court before the U.S. Attorney starts?

THE COURT: Yes, sir.

MR. ROWLAND: Mr. Poe, I believe in the past that I have represented some members of your family. You may have forgotten, it's been some time ago, and also I think I have - - is Lillie Parker your mother-in-law?

MR. POE: Yes.

MR. ROWLAND: I have a continuing relationship with Lillie Parker. You may not know that.

MR. POE: Yes, I do know that now. You made out our will.

MR. ROWLAND: Okay. Rather than have it come up later, I just wanted to make - -

MR. POE: (Interrupting) I would like to say, Your Honor, that I have worked in Prestonsburg forty years, and I know a lot of people in Floyd County.

THE COURT: Yes, sir. Well, let me ask you this, sir.

I am not saying whether you like your brother-in-law or you don't like your mother-in-law, I am not asking you that - -

MR. POE: (Interrupting) My mother-in-law eats three meals a day at my home, and I don't know that that's liking her.

THE COURT: Now, do you think by reason of the fact that he may have done some legal work for your mother-in-law, or maybe the attorney for some of the members of your family at the present time, would that in any way create any feelings with regard to you in consideration of this evidence, or do you

think you can try it solely upon the evidence?

MR. POE: I think I can, sir.

THE COURT: All right.

MR. DAUSE: Thank you, Your Honor.

Ladies and gentlemen, as I said before, my name is Charles Dause, and I am Assistant United States Attorney and I appreciate the frankness with which you responded to the Judge's questions, and the questions that I am going to ask you, and certainly hope you will be equally frank in answering those.

The first thing I would like to ask you in the way of general question is whether any of you have any religious , Moral, ethical or political beliefs which make it impossible for you to sit in judgement on the fate of another human being?

REPORTER'S NOTE: No response.

MR. DAUSE: As I see no hands and no one rising, I take it that none of you do?

REPORTER'S NOTE: (No response)

MR. DAUSE: Do any of you, or are any of you presently employed or have any close relatives or close friends that are employed with the Federal Government?

Yes, sir, would you rise and state your name and number, please?

MR. RATLIFF: Eddie Ratliff, 170. My father is a Federal Mines Inspector.

MR. DAUSE: Does he work for I Ensure?

MR. RATLIFF: Yes.

MR. DAUSE: Thank you, sir.

Anyone else have any close friends or relatives that work for the Federal Government or any of its agencies? Any of you personally, your close family or close friends, have at this time any disputes, or have had in the past, any disputes with the Federal Government, or any of its agencies? That dispute could be a civil lawsuit, could be a run in with the Social Security Administration, or any other agency of the United States?

Any of you had any serious disputes, and that would include the IRS too, most of us have had disputes with them.

REPORTER'S NOTE: No response.

MR. DAUSE: I see no response to that either.

Now, as the Judge has

already told you, there will be potentially a large number of witnesses in this case, some of those witnesses as you have heard are agents of investigative or law enforcement agencies, Bureau of Alcohol, Tobacco and Firearms, or the Department of the Treasury of the United States, Kentucky State Police, could be others.

Any of you close friends or relatives, had any disputes with any law enforcement agency which caused you to hold ill feeling toward any law enforcement agency, City Police, County Police, State Police, Park Rangers, anything?

*** *** ***

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(502) 587-6006

I see no response to that. I take it none of you have.

Now, this part of the country has a considerable number of federal reservations, recreational areas. Those areas that are -- the title of the property is held by the United States. On those reservations, if you're stopped and given a parking ticket or a speeding ticket or anything like that, that's been given to you by a federal officer.

Have any of you had any run-ins with those kinds of federal officers; on the waterways, that would include those also?

I see no response to that either.

Before coming today and beginning this voir dire process excluding the Clerk's office and the United States Marshall service, both of whom are members of the Court's family, and their jobs involve processing you all to be here. Excluding those two groups, has any federal officer, agent, contacted any of you?

On the flipside of that, has anyone that purports to represent any of the Defendants in the way of an attorney, a

personal friend, investigative agent, or anyone else contacted you on behalf of the Defendants?

I see no response to that either and I take it there is none.

Now ladies and gentlemen, going through the witness list, that large witness list again, there's persons that potentially would be witnesses in this case who could fall into one of two categories. One would be somebody who perhaps the evidence would show was in some manner involved in this set of facts underlying this case, who has not been charged. There's no charges pending against him or her.

The other group would be people that potentially were involved in the same set of facts who have entered guilty pleas to a various charge in Federal Court and are testifying concerning the underlying facts. Those guilty pleas being entered pursuant to plea agreements with the United States.

Now, I would ask you, ladies and gentlemen, to think and see if knowing those facts or if those facts were presented to you, if those facts would cause you to disbelieve and reject the testimony given to you bypeople that fall

in either category?

I take it as I see no response that those facts alone would not cause you to disbelieve the testimony of the persons I've just described.

Does the fact or if the fact were to arise that some individual did not testify who potentially was involved in this same underlying set of facts, and has not been charged in any fashion, would that cause you to think that there is something unfair that had occurred, and therefore, other persons who happen to be on trial should not be convicted either?

Would any of you feel that -- if you felt like someone else should have been charged and they were not a Defendant in this trial, therefore, you would reject the charges against the Defendants who are on trial?

As I see no response I take it none of you would reject the case against certain Defendants merely because you thought others should have been included?

Any of you ladies and gentlemen personally, spouses, close relatives, close friends, involved in the business of dealing

in firearms?

