

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

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BEFORE: THE HONORABLE G. WIX UNTHANK

DATE: JANUARY 16, 1984

VOLUME SEVEN

DALE SOERGEL MOORE SHAW & ASSOCIATES

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

BERNARD PAFUNDA, ESQ.

For the Defendant Ranny Blankenship:

ELDRED E. ADAMS, JR., ESQ.

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

WILLIAM D. KIRKLAND, ESQ.

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1 REPORTER'S NOTE: The Court  
2 was called to order at  
3 10:00 A.M.

4 THE COURT: All right. Madam Clerk,  
5 let's call the matter, and let's have the Defendants  
6 note their appearances and state what Defendants are  
7 present.

8 THE CLERK OF THE COURT: Yes, Your  
9 Honor. Pikeville Criminal Action 83-8, United States  
10 of America versus Edgar Jones, Jason Moore, German  
11 Stumbo, Drexil Hall, Teddy Kinney, Benny Caudill,  
12 Kenneth Rolland, Ranny Blankenship, Eugene Tackett,  
13 Harold Moore, Hermit Newsome, Tim Milam, Mose Mead,  
14 Donahue Halbert, Austin "Bo" Moore, Pebo Gayheart,  
15 Linville Mosley, Raymond Hall, and Morris Ray Hall,  
16 for a trial by Jury.

17 MR. HARWELL: May the Court please, I  
18 am Aubrey Harwell, representing Edgar Jones, and  
19 he is in the Court Room this morning.

20 THE COURT: Thank you, sir.

21 MR. WALBOURN: May the Court please,  
22 I am E. J. Walbourn, representing Benny Caudill,  
23 Harold Moore, Hermit Newsome and Mose Mead.

24 Everyone except Hermit  
25 Newsome is present.

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MR. PAFUNDA: Your Honor, Bernard Pafunda on behalf of Drexil Hall and Austin "Bo" Moore, and they are both present.

THE COURT: Thank you, sir.

MR. SPENCER: May it please the Court, I am Ed Spencer, representing Linville Mosley, and he is present in the Court Room, Your Honor.

MR. ADAMS: Eldred Adams on behalf of Ranny Blankenship, Your Honor, and I don't see him here this morning. I have not had any contact with him, however, I would just point out to the Court he has consistently shown up on other occasions, and I suspect the weather had something to do with it.

THE COURT: Thank you, sir.

MR. ROWLAND: May it please the Court, Dan Rowland on behalf of Tim Milam, and Tim is present in the Court Room.

MR. BRANSEN: May it please the Court, Hershel Bransen, on behalf of Donahue Halbert, who is present in the Court Room.

MR. HOLLON: May it please the Court, Tom Hollon representing Pebo Gayheart who is present in the Court Room, and Morris Ray Hall who is not present, Your Honor.

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1 MR. THOMAS: Your Honor, David Thomas  
2 representing Eugene Tackett, and Mr. Tackett is not  
3 here.

4 MR. KIRKLAND: If the Court please, I  
5 am William D. Kirkland, and I represent Jason Moore,  
6 Kenneth Rolland, German Stumbo, Teddy Kinney, Raymond  
7 Hall, and they are all here.

8 THE COURT: Thank you, sir. Now,  
9 where does Mr. Newsome live?

10 MR. WALBOURN: Beaver - McDowell area.

11 THE COURT: Anyone here from Beaver -  
12 McDowell area?

13 REPORTER'S NOTE: Several of the Defendants  
14 raised their hand.

15 THE COURT: One, two, three - - all  
16 from - - is there any difference in - -

17 THE MARSHALL OF THE COURT: Ten are from  
18 there.

19 THE COURT: Is there any difference  
20 in the - - where Hermit is from the rest of you  
21 gentlemen?

22 A DEFENDANT: Yes, sir, there is, most  
23 of us have four-wheel drives.

24 THE COURT: All right. What about  
25 Ranny Blankenship?

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1 MR. ADAMS: Your Honor, he lives,  
2 I believe his mail goes to Ligon, but I have no idea  
3 where is residence is, unless the other Defendants  
4 - - the only thing, the last time I talked to him,  
5 I think he drove to Court, he had just a regular  
6 car, and I don't think it was four wheels.

7 THE COURT: All right.

8 THE MARSHALL OF THE COURT: Your Honor,  
9 he has been riding with Mr. Newsome.

10 THE COURT: All right, so they were  
11 together. Now, what about Morris Ray ?

12 MR. HOLLON: Your Honor, Morris Ray  
13 lives in High Hat, and I believe the last time we  
14 had problems with the weather, Mr. Hall had diffi-  
15 culty getting here the next morning.

16 THE COURT: All right.

17 MR. HOLLON: He has been present on  
18 every occasion in this proceeding.

19 THE COURT: All right, Eugene.

20 MR. THOMAS: Eugene, Route One,  
21 McDowell, Kentucky. I don't know if he associates  
22 with Ranny, but I don't know if he rides with them.

23 THE MARSHALL OF THE COURT: They all ride  
24 together, Your Honor.

25 THE COURT: Okay, that is fine.

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No, I understand because of the weather, I accept the fact that they can't be here. I guess here is what I want to do, gentlemen, is this. I recognize the reason that they can't be here, and we are not going to jump on them. We just can't have any proceedings in their absence.

But down the road someone might say well since it's that way I might just not, you know - - might decide some time to be absent, but don't do this, you know.

I have something against the Defendants, I haven't against the Jurors. The Jurors I can fine them for contempt. The Defendants, if I thought I had any problem about being sure that they would be here, I can set aside their bonds, remand them to jail, you know, where I have always got their presence.

