

always remember, suit was for Birnbaum having violated the TEXAS WATER
CODE by building a dam, "The Dam" dam, in 1994.
This is all about BEAVER - 102 times -- ALL FRAUD

NO. 95-63

WILLIAM B. JONES

IN THE DISTRICT COURT

VS.

VAN ZANDT COUNTY, TEXAS

UDO BIRNBAUM

294TH JUDICIAL DISTRICT

ORAL DEPOSITION

OF

UDO BIRNBAUM

APPEARANCES:

MR. RICHARD L. RAY, Attorney at Law
300 South Trade Days Boulevard
Canton, Texas 75440

APPEARING FOR PLAINTIFF

MR. UDO BIRNBAUM
Route 1, Box 295
Eustace, Texas 75124

ACTING IN HIS OWN BEHALF

ALSO PRESENT: Mr. Louis Thibideaux

ANSWERS ,and DEPOSITION of UDO BIRNBAUM, taken
at the instance of the Plaintiff, taken in the above-
styled and numbered cause at 9:15 a.m. on the 10th day
of December, 1997, before Muriel I. Pearson, a Certified
Shorthand Reporter in and for the State of Texas, at the
Van Zandt: County District Courtroom, located at 121 East
Dallas, Canton, Texas, in accordance with Notice.

UDO BIRNBAUM,

2 the witness hereinbefore named, having been first duly
3 cautioned and sworn to tell the truth, the whole truth,
4 and nothing but the truth, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. RAY:

8 Q Mr. Birnbaum, my name is Richard Ray. We
9 are on the record at this time, and as you are aware,
10 I am the attorney representing Mr. Jones in a suit
11 that he has filed against you, is that correct?

12 A I don't know how to reply to that. That's
13 before the Court. Obviously yes.

14 Q Have you ever had your deposition taken before?

15 A Which deposition?

16 Q We are here for a deposition today, correct?
17 Is that right?

18 A Yes.

19 Q Have you ever had it taken before, a deposition
20 in any other case at any time?

21 A No. That was not the way I understood the
22 question.

23 Q As a result I'm going to explain to you what
24 a deposition is because you are not an attorney, are
25 you, Mr. Birnbaum?

<>.

A You know I'm not.

2 Q Okay. Now your deposition, and your testimony
3 is taken under oath the same as it would be if you were
4 in court testifying from the witness stand before the
5 Judge. Do you understand that?

6 A Continue.

7 Q Do you understand that?

8 A What do you mean by understand?

9 Q Do you understand?

10 A Yes.

11 Q And you understand that you are under oath
12 and sworn to tell the truth the same way as you would be
13 if you were testifying and it was an actual court
14 proceeding rather than here at the deposition?

15 A I do, yes.

16 Q If you would, Mr. Birnbaum, please state your
17 full name.

18 A Udo H. Birnbaum.

19 Q What does the "H" stand for, or does it stand
20 for anything?

21 A Herman. H-e-r-m-a-n.

22 Q So your full name is actually Udo Herman
23 Birnbaum?

24 A Yes.

25 Q And is your address the same as you stated

on the interrogatories, which is Route 1, Box 295,
2 Eustace, Texas?

3 A Yes.

4 Q How long have you resided at that address,
5 Mr. Birnbaum?

6 A Since what do you define officially
7 residing? I don't know what is relevant.

8 Q How long have you lived there?

9 A I bought the farm in '81, and I've lived
10 there since some time that I moved in after that.

11 Q How soon after 1981 did you move in, or do you
12 recall?

13 A I built the house in '85.

14 Q Had you lived there prior to building the
15 house?

16 A Yes.

17 Q When did you begin to live on the property?

18 A In '81.

19 Q What's your date of birth, Mr. Birnbaum?

20 A Looking at the interrogatories, 11/28/36.

21 Q And what age does that make you now?

22 A Sixty-one.

23 Q Where were you born?

24 A Houston, Texas.

25 Q Where did you spend your childhood? Where

did you live?

2 A I was born in America. I lived in Germany
3 for some time.

4 MR. BIRNBAUM: I object to the nature of
5 the question.

6 MR. RAY: First of all, we probably should
7 have discussed what kind of agreement we have.

8 We are taking this deposition in accordance
9 with the Rules, okay, but not Rules that I make up or
10 that you make up, Mr. Birnbaum.

11 Now my understanding of the Rules are that you
12 can object to my questions but you still have to answer
13 them, and then the Judge can rule on the objection, and
14 if he rules to grant your objection then the answer is
15 excluded.

16 In addition I can object if you are non-
17 responsive to one of my questions. For instance if I
18 ask you if the sun is shining outside and you tell me
19 that you had breakfast this morning, that is a
20 nonresponsive answer and I can object to that, okay?

21 To make my questions simpler to you, so I can
22 understand your answers better, and this is not a trick
23 question; I'm not trying to do anything underhanded to
24 you, I am just inquiring as to your past history.

25 Q And you told me you were born in Houston

1 and that you spent a portion of your childhood in
2 Germany. How long did you remain in Houston before
3 you returned to Germany as a child?

4 A Time out.

5 (Short recess.)

6 A What was the question?

7 Q I asked you how long -- you said you were born
8 in Houston?

9 A Yes.

10 Q And that you returned to Germany in your
11 childhood?

12 A Yes.

13 Q I asked you for how long a period of time
14 did you remain in Houston after your birth until you
15 returned to Germany as a child?

16 A Two years. I did not return to Germany as
17 a child. I didn't say that.

18 Q Okay, explain to me what you said. I don't
19 want to put words in your mouth.

20 A What was the question?

21 Q I was asking you how many years you resided
22 as a child in Houston after your birth. You told me
23 you were born in Houston, correct?

24 A Yes.

25 Q And I presume you were living in Houston

when you were born?

2 A Yes.

3 Q Now how many years did you remain in Houston
4 or live in Houston before you returned to Germany?

5 A I couldn't have returned to Germany; I was
6 an American. I couldn't have returned to Germany, I
7 was born in Houston. How could I return to Germany? I
8 don't understand the question.

9 Q Did you say you stayed in Houston and then
10 you went to Germany to live as a child?

11 A That's what I said.

12 Q How long did you live in Germany as a child?

13 A To 1950.

14 Q And how old would you have been then?

15 A Thirteen.

16 Q And what happened in 1950? Where did you go
17 to live?

18 A To Houston, Texas.

19 Q You returned to Houston, Texas?

20 A Yes.

21 Q Did you spend the rest of your childhood there
22 in Houston, or did you return to Germany?

23 A No. I never went back to Germany until much,
24 much, much later.

25 Q From the age of thirteen to eighteen where did

you live:

2 A Houston, Texas. I went to public school. I
3 was an American citizen.

4 Q What high school did you graduate from?

5 A Milby. Milby High School in Houston.

6 Q Then after you graduated from high school
7 did you go on and obtain other education?

8 A Yes. I went to Rice University in Houston.

9 Q How many years did you attend Rice University?

10 A Five years.

11 Q Was it Rice Institute then?

12 A It was called Rice Institute at that time.

13 Q And did you take a degree from Rice?

14 A They gave me a degree.

15 Q And what was the degree in?--

16 A Rice gave two; dual degrees. After four years
17 I got a degree with some kind of a nondescript, just a
18 B.S. I think was a nondescript. And after five years I
19 got a degree in Electrical Engineering.

20 Q So I take it then most of your studies were
21 in the engineering field, or the electrical field? Is
22 that a fair statement?

23 A Elaborate the question.

24 Q As far as the courses you took when you were
25 at Rice were the majority of your courses then in the

engineering field, since you took ...

2 A I got a degree in electrical engineering.
3 We also had courses in all kinds of other things.
4 History, I voluntarily took some American History
5 that I didn't have to take. In fact most of the
6 things that I spent my time on were not engineering
7 related. It was a university. They teach you all kinds
8 of other things besides engineering. We had economics:
9 we had history: we had English. I think you are trying
10 to portray -- I don't know what ... Proceed.