MR. POE: I'm involved in the business of dealing in firearms.

MR. DAUSE: Would you state your name and number, please, sir?

MR. POE: Isom Poe, No. 168.

THE COURT: Just hold on for a second, please.

(Reporter's Note: At this time the Court was speaking to the Clerk at the Bench.)

THE COURT: You may proceed, sir.

MR. DAUSE: Thank you, Your Honor.

State your name and number, please.

MR. POE: Isom Poe, No. 168.

MR. DAUSE: And you work for an explosive company?

MR. POE: Yes.

MR. DAUSE: Do you have any contacts with individuals who sell firearms in the sense of rifles, shotguns, pistols?

MR. POE: No.

MR. DAUSE: Now, in the explosives business, would you tell me just briefly what it is you do?

MR. POE: Well, I have done a little bit of everything. I sold some at least for a while. I was a salesman for a while. Now I'm called -- they've got me classified as a parts man and I work in the garage.

MR. DAUSE: Are you trained in the use of dynamite?

MR. POE: I'm not trained in the use of explosives.

MR. DAUSE: Have you ever used them to any extent?

MR. POE: No, I have not. I was called a delivery man.

MR. DAUSE: Thank you. Anyone else? Yes, ma'am. Would you stand and state your name?

MS. HALFHILL: Peggy Halfhill, No. 153. Are you asking if we know someone that sells explosives or dynamite?

MR. DAUSE: Someone with whom you have a close family or personal relationship?

MS. HALFHILL: My husband, he sells explosives for DuPont Corporation.

MR. DAUSE: Is he trained in the use of explosives?

MS. HALFHILL: Yes.

MR. DAUSE: Anyone else, either with dynamite or explosives or guns, rifles, pistols, shotguns, anything of that nature that use it for business primarily, but even maybe for a hobby, buying and selling shotguns.

Thank you.

His Honor has already alluded to and discussed the potential involvement of the United Mine Workers. Without getting into what His Honor has discussed, I'd like to ask you have any of you had any family or close friends been involved in a picket or work stoppage or strike situation with the U.M.W.A.?

Any of you?

MR. SMALL: Yes, I have been a foreman and where I was employed I've been told to cross the U.M.W.A. picket.

MR. DAUSE: All right, in those situations have there been any violence that's occurred?

MR. SMALL: Yes.

MR. DAUSE: Yes, and I think you already said that that effects your opinion. Is that correct?

MR. SMALL: Yes.

MR. DAUSE: I thank you.

MR. DAMRON: Gary Damron, 163. I'm with the railroad transportation and I had a work stoppage and strike, but it did not effect me.

MR. DAUSE: Through the U.M.W.A. strike?

MR. DAMRON: Yes.

MR. DAUSE: And in those strikes you have been an employee of the railroad and that has affected your work, is that correct?

MR. DAMRON: Yes.

MR. DAUSE: Any violence in those strikes that you've been involved with?

MR. DAMRON: No.

MR. DAUSE: Thank you.

Anyone else?

Now, the two gentlemen that arose and have spoken, really, it's more went to this question than the last one, but besides those two gentlemen, have any of you been involved in a company that has suffered in effect from a work stoppage, picket or strike?

Yes, sir.

MR. POE: Isom Poe, 168. If you've

worked in explosives then you've been stopped by pickets.

MR. DAUSE: All right, sir. Thank you.

Now, ladies and gentlemen, I have a very limited number of questions I want to direct to some of you. It's no effort on my part to pry into your affairs. As you've heard already the whole purpose of doing this voir dire is to come up with a jury that can try this case that will be fair and impartial to both sides. So please take no personal offense from the fact that I asked a few people some specific questions. Certainly nothing is meant by it.

Miss Wakeland, Juror No. 162, would you stand, please.

We noted that you lived in Shelbiana, is that correct?

MS. WAKELAND: Yes.

MR. DAUSE: Are you in any way affected by Coal-Mac's Coal Company and Tipple in Shelbiana?

MS. WAKELAND: No.

MR. DAUSE: Do you live fairly close to it?

MS. WAKELAND: About a mile or two up from it.

MR. DAUSE: But the presence of that Tipple there causes you no problems?

MS. WAKELAND: No.

MR. DAUSE: Have you ever been an employee of the Pike County Board of Education?

MS. WAKELAND: No.

MR. DAUSE: I thank you.

Juror No. 131, Lorraine Castle. Is that your name?

MR. CASTLE: Yes.

MR. DAUSE: We note that you were from Magoffin County, I believe?

MS. CASTLE: No, I'm from Johnson County.

MR. DAUSE: I'm sorry. Are you related in any way to Lillie Mae Castle of Magoffin County?

MS. CASTLE: No.

MR. DAUSE: Thank you.

Mr. Ratliff, No. 170. I forgot to ask you a minute ago what your father's name was, a minute ago, that worked for Emsure.

MR. RATLIFF: Burla.

MR. DAUSE: Burla Ratliff. Thank you. Do you have any -- in your family situation do you have any involvement with the U.M.W.A. I don't recall if you answered that question before.

MR. RATLIFF: No, I don't.

MR. DAUSE: Thank you, sir.

Juror No. 167, Goldina McCown.

As you all have heard, we have a gentleman here on our side of the podium, Mr. Self, who is from Pike County. And he was curious, I'm the only one that's allowed to speak here in this particular set of voir dire. But he was curious if you were related to the John McCown that ran a grocery store down there in Pike County?

MS. McCOWN: No.