So as I say, I understand why those four weren't here, but just down the road I don't want someone for no reason at all just deciding not to be here, because all of you understand now those four not being here, we, of course, can't proceed this morning.

But we have got Jurors who can't be here and we can't proceed. This is something

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1 that is nobody's fault. We have just got bad  
2 weather, and we are just going to have to hold up.

3 I think what we will do,  
4 we are going to try to - - in other words, what we  
5 were going to do today we will put off and we will  
6 do tomorrow. And what we were going to do tomorrow,  
7 we will put off and do the day after tomorrow. So  
8 we just have to do it one day at a time, gentlemen,  
9 that is all we can do.

10 MR. SELF: If it please the Court,  
11 I think just for the record the record needs to  
12 reflect that we have an approximate accumulation of  
13 two to three inches of snow outside that has deve-  
14 loped since approximately 4:00 o'clock this morning.  
15 The road conditions in Eastern Kentucky, and the  
16 counties covered by this Court are, as reported by  
17 the National Weather Service, hazardous and icy,  
18 just for the matter of the record at this point in  
19 time, Your Honor.

20 THE COURT: Should we put off what  
21 we are going to do, rather than putting off what we  
22 were going to do today, tomorrow, put off what we  
23 were going to do until the day after tomorrow?  
24 Should we put it off two days or one day, gentlemen?

25 MR. PAFUNDA: Your Honor, Bernard

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1 Pafunda, and my first response would be to put it  
2 off one day, because I think everybody is ready to  
3 get this thing moving.

4 However, as you look  
5 around at the Jurors coming in from several surround-  
6 ing counties quite faraway, if there can be some  
7 accommodations made with respect to the Jurors  
8 so that they would be able to phone in well in  
9 advance so they don't have to leave their home  
10 early in the morning - -

11 THE COURT: (Interrupting) If I am  
12 not mistaken, and, of course, we all know we can't  
13 depend on the weather. The weather report says this  
14 is supposed to end late this afternoon, or in the  
15 early evening it is supposed to end.

16 But, of course, the main  
17 roads are cleared very well, and I understand a lot  
18 of persons don't live on the main roads and we had a  
19 problem with clearing on the main road.

20 MR. HARWELL: I don't want to throw in  
21 two cents worth, Judge, but my understanding was,  
22 and I am kind of like Mr. Pafunda, my understanding  
23 was there was another front moving in headed toward  
24 the Northeast, and I know that in Northern Tennessee  
25 they had, as of this morning, an inch, and it was

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1 coming down real hard four hours ago, if that sheds  
2 any light on Your Honor's thought in regard to  
3 tomorrow versus the next time.

4 THE COURT: Well, I guess the best  
5 thing to do is to put what we were going to do Mon-  
6 day, we will do it Wednesday.

7 Let's do this, Madam  
8 Clerk, call the roll of the Jury, and then let them  
9 have an input into it too because they are the ones  
10 who are coming in.

11 THE CLERK OF THE COURT: Ladies and  
12 gentlemen, as I call your name, please stand very  
13 briefly, and then you may again be seated.

14 Juror No. 130,  
15 Douglas L. Brown.

16 MR. BROWN: Present.

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

19 REPORTER'S NOTE: (No response.)

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

22 REPORTER'S NOTE: (No response.)

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

25 REPORTER'S NOTE: (No response.)

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

3 REPORTER'S NOTE: (No response.)

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

6 MR. FLINCHUM: Present.

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

9 REPORTER'S NOTE: (No response.)

10 THE CLERK OF THE COURT: Your Honor,  
11 Ms. Walls called this morning and said she was not  
12 able to get out of her driveway. She is shown as  
13 living in Prestonsburg, and she said she would attempt  
14 to make it by 1:00 o'clock, if possible. If she  
15 could not make it, she would place another call to  
16 the Clerk's Office.

17 THE COURT: All right, thank you.

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

20 MR. JOHNSON: Present.

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

23 MS. LOONEY: Present.

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

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MS. SPARKS: Present.

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

REPORTER'S NOTE: (No response.)

THE CLERK OF THE COURT: Mr. Damron  
also called this morning and said that it was  
difficult, Your Honor, and he lives over an embank-  
ment and could not get up that to come on out.

Juror No. 150,  
Chester Mullins.

REPORTER'S NOTE: (No response.)

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

REPORTER'S NOTE: (No response.)

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

MS. JOHNSON: 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.

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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.

REPORTER'S NOTE: (No response.)

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

REPORTER'S NOTE: (No response.)

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: Thirteen Jurors  
from the nineteen, Your Honor are present.

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1 THE COURT: All right, gentlemen, we  
2 have one juror-- All right, the jury thing, I just  
3 want to bring this to the attention of the attorneys.  
4 Let me state to the members of the jury who are here.

5 As you note, four of the  
6 defendants are absent. And as you note, I said to  
7 them, you can hold them, if it is necessary to have  
8 their attendance here.

9 The law requires that a  
10 defendant--the law requires that a defendant have the  
11 right to be present at every step of the trial. And  
12 if we hold a trial without a defendant being present--  
13 any step such as selecting this jury, then the whole  
14 thing is for naught, and can be set aside, and you  
15 have to do it over again.

16 And, of course, that is why  
17 the law allows the Court much more discretion of hav-  
18 ing the attendance of the defendants.

19 But we apologize for that,  
20 and the Court understands the absence, why persons  
21 aren't here. And we want to have you--we want to hear  
22 from you in a few moments.

23 Let me state this to coun-  
24 sel. The Court received a letter from Juror No. 123  
25 from the list, and the name is Lucinda Johnson, and

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1 she is from Stone, Kentucky. Where is Stone,  
2 Kentucky?