11 Q What age were you when you graduated?

12 A Approximately twenty-three, twenty-four.
13 I got my first degree in 159: the second in 160.
14 Something like twenty-three, twenty-four years.

15 Q Did you participate in any of the student
16 activities while you were in college?

17 A Yes.

18 Q What?

19 A I was at the football games. I was involved
20 in cheer leading at the football games, the indoctrination
21 of the freshmen at a couple of engineering societies,
22 and things of that nature.

23 Q Did you belong to any organizations, for a
24 better word associations, within the University that
25 were extra curricular in activity?

1 A Yes. Tau Beta Phi; Phi Beta Kappa.

2 Q Are there any others?

3 A That's all I can think of at the moment.

4 Q Did you take your degree with honors?

5 A Yes.

6 Q Did you take it with high honors?

7 A Yes.

8 Q What's the Latin phrase for that?

9 A It's either summa cum laude, or magna cum laude.

10 I'm mixed up a little bit about which one I got but it's

11 one of the two.

12 Q NOW, I think ...

13 A There may have been some mix-up because I

14 think it showed on one of the things on the diploma

15 something and one of them something else. There may

16 have been some mix-up. Anyway, one of the two.

17 Q Did that upset you when that occurred?

18 A I'm not sure I recognized it at that time.

19 I'm not sure it's really true.

20 Q What's true?

21 A Whether a mix-up really occurred, or whether

22 there's something that it was supposed to be. But I

23 couldn't recollect exactly what it is but I thought I

24 had seen but when I look back it was either summa cum

25 laude or magna cum laude. It was one of the two. If

1 it's needed I will provide the information to you. I
2 will supplement it.

3 Q That's fine. I was just asking you if that
4 was an upsetting episode to you?

5 A No, it was not. At the time it didn't
6 register.

7 Q I notice you answered one of your
8 interrogatories whenever -- you said you were an
9 American citizen by birth?

10 A Yes, sir.

11 Q Why do you say you are an American citizen
12 by birth?

13 A Because I was born here. What else?

14 Q I've taken an international law course, and
15 I have an advantage over you here. When you say you are
16 a citizen by birth that normally indicates to me not the
17 location of your birth but the lineage of your birth.
18 In other words that you were born of an American citizen
19 and then you could be born anywhere in the world and
20 still be an American citizen. But as I understand it
21 you are indicating that you are an American citizen
22 because you were born within the United States?

23 A You have answered the question.

24 Q Is that right?

25 A Yes, sir.

Q Were your parents American citizens?

2 A Not at that time. They are American citizens.

3 Q They are American citizens?

4 A They are naturalized.

5 Q Why were your parents living in Houston, Texas,
6 when you were born?

7 MR. BIRNBAUM: I object to that. That's a
8 speculative answer.

9 Do you want to get into that? Do you want
10 me to finish the whole_thing?

11 MR. RAY: Yes, sir.

12 A Okay, why were they born...

13 Q Why were they in the United States when you
14 were born?

15 A Everybody has got to be somewhere.

16 Q Yes, sir, I understand, but I presume they
17 came to America for some reason, right?

18 A Yes, there was a reason, certainly. I don't
19 know how to answer. I don't know. They liked it, I
20 guess.

21 Q Did they have any intention to immigrate to
22 America?

23 A I have no idea. You were asking me about
24 intentions. I can't tell you about intentions. I can
25 tell you some of the things he did, okay? He was

working in oil exploration as I guess really doing
2 seismic work. That was before the term really came.
3 He would have been a hundred by now. He was running
4 around all across the prairies with a gravity meter
5 trying to find silicones so he could find oil fields.
6 He was doing that to start off with. That was what he
7 did when he was working.

8 Q How long had your parents been in the United
9 States prior to your birth, or do you know?

10 A Approximately twelve years.

11 Q Do you know what companies your father worked
12 for?

13 A At that time?

14 Q Prior to your birth, or at the time of your
15 birth?

16 A Well, he came over, I think, working for some
17 German company. I don't know the name of it. And then
18 he worked for somebody else over here. I don't know
19 what name they were under. It was Conklin America
20 Corporation in Houston at some point. I think when
21 he was working some of these names didn't even exist.

22 Q But as I understand your answer your father
23 came over to the United States originally while in the
24 employ of a German company.

25 A I believe that's true, yes.

2 Q And did he subsequently then go to work for
American companies doing the same thing?

3 A I don't say the same. I don't know.

4 Q As far as you know, and I realize ...

5 A Oil exploration, right.

6 Q Did Qe have any success in locating silicones?

7 A Yes.

8 Q Why then did he return to Germany two years
9 after you were born, which would have been about 1940?

10 A He's dead.

11 Q Was your father dead in 1940?

12 A No, no, no. He's dead right now. He returned.

13 Q I understand, Sir, but why did he go back to
14 Germany in the 1940's?

15 A I didn't say he went back in 1940

16 Q When did he go back?

17 A Approximately 1938.

18 Q When were you born?

19 A 1936.

20 Q Okay, he went back in 1938?

21 A Uh-huh.

22 Q Why did he return to Germany in 1938?

23 A You are asking me to give my opinion?

24 A Uh-huh.

25 A Temporary insanity.

Q In what way?

2 A Anybody that goes back to Germany in 1938 has
3 got to be insane in retrospect. Do you know when the
4 war broke out?

5 Q In 1939. Did that have anything to do with
6 his going back?

7 A Well, anybody that goes back in 1938, it's
8 got to be temporary insanity.

9 Q But I'm asking you why do you state that as
10 an opinion?

11 A Because you asked me. I asked you if you
12 wanted my opinion or the facts and you said you wanted
13 my opinion.

14 Q That's right. I want your opinion.

15 And if you would, state to me the reasons
16 why you give me that opinion that your father had to
17 be temporarily insane to return to Germany in 1938 other
18 than the war.

19 A It's in retrospect. Monday morning quarter-
20 backing.

21 Q Did your mother go with him?

22 A That question never arose. It's never been
23 asked me before. I am sure she did. I know she did.

24 Q And you went as a child? You were two years
25 old?

1 A Are you asking me to testify what I did as a
2 child of two years old? I imagine I did.

3 Q You said you went back to Germa~y; you told me
4 that. So you must have gone with your family, correct?

5 A I wound up over there, yes.

6 Q Did you have any siblings?

7 A A brother.

8 Q What age is your brother?

9 A He's about two-and-a-half years younger.

10 Q Where does he reside?

11 A Pearland, Texas.

12 Q While you were in Germany what did you do as
13 a child?

14 A Be more specific.

15 Q Did you go to school?

16 A Yes.

17 Q And where did you go to school?

18 A I went to elementary school in the village we
19 lived in. Then after that I went to a middle school.

20 Q What was the village name?

21 A Triangel.

22 Q And what province would that be located in,
23 or state?

24 A I don't know how they are organized over
25 there, provinces, or state, or what. It was in the

Kreisgilhorn.

2 Q And how did you do in school in Germany?

3 A Good.

4 Q I think your earlier testimony indicated that
5 you returned to the United States in 1950, is that
6 correct?

7 A Uh-huh. Yes.

8 Q So I take it you were in Germany through the
9 war?

10 A Yes.

11 Q How old were you when the war ended? Do you
12 recall?

13 A The answer I gave you~ In 1945 I would have
14 been nine years old.

15 Q Was your father still alive at that time?

16 A Oh, yes. My father died about three or four
17 years ago. Five years ago, I guess.

18 Q What did your father do during the war as an
19 occupation?

20 A Oil exploration.

21 Q In Germany?

22 A Yes, sir.

23 Q Was there very much oil activity in Germany?

24 A I guess the need was pretty high.

25 Q But he didn't go anywhere else to work on

oil exploration?