MR. DAUSE: Thank you.

My final question, ladies and gentlemen, is simply, is there any reason that I have not touched upon or the Judge has not touched upon in his questions to you that you feel like you would have a problem or could not sit as a juror in this case without being able to objectively weigh the facts that come to you only by the evidence

introduced into the trial and apply the law as the Judge gives it to you. Do you have any problems that we have not touched on?

I take it there's no response that you do not have any.

Thank you very much.

THE COURT: Before we go to Mr. Harwell. The gentleman that has the pacemaker.

Did you say -- how do you -- do you have to go to the doctor's office and sit and wait?

MR. DAMRON: Once a month or maybe twice a month.

THE COURT: Do you have to make an appointment and sit and wait?

MR. DAMRON: Yes, my next appointment is January the 9th, but if I have any trouble I have to go before.

THE COURT: Thank you, sir.

Mr. Harwell.

MR. HARWELL: Ladies and gentlemen, I have stood up and introduced myself. But with all the people on this side of that bar compared to those on that side you can't be expected to remember us so I'm going to reintroduce myself.

My name is Aubrey Harwell and I am a lawyer. Most of the time except of late I practice law in Nashville, Tennessee. I am the attorney for Mr. Edgar Jones. Mr. Jones, stand up one more time for these folks can see you. You can sit back down.

You know Judge Unthank refers to us folks as professionals. And he said professionals and amateurs are different and there's a little speech he makes about that, but I agree with him. But one of the things that he may or may not have said to you is that professionals does this sort of thing or a lawyer does this sort of thing over and over. Everytime I stand up to do voir dire I try briefly in my mind's eye to put myself in the position of the people sitting out there. And when I do that, I'm always compelled to say what I'm going to say to you now. That is I'm doing a job. I'm going to ask some questions just as these other gentlemen have and please understand that I'm not trying -- I'm not trying to embarrass you or get into your personal lives. I'm merely trying to ask those questions that in my opinion are calculated to give me and all these lawyers and the Judge as well some information.

Information that we can use in making a determination about who will or will not end up on this jury. We have done this with other panels in this courtroom earlier this week. In looking over the various names on various panels, this area is somewhat like Nashville, there's a lot of similar names up here.

Coleman for example and Harwell are very common names in Nashville and I'm related to some Harwells and some I am not. I would like to ask No. 149, Ms. Damron, am I right, have I got my numbers wrong -- Mr. Damron, excuse me. If you could stand up for just a minute, sir.

Mr. Damron, are you related to Mr. Gary Damron of Robinson Creek, or do you know?

MR. DAMRON: I don't know.

MR. HARWELL: All right, sir. Are you related to a man named Timothy Damron in Pike County? Does that name ring a bell with you?

MR. DAMRON: No, it doesn't.

MR. HARWELL: Thank you, sir.

No. 145, Miss Brenda Gail Owens Looney.

Miss Looney, are you related to Edward Looney of Belcher?

MS. LOONEY: No, I'm not.

MR. HARWELL: Thank you, ma'am.

I've got one or two more here with the same last name.

Denver Wells.

Mr. Wells, are you any kin, sir, to Marcus Wells of Martin County?

MR. WELLS: Not that I know of.

MR. HARWELL: Thank you, sir.

Mr. Lowell Dean Johnson. Mr. Johnson, are you related to a lady named Harriet S. Johnson from Pike County?

MR. JOHNSON: I don't know her.

MR. HARWELL: You don't know her, all right. Are you related to a lady named Magdaline Johnson out of Weeksburg?

MR. JOHNSON: I don't know her either.

MR. HARWELL: And how about a relationship with a fellow named Harold Wayne Johnson out of Magoffin?

MR. JOHNSON: I don't know him either.

MR. HARWELL: Thank you, sir.

There's a few questions

that I want to ask that I don't think have been posed by the Court or by Mr. Dause.

I'd like to direct these to all of you as a panel. And if I could impose on the Marshall, if any of you answer yes, then I'll take your answers one at a time.

Have any of you all ever been employed in law enforcement? Be it by the federal government or by state government or by county or by a private investigative or security firm. If you have, will you hold up your hand? I'd like to talk to you one at a time if I might.

Yes, sir.

MR. HORN: I have been a Deputy Sheriff briefly because my father was a High Sheriff of Martin County and I had a brother-in-law that was High Sheriff at one time.

MR. HARWELL: How long ago has that been?

MR. HORN: About twenty-five years ago.

MR. HARWELL: No law enforcement functions that you've done in the past twenty-five years?

MR. HORN: No.

MR. HARWELL: And am I correct, sir, in assuming that your experience some years ago would have no bearing on you being a fair and impartial juror?

MR. HORN: No.

MR. HARWELL: A fair statement?

MR. HORN: Yes.

THE COURT: Your name and number.

MR. HARWELL: I'm sorry, Your Honor, sir, your name and number.

MR. HORN: I prefer U. G. Horn. It's Ulysses G. Horn. Like I say, I don't like my first name. It's 190. I just use it in official business, so I guess I better use it.

MR. HARWELL: Okay, sir. Let me ask that same question and just change a few words around.

That question is, are any of you or do any of you all have any close friends or members of your family who or have recently been employed in law enforcement. Not you yourself, but family and friends?

MR. JOHNSON: Lowell Dean Johnson, No. 142. I have a brother that's a game warden.

MR. HARWELL: Is he State or Federal?

MR. JOHNSON: He's State.

MR. HARWELL: State Game Warden?

