UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT

TO : Honorable G. Wix Unthank
U.S. District Judge, E.D. Kentucky

DATE: March 12, 1986

FROM : James A. Higgins, Circuit Executive

SUBJECT : Voucher No. 815993
United States v. Harold Glenn Webb
E.D. Kentucky - No. 85-17-1
Stephen W. Owens, Attorney

Judge Lively has approved the above voucher in the amount of $3,337.02 and same is returned herewith for further processing.

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT

TO : Honorable Pierce Lively
Chief Judge

DATE: March 10, 1986

FROM : James A. Higgins, Circuit Executive

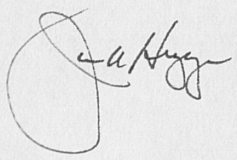
SUBJECT : Voucher No. 815993
United States v. Harold Glenn Webb
E.D. Kentucky - No. 85-17-1
Stephen W. Owens, Attorney

I have reviewed the above voucher which was forwarded by Judge Unthank.

This was a trial on charges of unlawful dealings in firearms. The trial of the case required four days.

It is noted that the attorney is claiming compensation for out of court services at less than the statutory amount. I do not believe, however, that the Chief Judge may authorize compensation in excess of that claimed by the attorney and certified by the trial judge.

I recommend approval of the voucher in the amount of $3,337.02 as certified by Judge Unthank.



United States District Court
FOR THE
Eastern District of Kentucky

Chambers of
G. Wix Unthank
Judge
Pikeville, Kentucky 41501

March 6, 1986

Hon. Pierce Lively
Chief Judge
Sixth Circuit Court of Appeals
P. O. Box 1226
Danville, Kentucky 40422

Dear Judge Lively:

Enclosed is an application for payment of attorney fees to counsel appointed to represent one Harold Glenn Webb in criminal proceedings before this Court. The memorandum submitted by the attorney in support of the excess payment requested is self explanatory.

I have reviewed the claim and believe it to be justified.

Yours truly,

G. WIX UNTHANK, JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

CRIMINAL NO. 85-17

UNITED STATES OF AMERICA PLAINTIFF,

VS:

HAROLD GLENN WEBB DEFENDANT.

COURT'S INSTRUCTION TO THE JURY

MEMBERS OF THE JURY:

YOU HAVE NOW HEARD ALL OF THE EVIDENCE IN THE CASE AS WELL AS THE FINAL ARGUMENTS OF THE LAWYERS FOR THE PARTIES.

IT BECOMES MY DUTY, THEREFORE, TO INSTRUCT YOU ON THE RULES OF THE LAW THAT YOU MUST FOLLOW AND APPLY IN ARRIVING AT YOUR DECISION IN THE CASE.

THE COURT'S INSTRUCTIONS ARE IN THREE SEPARATE PHASES:

FIRST, THE RULES OF LAW GOVERNING THE MANNER IN WHICH THE JURY CONSIDERS THE OFFENSE INSTRUCTIONS:

SECOND, THE OFFENSE INSTRUCTIONS, WHICH IS THE LAW GOVERNING THE OFFENSE CHARGED IN THE INDICTMENT;

THIRD, ARE THE DEFINITIONS OF PARTICULAR WORDS CONTAINED IN THE OFFENSE INSTRUCTIONS AND THE CONDUCT OF THE JURY AFTER THE CASE IS UNDER SUBMISSION TO THE JURY.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

DUTY TO FOLLOW INSTRUCTIONS

YOU, AS JURORS, ARE THE JUDGES OF THE FACTS. BUT IN DETERMINING WHAT ACTUALLY HAPPENED IN THIS CASE -- THAT IS, IN REACHING YOUR DECISION AS TO THE FACTS -- IT IS YOUR SWORN DUTY TO FOLLOW THE LAW I AM NOW IN THE PROCESS OF DEFINING FOR YOU.

AND YOU MUST FOLLOW ALL OF MY INSTRUCTIONS AS A WHOLE. YOU HAVE NO RIGHT TO DISREGARD OR GIVE SPECIAL ATTENTION TO ANY ONE INSTRUCTION, OR TO QUESTION THE WISDOM OR CORRECTNESS OF ANY RULE I MAY STATE TO YOU. THAT IS, YOU MUST NOT SUBSTITUTE OR FOLLOW YOUR OWN NOTION OR OPINION AS TO WHAT THE LAW IS OR OUGHT TO BE. IT IS YOUR DUTY TO APPLY THE LAW AS I GIVE IT TO YOU, REGARDLESS OF THE CONSEQUENCES.