2 A No.

3 Q What did your mother do during that period
4 of time?

5 A Raised us kids.

6 Q She didn't have any job outside the home or
7 anything, did she?

8 A She went out in the fields and collected the
9 grain out of the fields after the farmers had already
10 harvested it so we would have something to eat. I give
11 you a complete answer but I don't see the relevance with
12 any of it.

13 Q What I'm asking you is did she work outside
14 the home for a wage, or to make money?

15 A She worked in the fields for us kids.

16 Q What is your religion, Mr. Birnbaum, or do you
17 have one?

18 A Protestant.

19 Q Any particular faith?

20 A I guess I went through catechism school as
21 a Lutheran wh~ch everybody over there was required to
22 do because Germany was half Lutheran and half Catholic,
23 and I happened to be a Lutheran. And I have gone to
24 Baptist churches over here, and I have gone to Assembly
25 of God in my neighborhood. Zion Hill Assembly of God.

2 Q Have you attended any other churches besides
the Zion Hill Assembly of God?

3 A Yes.

4 Q What other churches?

5 A What do you mean by attend?

6 Q Well, just to go to visit.

7 A Yes.

8 Q What other churches?

9 A In the Dallas area ■---

10 Q I'm going to stop you there. I'm not really
11 interested in the Dallas area. I just want to know
12 about churches that would be located in Van Zandt
13 county.

14 A China Grove.

15 Q China Grove Baptist Church?

16 A Uh-huh.

17 Q Any others besides China Grove Baptist Church
18 and Zion Hill?

19 A I've gone to some revivals in other places.

20 Q Within Van Zandt County?

21 A County Road, although that may not be in
22 Van Zandt County.

23 Q County Line?

24 A It's right on the edge of the County.

25 Q Any other places?

1 A Not that I can recall that there was any
2 major involvement on my part. I may have been to some
3 other churches.

4 Q Do you have any particular friends that you
5 go to church with?

6 A The congregation.

7 Q By name who would be your close friends within
8 that congregation?

9 A Well, the preacher and his wife.

10 Q What is their name?

11 A Curtis Munn.

12 Q And what is his wife's first name?

13 A I think it's Yvonne. I don't know how to spell
14 it.

15 Q Who else?

16 A The Greens. Wilma Green and Dan Green. The
17 list just goes on and on.

18 Q Mr. Birnbaum, let me explain to you why I am
19 asking you these questions. You have placed this case
20 on the jury docket, correct, asking for a jury trial?

21 A I have paid the jury fee. I do not know if
22 that constitutes placing it on the jury docket. You
23 would know that.

24 Q Let me rephrase my question. Are you asking
25 for a jury to make a determination of this case? I take

1 it by your own admission you have paid a jury fee so you
2 must be.

3 MR. BIRNBAUM: I object to the nature of that
4 question. That is before the Court and that is where it
5 properly belongs to be addressed.

6 Q Okay, Sir. Let me tell you why I am asking
7 these questions. Because you have placed this case upon
8 the jury docket, or paid a jury fee, I will be required
9 to pick a jury, and I'm entitled to know who your friends,
10 your acquaintances, your social relationships, any
11 fraternal organizations you might belong to, all those
12 things about you, and the reason for that is so that I
13 can discover if there is anyone in that jury panel that
14 might have a bias based on friendship or any other kind
15 of relationship with you that I would think would be
16 unfair.

17 And in the process of trial I am entitled to
18 so many strikes in behalf of Mr. Jones, and I would
19 probably exercise them on those folks, so I am entitled
20 to ask you that, and that's why I'm asking you. And
21 I'm not asking you about the entire congregation, but
22 I'm asking you who are your good friends, within the
23 congregation in the churches that you attend, and you
24 told me the Greens, and you told me the Munns. Anybody
25 else?

/--"

1 A I think that that constitutes with just the name
2 many people.

3 Q Do you have any social acquaintances that you
4 go to visit from time to time? This is not concerning
5 church activities or anything; just friends?

6 A Mr. Thibideaux.

7 Q Anyone else? Your wife, too.

8 A And I have others that are friends out in the
9 county. Are you referring to the county?

10 Q Yes, sir. And I'm asking you in the county.

11 Q There's somebody else I visit sometimes. I
12 can't think of his name right now.

13 Q If we leave a blank in it could you fill the
14 blank in when you review it?

15 A I can come up with the name in just a minute.

16 _____
17 There's somebody else that helps me with my
18 cows a little bit.

19 Q Who is that?

20 A Jesse Lowry.

21 Q Where does he live?

22 A In Van Zandt. I can't give you the road.

23 Q Do you belong to any fraternal organizations
24 such as the Masonic Lodge, or the Lions Club, anything
25 like that?

A Uh-uh.

2 Q What do you do for recreation?

3 A For the last three years I have been worrying
4 about this thing.

5 Q I take it this thing is not exactly recreation
6 or pastime. So, is there anything that you would like to
7 be doing that maybe you're not getting to do? Hobbies,
8 or anything like that?

9 A Try to get more involved in my wetlands again.
10 Electronics; I like nature; I like to read; I like to
11 talk to people. That's not a complete answer but that's
12 the gist of it.

13 Q After you graduated from college what did you
14 do next?

15 A I started working and making a living.

16 Q Where did you go to work?

17 A Texas Instruments in Dallas.

18 Q Did you marry?

19 A No.

20 Q Have you ever married?

21 A No.

22 Q What year was it you went to work for Texas
23 Instruments, or do you recall?

24 A The first time 1959; summer employment. 1960,
25 permanent.

Q And how long did you work for Texas
2 Instruments?

3 A Until 1985, with a very short intermission
4 after half a year.

5 Q Why did you have an intermission in half a
6 year?

7 A I changed jobs and came back.

8 Q Came back to where?

9 A Texas Instruments.

10 Q So I take it the change in jobs took you away
11 from Texas Instruments?

12 A For about half a year.

13 Q Who did you work for during that half year?

14 A State Farm. It's in Dallas.
~:---~

15 Q What was the nature of your job when you went
16 to Texas Instruments?

17 A Electrical Engineer.

18 Q Did that remain the same throughout .your
19 tenure with Texas Instruments?

20 A I answered the last question as in the
21 generality, and now you are asking specifics. It can
22 no longer be answered as just Electrical Engineer. You
23 asked me did it remain the same. An Electrical Engineer
24 does all kinds of things. I don't know what you -- **it**
25 obviously is not the same all the time. What do you

mean by the same?

2 Q My question really only calls for "yes" or
3 "no". So *t* take it that your response is, no, it did
4 not remain the same?

5 A No.

6 Q And what was it that changed?

7 A I learned; I assumed more responsibility; got
8 into new fields that developed.

9 Q Did you have a supervisory capacity?

10 A Not that I have ever considered it.

11 Q And why do you say that?

12 A Yes, I had people assigned to me but I didn't
13 have any -- I was just the first one on the line
14 reporting on the paperwork. I don't know what you
15 mean by supervisory.

16 Q Did you have the authority to hire and fire?

17 A No. If you have a big company of ten thousand,
18 twelv~ thousand, I can't have the authority to hire and
19 fire. Did I input it in some way, yes. The answer is
20 yes. We had people coming in for job applications,
21 and we would fill out job reviews in the field, and
22 the recommendations, and various and sundry things, and
23 you just put in the requirements of the type of people
24 that you needed and somebody else had to approve it,
25 and all these things. You are familiar with that.

2 Q Why did you leave Texas Instruments in 1985?
A Multiple. Seek other employment.

3 Q You say multiple, and I take it you mean
4 multiple reasons. You've given me one to seek other
5 employment. Why would you seek other employment" and
6 leave an employer you had had for approximately twenty-
7 five years?
A Well, for a rural setting in Van Zandt
8 County; getting up in age.