3 MR. PAFUNDA: Near Belfry, Your Honor.

4 THE COURT: All right. But,  
5 Ms. Johnson says that by reason of her religion, she  
6 doesn't believe in taking the oath, she doesn't be-  
7 lieve in passing judgment on anyone. No, this isn't  
8 Ms. Johnson that on--it isn't Ms. Johnson. Set that  
9 aside. It is another juror. We will get to that  
10 later.

11 Now, this Lucinda Johnson  
12 which I have here, which is no. 123 from Stone, she  
13 said she had Caesarean delivery, and the opening hasn't  
14 healed. She can't be here.

15 Because of the physical dis-  
16 ability, gentlemen, the Court is excusing Lucinda  
17 Johnson, which is no. 123.

18 Now, we have Ms. Moore, I  
19 guess. Ms. Moore? Where is Ms. Moore?

20 THE CLERK OF THE COURT: She is Juror  
21 No. 100, Your Honor, and I have requested that she  
22 stay and state her reason in open court, although she  
23 was not scheduled to come in today.

24 THE COURT: Yes.

25 THE MARSHAL OF THE COURT: She is in the

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hall, Your Honor.

THE COURT: Have Ms. Moore come in.  
(The Marshal complied.)

THE COURT: Ms. Moore, you were supposed to report tomorrow, but it is my understanding you had someone in the family die.

MS. MOORE: My sister-in-law died last night.

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1 THE COURT: And I'm sorry to hear  
2 that, ma'am. She had six children?

3 MS. MOORE: Yes, ages twelve to  
4 eighteen.

5 THE COURT: And it is going to be  
6 necessary for you to look after those children?

7 MS. MOORE: Yes.

8 THE COURT: All right. You are  
9 excused, ma'am.

10 MS. MOORE: All right, Your Honor.

11 THE COURT: Just a moment, Ms.  
12 Moore.

13 Anybody have any objection to  
14 that?

15 MR. SELF: Not on behalf of the  
16 United States, Your Honor.

17 THE COURT: All right, there is no  
18 objection.

19 MS. MOORE: All right.

20 THE COURT: Thank you, ma'am. You  
21 are excused.

22 THE CLERK OF THE COURT: Temporarily  
23 excused.

24 THE COURT: She is temporarily excused.  
25 I don't have the other lady. All right, who came?

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1 Has anyone -- is there anyone from Lee County on  
2 this panel?

3 (Prospective Juror indicating  
4 by raising hand.)

5 THE COURT: How many miles did you  
6 come this morning, sir?

7 PROSPECTIVE JUROR: One hundred and  
8 five miles.

9 THE COURT: What time did you have to  
10 leave?

11 PROSPECTIVE JUROR: 5:30, and I got here  
12 at eight o'clock.

13 THE COURT: How was the roads, sir?

14 PROSPECTIVE JUROR: They were slick,  
15 but I have got a four-wheel drive.

16 THE COURT: All right, sir. Do you  
17 live on the main road, or do you live on --

18 PROSPECTIVE JUROR: It is -- yeah, it  
19 is blacktop.

20 THE COURT: Anyone here doesn't live--  
21 anyone on the panel doesn't live on the main road?

22 PROSPECTIVE JUROR: I don't.

23 THE COURT: How did you make it,  
24 ma'am?

25 PROSPECTIVE JUROR: With a chain.

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1 THE COURT: Cautiously.  
2 PROSPECTIVE JUROR: Very cautiously.  
3 MR. SELF: May I make a suggestion,  
4 Your Honor, because we are really in doubt as to what  
5 the weather conditions are? To continue, realizing  
6 we don't have a lot to finish up with these members of  
7 this panel, would the Court consider putting, say, this  
8 panel off until, say, tomorrow afternoon, and having  
9 the jurors come in tomorrow morning; and then at that  
10 time the Court can evaluate the weather and the road  
11 conditions, and advise the jurors if they should call  
12 in, say, at nine o'clock in the morning. I think most  
13 everyone on this panel could make it by one o'clock if  
14 they called in.  
15 THE COURT: What, let's see what the  
16 panel thinks as to putting it off until Wednesday.  
17 Does anyone on the panel--prospective panel care to--  
18 PROSPECTIVE JUROR: May I speak?  
19 THE COURT: Yes, sir.  
20 PROSPECTIVE JUROR: If I didn't come here,  
21 I have to report to work at six o'clock. And if I  
22 report to work at six o'clock, I have got to work  
23 eight hours.  
24 THE COURT: Yes, sir.  
25 PROSPECTIVE JUROR: Or maybe nine. I don't

1 know. Will that be a problem?

2 THE COURT: So, it is either you have  
3 got to come here, or you don't have to come here.

4 PROSPECTIVE JUROR: That is the way it  
5 looks, as I understand--

6 THE COURT: Yes, sir. I certainly  
7 understand that, and it is a good suggestion.

8 PROSPECTIVE JUROR: Yeah, and I am also  
9 employed, and if I don't report here, I have got to  
10 go to work.

11 THE COURT: Well, I think we could  
12 remove some doubt if we just say, you report back  
13 Wednesday morning at nine o'clock. Wouldn't that--

14 PROSPECTIVE JUROR: I have got to be at  
15 work at seven, the same way.

16 THE COURT: Do you think it would be  
17 better if we just make it definitely that you report  
18 back Wednesday morning at nine o'clock, sir?

19 PROSPECTIVE JUROR: (Nodding affirmatively)

20 THE COURT: Let me ask you this. The  
21 Clerk pointed it out that the jurors who weren't here  
22 are from Pike County or something. Of course, we all  
23 know Pike County is the largest county in the state  
24 geographically; and it is a large area that has many  
25 hollows which the roads become unpassable. But is it--

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1 Do you think there is any possibility that we might  
2 get those defendants in this afternoon? If we could,  
3 then we could proceed with what we have here.