BY THE SAME TOKEN IT IS ALSO YOUR DUTY TO BASE YOUR VERDICT SOLELY UPON THE TESTIMONY AND EVIDENCE IN THE CASE, WITHOUT PREJUDICE OR SYMPATHY. THAT WAS THE PROMISE YOU MADE AND THE OATH YOU TOOK BEFORE BEING ACCEPTED BY THE PARTIES AS JURORS IN THIS CASE, AND THEY HAVE THE RIGHT TO EXPECT NOTHING LESS.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

PRESUMPTION OF INNOCENCE, BURDEN OF PROOF, REASONABLE DOUBT

THE INDICTMENT OR FORMAL CHARGE AGAINST A DEFENDANT IS NOT EVIDENCE OF GUILT. INDEED,THE DEFENDANT IS PRESUMED BY THE LAW TO BE INNOCENT. THE LAW DOES NOT REQUIRE A DEFENDANT TO PROVE HIS INNOCENCE OR PRODUCE ANY EVIDENCE AT ALL. THE GOVERNMENT HAS THE BURDEN OF PROVING HIM GUILTY BEYOND A REASONABLE DOUBT, AND IF IT FAILS TO DO SO YOU MUST ACQUIT HIM.

THUS, WHILE THE GOVERNMENT'S BURDEN OF PROOF IS A STRICT OR HEAVY BURDEN, IT IS NOT NECESSARY THAT THE DEFENDANT"S GUILT BE PROVED BEYOND ALL POSSIBLE DOUBT. IT IS ONLY REQUIRED THAT THE GOVERNMENT'S PROOF EXCLUDE ANY "REASONABLE DOUBT" CONCERNING THE DEFENDANT'S GUILT.

A "REASONABLE DOUBT" IS A REAL DOUBT, BASED UPON REASON AND COMMON SENSE AFTER CAREFUL AND IMPARTIAL CONSIDERATION OF ALL THE EVIDENCE IN THE CASE.

PROOF BEYOND A REASONABLE DOUBT, THEREFORE, 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. IF YOU ARE CONVINCED THAT THE ACCUSED HAS BEEN PROVED GUILTY BEYOND REASONABLE DOUBT, SAY SO. IF YOU ARE NOT CONVINCED, SAY SO.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

EVIDENCE -- EXCLUDING ARGUMENT OF COUNSEL
AND COMMENT OF COURT

AS STATED EARLIER IT IS YOUR DUTY TO DETERMINE THE FACTS, AND IN SO DOING YOU MUST CONSIDER ONLY THE EVIDENCE I HAVE ADMITTED IN THE CASE. THE TERM "EVIDENCE" INCLUDES THE SWORN TESTIMONY OF THE WITNESSES AND THE EXHIBITS ADMITTED IN THE RECORD.

REMEMBER THAT ANY STATEMENTS, OBJECTIONS OR ARGUMENTS MADE BY THE LAWYERS ARE NOT EVIDENCE IN THE CASE. THE FUNCTION OF THE LAWYERS IS TO POINT OUT THOSE THINGS THAT ARE MOST SIGNIFICANT OR MOST HELPFUL TO THEIR SIDE OF THE CASE, AND IN SO DOING TO CALL YOUR ATTENTION TO CERTAIN FACTS OR INFERENCES THAT MIGHT OTHERWISE ESCAPE YOUR NOTICE. IN THE FINAL ANALYSIS, HOWEVER, IT IS YOUR OWN RECOLLECTION AND INTERPRETATION OF THE EVIDENCE THAT CONTROLS IN THE CASE. WHAT THE LAWYERS SAY IS NOT BINDING UPON YOU. ALSO, DURING THE COURSE OF A TRIAL I OCCASIONALLY MAKE COMMENTS TO THE LAWYERS, OR ASK QUESTIONS OF A WITNESS, OR ADMONISH A WITNESS CONCERNING THE MANNER IN WHICH HE SHOULD RESPOND TO THE QUESTIONS OF COUNSEL. DO NOT ASSUME FROM ANYTHING I MAY HAVE SAID THAT I HAVE ANY OPINION CONCERNING ANY OF THE ISSUES IN THIS