MR. JOHNSON: Yes.

MR. HARWELL: Thank you, sir.

Anybody else?

Ma'am, were you holding up your hand?

MS. HALFHILL: Peggy Halfhill, 153. Lawyers are sometimes considered law enforcement agents?

MR. HARWELL: There's some that would debate that maybe, I really don't know. I'm really not interested, Miss Halfhill, in lawyers. I'm looking into areas such as law enforcement, police agents, that sort of thing. You don't have any?

MS. HALFHILL: No.

MR. HARWELL: Earlier when Mr. Dause was going through his voir dire questions with you all he said there could be two categories of people that might be witnesses in this case.

Mr. Dause, you interrupt me if I misstate you. I've got this mostly written down.

He said that the first

category could be someone who wasn't involved in the facts concerning this lawsuit and who had no charges brought against them, wasn't prosecuted or arrested or anything. He said the second category was someone likewise who was involved in the facts out of which this lawsuit arises and they enter a guilty plea.

Then as I recall, Mr. Dause said would those facts alone that a person was not charged or a person entered a plea, those facts alone cause you to disbelieve that person if he testified here. You all answered him.

I want to kind of go at it from the other end. Would you all take those facts into consideration in making a judgement about the credibility of those witnesses if they testify? That is, witnesses who have maybe been involved in underlying facts and not been charged, would you take into consideration in determining the credibility of witnesses others who may have been involved in underlying facts and entered guilty pleas?

I take it by your silence that you would or would not take that into consideration. If you would take that into

consideration, would you raise your hand for me, please? If the Court charges.

Let me explain a little bit, Your Honor, may I, about the charge?

THE COURT: Yes, sir.

MR. HARWELL: You are going to hear the facts, and Judge Unthank has explained and it's your job to be the judge on the facts.

MR. HARWELL: Judge Unthank will be the big judge for the judge on the law. He will, close to the time this case is over, charge you or tell you what the law is. And then you will take his charge on the law and apply the facts.

I can't speak for this Court, but I believe that Judge Unthank will give you a charge and tell you how you are to make decisions about the testimony about the credibility of witnesses. And I suspect, though I don't speak for him, that he will say when you look at the credibility of a witness to try to determine the truth of a matter, you will look at certain things including whether that person is a convicted felon. I don't know if I am making good sense to you. It is late in the day. But my question is simple. Do you all all understand that you are obligated if you become members of this jury to listen to the charge the Court gives and to follow the directives of this Court on that charge? Is there anybody that has any doubt about that?

I take it that none of you have any questions about it.

Mr. Brown, no. 130, I understood, sir, that you said you had a business relationship with Mr. Frank Justice.

MR. BROWN: Douglas Brown, 130.

MR. HARWELL: Yes, sir. You are in the food service business?

MR. BROWN: Uh-huh.

MR. HARWELL: Can you tell me a little bit more about the business relationship that you and Frank Justice have?

MR. BROWN: Well, we deliver twice a week.

MR. HARWELL: I beg your pardon, sir.

MR. BROWN: Deliver twice a week in the food service business.

MR. HARWELL: Do you deliver it to the office out here out the road past the Holiday Inn and the bowling alley?

MR. BROWN: Well, the drive-in.

MR. HARWELL: The drive-in.

MR. BROWN: Uh-huh.

MR. HARWELL: I see. Let me ask you this: Suppose--this may or may not to be accurate. But suppose Mr. Frank Justice had an interest in this case, and you became aware of that while you were sitting as a juror, would that affect you in serving on this jury in being fair and impartial?

MR. BROWN: No.

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MR. HARWELL: It would not?

MR. BROWN: (Shaking head in the negative.)

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

Ladies and gentlemen, a couple of more areas I want to cover, I will sit down and let some other lawyer stand up here. But have any of you or your close friends or members of your family ever been victims of a crime or feel like or think that you have been victims of a crime? If you have, hold your hand up and let me talk to you about it one at a time, please.

Nobody feels like he or she or a close friend or member of the family I take it has been a victim of a crime. Am I right? Okay.

Has any--has any member of this panel served on a grand jury, a state or federal grand jury? Yes, sir.

MR. DAMRON: I have served on a grand jury.

MR. HARWELL: Excuse me, sir. You have got to give your name and number.

MR. DAMRON: Burla Damron, 149. I have served on a grand jury and also on a petit jury.

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MR. HARWELL: You sat here in the federal court?

MR. DAMRON: No, not in federal court.

MR. HARWELL: Where was that, sir?

MR. DAMRON: In circuit court.

MR. HARWELL: Is that Pike County Circuit Court?

MR. DAMRON: Pike County.

MR. HARWELL: When did you last serve on the grand jury?

MR. DAMRON: Oh, that has been years ago.

MR. HARWELL: How about the petit jury?

MR. DAMRON: About ten or twelve years ago.

MR. HARWELL: All right, sir. Now, you are talking about grand jury when you say ten or twelve years ago?

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

MR. HARWELL: What about the petit jury?

MR.BBROWN: Oh, that is six, four or eight years ago.

MR. HARWELL: All right. Did you ever serve as a foreman on the grand jury or on the trial

jury?

MR. DAMRON: I have on the trial jury, but not on the grand jury.

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

Anybody else who has served on a grand jury?

MR. HORN: Gene Horn, no. 190. I have served on a grand jury in Letcher County.

MR. HARWELL: In Lexington?

MR. HORN: Letcher County.