9 Q You didn't have any difficulty at Texas
10 Instruments, did you?
A What do you mean by difficulties?

11 A Did any problems arise at Texas Instruments
12 that precipitated your leaving in 1985?
A No. Problems that forced me to leave, or what?

13 Q Uh-huh.
A No.

14 Q If you wanted to go back today could you
15 still go back?
A No.

16 Q Why not?
A There is no more of that division that I worked
17 for.

18 Q If you wanted to go back in 1988 could you?
A These are speculative answers; irrelevant.

I don't know. How would I know if I could go back?

2 There's nothing that transpired of any thing that

3 reflected on personality, or anything on me. Could I

4 go back? Speculative answer. Speculative question.

5 I decided to live in Van Zandt County and become part

6 of"this community. I don,t want to be back in Dallas.

7 Q Did you dislike Dallas in particular?

8 A I like Van Zandt County better.

9 Q Why?

10 A Private; a rural setting; I wanted to be
11 around animals, nature, these kind of things. Less
12 polluted; less crime.

13 Q As a child were you raised in a rural area or
14 city area?

15 A More or less -rural.

16 Q Why did you in particular choose Van Zandt
17 County to come to live in 1985?

18 A Everybody's got to be somewhere.

19 Q That's right, and I think you told me you
20 bought land in 1981?

21 A Yes.

22 Q Did that have anything to do with your decision?

23 A Yes.

24 Q Coming to Van Zandt County?

25 A We went through that before. I came to

1 Van Zandt County when I bought the land. It was the
2 buying of the land that constitu~ed me moving into
3 Van Zandt County.

4 Q Why did you decide to buy land in Van Zandt
5 County?

6 A I guess the price was right. The price was
7 right and I liked it.

8 Q Did you have any friends here that caused
9 you to come, or was it just an advertisement in the
10 paper, or what?

11 A It was an advertisement in the paper. I had
12 been looking for land in all kinds of places. I had
13 been running around to Bonha~ and it's too dry when you
14 go out west, and when you go east it's salty, and when you
15 go north it's too cold, and when you go too far south it's
16 too hot. So here I am.

17 Q What kind of work or employment did you
18 obtain when you came to Van Zandt County, or did you?

19 A I taught at Martins Mill.

20 Q Martins Mill Independent School District?
21 What courses did you teach at Martins Mill? Or should
22 I say subjects rather than courses?

23 A Actually subjects. Sixth Grade Science, Seventh
24 Grade Science, Ninth Grade Algebra, Ninth Grade Physical
25 Science, Chemistry and Trigonometry.

1 Q Did you have to go back and take some education
2 courses to qualify to teach at Martins Mill, or did you
3 take those originally when you were at Rice?

4 A Break the questions down into one question
5 at a time.

6 Q Have you ever taken any education courses
7 in your lifetime?

8 A No.

9 Q How do you qualify to teach in the Public
10 School system then?

11 A I do not know. It was on some kind of an
12 emergency basis that they got some sort of a thing.
13 That's all I know. More than that I'm not privileged.
14 I do not know, but it is my understanding it was on
15 some sort of an emergency basis. I was considering
16 taking some more courses after that. I decided not
17 to take any more courses after that.

18 Q How long did you teach at Martins Mill?

19 A Half a year approximately.

20 Q Why did you leave after that half a year?

21 A I haven't figured that one out.

22 Q Did you leave of your own volition or did they
23 ask you to leave, and by they I am referring to the
24 administration of Martins Mill School?

25 A It was a mutual -- I don't know exactly

1 what happened. It was a mutual understanding that it
2 wasn't working out. I was wrong; it wasn't a mutual
3 understanding. It was not working out on my part. I
4 was not satisfied.

5 Q Why was it not working out?

6 A I decided I didn't want to do that. It
7 wasn't worth the hassle .•

8 Q Did you have any difficulty getting along with
9 the children?

10 A Do teachers have difficulty getting along with
11 children? All do. To what degree?

12 Q In your opinion did you have more than the
13 normal teacher's problems in dealing with the children?

14 A That's speculative. It's speculative
15 information.

16 Q I asked you your opinion, so you can give it.

17 A Oh, I don't think so.

18 Q Did you have any difficulty getting along with
19 your superiors at the school?

20 A No, not that I know of. No.

21 Q If I were to subpoena your employment records
22 from Martins Mill ISD would it reflect well on your
23 record as a teacher, or not?

24 A I have no idea. I have never seen them. I have
25 never seen the. You may do that. There is nothing in

there that I know of in any form or fashion.

2 Q Well, the reason I ask this, Mr. Birnbaum, is
3 the fact that somebody normally wouldn't leave in the
4 middle of the year; that you didn't leave at the end
5 of the year. So I take it there must have been a
6 considerable amount of unhappiness on someone's part
7 and you told me originally that it was a mutual under-
8 standing that you left there. Did they ask you to leave?

9 A I corrected that and said that I decided to
10 leave.

11 Q Was there any personnel in the Martins Mill
12 Independent School District that asked you to resign,
13 or give up your teaching position?

14 A No.

15 Q Were you called in for any conferences to
16 discuss your performance on the job?

17 A Not relating to any specific matters. There's
18 always conferences kinds of things going on.

19 Q What was discussed in those conferences?

20 A Complaints due to House Bill 72 documentation
21 of when what students had mastered various things at
22 various times, and matters of that nature, but there was
23 nothing specific to me.

24 Q Were you friends with any of the teachers in
25 particular there at the Martins Mill Independent School

District?

2 A No.

3 Q Do you remember any of them as being a social
4 friend of yours at all at the school?

5 A No.

6 Q Did you have a friendship with any of the
7 members of the school board at Martins Mill?

8 A No.

9 Q After you stopped teaching at Martins Mill what
10 did you do for employment?

11 A I had my parents move up here from Houston
12 in 1985. I built a house, and I took care of my parents.

13 Q Did you seek any other employment after you
14 left the Martins Mill School District?

15 A No, I didn't seek .it, but ...

16 Q Did you obtain any employment?

17 A Yes.

18 Q What.

19 A Working for Texas Instruments.

20 Q Let me back up because I am confused. You
21 said in 1985 you left Texas Instruments, right?

22 A Yes, sir.

23 Q And I understood you went to work for
24 Martins Mill School District in 1985

25 A Yes.

2 Q And now you are telling me you returned to
Texas Instruments to work?

3 A Yes.

4 Q When did you do that?

5 A In 1989.

6 Q What did you do from leaving the Martins Mill
7 School District job until 1989?

8 A I think I answered that. I took care of my
9 parents.

10 Q You didn't have any other employment?

11 A I had a farm out there as you know. Got some
12 cows.

13 Q But you didn't have a particular job that you
14 went to on a daily basis, or anything?

15 A No. Yes, I did not.

16 Q What caused you to go back to Texas
17 Instruments in 1989?

18 A Some of the people I had worked for were
19 looking for some more people to do some work in the
20 areas that I had been working.

21 Q Did they call you and initiate your coming
22 back?

23 A Yes.

24 Q How long did you work? From 1989 until what
25 date?

1 A Until '93.

2 Q Why did you leave in 1993?

3 A They no longer had need of my work.

4 Q Did you go to work anywhere else after 1993?

5 A I went back to work for Texas Instruments --

6 No, after that I worked at Texas Instruments through one

7 of the employment agencies, doing engineering again.

8 Q After 1993?

9 A Yes.

10 Q When would that have been?

11 A Some time in 1995, I think. I can't give you

12 the exact dates. It was not for long.