CASE. EXCEPT FOR MY INSTRUCTIONS TO YOU ON THE LAW, YOU SHOULD DISREGARD ANYTHING I MAY HAVE SAID DURING THE TRIAL IN ARRIVING AT YOUR OWN FINDINGS AS TO THE FACTS.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

EVIDENCE -- INFERENCES -- DIRECT AND CIRCUMSTANTIAL

SO, WHILE YOU SHOULD CONSIDER ONLY THE EVIDENCE IN THE CASE, YOU ARE PERMITTED TO DRAW SUCH REASONABLE INFERENCES FROM THE TESTIMONY AND EXHIBITS AS YOU FEEL ARE JUSTIFIED IN THE LIGHT OF COMMON EXPERIENCE. IN OTHER WORDS, YOU MAY MAKE DEDUCTIONS AND REACH CONCLUSIONS WHICH REASON AND COMMON SENSE LEAD YOU TO DRAW FROM THE FACTS WHICH HAVE BEEN ESTABLISHED BY THE TESTIMONY AND EVIDENCE IN THE CASE.

YOU MAY ALSO CONSIDER EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE. "DIRECT EVIDENCE" IS THE TESTIMONY OF ONE WHO ASSERTS ACTUAL KNOWLEDGE OF A FACT, SUCH AS AN EYE WITNESS. "CIRCUMSTANTIAL EVIDENCE" IS PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES INDICATING EITHER THE GUILT OR INNOCENCE OF THE DEFENDANT. THE LAW MAKES NO DISTINCTION BETWEEN THE WEIGHT TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE. IT REQUIRES ONLY THAT YOU WEIGH ALL OF THE EVIDENCE AND BE CONVINCED OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT BEFORE HE CAN BE CONVICTED.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

CREDIBILITY OF WITNESSES

NOW, I HAVE SAID THAT YOU MUST CONSIDER ALL OF THE EVIDENCE. THIS DOES NOT MEAN, HOWEVER, THAT YOU MUST ACCEPT ALL OF THE EVIDENCE AS TRUE OR ACCURATE.

YOU ARE THE SOLE JUDGES OF THE CREDIBILITY OR "BELIEVABILITY" OF EACH WITNESS AND THE WEIGHT TO BE GIVEN TO HIS TESTIMONY. IN WEIGHING THE TESTIMONY OF A WITNESS YOU SHOULD CONSIDER HIS RELATIONSHIP TO THE GOVERNMENT OR THE DEFENDANT; HIS INTEREST, IF ANY, IN THE OUTCOME OF THE CASE; HIS MANNER OF TESTIFYING; HIS OPPORTUNITY TO OBSERVE OR ACQUIRE KNOWLEDGE CONCERNING THE FACTS ABOUT WHICH HE TESTIFIED; HIS CANDOR, FAIRNESS AND INTELLIGENCE; AND THE EXTENT TO WHICH HE HAS BEEN SUPPORTED OR CONTRADICTED BY OTHER CREDIBLE EVIDENCE. YOU MAY, IN SHORT, ACCEPT OR REJECT THE TESTIMONY OF ANY WITNESS IN WHOLE OR IN PART.

ALSO, THE WEIGHT OF THE EVIDENCE IS NOT NECESSARILY DETERMINED BY THE NUMBER OF WITNESSES TESTIFYING AS TO THE EXISTENCE OR NON-EXISTENCE OF ANY FACT. YOU MAY FIND THAT THE TESTIMONY OF A SMALLER NUMBER OF WITNESSES AS TO ANY FACT IS MORE CREDIBLE THAN THE TESTIMONY OF A LARGER NUMBER OF WITNESSES TO THE CONTRARY.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

INCONSISTENT STATEMENT ONLY

A WITNESS MAY BE DISCREDITED OR "IMPEACHED" BY CONTRADICTORY EVIDENCE, BY A SHOWING THAT HE TESTIFIED FALSELY CONCERNING A MATERIAL MATTER, OR BY EVIDENCE THAT AT SOME OTHER TIME THE WITNESS HAS SAID OR DONE SOMETHING, OR HAS FAILED TO SAY OR DO SOMETHING, WHICH IS INCONSISTENT WITH THE WITNESS' PRESENT TESTIMONY.