MR. HARWELL: Letcher County. State grand jury?

MR. HORN: State grand jury.

MR. HARWELL: How long ago has that been, Mr. Horn?

MR. HORN: I would say six years ago.

MR. HARWELL: Six years ago. Were you foreman of that grand jury?

MR. HORN: No, sir.

MR. HARWELL: How long in Letcher County do you serve when you are impanelled as a member of the grand jury?

MR. HORN: Well, it used to be about thirty days in most cases or until the work is taken

care of. I believe in this case it was about three weeks.

MR. HARWELL: About three weeks?

MR. HORN: Uh-huh.

MR. HARWELL: I see. Does that fact and your experience as a grand juror have any bearing on your serving as a trial juror in this case to render a fair and impartial verdict?

MR. HORN: No, sir.

MR. HARWELL: All right. Thank you for responding.

Ladies and gentlemen, it is getting late in the day, and I feel like I am probably not communicating as well as I might earlier in the day. I have got a lot of other questions I could put to you all, but I am not going to do that to you all or to myself. I am not sure that if I asked those other questions that I would not get any responses that would cause me to have information different from what I have now.

I want to follow with a little bit more detail with a question that Judge Unthank asked you, and then I am going to sit down.

What I want you to do, please, put yourself--in your mind's eye, put

yourselves for just a moment in the position of my client, Mr. Edgar Jones over here who is a defendant that has been indicted in this matter, and reach way down and search your hearts, putting yourself in his position and ask do I have any bias or any prejudice about this case, or am I the kind of juror that I would be willing to have judge me to sit as a jury on my case if I was in Edgar Jones' chair because that is what we are looking for is the kind of person who in his heart knows he will be fair and be impartial and will listen to this proof and to the charge the Court gives.

Is there anybody who in looking into his own mind, his own thoughts, lady or gentlemen, who thinks that he might have any problem in being a fair juror.

The record should reflect that nobody raised his hand, and I infer from that the answer that you all are satisfied that you will be fair. I appreciate your attention.

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THE COURT: Mr. Walbourn.

MR. WALBOURN: Thank you, Your Honor.

Members of the prospective jury panel, I promise that I will try to be as brief as possible so that we will all get out of here in plenty of time to get home before it gets too dark.

As I have indicated earlier, my name is E. J. Walbourn. I am an attorney from Ashland, Kentucky. I represent four different individuals in this case. As Judge Unthank has earlier told you, you must judge each Defendant separately of the others. But I do want you to know that I represent four of them.

I would like to introduce you to them and tell you about where they live and their families. And while I am doing this, please be thinking if either you know any members of their families or if members of your family may associate with them.

First of all, I represent Benny Caudill. Benny, would you stand up. Benny and his wife, Delores, and two children, Jennifer and Benjamin, live in the Drift area.

I represent Mr. Mose Mead.

Mose and his wife, Mary, and child, Benjie, live in McDowell area.

Hermit Newsome. Hermit and his wife, Carolyn and children, William and Robin -- I heard earlier Hermit say McDowell; but I think he was really from the Beaver area.

And finally, Harold Moore and his wife, Barbara, and their child, Tyra.

Now, having had them stand up and tell you about their families, do you know any of their families, or do any members of your family perhaps associate with them?

I take it by your silence then not.

In following up a question from Ms. Halfhill, how many of you are either related to or have close friends who are attorneys? Could I see hands there, please?

Ms. Vickers, would you enlighten us on that, please?

MS. VICKERS: Well, Helen Vickers, 188. I have an uncle who is a lawyer and a cousin. Well, my sister's ex-husband also is a lawyer.

MR. WALBOURN: Okay. Would the fact

that you have these associations or know these people, would that influence your decision in this case in any manner?

MS. VICKERS: No, sir.

MR. WALBOURN: All right. Thank you.

Ms. Halfhill - am I saying your name right?

MS. HALFHILL: Halfhill.

MR. WALBOURN: Okay.

MS. HALFHILL: Peggy Halfhill, 153. My brother-in-law, Albert A. Burchett.

MR. WALBOURN: All right. Anyone else, please?

My final question, I think Mr. Dause asked if anyone was employed by the federal government. My question is are any of you, close family, or your family, relatives or close friends employed by the State government? If you fall into that category, could I see you hands, please?

I am sorry, ma'am.

MS. JUSTICE: Inez Justice, 181. Kentucky State Department of Mines and Minerals is who I work for.

MR. WALBOURN: Okay. Anyone else?

Yes, sir, Mr. Ratliff.

MR. RATLIFF: Yes, sir, 170. I have a couple of friends who work for the State.

MR. WALBOURN: Okay, and how are they employed?

MR. RATLIFF: Well, one of them is a radio technician. And the other one is employed by KEWS. It is more or less a radio system, too, Statewide.

MR. WALBOURN: Okay. Thank you. Anyone else, please?

And to my word, I am done. Thank you.

THE COURT: Mr. Pafunda.

MR. PAFUNDA: Your Honor, ladies and gentlemen, I will try to be as brief as Mr. Walbourn. I only have a few questions. And I would just like to make the comment that Mr. Harwell made. These questions aren't designed to pry into your private life or in any manner embarrass you.

And I certainly have the utmost respect for your right to privacy. However, it is my obligation to my clients - - and I would ask them to stand - -

Drexil Hall and Austin Moore, to ask these questions.

Thank you, gentlemen.

In that regard, Mr. Brown.

MR. BROWN: Douglas Brown, 130.