13 Q Did you work for anyone else besides Texas

14 Instruments after 1993?

15 A No. You didn't catch my phrasing on that.

16 You didn't get the phrasing. After 1993 I worked at

17 Texas Instruments through one of the employment

18 agencies. They changed the accounting rules in such a

19 way that you could no longer work for them directly in

20 this way and they had some other ways. I actually

21 corrected it the first time.

22 Q Okay. Other than working for some contracting

23 agency with Texas Instruments after 1993 did you work for

~ anyone else?

25 A No. Correction. In fact, since you bring the

issue up, the employment with Texas Instruments from
2 1989 to 1993 was with a full Texas Instruments as a
3 contractor. The other one was working at Texas
4 Instruments as a contractor through employment with some-
5 body that sanitizes the whole paperwork.

6 Q When you say sanitizes, what do you mean?

7 A They take care of the paperwork.

8 Q Sanitizes indicates maybe they clean it up
9 in some fashion.

10 A No. They know how to handle it. The intent
11 was that ... You seem to expect information from me
12 regarding the reasons of Congress in establishing these
13 things with these companies. I'm giving you the best
14 information I can.

15 Q You tell me they sanitized it. I am asking
16 you why you say they sanitized it?

17 A Sanitizing is probably not the word. It
18 probably should be that they did the required paperwork
19 that somebody required, or something. It gets around
20 some of the health insurance problems and other things.
21 I have no idea what is scheduled.

22 Q Gets around Government regulations, I take it?

23 A I don't know what they comply with. I didn't
24 say get around it. You are saying that. They comply
25 with it.

Q Is your driver's license number 03382820?

2 A To get the answer to that I am looking at
3 the deposition -- my answers to the interrogatories.
4 State the number again.

5 Q 03382820.

6 A That's correct.

7 Q Is your Social Security Number 458-56-2912?

8 A Yes. I'm looking at the interrogatories to
9 get the answer I gave you.

10 Q Have you ever been charged with a criminal
11 offense?

12 A No. I refer to my answer to your 1995
13 interrogatories, Answer No.3. "Have you ever been
14 arrested for a felony crime or a crime involving moral
15 turpitude? If so, please state dates, arresting authority,
16 and offense charged." Answer, "No, and I also do not
17 drink, smoke, run around, or do drugs. I also go to
18 church and am involved in my community." etc. You have
19 the answer.

20 Q My question was a little different to you,
21 Mr. Birnbaum. I asked you if you had ever been charged
~ with any felony offense. That particular interrogatory
23 asked you if you had ever been arrested for a felony or
24 a crime involving moral turpitude. There are other
25 criminal offenses, so I am asking you have you ever been

charged with a criminal offense.

2 A I misread your question and put them in the
3 same hopper. No.

4 Q You indicate in your answer that you for
5 free teach and tutor ten homeschool students in math,
6 algebra. and chemistry three times a week, is that
7 correct? And that's Answer No. 3.

8 A I have tutored and was trying to teach them.

9 Q And they don't pay you?

10 A No.

11 Q And who are these children? And if you don't
12 know their first names tell me their last names or
13 their family names.

14 A I will supplement that if you make a request.

15 Q The request has been made.

16 A I'm not going to address it all at this time.

17 Q Why not?

18 A It would confuse me at this point to giving
19 out names.

20 Q How many children do you think you have
21 tutored or taught for free in a homeschool situation
22 in Van Zandt County?

23 A It's answered in the interrogatory.

24 Q Just the ten that are listed here?

25 A Yes.

1 Q And are you telling me that if we leave a
2 blank space in the deposition at this point that you will
3 fill in those ten names for me, first and last names?

4 (Brief recess for discussion with Mr. Thibideaux.)

5 MR. RAY: Let the record reflect that Mr.
6 Birnbaum consulted with Mr. Thibideaux.

7 A Okay. Jeremy Johnson, Christi Johnson,
8 Daniel Morrow, I think it's Christi Morrow, Chris Womble,
9 Justin Womble, Cory Womble, Aaron Schinn, Jonathan
10 Reese, Rebecca Reese, Justin Reese. Now that does not
11 mean that all of these were all the time, or necessarily
12 at that time, or necessarily in this county.

13 Q I think you gave me eleven, but I take it that
14 ten was the general number, is that right, Mr. Birnbaum?
15 I have eleven on the list here, and I take it ten was
16 your approximation and it may have been only ten were
17 taught at anyone time; or less, is that right?

18 A Was your question at that time or any time?

19 Q At any time.

20 A I have answered your question.

21 Q Okay. Now tell me the names of the parents
22 of Jeremy and Chris Johnson, either one, or both.

23 A Karen Johnson.

24 Q Do you know her husband's name? If she has one.

25 A He's a preacher. Jerry.

Q Jerry Johnson?

2 A Uh-huh.

3 Q Do you know where he preaches?

4 A In Athens, I think.

5 Q Daniel Morrow and Christi Morrow, the name of
6 their parents?

7 A I think it's also Jerry. Jerry and --what is
8 it. I can't think of it.

9 Q If you should, I'm going to ask Mrs. Pearson
10 to leave a blank in your deposition at that point for
11 Mrs. Morrow, and you can fill it in.

12

13 The name of the parents of the Womble children?

14 A Okay. Those are not all the same Wombles.

15 Q Okay, then Chris Womble?

16 A Chris Womble is Delena Womble.

17 Q And her husband's name?

18 A Is Edward.

19 Q Justin Womble?

20 A Gene Womble.

21 Q Is that the husband, or ...

22 A That's the father.

23 Q Do you know the mother's name?

24 A I think it's Sue.

25 Q Corey Womble?

1 A Is Edward Womble.

2 Q And the mother's name?

3 A Delena. I gave you that before.

4 Q Okay. In other words Chris and Corey go
5 together?

6 A Yes. Right. She may be stepmother, or I don't
7 know what.

8 Q Well, whoever you understand to be in the
9 parental position.
10 The parents of Aaron Schinn?

11 A I think it's Lloyd, but I don't know the wife's
12 name. I'm not sure if it's Kit. I think it is.

13 Q The parents of Jonathan Reese?

14 A Connie Reese and Bob Reese.

15 Q Is that the Reese that ran as a Republican for
16 State Senator? Or do you know?

17 A I believe so.

18 Q Rebecca Reese?

19 A Same two Reeses.

20 Q Justin Reese?

21 A The same.

22 Q Without going into great detail about your
23 teaching techniques, you stated in your answer that
24 you normally see them three times a week, I believe.
25 If you would just describe when you see them how

long do you see them and what do you do?

2 A About an hour.

3 Q Are you teaching any of them at this time?

4 A No.

5 Q When did you stop teaching them?

6 A It just sort of gradually played out and I
7 can't tell you exactly.

8 Q Any particular reason it gradually played out?

9 A I can't speculate on that. They just decided
10 to do other things.

11 Q You decided to do other things or they
12 decided to do other things?

13 A They did.

14 Q The students?

15 A I guess the parents did.

16 Q Was there any unhappiness, or friction, or
17 any particular reason that you were relieved as a
18 teacher of the children?

19 A I don't think I ever was relieved.

20 Q Well, you stopped in some fashion, didn't you?
21 Who told who to stop?

22 A The main thing that I did was it just gradually
23 played out. Somebody went somewher~else; and somebody
24 went somewhere else, and it just gradually played out
25 and that was it.

2 Q And you didn't ask any questions as to why
you stopped teaching them?

3 A I left all matters of encouragement, all
4 matters of whether they wanted to learn or whether they
5 didn't want to learn, anything on that strictly up to
6 whatever the parents wanted to do with the kids. But
7 that was strictly theirs. It was an informal arrangement.