IF YOU BELIEVE THAT ANY WITNESS HAS BEEN SO IMPEACHED, THEN IT IS YOUR EXCLUSIVE PROVINCE TO GIVE THE TESTIMONY OF THAT WITNESS SUCH CREDIBILITY OR WEIGHT, IF ANY, AS YOU MAY THINK IT DESERVES.

AS STATED EARLIER, A DEFENDANT HAS A RIGHT NOT TO TESTIFY. IF A DEFENDANT DOES TESTIFY, HOWEVER, HIS TESTIMONY SHOULD BE WEIGHED AND CONSIDERED, AND HIS CREDIBILITY DETERMINED, IN THE SAME WAY AS THAT OF ANY OTHER WITNESS.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

EXPERT WITNESSES

THE RULES OF EVIDENCE PROVIDE THAT IF SCIENTIFIC, TECHNICAL, OR OTHER SPECIALIZED KNOWLEDGE MIGHT ASSIST THE JURY IN UNDERSTANDING THE EVIDENCE OR IN DETERMINING A FACT IN ISSUE, A WITNESS QUALIFIED AS AN EXPERT BY KNOWLEDGE, SKILL, EXPERIENCE, TRAINING, OR EDUCATION, MAY TESTIFY AND STATE HIS OPINION CONCERNING SUCH MATTERS.

YOU SHOULD CONSIDER EACH EXPERT OPINION RECEIVED IN EVIDENCE IN THIS CASE AND GIVE IT SUCH WEIGHT AS YOU MAY THINK IT DESERVES. IF YOU SHOULD DECIDE THAT THE OPINION OF AN EXPERT WITNESS IS NOT BASED UPON SUFFICIENT EDUCATION AND EXPERIENCE, OR IF YOU SHOULD CONCLUDE THAT THE REASONS GIVEN IN SUPPORT OF THE OPINION ARE NOT SOUND, OR THAT THE OPINION IS OUTWEIGHED BY OTHER EVIDENCE, THEN YOU MAY DISREGARD THE OPINION ENTIRELY.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

Count 1 of the indictment charges that from on or about December 31, 1984, up to and including January 3, 1985, in Letcher County, Kentucky, Harold Glenn Webb did transport and cause to be transported in interstate commerce, from Letcher County, in the State of Kentucky, to Coeburn, in the State of Virginia, goods having a value in excess of $5,000.00, that is approximately five hundred fifty-nine (559) tons of coal, knowing the same to have been stolen, converted, and taken by fraud, in violation of Title 18, United States Code, Section 2314.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

Title 18, United States Code, Section 2314, paragraph one provides as follows:

> "Whoever transports in interstate or foreign commerce, any goods, wares, merchandise, securities, or money, of the value of $5,000 or more, knowing the same to have been stolen, converted or taken by fraud" (shall beguilty of an offense against the United States).

There are four essential elements which must be proved beyond a reasonable doubt in order to establish the offense proscribed by this law:

First: That the defendant knowingly transported or caused to be transported coal in interstate commerce;

Second: That at the time the coal had a value in excess of $5,000;

Third: That at the time of the transportation, the coal had been stolen, converted or taken by fraud; and

Fourth: That at the time the defendant transported or caused the coal to be transported, he knew that it had been stolen.

The offense is complete when the four elements just stated are proved beyond a reasonable doubt. The proof need not show who may have stolen the property involved.

The word "stolen" includes all wrongful and dishonest takings of property with the intent to deprive the owner of the rights and benefits of ownership.

The word "value" means the face, par, or market value, or cost price, either wholesale or retail whichever is greater.

The term "interstate commerce" includes any movement or transportation of goods, wares, merchandise, securities or money from one state into another state.

The word "knowingly" as that term has been used from time to time in these instructions, means that the act was done voluntarily and intentionally and not because of mistake or accident or other innocent reason.

Count two of the indictment charges that on or about December 31, 1984, in Letcher County, Kentucky, in the Eastern District of Kentucky, Harold Glenn Webb, having devised a scheme and artifice to defraud and for obtaining money by means of false and fraudulent pretenses, representations, and promises, did induce Frank Dotson to travel in interstate commerce from the state of Virginia to Letcher County, in the State of Kentucky, for the purpose of defrauding Frank Dotson of money in excess of $5,000.00, in violation of Title 18, United States Code, Section 2314.