4 MR. KIRKLAND: Your Honor, perhaps we  
5 could try to contact them and see.

6 THE COURT: Well, you all understand  
7 what we are saying? While you are here, if we can  
8 get the defendants here, we can process this group.

9 What we have to do is,  
10 first, we have got to get everyone in, and you have  
11 what you call challenges for cause, which is a legal  
12 basis, like the lady's religion who says she can't  
13 serve as a juror because it is against her religion  
14 for her to pass judgment on anyone.

15 Now, she cannot sit on  
16 what is called the peremptory challenge. We must get  
17 ninety-six jurors, which is called a peremptory panel.

18 We have a panel which is  
19 called the panel for cause, which is what you are all  
20 on right now. For some legal cause, they can be on  
21 the peremptory challenge--the peremptory challenge  
22 panel.

23 Now, the peremptory chal-  
24 lenge panel must have ninety-six. We have sixty-four.  
25 Ms. Moore was on the peremptory panel, and we had

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1 sixty-five, and we have got sixty-four; so we have  
2 thirty-two jurors to go before we have the peremptory  
3 panel.

4 When we get the peremptory  
5 panel, then it will be reduced to eighteen who will  
6 try the case.

7 You see how this is kind  
8 of sifting down things, or a beauty contest, like I  
9 said. It is a beauty contest proposition.

10 But we have this many here,  
11 and we have the defendants, and we could process this  
12 group to determine how many out of this group can sit  
13 on the peremptory panel.

14 MR. PAFUNDA: Your Honor, if it please  
15 the Court, those attorneys for those persons who are  
16 not present here, they are welcome to use the phones  
17 in our office and call the McDowell area. And they  
18 may even be on their way. I don't way how everyone  
19 else feels about it.

20 THE COURT: We have--we can use the  
21 Clerk's telephone, or if someone will give us the num-  
22 ber, we can call and find out.

23 Let's do this. Before we  
24 disperse or make up our minds on anything, let's have  
25 a recess for twenty minutes, until a quarter till

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eleven, and then we will come back at quarter till eleven and see where we can go, all right?

(Whereupon the Court recessed for twenty minutes.)

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1 (Reporter's Note: Court  
2 reconvened at approximately  
10:50 A.M.)

3 THE MARSHALL OF THE COURT: The Court  
4 is again in session, be seated and come to order.

5 THE COURT: Gentlemen, the Chief  
6 Judge sends his sympathies. Remember I mentioned  
7 about the neighboring counties, and I'm going to  
8 let that pass for the Board. We're just going to  
9 have to grind it out here, that's all.

10 The juror -- the  
11 religious conviction was Donna K. Roberts Mason.  
12 That is Juror No. 186. I think that was the one  
13 that failed to appear.

14 Mr. Marshall, this  
15 (Indicating) is a notarized and sworn statement.  
16 Is that yours?

17 THE CLERK OF THE COURT: She failed to  
18 appear, Your Honor, and then we summonsed her by  
19 mail to be in at one o'clock today.

20 THE COURT: Then that's the one that  
21 was going to be here today at one o'clock. Now,  
22 because of her religious conviction she can't. If  
23 she can't qualify she can't qualify then.

24 All right. What have we  
25 to say for purposes of the record with regard to the

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1 absent Defendants?

2 MR. WALBOURN: Your Honor, E. J.  
3 Walbourn. I represent Hermit Newsome. Mr. Newsome  
4 does not have a phone. However, I have been  
5 advised that Hermit Newsome, Ranny Blankenship and  
6 Eugene Tackett ride together in Mr. Newsome's car.

7 Mr. Thomas was able to  
8 contact the contact number on Mr. Tackett. He left  
9 at six o'clock this morning. They're not here.

10 I've been described  
11 their path. It takes them over some treacherous  
12 ground without a four-wheel drive. They're in Mr.  
13 Newsome's vehicle, which is an ordinary passenger  
14 car, not four-wheel drive.

15 I'm led to believe that  
16 they're probably sitting in a ditch somewhere.

17 MR. HOLLON: Your Honor, Tom Hollon.  
18 I represent Morris Ray Hall.

19 I did contact Mr. Hall  
20 by telephone at his home in Hi Hat. He said that  
21 the roads were -- in not a very good condition.  
22 He would try to be here by one o'clock if necessary,  
23 but he doubted seriously if he'd be able to make it.

24 THE COURT: Well, gentlemen, I --  
25 I believe that the best thing to do is just put

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1 everything on hold until Wednesday morning at  
2 nine o'clock. I realize that's causing some  
3 difficulty quite a bit among counsel. I believe  
4 it would be best to do it that way.

5 Go ahead, gentlemen.

6 MR. PAFUNDA: Your Honor, if it please  
7 the Court, just a suggestion. I know I may be the  
8 only attorney from Pikeville, but just as a  
9 suggestion, and I don't know how everyone else would  
10 feel about it, I think Mr. Self had a good suggestion.

11 If there should be a  
12 chance of snow tomorrow then possibly, just for  
13 the jurors' convenience, the Court can make a  
14 decision sometime tomorrow so that people could call  
15 in say around three o'clock and find out if Court  
16 is on or if Court is off.

17 THE COURT: You mean Wednesday?

18 MR. PAFUNDA: For Wednesday, yes, but  
19 they could call.

20 THE COURT: That's right.

21 MR. PAFUNDA: I don't know how the  
22 Government feels about that.

23 MR. SELF: Any suggestions that  
24 anyone could make to alleviate people having to  
25 travel in these conditions as much ahead as possible

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1 we're in total favor of.