8 Q How did it happen that you would go over to
9 teach them then?

10 A We sort of shuffled things around.

11 Q Are you social friends with the parents?

12 A Some of the ones are some of my neighbors,
13 yes. Yes, they are my neighbors.

14 Q Would you make an appointment, or would they
15 call you to make an appointment?

16 A They called me.

17 Q They just stopped calling?

18 A Yes. You wound up with some sort of regular
19 schedule that you sort of run into. I mean even my cows
20 come up to the water trough at the regular time. So you
21 wind up with some sort of a time, and after some time you
22 don't do quite as much calling, so you only call when
23 something gets changed, so I don't know exactly who said
24 what. This date is not convenient with me: I want to
25 take my kids on vacation: no, I want to do this. No,

it was a strictly, absolutely informal arrangement.

2 Q I take it though that you would prefer to give
3 your knowledge of cows to the children rather than be a
4 teacher, wouldn't you?

5 A That's what I'm saying. After a while the
6 input that one requires into a system decreases as some
7 sort of behavior is established. But it was flexible;
8 absolutely flexible. I mean there was no obligation on
9 my part; no obligation on theirs. There was no sudden
10 initiation; no sudden stopping.

11 Q Why did you do it for free?

12 A I felt I had some knowledge. These are my
13 neighbors. Okay, this is a very good question. I
14 figured I would rather have the kids in my neighborhood
15 learn something so they wouldn't be stealing my hubcaps
16 later on. So if they learn something ... It was
17 community. In other words, I had a background in
18 something. I felt I needed to give something useful.
19 These were my neighbors; these are the ones that grew up
20 here in my neighborhood. If I could build up good will
21 by having some kid and having some relation to meet the
22 children in the area, that protects you to some extent
23 from bad will by somebody else. But something will come
24 out of it. It's good will.

25 Q You had an indication and you were fearful that

Bob and Connie Reese's kids might steal your hubcaps?

2 A They give problems.

3 Q Well, is it?

4 A That's a silly question. That's not what I'm
5 saying. I said I was trying to generate goodwill in the
6 neighborhood, and things just sort of grew. The reasons
7 were not some of my personals, no.

8 Q So what are you concerned then about the
9 Johnson, or the Morrow kids, or the Womble kids?

10 A No, I'm not concerned with the Johnson or
11 Womble kids, or some of the others. They had a home
12 student program going under someone there at the church,
13 or something. Vv U..I/p II-tl, C" " IIq| a f»
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14 Q What church?

15 A The Johnsons had been in home school here, and
16 I don't know what. That was my interpretation.

17 Q Did you have any particular certification,
18 license or authority to teach children in a home school
19 situation from the State of Texas or any other entity?

20 A We never discussed it.

21 Q Did you ever check...g.!l<J~.lt.patsee if you were
22 required to hav.e,_"t;.a.atT"

23 A It wasn't discussed.

24 Q Now, you own land adjoining Mr. Jones, is
25 that correct?

A Yes.

2 Q To the south, north, east or west?

3 A I guess I'm on land that's to the east of
4 Mr. Johnson.

5 Q How much acreage do you own?

6 A That's not correct. I own about 150 acres
7 to the east and there's a little something to the north
8 of Mr. Jones~ Not directly to the north, but northerly.

9 Q And is there a stream that crosses his
10 property and goes into your property?

11 A You already have the answer. I read from the
12 interrogatory. "Does a spring or creek flow through
13 your property from Mr. Jones?" The answer is, "Yes.
14 This creek is one of three live creeks that join in the
15 area, and a portion of my land and a large portion of
16 Jones' land are natural wetlands." My answer to the
17 interrogatories in 1995.

18 Q Yes, sir. Is that the only creek that goes
19 across Mr. Jones' property and onto your property?

20 A You have to ask Mr. Jones on that.

21 Q You know what flows onto your property, don't
22 you?

23 A Rephrase the question.

24 Q Is this the only creek that flows directly
25 from his property onto your property?

A Yes.

2 Q Are you downstream on that creek?

3 A All right, answer to interrogatory No.8.

4 "Did water from the stream ever overflow from your
5 property to Mr. Jones? If so, on what dates." This
6 is No.8. Answer, "No. My property is totally downstream
7 from Jones. I am at a much lower elevation."

8 Q So your answer is yes, you are downstream,
9 right?

10 A Yes.

11 Q My questions are not prepared, Mr. Birnbaum,
12 to just strictly follow those interrogatories. Now,
13 have you had any instances from beaver dams develop on
14 your property on that creek? In your memory?

15 A Have I what?

16 Q Have any occurrences from beaver dams
17 occurred on your property on the creek?

18 A There have been terraces all up and down that
19 creek.

20 Q And when you say terraces, I notice you used
21 that word in one of your interrogatories, how do you
22 describe a beaver terrace?

23 A It's one of multiple things that they build.

24 Q Well, what are the multiple things that beavers
25 build. I don't profess to be an authority on beavers

and beaver dams, so if you would, tell me.

2 A I'm not an authority on beavers either.

3 Q You obviously know more than I do, so educate
4 me. What's a beaver terrace?

5 A Stops water a little bit. Makes water run
6 over it a little bit.

7 Q What does it look like?

8 A It's a place for beaver. I guess they build
9 it and put mud on it, and sometimes vegetation grows on
10 it, and then sometimes they wash out and they rebuild
11 them.

12 Q How is a beaver terrace different from a
13 beaver dam?

14 A I guess a beaver dam is where the beavers
15 spend most of their time. I don't know.

16 MR. RAY: I am going to object to that answer
17 as not being responsive.

18 Q How is a beaver terrace different or
19 differentiated from a beaver dam using your terminology,
20 because you are the one who is using it, okay?

21 MR. RAY: And I object to Mr. Thibideaux
22 giving you an answer.

23 MR. BIRNBAUM: I had already given that answer.

24 A I believe I have already given the answer it's
25 where the beavers spend most of their time, and you

1 didn't take that answer. I guess the beaver dam is where
2 the lodge is. I guess.

3 Q That's your definition of a beaver dam?

4 A That's what I consider a beaver dam.

5 Q So in other words for it to be a beaver dam
6 there's got to be a beaver lodge and beavers living in
7 the lodge, is that correct? That's what you just said,
8 isn't it?

9 A I said that's where the beavers spend most of
10 their time, I guess. It's the primary weather structure,
11 is one of the things, yes. But if you take it that way,
12 you can take a beaver terrace to be a beaver dam.

13 Q How can you take a beaver terrace to be a
14 beaver dam? Do they live in the beaver terrace?

15 A It's in the eyes of the beholder.

16 Q Okay, let's go back. You have an engineering
17 degree, and I don't. I'll give you the benefit of the
18 doubt here on knowing more about this than I do obviously,
19 but why is a dam constructed on any stream? What is
20 its purpose?

21 A What dam are you talking about?

22 Q Anyone. Any, whether they are made by beavers,
23 whether they are made by man, whether they are made by
24 nature.

25 A There's the Hoover Dam to produce electricity.

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2 Q Okay. How does it produce the electricity?

3 A Generates it.

4 Q Is a part of the production of the electricity
5 the storage of the water?

6 A It's not a part but it's a necessity.

7 Q And it would be a normal definition that a
8 dam stores water?

9 A No.

10 Q Why not?

11 A Dams can be intended to store water.

12 Q And no water comes down to be there?

13 A Uh-huh.

14 Q But if a dam is properly constructed on a live
15 stream would it be your opinion as an engineer that it
16 would hold water if it was built properly?

17 A You have answered the question. What is the
18 question?

19 Q I am asking you for a definition of a dam. What
20 is the definition of a dam?

21 A I don't have a dictionary. Does anybody have
22 a dictionary?

23 Q I'm not asking you for a dictionary's
24 definition. I'm asking you in your own working under-
25 standing what a dam is. You told me it's to produce
electricity.

1 A You asked me that, question. ~

2 Q Okay. There are allkinds of dams constructed

3 on free flowing stre~ms, on general watershed areas,

4 lots of areas. There are tanks allover this county.