Count three of the indictment also charges in language identical to count two except it charges that the violation occurred on or about January 3, 1985. I will not recite it in detail herein and you are urged to refer to the indictment during your deliberations as to the specifics of count three.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

Title 18, United States Code, Section 2314, paragraph two, provides in part as follows:

> "Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, . . . induces any person to travel in . . . interstate commerce in the execution or concealment of a scheme or artifice to defraud that person of money or property having a value of $5,000 or more" (shall be guilty of an offense against the United States).

In order to establish that a defendant is guilty of the above offense, the Government must prove beyond a reasonable doubt all of the following essential elements:

First: The defendant willfully and knowingly devised a scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations or promises;

Second: The defendant induced Frank Dotson to travel in interstate commerce; and

Third: That the defendant induced Mr. Dotson to travel in interstate commerce in the execution of a scheme or artifice to defraud him of money or property having a value of $5,000 or more.

The words "scheme" and "artifice" include any plan or course of action intended to deceive others, and to obtain, by false or fraudulent pretenses, representations, or promises, money or property from persons so deceived.

A statement or representation is "false" or "fraudulent" within the meaning of this statute if it relates to material fact and is known to be untrue or is made with reckless indifference as to its truth or falsity and is made or caused to be made with intent to defraud. A statement or representation may also be "false" or "fraudulent" when it constitutes a half truth, or effectively conceals a material fact, with intent to defraud. A "material fact" is a fact that would be important to a reasonable person in deciding whether to engage or not engage in a particular transaction.

To act with "intent to defraud" means to act knowingly and with the specific intent to deceive, ordinarily for the purpose of causing some financial loss to another or bringing about some financial gain to one's self.

It is not necessary that the Government prove that the alleged scheme actually succeeded in defrauding anyone.

What must be proved beyond a reasonable doubt is that the defendant knowingly and willfully devised or intended to devise was a scheme to defraud and that he induced Frank Dotson to travel in interstate commerce, in the execution or carrying out of the scheme to defraud Frank Dotson of money or property having a value of $5,000 or more.

The word "value" has the same meaning as defined previously regarding count one.

Each separate travel in interstate commerce by Frank Dotson in furtherance of a scheme to defraud, constitutes a separate offense.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

The element of knowledge may be satisfied by inferences drawn from proof that a defendant deliberately closed his eyes to what would otherwise have been obvious to him. A finding beyond a reasonable doubt of a conscious purpose to avoid enlightenment would permit an inference of knowledge. Stated another way, a defendant's knowledge of a fact may be inferred from willful blindness to the existence of the fact.

It is entirely up to you as to whether you find any deliberate closing of the eyes, and the inferences to be drawn from any such evidence. A showing of negligence or mistake is not sufficient to support a finding of willfulness or knowledge.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

EXCULPATORY STATEMENTS--LATER SHOWN FALSE

CONDUCT OF A DEFENDANT, INCLUDING STATEMENTS KNOWINGLY MADE AND ACTS KNOWINGLY DONE UPON BEING INFORMED THAT A CRIME HAS BEEN COMMITTED, OR UPON BEING CONFRONTED WITH A CRIMINAL CHARGE, MAY BE CONSIDERED BY THE JURY IN THE LIGHT OF ALL OTHER EVIDENCE IN THE CASE, IN DETERMINING GUILT OR INNOCENCE.

WHEN A DEFENDANT VOLUNTARILY AND INTENTIONALLY OFFERS AN EXPLANATION, OR MAKES SOME STATEMENT TENDING TO SHOW HIS INNOCENCE, AND THIS EXPLANATION OR STATEMENT IS LATER SHOWN TO BE FALSE, THE JURY MAY CONSIDER WHETHER THIS CIRCUMSTANTIAL EVIDENCE POINTS TO A CONSCIOUSNESS OF GUILT. URDINARILY, IT IS REASONABLE TO INFER THAT AN INNOCENT PERSON DOES NOT USUALLY FIND IT NECESSARY TO INVENT OR FABRICATE AN EXPLANATION OR STATEMENT TENDING TO ESTABLISH HIS INNOCENCE.

WHETHER OR NOT EVIDENCE AS TO A DEFENDANT'S VOLUNTARY EXPLANATION OR STATEMENT POINTS TO A CONSCIOUSNESS OF GUILT, AND THE SIGNIFICANCE TO BE ATTACHED TO ANY SUCH EVIDENCE, ARE MATTERS EXCLUSIVELY WITHIN THE PROVINCE OF THE JURY.