2 THE COURT: All right. Now, Madam  
3 Clerk, we have this. Those which were to come in  
4 at one o'clock -- we must first determine if they're  
5 qualified to even sit on the for cause panel.  
6 So, we can do that this afternoon for those coming  
7 in.

8 THE CLERK OF THE COURT: Your Honor,  
9 I need to state for the record also that Mr. Burla  
10 Damron, No. 149, says he can make it in this  
11 afternoon. He called and he said he did have his  
12 driveway clear.

13 Also, Mr. Chester Mullins,  
14 who is Juror No. 150, had mistakenly heard a message  
15 on the radio which pertained to Pike District Court,  
16 and he will be coming in this afternoon. And --

17 THE COURT: Let me state this to the  
18 members who are out there. It was on the radio that  
19 the Pike Circuit Court and the Pike District Court --  
20 this is -- would not meet today. This is misleading.  
21 You have a -- Realize all of these counties have a  
22 District Court, which is misdemeanor court, but this  
23 is the Federal District Court, which would be  
24 U.S. District Court.

25 When they said District

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1 Court on the radio you -- you listen with caution  
2 at that.

3 Go ahead, Madam Clerk.

4 THE CLERK OF THE COURT: Out of the  
5 six jurors who have not reported in, all except one  
6 are attempting to make it in this afternoon. Miss  
7 Lorraine Castle, No. 131, said she did not think  
8 it would be possible. She said she would call us  
9 back at one o'clock if she was not able to attend,  
10 but the remaining five said they would make an  
11 attempt to be in this afternoon.

12 THE COURT: If we have the Defendants  
13 here we could proceed with this at one o'clock,  
14 gentlemen.

15 MR. THOMAS: Your Honor, David Thomas,  
16 on behalf of Eugene Tackett. May I make a  
17 suggestion?

18 THE COURT: Yes.

19 MR. THOMAS: I was wondering if these  
20 jurors are able to make it in if we could send the  
21 Marshall out for the other one that can't make it  
22 in, and maybe send either one of the lawyers or  
23 another Defendant or the Marshall out to get the  
24 other Defendants. Now, that way we might be able to  
25 take care of them today.

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THE COURT: Do you gentlemen want to  
do that?

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MR. THOMAS: I do, Your Honor.

MR. ROWLAND: Dan Rowland, and I agree with the Court's first analysis of the situation.

MR. HARWELL: If the Court please, Aubrey Harwell on behalf of Edgar Jones. I am concerned about these folks that have gone to the trouble of getting in today, and about those who are stranded.

My fear, Your Honor, lies in the fact that the Court through its staff, and the Marshall Service, used their best efforts, and I am fearful that along about 1:30 or 2:00 o'clock we will have some essential entity missing, and these folks who have sat here and cooled their heels, as will Your Honor, and the prosecutors, the Defense Counsel, and Defendants and I, and I heartily endorse your statement earlier to shut this thing down and crank back up whenever Your Honor said, because I am afraid today we are not going to get everybody here who is essential.

We are going to be sitting here waiting and hoping, and probably not having everybody here.

MR. ROWLAND: I agree.

THE COURT: What do the members of

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1 the Jury think? Those prospectives, sitting on  
2 the first row back here, you know, the star of any  
3 show is the Jury. It's funny, a Jury is paid  
4 thirty dollars a day to come in here and make, in  
5 a Civil case, make a million dollar decision, and  
6 it just doesn't seem fair, but, you know, a fair  
7 and impartial Jury is the star of the Court Room,  
8 and that is what the Defendants are after is a fair  
9 and impartial Jury.

10 You are the ones that we  
11 have to consider. Let me ask you this. All that is  
12 in favor of shutting this thing down for the Jury  
13 until 9:00 o'clock Wednesday morning, raise your  
14 hands.

15 REPORTER'S NOTE: (All Jurors  
16 raised their hands.)

17 THE COURT: There is your answer.  
18 So Madam Clerk, you may excuse these members of the  
19 Jury who are here now until 9:00 o'clock Wednesday  
20 morning. The ones who - - now, where does that put  
21 us with regard to - - let's see, we will take care of  
22 those that come in this afternoon at 1:00 o'clock,  
23 because we can tell them when to come back.

24 Now, Panel One and Panel  
25 Two will come back Thursday morning at 9:00 o'clock.

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1 You are Panel Three.

2 THE CLERK OF THE COURT: Judge - -

3 THE COURT: (Interrupting) I believe  
4 that is correct.

5 MR. HARWELL: (Nodding head affirmative)

6 THE COURT: And the one coming in  
7 at 1:00 o'clock is Panel Four.

8 MR. HARWELL: (Nodding head affirmative)

9 THE CLERK OF THE COURT: What might be  
10 confusing, Judge, these new Jurors are not, but our  
11 Jurors that used to be referred to by year, '81 Panel  
12 and '82 Panel, because that determines and denotes  
13 the year in which they first reported, therefore we  
14 know what year they were brought in and how many  
15 they served.

16 For purposes  
17 of this trial, they have been combined, but the '81  
18 and '82 Panel which normally were to report in tomorrow,  
19 you want to report Thursday morning.

20 THE COURT: Thursday morning, yes,  
21 Ma'am.

22 THE CLERK OF THE COURT: And since we  
23 did have a duplication in numbers from our old panel,  
24 this panel please listen to the words new Jurors,  
25 and our older panel knows to listen to old Jurors,

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1 because there are some duplication in numbers.

2 But at this  
3 point you will report back Wednesday morning at  
4 9:00 A.M. Please check your message before report-  
5 ing, and you are going to get a busy signal because  
6 all the Jurors are trying to check that message.  
7 So please just call until you do get it, it is on  
8 all during the night, and we did attempt to change  
9 it by remote control, it did accept my new message,  
10 it played it back for me twice, but then it would  
11 not play it any more.