5 I'm asking you what the purpose would be behind the

6 construction of a dam, whether it be a beaver, whether

7 it be a man, who?

8 A To build a dam.

9 Q But what would be the purpose of putting the

10 dam there to start with? To hold water, right?

11 A No.

12 Q I mean to me it's logical.

13 A I have seen people build dams on the top of

14 a hill where no water could get in them.

15 Q I understand, but they built the dam thinking

16 they could get water if they didn't, right?

17 A I don't know what the beavers thought.

18 Q I didn't ask you what the beavers thought but

19 I am asking you what your definition of a dam is and

20 I would presume ...

21 A Something that is built to hold water.

22 Q A dam is to hold water.

23 A I mean that's the definition of a dam.

24 Q Now, using that as a definition, what is the

25 definition of a terrace.

1 A The definition of a terrace? I don't know.
2 I'm going to give you what I think is a-terrace.
3 Q Okay.
4 A A terrace is something that supplements a dam.
5 Q How does it supplement a dam?
6 A We are suddenly down from a dam which man built
7 to a terrace that beaver built, and you're asking me
8 what's the difference. A dam is built by the one that
9 built it; a terrace, beaver terrace, is built by beavers.
10 Q Okay, and what's the purpose 01 the beaver
11 terrace built by them?
12 A For the beavers to survive.
13 Q And how do they survive by building a terrace?
14 A I guess they make themselves puddles of water
15 so they can get under it to get away from whatever
16 dangers they've got.
17 Q And does the terrace supplement the beaver dam?
18 A What do you mean by supplement?
19 Q Is it a part of the beaver dam, or is it in
20 fact a beaver dam itself?
21 A It's all in the eyes of the beholder.
22 Q In other words a beaver terrace is to some
23 people a beaver dam, do you concede that?
24 A Yes.
25 Q And the particular terrace that was constructed

on your property, do you know how deep the terrace was,
2 or how high it was?

3 A Which terrace?

4 Q How many terraces were there then?

5 A Which one are you talking about?

6 Q The one constructed on y"our property by
7 beavers.

8 A At what time?

9 Q At any time?

10 A I'm not out there all the time. It's in the
11 answers to interrogatories. When I went out there with
12 Mr. Jones there was maybe a half foot of water on the
13 thing.

14 Q Do you know of any other terraces or beaver
15 dams being constructed on your property other than
16 the incident involving Mr. Jones?

17 A There have been, as you put it, either beaver
18 dams or terraces, or where other terraces or other dams
19 may have been.

20 Q Do you recall from your own personal knowledge
21 or memory that there were other beaver terraces and
22 beaver dams on your property prior to the one which
23 brings this lawsuit?

24 A There have been beavers in the area since
25 before I bought the place.

Q Were they building dams and terraces on your
2 property?

A I didn't observe them all the time.

Q To your knowledge were they building dams or
4 terraces on your property?

A I didn't observe them. There were beaver
7 terraces there. When there are beavers there they're
8 always moving things.

Q Did you ever see any beavers on your property,
10 actually see the beavers?

A I saw some beavers way back in '81, '82.
12 I haven't been back in that area since this thing with
13 Mr. Jones came up. There have been beavers up and down
14 that thing all the time.

Q Could you tell that beavers had been there,
16 seen evidence of their having been there?

A Returning to the beaver terrace that they built,
18 obviously it's there.

Q Okay, Sir, and in addition to a beaver terrace
20 that they built on your property, did you see any
21 evidence of where they had cut any saplings or trees?

A Yes.

Q How many?

A Four or five.

Q What size? How many inches in diameter?

1 A Five inches in diameter. I mean this is in
2 various types and various creeks in the area. I mean
3 I have seen -- there are marks all up and down the creeks.
4 There were marks there without the terraces.

5 Q Did the beaver utilize those saplings and
6 trees to construct a dam or terrace?

7 A I don't know that.

8 Q Could you tell from your inspection of the dam
9 or terrace?

10 A They could have used some wood at some time,
11 but I don't know what kind they used. Yes, they
12 probably did. I mean probably. We all know that beavers
13 built with whatever they can get around there. Did I
14 watch them chop a tree down and use it, no. Could I pin
15 a particular tree to a particular thing, no.

16 Q Are beavers nocturnal animals and very difficult
17 to see in the open daylight?

18 A Yes. In fact I would imagine you would probably
19 never see one in the daylight.

20 Q Did you make any effort to remove these
21 beavers or stop the beavers from building dams and
22 terraces on your stream on your property?

23 A Did I stop them? Make any attempt to stop
24 them?

25 Q Yes.

1 A No.

2 Q Why not?

3 A They were no problem. Nobody ever complained.

4 Q When was the first time you ever received a
5 complaint from anyone about a backup of water from a
6 beaver dam or terrace on your property?

7 A This is answered in my answer to interrogatory
8 No. 10, "Were you ever asked to remove the dam?"

9 Q And what was your response?

10 A "Yes, I was asked to remove a beaver dam, but
11 when Jones and I went on my property to look at the area,
12 it turned out to be the remnants of a beaver terrace. It
13 was choked with sand which had washed down from Jones'
14 property where he had used a bulldozer.

15 "There was no beaver lodge. The beaver lodge
16 must have been on Jones property, which he had long
17 since all cleaned out .."

18 Q Let me stop you right there.

19 A Let me finish my answer.

20 Q Are you going to read the whole thing?

21 A I'm going to read a part of it, okay?

22 I believe you asked was I ever asked to remove
23 one. Okay, "This must have been in October or November,
24 1994, but I am not sure. In any case it was the first
25 and the last time I talked to Jones •.." and that's the

1 first time and last time I've had a complaint. That
2 was the first time I had ever had a complaint about
3 anything relating to beavers.

4 Q Did you do anything to remove the terrace?

5 A No.

6 Q Why?

7 A It washed out. It says here -- let me continue
8 reading, okay? Restate your question.

9 Q Did you do anything to remove the dam or
10 beaver terrace?

11 A Okay, it says here, interrogatory No. 11,
12 question, "Did you remove the dam, and if so, when?"
13 Answer, "No, the terrace had totally washed out long
14 before the filing of 95-63. There never was a dam."

15 Q But the terrace or dam did exist. Did it back
16 water up back on Mr. Jones' property?

17 A No.

18 Q Are you certain of that?

19 A Was there water flowing down the creek from
20 Mr. Jones, yes, approximately six inches deep, okay.
21 Did it back it up, no.

22 Q Had it backed it up in the past to your
23 knowledge?

24 A No.

25 Had it backed up before? There had been

1 water in that creek since day immemorial. Water backs
2 up in Van Zandt creeks.

3 Q So what you are telling me, you do agree that
4 water backed upon Mr. Jones' property, is that correct?

5 A No.

6 Q That's what you just said, Mr. Birnbaum. You
7 just said that it backs up on his property, did you not?

8 A I don't know what I said.

9 Q Well, let me just ask you the question again.
10 Did any water back up from your property for
11 whatever reason, on to Mr. Jones' property; has it ever?

12 A What do you mean by back up? Water doesn't
13 back up and go up a hill.

14 Q Has any water from the stream that flows across
15 your property ever gone outside its stream banks and
16 flooded and backed up or gone across your property and
17 also been flooded over onto Mr. Jones' property?

18 A Water from my place does not go across to his.
19 Those creeks, you can hear them from the house when they
20 run. Those creeks roar, and there's water in that whole
21 area down there. I don't know what would make water from
22 my place go to his.

23 Q When you have more water than the stream can
24 hold on your property what happens to the additional
25 volume of water rushing down the stream? Where does it

1 go when it is coming across Mr. Jones , onto you and your
2 stream is full and out of its banks? What happens then?

3 A It's not my stream.

4 Q The stream that flows across your property,
5 where does it go? What happens to the water upstream
6 when your streambed is full and it is flooding and out
7 of its banks?