A STATEMENT OR AN ACT IS "KNOWINGLY" MADE OR DONE, IF MADE OR DONE VOLUNTARILY AND INTENTIONALLY, AND NOT BECAUSE OF MISTAKE OR ACCIDENT OR OTHER INNOCENT REASON.

THE JURY WILL ALWAYS BEAR IN MIND THAT THE LAW NEVER IMPOSES UPON A DEFENDANT IN A CRIMINAL CASE THE BURDEN OR DUTY OF CALLING ANY WITNESSES OR PRODUCING ANY EVIDENCE.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

"Possession" of recently stolen property, if not satisfactorily explained, is ordinarily a circumstance from which you may reasonably draw the inference and find, in the light of the surrounding circumstances shown by the evidence in the case, that the person in possession knew the property had been stolen.

However, you are never required to make this inference. It is the exclusive province of the jury to determine whether the facts and circumstances shown by the evidence in this case warrant any inference which the law permits the jury to draw from the possession of recently stolen property.

The term "recently" is a relative term, and has no fixed meaning. Whether property may be considered as recently stolen depends upon the nature of the property, and all the facts and circumstances shown by the evidence in the case. The longer the period of time since the theft the more doubtful becomes the inference which may reasonably be drawn from unexplained possession.

If you should find beyond a reasonable doubt from the evidence in the case that the coal described in the indictment was stolen and that while recently stolen the coal was in the possession of the defendant, you would ordinarily be justified in drawing from those facts the inference that the coal was possessed by the accused with knowledge that they were stolen property, unless such possession is explained by facts and circumstances in this case which are in some way consistent with the defendant's innocence.

In considereing whether possession of recently stolen property has been satisfactorily explained, you are reminded that in the exercise of constitutional rights the accused need not take the witness stand and testify.

Possession may be satisfactorily explained through other circumstances, other evidence, independent of any testimony of the accused.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

DURING THE COURSE OF THE TRIAL, AS YOU KNOW FROM THE INSTRUCTION I GAVE YOU AT THE TIME, TESTIMONY OR EVIDENCE WAS RECEIVED WITH RESPECT TO DEFENDANT'S ALLEGED VIOLATION OF OTHER STATE AND FEDERAL MINING LAWS. THESE ACTS WERE NOT CHARGED IN THE INDICTMENT IN THIS CASE, BUT WOULD, AT MOST, CONSTITUTE EVIDENCE OF "SIMILAR ACTS" IN RELATION TO THOSE ALLEGED IN THE INDICTMENT.

EVIDENCE THAT AN ACT WAS DONE AT ONE TIME, OR ON ONE OCCASION, IS NOT ANY EVIDENCE OR PROOF WHATEVER THAT A SIMILAR ACT WAS DONE AT ANOTHER TIME, OR ON ANOTHER OCCASION. THAT IS TO SAY, EVIDENCE THAT A DEFENDANT MAY HAVE COMMITTED AN ACT SIMILAR TO THE ACTS ALLEGED IN THE INDICTMENT MAY NOT BE CONSIDERED BY THE JURY IN DETERMINING WHETHER THE ACCUSED IN FACT COMMITTED ANY ACT CHARGED IN THE INDICTMENT.

NOR MAY EVIDENCE OF SOME OTHER ACT OF A LIKE NATURE BE CONSIDERED FOR ANY OTHER PURPOSE WHATEVER, UNLESS THE JURY FIRST FIND THAT THE OTHER EVIDENCE IN THE CASE, STANDING ALONE, ESTABLISHES BEYOND A REASONABLE DOUBT THAT THE ACCUSED DID THE PARTICULAR ACT CHARGED IN THE PARTICULAR COUNT OF THE INDICTMENT THEN UNDER DELIBERATION.