12 The only  
13 thing I can tell you is we do attempt to change it  
14 per Judge's instructions, but I think we would have  
15 been a little late on the gentlemen from Breathitt  
16 County as he had already left home before we changed  
17 it.

18 Please check  
19 your message, and you're all free to leave at this  
20 time, drive carefully going home, and thank you very  
21 much for coming in today.

22 REPORTER'S NOTE: At this  
23 point all Jurors left the  
24 Room.  
25

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REPORTER'S NOTE: At this time the Clerk of the Court conferred with the Court.

MR. SELF: May it please the Court, may I suggest to the Clerk contact other members of the Clerk's staff and have them contact those people who are remaining on Panel Three, notify them not to report back in at 9:00 o'clock.

THE COURT: That is just what we were talking about.

MR. SELF: So they don't have to be here at 1:00.

MR. WALBOURN: Your Honor, I know I usually appear unduly concerned, am I still safe in stating that we will not meet on Friday?

THE COURT: Yes.

MR. WALBOURN: Thank you.

MR. KEHRLI: Your Honor, this is a matter for the record. The Government, this morning, filed a Government's request to file proposed Jury instructions, and a supporting memorandum particularly with regard to supporting the Enmons' instruction.

I attempted to serve copies of those two documents to all counsel by hand this

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1 morning. If anyone did not get that, would they  
2 stop by the Government's table on the way out and  
3 I will give them a copy.

4 MR. HARWELL: Judge, may I be heard  
5 briefly, for the record?

6 THE COURT: Yes, sir.

7 MR. HARWELL: We received a copy of the  
8 Government's request to file proposed Jury instruc-  
9 tion, and also received on behalf of Mr. Jones a copy  
10 of the Government's memorandum supporting the propos-  
11 ed Jury instruction.

12 As the Court might well  
13 envision, there is an awful lot that is said in that  
14 memorandum with which we disagree. Given the weather,  
15 and the fact that my folks don't have a library here,  
16 even though these gentlemen have been kind enough,  
17 as has the Court, to let us use theirs, we want to  
18 tell Your Honor that we certainly intend to file a  
19 memorandum in opposition of this.

20 And given the fact that  
21 it pertains to Jury instructions, we would hope the  
22 Court would not push us to do that very, very rapid-  
23 ly, but rather give us time, Your Honor.

24 THE COURT: Well - -

25 MR. HARWELL: (Interrupting) I wanted

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1 to alert the Court to the fact that we scanned over  
2 this, and we certainly don't agree with the contents  
3 of it.

4 THE COURT: Do this, gentlemen. When  
5 we have our Rule Thirty Conference, you know, where  
6 I have to make my decision - -

7 MR. HARWELL: (Interrupting) The Charge  
8 Conference?

9 THE COURT: Yes. And if you want to  
10 get the Judge's ear, it is better to get it in  
11 advance of that conference.

12 MR. HARWELL: We will have it in  
13 advance, Judge.

14 THE COURT: Well in advance of that  
15 conference.

16 MR. HARWELL: We will have it in  
17 advance, Your Honor.

18 THE COURT: Because around the time  
19 he is going to be pretty busy.

20 MR. HARWELL: Yes, sir, thank you, sir.  
21 Just for clarification,  
22 might I ask the Court if I understand correctly that  
23 those Jurors that have just been excused by Your  
24 Honor will be here at 9:00 o'clock Wednesday?

25 THE COURT: Right.

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1 MR. HARWELL: The balance of the 1984  
2 Panel that were summoned in will be in at 1:00  
3 o'clock Wednesday, is that right?

4 THE COURT: No, sir. Well, the bunch  
5 which is to be here today at 1:00 o'clock, we will  
6 make a decision after we talk - - after we qualify  
7 them when they will come in.

8 MR. HARWELL: Then you are having  
9 Panels One and Two come in at 9:00 o'clock Thursday  
10 morning.

11 THE COURT: Thursday.

12 MR. HARWELL: All right, sir.

13 THE COURT: I would like very much  
14 if Thursday we could select the Jury.

15 MR. HARWELL: We would, too, Your Honor.

16 MR. SELF: Likewise, Your Honor.  
17 Let me, as a point of scheduling, assuming that we do  
18 pick a Jury on Thursday and at least get into the  
19 United States' opening statements, and then the  
20 Defendants, as to whether we should anticipate having  
21 witnesses lined up on Thursday afternoon.

22 I don't know how - - it  
23 won't be that much of a problem, Your Honor.

24 THE COURT: I doubt it, I doubt it,  
25 no, no.

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MR. SELF: Our witnesses are readily available - -

THE COURT: (Interrupting) I would assume even if we get to select the Jury on Thursday, I would be reluctant to place them under oath until Monday morning at the time the trial began.

MR. SELF: Then I will not plan on having any witnesses in here until Monday morning, nor have opening statements - -

THE COURT: (Interrupting) Who knows, it might be Thursday afternoon, gentlemen, before we select the Jury. We might have to do some other stuff Thursday morning to complete enough to get the panel.

MR. SELF: I am - - just as a matter for being personal, Your Honor, I am supposed to go back to the Doctor on Friday, maybe I will be off crutches by then, I hope so, and give an opening statement.

I think there are matters, even if we do get a Jury qualified, there probably are some matters that need to be taken up, Your Honor, before that Jury is sworn.

The Court is, I am sure, aware of other matters that have been before this

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Court that need to be handled before that Jury has  
been sworn and jeopardy is attached.

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1 THE COURT: For the purposes of trial,  
2 I don't think that we can take any--any-- I am speak-  
3 ing of--I am not speaking of supporting trial activity;  
4 I am speaking of direct trial activity. I can't  
5 reasonably foresee that being done before Monday.