MR. PAFUNDA: Excuse me, sir? Your number, please?

MR. BROWN: 130.

MR. PAFUNDA: Thank you. You are with Brown Produce in Prestonsburg.

MR. BROWN: Brown Food Service. I am a part owner.

MR. PAFUNDA: And the other owner is George Brown.

MR. BROWN: Uh-huh, and John.

MR. PAFUNDA: George and John?

MR. BROWN: George and John.

MR. PAFUNDA: And George Brown is your brother, sir?

MR. BROWN: Right.

MR. PAFUNDA: There was a George Brown called off by the Judge, you may not have heard it as a possible witness in this case.

I believe the Judge named George Brown. Is that correct, Your Honor?

THE COURT: Grand Jury Foreman.

MR. BROWN: He was foreman of the Grand Jury.

MR. PAFUNDA: Yes. You are related to him? That is your brother?

MR. BROWN: My brother.

MR. PAFUNDA: Thank you, Mr. Brown.

Your Honor, may I approach the Bench for just a moment, please.

THE COURT: Yes.

MR. PAFUNDA: Your Honor, I was sitting very close to Mr. Brown. I was sitting close to Mr. Brown, and I sensed that possibly he didn't hear all of the Court's questions. And I would like to ask

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him if he has discussed this matter with his brother, only I fear he might blurt out.

You know, he may go beyond that. I don't know whether it would be appropriate to do that or do it in an **individual** sense.

THE COURT: Just ask him.

MR. PAFUNDA: Okay.

MR. DAMRON: I would like to point out that No. 149, Burla Damron, used to trade at my father's store.

THE COURT: Go ahead. You have got fifteen minutes and we are going to recess.

MR. PAFUNDA: Thank you, Your Honor.

Mr. Brown, have you discussed, and if you have, don't tell us what you have discussed, but have you discussed this case with your brother at all?

MR. BROWN: No.

MR. PAFUNDA: Thank you very much, sir.

Is there anyone here who is now or has an immediate family member or a very close friend who is engaged in the coal business?

Mr. Ratliff, you have to give your number.

MR. RATLIFF: Eddie Ratliff, 170. The same thing. My father is a Mine Inspector.

MR. PAFUNDA: That is the only person in your family - -

MR. RATLIFF: (Interrupting) Yeah.

MR. PAFUNDA: All right. Thank you very much.

Yes, Ma'am.

MS. HALFHILL: Peggy Halfhill, 153. Jake Cooley of McDowell, my uncle.

MS. JUSTICE: Does that mean someone is right now or has been?

MR. PAFUNDA: Or have been.

MS. JUSTICE: Okay. 181, Inez Justice. My son-in-law, Frank May from Prestonsburg has been in the coal business.

MR. PAFUNDA: And what was - - excuse me, Ma'am. What was the name of his company?

MS. HUSTICE: (Inaudible response)

MR. PAFUNDA: Located in Floyd County, Ma'am?

MS. JUSTICE: In Floyd County. And then there is another one. They also sell coal.

MR. PAFUNDA: And he is engaged in it at the present time?

MS. JUSTICE: Yes.

MR. PAFUNDA: Is that a Union or a non-Union operation, Ma'am?

MS. JUSTICE: I really don't know much about his business.

MR. PAFUNDA: Okay. Anyone else in your family or a close friend?

MS. JUSTICE: No.

MR. PAFUNDA: Thank you. Mr. Small, that is fine. You have already indicated.

MR. BARNETT: Ray Barnett, 183. I am an employee of Delta Coal Company.

MR. PAFUNDA: In Breathitt County?

MR. BARNETT: Yes.

MR. PAFUNDA: And that is a non-Union operation. Correct, sir?

MR. BARNETT: (Nodding head affirmative)

MR. PAFUNDA: Thank you. Is there anyone else that I may have overlooked?

MR. POE: Isom Poe, 168. You said friend in the coal business?

MR. PAFUNDA: Close friend.

MR. POE: I am close friends with several. Ridgeway Coal, Chaney Coal.

MR. PAFUNDA: All in the Floyd County

area, Mr. Poe?

MR. POE: Some are in Floyd County; some in Pike County.

MR. PAFUNDA: And you would be friends with the owner-operators. Is that correct, Mr. Poe?

MR. POE: Yes.

MR. PAFUNDA: Thank you very much.

Is there anyone else we may have overlooked?

As a result of - - and I will address this to the people who just stood up as well as to the whole panel, but particularly the people that answered in response to that question.

As a result of either those close friendships or family ties or business connections, has anyone here formed an opinion regarding whether workers should be organized in a Union other than Mr. Small who has already indicated some?

Is there anyone else on this panel?

Yes, sir, your name and number.

MR. DAMRON: Gary W. Damron, 163. Would you restate the question. I don't know if I

understood.

MR. PAFUNDA: My question again - - I apologize. It is late in the day, and I may have misstated the question.

Is there anyone here who is strictly opposed to employees becoming Union?

MR. DAMRON: No, I am not.

MR. PAFUNDA: All right. Thank you very much. Is there anyone other than Mr. Small who indicated his opinion earlier?

I take it by your silence that you are not.

Is there anyone on this panel that feels all work stoppages are unjust? In other words, that there is no just cause for a work stoppage?

And again, I take it by your silence, that you feel that work stoppages can be just. Is that correct?

One final question. The Judge indicated that as he read off the list of witnesses, a great number of witnesses who may testify in this case if they all come and do give testimony.