IF THE JURY SHOULD FIND BEYOND A REASONABLE DOUBT FROM OTHER EVIDENCE IN THE CASE THAT THE ACCUSED DID THE ACT CHARGED IN THE PARTICULAR COUNT UNDER DELIBERATION, THEN THE JURY MAY CONSIDER EVIDENCE AS TO AN ALLEGED ACT OF A LIKE NATURE, IN DETERMINING THE STATE OF MIND OR INTENT WITH WHICH THE ACCUSED

DID THE ACT CHARGED IN THE PARTICULAR COUNT. AND WHERE PROOF OF AN ALLEGED ACT OF A LIKE NATURE IS ESTABLISHED BY EVIDENCE WHICH IS CLEAR AND CONCLUSIVE, THE JURY MAY, BUT IS NOT OBLIGED TO, DRAW THE INFERENCE AND FIND THAT, IN DOING THE ACT CHARGED IN THE PARTICULAR COUNT UNDER DELIBERATION, THE ACCUSED ACTED WILLFULLY, AND NOT BECAUSE OF MISTAKE OR ACCIDENT OR OTHER INNOCENT REASON.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

GOOD FAITH DEFENSE

ONE OF THE ESSENTIAL ELEMENTS OF THE OFFENSE CHARGED IS KNOWLEDGE OF THE ACCUSED THAT THE COAL IN QUESTION WAS STOLEN AT THE TIME THE ALLEGED OFFENSE WAS COMMITTED. THE DEFENDANT DENIES SUCH KNOWLEDGE AND CONTENDS THAT HIS ACTS, AS CONTAINED IN THE EVIDENCE, WERE IN GOOD FAITH.

IF THE JURY BELIEVES AND FINDS THAT THE DEFENDANT AT THE TIME AND PLACE CONTAINED IN THE EVIDENCE, IN GOOD FAITH, BELIEVED THAT HE HAD THE RIGHT TO MINE AND SELL THE COAL THEN THE ACCUSED CANNOT BE FOUND TO HAVE KNOWINGLY TRANSPORTED OR CAUSED TO BE TRANSPORTED STOLEN COAL IN INTERSTATE COMMERCE AND THE JURY SHALL SO FIND.

THE PHRASE "IN GOOD FAITH" MEANS HONEST AND SINCERE; THE CONDITION OF ACTING WITHOUT KNOWLEDGE OF FRAUD AND WITHOUT INTENT TO CARRY OUT A FRAUDULENT OR OTHERWISE UNLAWFUL PURPOSE.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

ON OR ABOUT --KNOWINGLY -- WILLFULLY

YOU WILL NOTE THAT THE INDICTMENT CHARGES THAT THE OFFENSE WAS COMMITTED "ON OR ABOUT" A CERTAIN DATE. THE PROOF NEED NOT ESTABLISH WITH CERTAINTY THE EXACT DATE OF THE ALLEGED OFFENSE. IT IS SUFFICIENT IF THE EVIDENCE IN THE CASE ESTABLISHES BEYOND A REASONABLE DOUBT THAT THE OFFENSE WAS COMMITTED ON A DATE REASONABLY NEAR THE DATE ALLEGED.

THE WORD "KNOWINGLY," AS THAT TERM HAS BEEN USED FROM TIME TO TIME IN THESE INSTRUCTIONS, MEANS THAT THE ACT WAS DONE VOLUNTARILY AND INTENTIONALLY AND NOT BECAUSE OF MISTAKE OR ACCIDENT.

THE WORD "WILLFULLY," AS THAT TERM HAS BEEN USED FROM TIME TO TIME IN THESE INSTRUCTIONS, MEANS THAT THE ACT WAS COMMITTED VOLUNTARILY AND PURPOSELY, WITH THE SPECIFIC INTENT TO DO SOMETHING THE LAW FORBIDS; THAT IS TO SAY, WITH BAD PURPOSE EITHER TO DISOBEY OR DISREGARD THE LAW.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

CAUTION -- PUNISHMENT

A SEPARATE CRIME OR OFFENSE IS CHARGED IN EACH COUNT OF THE INDICTMENT. EACH CHARGE AND THE EVIDENCE PERTAINING TO IT SHOULD BE CONSIDERED SEPARATELY. THE FACT THAT YOU MAY FIND THE DEFENDANT GUILTY OR NOT GUILTY AS TO ONE OF THE OFFENSES CHARGED SHOULD NOT CONTROL YOUR VERDICT AS TO ANY OTHER OFFENSE CHARGED.