6 MR. SELF: May I ask the Court one  
7 other matter. The jurors that have been in, and the  
8 jurors that are coming in and completing the question-  
9 naire that Mr. Harwell has recently supplied--

10 THE COURT: (Interrupting) Yes, let's  
11 get this on the record.

12 MR. SELF: (Continuing) That  
13 Mr. Harwell has graciously supplied to the Court, I  
14 want to request, Your Honor, that at the time we have  
15 the jurors who are struck for cause, gone, that we are  
16 at the point the peremptory challenges. I know  
17 Mr. Harwell has had his staff diligently hand copying  
18 that, because at the Court's instructions, we are not  
19 to release those. I would like to suggest that--or  
20 may I request that once we have those jurors picked;  
21 that we are the stage of making peremptory challenges;  
22 that we be allowed to make a copy of those, Your Honor.  
23 And I will make a copy for defense counsel, one so they  
24 can share and use, rather than all of us having to hand  
25 copy those. We are supposed to have a xerox machine

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1 in our office today. And I would like to make one  
2 copy for myself, and I will provide defense a copy of  
3 one for their office.

4 THE COURT: Let me get this on the  
5 record. Is there anyone, United States or defendants,  
6 objecting to the questionnaire which has gone to the  
7 jury--to the jurors--the questionnaire which has gone  
8 to the jurors, that being utilized by counsel in lieu  
9 of the voir dire questions? Is there anyone objecting  
10 to that?

11 MR. SELF: You are talking about in  
12 lieu of-- In other words, as we have done it up to  
13 this point; is that what you are talking about?

14 THE COURT: Right, as we have done it  
15 up to this point. The questionnaire, I think  
16 Mr. Harwell submitted it to the Court, and that is  
17 part of the record.

18 The Court viewed the ques-  
19 tionnaire, and the Court approved it. And it was--I  
20 think it was assumed that all parties agreed that it  
21 would expedite voir dire by getting these forms filled  
22 out and everyone considering them.

23 Now, is there anyone object-  
24 ing to that?

25 MR. SELF: No objection on behalf of

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1 the United States, Your Honor.

2 THE COURT: Do any of the defendants  
3 have any objections?

4 (Silence)

5 THE COURT: Then the record will re-  
6 flect then there is no objection from any defendant.

7 MR. SELF: Come sometime Thursday that  
8 we have selected ninety-something or a hundred-  
9 something jurors to be eligible for selection of per-  
10 emptory challenges-- And I know lots of these gentle-  
11 men have had the opportunity and have been able to go  
12 in and inspect them in the Clerk's Office, at the  
13 request of the Clerk of the Court; but because of the  
14 copying problem, they have not made copies. I would  
15 like for the Court's permission to make two copies of  
16 those, one for our office, and one to provide to  
17 defense counsel to use however they may want to use  
18 it.

19 THE COURT: Here is what I want done,  
20 gentlemen, it is this. I have no objection to that.  
21 But once this case is over, I want those questionnaires  
22 to be destroyed.

23 MR. SELF: Yes, Your Honor.

24 MR. HARWELL: Yes, Your Honor.

25 THE COURT: You understand, there

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1 might be something about religious preference or some-  
2 thing like that on those questionnaires, which maybe  
3 the jurors might not want that out in public, and  
4 there is possibly a chance of that being in public.

5 And I certainly--I wouldn't  
6 mind filling out the questionnaire for this case, but  
7 once this case is over, I think that--I would kind of  
8 like that questionnaire destroyed.

9 Does anyone have any ob-  
10 jection to that?

11 MR. HARWELL: No objection, Your Honor.  
12 I am just saying that we would like to keep that,  
13 because maybe there are jurors in other cases; but we  
14 will have no problems destroying them, Your Honor.

15 THE COURT: Now, here is what we anti-  
16 cipate, gentlemen. When we get the ninety-six  
17 peremptory panel, we will bring them back to the  
18 courtroom before you make your selection, and the Clerk  
19 will call their name and their number, and they will  
20 stand, and then you will make your selection. This  
21 gives us one more chance to look at each individual  
22 juror before you make your selection.

23 MR. HARWELL: Judge, I think we might  
24 inquire as to what the Court's wishes are in terms of  
25 the choosing of alternates. I think it has been

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1 mentioned to Your Honor, or somebody has suggested--

2 THE COURT: (Interrupting) At the  
3 present time, we are anticipating having ninety-six  
4 jurors.

5 MR. HARWELL: Yes, sir.

6 THE COURT: Madam Clerk will say, the  
7 eighty-eight jurors who are called, and when she  
8 calls their name, they stand, and these jurors are for  
9 the petit jury, from which the twelve will be drawn.

10 Then she will have the  
11 panel of eighteen, and this is the alternate panel  
12 from which you will select your alternates. Isn't  
13 that correct, Madam Clerk? You will have the list as  
14 to whom will be on the other and who is the other?

15 THE CLERK OF THE COURT: (Nodding affirm-  
16 atively.)

17 THE COURT: Now, when we get to the  
18 ninety-six panelled there, I am directing her to put  
19 those ninety-six names in the box, and draw out the  
20 alternate panel--draw out eighteen. That would be  
21 easier--

22 MR. HARWELL: (Interrupting) That was  
23 my question, Judge. She will put those ninety-six in  
24 the hat and draw out eighteen, and that will be the  
25 alternate panel.

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THE COURT: Right. And the remaining will be the petit jury panel. So, it is a selection by random as to what will be the regular jury panel and what will be the alternate panel.