I want to point out if you are selected as a member of this Jury, that the

shear number of witnesses who may testify one side or the other in and of itself is not determinative of a person's guilt. Does everyone understand that? The witnesses belong to no one. The Government may call witnesses. I may call the same witnesses in the defense of the case.

The number of witnesses that testify for either side is no indication as to which side should prevail.

I take it by your silence that you agree with that.

Mr. Damron, Burla, Mr. Self told me up there at the Bench that you used to trade at his father's store.

MR. DAMRON: That's right.

MR. PAFUNDA: Have you known Mr. Self for quite some time?

MR. DAMRON: I didn't know him until he told us who he was a while ago.

MR. PAFUNDA: I didn't know who he was until a little while ago either.

Thank you, Mr. Damron.

That answers my questions.

THE COURT: Mr. Spencer.

MR. SPENCER: Your Honor, it is late. I don't have any questions.

THE COURT: All right. Mr. Adams, do you have any? You have eight minutes to get as far as you can.

MR. ADAMS: All right, Your Honor. I may take more than eight minutes.

THE COURT: Let's stop at five.

THE OFFICIAL COURT REPORTER: Your Honor, I am out of paper.

THE COURT: Just a minute. You aren't going to have that long. Let's do this: I don't think it would be fair to let you get in the middle and cut you off.

MR. ADAMS: Okay, Your Honor.

THE COURT: Let me talk to the Clerk. Madam Clerk has a statement for the members of the jury.

THE CLERK OF THE COURT: Ladies and gentlemen, you are excused until Monday morning at nine A.M. You are to report back Monday morning at nine. Please, please check your message for your report, and listen to the complete and entire message. I want to warn you a little bit that we

do have some duplications in numbers. We have an old 81 panel that will be checking the message. You listen for yours. You are going to be called the New Panel. Okay, to distinguish between the two duplications in numbers, we will say Old Petit Jurors number so and so. And then we will say New Petit Jurors number so and so. But you are to report back Monday at nine o'clock unless you receive otherwise instructions.

Okay, and thank you for your cooperation, and you are free to leave at this time. But be sure to take that slip of paper home. It gives you our number. And call that message. Unless you receive otherwise notice from our office, you are to report back Monday morning at nine A.M.

THE COURT: Let me further explain some of you that are here may be excused and not have to report back Monday. The attorneys and Court will discuss this after you leave. But please be sure and call in. And unless you are advised specifically that you are excused, you must be back here when the Clerk has directed. Do you understand?

All right. Come up and turn the microphone around. Turn that mike --

no, just turn the mike around. What is your name and number?

MR. WELLS: Denver Wells, No. 135.

THE COURT: And you have advised the Marshall and he has related to me that perhaps there might have been a misunderstanding with regards to an answer to a question made by you.

MR. WELLS: Yes, sir.

THE COURT: What was that?

MR. WELLS: It was a question about whether I knew any of the lawyers here or not.

THE COURT: And who is that?

MR. WELLS: Mr. Spencer.

THE COURT: And how do you know Mr. Spencer?

MR. WELLS: You know, I went to him one time for legal advice.

THE COURT: And this was legal advice concerning the dentist?

MR. WELLS: Yes.

THE COURT: What was the -- perhaps the misinterpretation that you might have made?

MR. WELLS: I think I said yes when you asked me if it would hinder my decision on anything.

THE COURT: Well, would it effect your decision?

MR. WELLS: No, it wouldn't.

THE COURT: All right. Now, in other words, the fact that Mr. Spencer was your attorney at one time would in no way effect you and your services as a juror?

MR. WELLS: No, it wouldn't.

THE COURT: Okay, thank you.

MR. WELLS: Okay, thank you.

THE MARSHALL OF THE COURT: All the jurors have left the courtroom, Your Honor.

THE COURT: Wasn't that what he said?

MR. SPENCER: He said no, Your Honor. As a matter of fact, I didn't even remember him, Your Honor.

THE COURT: Well, I interpreted that he said it wouldn't effect him.

MR. SELF: If it please the Court --

THE COURT: (Interrupting) Here is what it is. We have three or four of those jurors that said they would -- I think Ms. Halfhill said because of Mr. Jones relationship, she couldn't.

Call roll, Madam Clerk,

and see who we have here.

THE CLERK OF THE COURT: Number 153, Peggy Halfhill. She said that Mr. Jones was her aunt's husband, and it would affect her.

THE COURT: All right.

THE CLERK OF THE COURT: And also no. 181, Inez Justice said that in her working at Old Republic and Big Sandy Insurance, and that she had known some of them for quite a period of time. She said it would affect her service.

Number 144, Mr. John Small. He said he responded to a question as to--that he had been more or less trained in his management position, that he was definitely not union; that it would affect his decision.

Those are the three that I know.

THE COURT: All right. Let's have one other. What is the principal who said he didn't have an assistant.

MR. HARWELL: 190, if the Court please, is responsible for fifteen teachers.

THE COURT: 19 what?

MR. HARWELL: 190.

THE COURT: All right. Is there any objection, gentlemen, to those four being excused?

MR. SELF: No, Your Honor. I think basically the three of them have indicated their bias as a matter of fact. And recognizing Mr. Horn's position, he is not merely a teacher but is a principal at a middle school. And that can be a problem in and of itself when you have no assistant. We recognize that.

THE COURT: What about 162? Her father had cancer and was going for an operation?

MR. SELF: I would have no objection to her being excused, Your Honor.

MR. HARWELL: Judge, it is all right with us that she be excused.