I CAUTION YOU, MEMBERS OF THE JURY, THAT YOU ARE HERE TO DETERMINE THE GUILT OR INNOCENCE OF THE ACCUSED FROM THE EVIDENCE IN THIS CASE. THE DEFENDANT IS NOT ON TRIAL FOR ANY ACT OR CONDUCT OR OFFENSE NOT ALLEGED IN THE INDICTMENT. NEITHER ARE YOU CALLED UPON TO RETURN A VERDICT AS TO THE GUILT OR INNOCENCE OF ANY OTHER PERSON OR PERSONS NOT ON TRIAL AS A DEFENDANT IN THIS CASE.

ALSO, THE PUNISHMENT PROVIDED BY LAW FOR THE OFFENSE CHARGED IN THE INDICTMENT IS A MATTER EXCLUSIVELY WITHIN THE PROVINCE OF THE COURT OR JUDGE, AND SHOULD NEVER BE CONSIDERED BY THE JURY IN ANY WAY, IN ARRIVING AT AN IMPARTIAL VERDICT AS TO THE GUILT OR INNOCENCE OF THE ACCUSED.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

DUTY TO DELIBERATE

ANY VERDICT MUST REPRESENT THE CONSIDERED JUDGMENT OF EACH JUROR. IN ORDER RETURN A VERDICT, IT IS NECESSARY THAT EACH JUROR AGREE THERETO. IN OTHER WORDS, YOUR VERDICT MUST BE UNANIMOUS.

IT IS YOUR DUTY AS JURORS, TO CONSULT WITH ONE ANOTHER, AND TO DELIBERATE IN AN EFFORT TO REACH AGREEMENT IF YOU CAN DO SO WITHOUT VIOLENCE TO INDIVIDUAL JUDGMENT. EACH OF YOU MUST DECIDE THE CASE FOR YOURSELF, BUT ONLY AFTER AN IMPARTIAL CONSIDERATION OF THE EVIDENCE IN THE CASE WITH YOUR FELLOW JURORS. IN THE COURSE OF YOUR DELIBERATIONS, DO NOT HESITATE TO RE-EXAMINE YOUR OWN VIEWS AND CHANGE YOUR OPINION IF CONVINCED IT IS ERRONEOUS. BUT DO NOT SURRENDER YOUR HONEST CONVICTION AS TO THE WEIGHT OR EFFECT OF THE EVIDENCE SOLELY BECAUSE OF THE OPINION OF YOUR FELLOW JURORS, OR FOR THE MERE PURPOSE OF RETURNING A VERDICT.

REMEMBER AT ALL TIMES, YOU ARE NOT PARTISANS. YOU ARE JUDGES--JUDGES OF THE FACTS. YOUR SOLE INTEREST IS TO SEEK THE TRUTH FROM THE EVIDENCE IN THE CASE.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

THE COURT'S INSTRUCTIONS TO THE JURY:

VERDICT

UPON RETIRING TO THE JURY ROOM YOU SHOULD FIRST SELECT ONE OF YOUR NUMBER TO ACT AS YOUR FOREPERSON WHO WILL PRESIDE OVER YOUR DELIBERATIONS AND WILL BE YOUR SPOKESMAN HERE IN COURT. A FORM OF VERDICT HAS BEEN PREPARED FOR YOUR CONVENIENCE.

[EXPLAIN VERDICT]

YOU WILL TAKE THE VERDICT FORM TO THE JURY ROOM AND WHEN YOU HAVE REACHED UNANIMOUS AGREEMENT AS TO YOUR VERDICT, YOU WILL HAVE YOUR FOREPERSON FILL IT IN, DATE AND SIGN IT, AND THEN RETURN TO THE COURTROOM.

IF, DURING YOUR DELIBERATIONS, YOU SHOULD DESIRE TO COMMUNICATE WITH THE COURT, PLEASE REDUCE YOUR MESSAGE OR QUESTION TO WRITING SIGNED BY THE FOREPERSON, AND PASS THE NOTE TO THE MARSHAL WHO WILL BRING IT TO MY ATTENTION. I WILL THEN RESPOND AS PROMPTLY AS POSSIBLE, EITHER IN WRITING OR BY HAVING YOU RETURNED TO THE COURTROOM SO THAT I CAN ADDRESS YOU ORALLY. I CAUTION YOU, HOWEVER, WITH REGARD TO ANY MESSAGE OR QUESTION YOU MIGHT SEND, THAT YOU SHOULD NEVER STATE OR SPECIFY YOUR NUMERICAL DIVISION AT THE TIME.