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1 MR. SELF: Is it eighteen or twelve  
2 alternates? I think it was twelve when we ended  
3 up with --

4 THE COURT: What is it going to be,  
5 Madam Clerk?

6 THE CLERK OF THE COURT: Your Honor,  
7 I have notice here that on the first call it will  
8 be seventy-eight jurors, and I will announce it  
9 being made for selection of the Petit Panel. The  
10 second draw, per the Judge's instructions, will be  
11 six alternates with six challenges each, which will  
12 make a second call of eighteen jurors, from which  
13 the alternates will be selected.

14 THE COURT: No. We have cut down the  
15 six challenges, didn't we? I believe we --

16 MR. HARWELL: You said three per side  
17 at one time, Your Honor.

18 THE COURT: All right.

19 THE CLERK OF THE COURT: That will be  
20 twelve then, Your Honor, if you are going to allow  
21 only three challenges per alternate.

22 THE COURT: So, we have seventy-eight  
23 and twelve; is that correct? Or is it eighty-eight  
24 and twelve?

25 THE CLERK OF THE COURT: Seventy-eight

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1 and twelve.

2 THE COURT: Seventy-eight and twelve.

3 MR. HARWELL: Would it be consistent  
4 with judicial economy, Your Honor, to go ahead,  
5 instead of breaking that ninety down into seventy-  
6 eight and twelve, but rather to have the ninety  
7 go ahead and exercise all of the challenges --  
8 peremptory challenges for the panel and for the  
9 alternates, and that will leave you with eighteen  
10 jurors. And then we can have Madam Clerk call  
11 six names out of that eighteen, and they will be  
12 sworn as alternates. Would that save -- Madam  
13 Clerk is shaking her head. I just threw it out.  
14 Whatever Your Honor says, I want to do.

15 THE COURT: Let's do it this way.  
16 She will put -- so we are going to have ninety.  
17 She puts the ninety names in the box. And is  
18 there anyone that wants her to draw out the seventy-  
19 eight, or is it agreeable that she draw out the  
20 twelve? This is the -- of course, she is going to  
21 have to identify them.

22 MR. HARWELL: We prefer she draw  
23 twelve, if she is going to draw them out.

24 THE COURT: Let me do this. I think  
25 for identification purposes, so that the jury can

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1 understand and give them a reason for standing and  
2 being identified, I am just going to ask her to call  
3 seventy-eight names. And those persons -- and  
4 that is the regular jury panel.

5 And then she will call  
6 up the twelve names, and they will stand, and they  
7 will be identified as the alternates.

8 THE CLERK OF THE COURT: And, Your  
9 Honor, I will state for the record that if some  
10 attorneys are not familiar with our procedure; that  
11 at that time that I am calling the name, I will be  
12 making a handwritten list, and you will be furnished  
13 a copy of that handwritten list on which you will  
14 note your challenges.

15 THE COURT: And we will give a one-  
16 hour recess for the selection of the jury.

17 MR. HARWELL: Thank you, Your Honor.  
18 Last but not least, Judge. Some of the attorneys  
19 have been talking, and I have culpable entity in  
20 this, but I'm not sure on panel one and two as to  
21 a couple jurors, whether they were struck or not  
22 struck. They were absent initially.

23 Might I inquire with the  
24 Court as to whether Ms. England has got an updated  
25 list of the jurors still existent after the cause

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1 challenges and after illness and excuses for the  
2 panels one and two.

3 THE CLERK OF THE COURT: Yes, Your  
4 Honor. I have a list which was scheduled to be  
5 distributed tomorrow for all the jurors reporting  
6 in on Tuesday.

7 MR. HARWELL: Thank you, ma'am.

8 THE COURT: Is there anything else?

9 MR. SELF: Your Honor, I think for  
10 the record, because we have discussed some minor  
11 procedural matters, that at least counsel for the  
12 Defendants who are not here, need to waive their  
13 presence for the purposes of matters that have  
14 been discussed at this point in time today.

15 THE COURT: Run that by me again,  
16 Mr. Self.

17 MR. SELF: We have four Defendants  
18 who are here, and I think counsel will need to at  
19 least waive their appearance for the matters and  
20 proceedings and all these discussions that have  
21 gone on this morning.

22 MR. WALBOURN: Your Honor, I don't  
23 think I can waive my client's appearance or  
24 decision, but I will state for the record that these  
25 have been merely housekeeping matters, and that they

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1 were not critical to the -- critical stage of the  
2 proceeding which would require the Defendant's  
3 appearance.

4 MR. HOLLON: Your Honor, I agree with  
5 Mr. Walbourn.

6 MR. THOMAS: David Thomas, and, and  
7 I agree with Mr. Walbourn.

8 THE COURT: All right, Mr. Marshall,  
9 we will be in adjournment in this matter until  
10 nine o'clock Wednesday morning. Court is adjourned.

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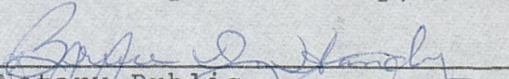
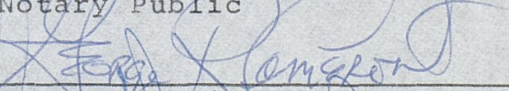
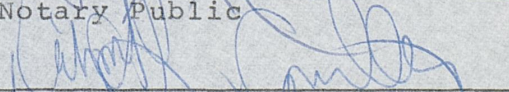
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WE, BRUCE D. HANDY, RICHARD L. COULTER  
and GEORGE R. CAMERON, Notary Publics, within and  
for the State at Large, do hereby certify that the  
foregoing proceedings were taken before us at the  
time and place and for the purpose in the caption  
stated; that the proceedings were reduced to short-  
hand writing by us 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 16th day of January, 1984.

  
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Notary Public  
  
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Notary Public  
  
\_\_\_\_\_  
Notary Public  
State at Large, Kentucky

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