THE COURT: Okay. All right, Madam Clerk, be advised 153, 181, 144, and 190, that they are excused and they do not have to return Monday at nine o'clock.

MR. HARWELL: May I inquire of the Government of their position on yet one more probably the last one that I would like to mention, Your Honor? I am concerned about no. 130. He and his brother currently own a food brokerage.

THE COURT: Mr. Brown.

MR. HARWELL: His brother was foreman of this grand jury. Though they haven't discussed it yet,

I would think that in spite of an admonition of the Court, the likelihood if he were on the grand jury would be such--

THE COURT: (Interrupting) But let him come back Monday. I understand also he is--I think two times a week he is delivering food.

MR. HARWELL: That's right.

THE COURT: On the other hand, you have got Mr. Damron there. I think he is drawing attention from the UMWA.

MR. SPENCER: Your Honor, may I point out one thing about Mr. Brown.

THE COURT: Yes, sir.

MR. SPENCER: Mr. Brown sat there and he had to hear Your Honor when he mentioned George Brown. Mr. Brown sat there; and in my opinion, neglected to state--to speak up. That implies to me that he is going to be covert in this, and he is not going to answer the questions straightly.

THE COURT: Let's let him come back Monday and we can go into it further, gentlemen.

MR. WALBOURN: Your Honor, if I might, I have stated this to Mr. Self. The firm I'm with represents Mr. Douglas Brown in Prestonsburg. And I believe-- I have heard the name bandied around

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Brown Food Service.

I have never represented him, but I know--I am almost positive he is a client of the firm I am associated with.

THE COURT: Let's let him come back, gentlemen.

MR. SELF: Leaves us nineteen out of this panel I think. There's an additional sixty-five from the last panel. That gives us--I can't add this late in the day--eighty-four.

THE COURT: Well, some of these will be excused. How many do we have to be summonsed?

MR. SELF: Your Honor, that is what I-- My position is we don't need to subpoena another fifty people in to get ten.

THE COURT: Well, let's see. I mean, let's see how many we have got summoned. We subpoenaed fifty. Out of the fifty, we might get ten.

MR. WALBOURN: Your Honor, was there a decision made on Juror No. 162. I heard her number come up but I don't know. I believe that is the one whose father was in the hospital or was going into the hospital.

THE COURT: Yes, we are going to excuse her.

THE CLERK OF THE COURT: Mr. Oliver is having to come back. That will be thirty-three.

THE COURT: All right. Mr. Oliver is coming back. That will be thirty-three. Let them come in.

MR. SELF: Your Honor, the last decision when we were working on the strikes in all was-- You know, we are talking about-- The Court is under pressure from the Sixth Circuit to eliminate cost. The Court is under pressure from the Sixth Circuit to eliminate cost. We are talking about getting any minimum. And I think what we have decided is we needed is eighty-eight. What was the last figure, Madam Clerk?

THE CLERK OF THE COURT: Ninety.

MR. SELF: Okay. We are talking about needing six jurors and calling thirty in.

THE COURT: Well, I am not under all that much stress. I am under pressure from the Sixth Circuit, but I will consider-- The Sixth Circuit has to do their job and I have to do mine.

MR. SELF: Well, I am also speaking for the Marshal Service, too. I know what a strain it will be on the Marshal Service to get out there this weekend and try to run down thirty people.

THE COURT: You know, I think Mr. Marshal has already resolved his problem. This was placed in the mail today.

MR. SELF: You are mailing thirty-five. I think you better-

THE COURT: The post office says they will get it tomorrow. My phone will start ringing tomorrow evening.

MR. SELF: Your Honor, some of the addresses may be as reliable as the phone number. So let thirty-five go.

THE COURT: Maybe we should have more than that.

Now, Madam Clerk, on the Code-a-phone, you will tell Panel 1 and 2 not to come in Monday but to come in Tuesday.

THE CLERK OF THE COURT: Yes, Your Honor.

THE COURT: Is that 1, 2, and 3. I am kindly getting woozy myself. Just the third panel or the fourth panel? Well, this panel that was here today, they will come back Monday morning.

Now, the ones are being summoned by mail or subpoenaed by mail--they are to come in Monday at noon. Is that correct?

THE MARSHAL OF THE COURT: I believe that

is correct.

THE COURT: And the other panel will come in Tuesday at nine o'clock.

Gentlemen, all of you look you are at the gate ready to leave. Is there anything you want to say before you go?

MR. PAFUNDA: Goodbye.

THE COURT: Marshal, will you adjourn this matter until Monday morning at nine o'clock.

THE MARSHAL OF THE COURT: All rise. This case is adjourned until nine o'clock Monday morning. The court is adjourned until nine o'clock Monday morning for business.

STATE OF KENTUCKY)
)
) SS.
COUNTY OF JEFFERSON)

WE, BRUCE D. HANDY, WILLIAM J. KALBFLEISCH & JAMES E. EDMONDSON, Notary Publics, within and for the State at Large, do hereby certify that the foregoing proceedings were taken before us at the time and place and for the purpose in the caption stated; that the proceedings were reduced to shorthand writing by me in the presence of the Court; that the foregoing is a full, true and correct transcript of the said proceedings 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 12th day of January, 1984.

James E Edmondson
Notary Public

Bruce D. Handy
Notary Public

William J. Kalbfleisch
Notary Public

I
to
to me AT
recess or have
get it to you - for
delivery to me AT Noon

Thanks!
B.B.H