8 A It keeps flowing through my property.

9 Q But can it carry it all off?

10 A Yes. All the water that flows is carried off.

11 Q So it is your testimony that there has never
12 been an occasion when there was not water standing on
13 Mr. Jones , property that joins yours along that stream-
14 bed?

15 A No, that's not my statement. My statement is
16 that I have never received a complaint on this except
17 from Mr. Jones, and when Mr. Jones complained there was
18 no water standing on his property.

19 Q So during 1994 you didn't allow a beaver dam
20 to be built on your stream?

21 A I didn't say that.

22 Q So you did allow a beaver dam to be built on
23 your stream on your property?

24 A I didn't say that either.

25 Q Which is it? One or the other.

2 A I don't allow beavers. Beavers are State
animals. I don't allow them.

3 Q In your discussions with Mr. Jones did you tell
4 Mr. Jones that you were not going to disturb the beavers?

5 A This is answered in my interrogatory.

6 Q I'm not asking you for an answer in your
7 interrogatory, I'm asking you did you ever tell Mr.
8 Jones that you were not going to disturb the beavers? ^{'-----<-----'}

9 A Not in any specific words.

10 Q What did you say? You tell me what you
11 said.

12 A I remember shaking my head something like this.

13 Q No, you tell me what you said. You told him
14 you weren't going to hurt the beaver, or harm them?

15 A I didn't say that. The record will say that
16 I did not tell you that I told him that. I did not
17 tell him I was not going to hurt the beavers. f

18 Q In your answer to interrogatory No. 10 you
19 indicate that you don't think that it's a beaver dam if
20 a lodge is not in it, right?

21 A The understanding as I have it, or that I had
22 with Mr. Jones at that time, that from the general access
23 -- I'm not sure if any words were said -- but I was not
24 concerned. There was no problem. I saw no problem at
25 the time that Jones and I came over there. Water was

flowing off of his property through ...

2 Q Why did Mr. Jones come talk to you about if
3 there wasn't a problem?

4 A You ask him that.

5 Q Was there a disagreement between you and Mr.
6 Jones as to whether or not there was a problem?

7 A Yes.

8 Q Your own answers concede that there had been a
9 beaver terrace on your property, right, in interrogatory
10 No. 10?

11 A Yes. A beaver terrace.

12 Q "...when Jones and I went on my property to
13 look at the area, it turned out to be the remnants of a
14 beaver terrace."?

15 A Yes.

16 Q And you used terrace instead of a dam by
17 choice, is that correct? To some people that might be
18 a beaver dam, true? A beaver terrace? That's what you
19 said earlier, isn't it?

20 A He saw it as a dam; I saw it as a terrace.
21 He saw it as a problem; I saw it as there was no problem.
22 We had a disagreement.

23 Q So you told him you weren't going to do anything,
24 didn't you? What did you tell him when he came out?

25 A I can't give you the exact words because I

wasn't even thinking he was going to sue or anything,
2 but something to the effect, no, that's not a problem,
3 it is runoff. Shake my head or some sort of statement.
4 I don't know the exact words. If I said something I
5 don't remember exactly, but I just didn't see it as one.

6 Q Did you give Mr. Jones the impression that
7 you were going to take no action concerning resolving
8 what he thought was a problem?

9 A I have forgotten the question, but •••

10 Q Did you give Mr. Jones the impression that
11 you were going to take no action concerning what he
12 thought was obviously a problem?

13 A I must have given that impression for him to
14 sue me.

15 Q Did you take any action after he left when
16 you-all met?

17 A No.

18 Q Did you do anything to try to correct what
19 he thought was a problem?

20 A I didn't do anything over there. I didn't think
21 there was anything to correct.

22 Q You-all are adjoining landowners and neighbors,
23 is that correct?

24 A Yes.

25 Q You've heard the old saying good fences make

good neighbors? Have you?

2 A Yes.

3 Q Did you form an impression that Mr. Jones was
4 unhappy and was not satisfied with your response?

5 A The attitude was described in answer No. 10.
6 "On the way back to Jones' property he proceeded to
7 threaten me with suit. I defused the situation, for he
8 was very set in his opinion. It just so happened that I
9 could not agree with his assessment."

10 Q How did you defuse the situation?

11 A By walking away from him.

12 Q Turned your back on him and walked away?

13 A No, no, no, no. Avoided the problem.

14 Q But you were not going to take any affirmative
15 action on your part at all to resolve the issue, were
16 you?

17 A I took affirmative action.

18 Q What did you do?

19 A I defused the situation.

20 Q You walked away? Is that your affirmative
21 action?

22 A No, I waited until Mr. Jones got on his
23 property, and then I wen~ home.

24 Q That was your affirmative action to resolve
25 the issue?

1 A I don't understand the question.

2 Q You say, "Have you ever allowed beavers to darn
3 up the stream? If so, when." Your answer, "No, not to
4 my knowledge. Definitely not on the day I was served
5 with suit. I have many witnesses to prove that."
6 Who are your witnesses -- many?

7 A I provided you with -- read the statement
8 again.

9 Q The answer to interrogatory No. 7 says -- the
10 question is "Have you ever allowed beavers to darn up the
11 stream? If so, when." And this is concerning the stream
12 on your property. Answer, "No, not to my knowledge.
13 Definitely not on the day I was served with suit. I have
14 many witnesses to prove that." Who are the witnesses you
15 are referring to?

16 A On the day of the suit was Deputy Johnson.

17 Q I think your answer here says many witnesses
18 to prove it. I take it these are witnesses you can
19 produce that will prove that you didn't allow beavers
20 to build dams or terraces on your property. I take it
21 those are potential witnesses for trial, and I want you
22 to tell me who they are.

23 A Well, you are misreading my answer.

24 Q You explain it to me, then.

25 A I have said definitely not on the day that I

was served with suit. I have many witnesses to prove
2 that.

3 Q So then your answer says only that there was no
4 dam on your property on the day you were served with suit,
5 is that what you are saying?

6 A What dam are you talking about?

7 Q My question was have you ever allowed beavers
8 to dam up the stream. That could be any dam.

9 A In my answer I don't mention the word dam.

10 Q In your answer you say, no, not to my knowledge,
11 definitely not on the day I was served with suit. I have
12 many witnesses to prove that.

13 A Prove what?

14 Q What is that that you are referring to? That
15 you had not allowed beavers to dam up the stream, or that
16 stream was not dammed up on that day?

17 A That they were not dammed up on the day.

18 Q So you are not saying that you haven't allowed
19 beavers to dam up the stream at other times, and dates, and
20 occasions, right?

21 A I wasn't addressing that.

22 Q That's a very, very simple question, Mr.
23 Birnbaum. It goes to the heart of this whole case that
24 we've got. You seem to contend that this is a tragedy
25 and people are taking advantage of you. When it comes

right down to it I asked you a very simple question.

2 Have you ever allowed beavers to dam up the stream,
3 and you can't give me one straight answer as to yes, or
4 no.

5 A I did not allow beavers to dam them up.

6 Q Ever. And you'll stand on that?

7 A Beavers have been up and down those creeks.

8 I have no allowing to do on the beaver dams.

9 Q You concede in your answer No. 10 that, yes,
10 there was a beaver terrace, not a beaver dam. But
11 presenting that question again, have you ever allowed
12 beavers to build a beaver dam or beaver terrace on your
13 property, what would your response be? It would have
14 to be yes, wouldn't it? You concede that by your
15 answer No. 10, don't you?

16 A No. I was reading into the allowed. I have
17 not allowed beavers. Beavers may have built them.

18 Q Who owns the property?

19 A Who owns the beavers?

20 Q Who owns the property?

21 A I do. I never had a complaint before that.

22 Q Okay, but you own the property. I take it
23 then you are the responsible landowner, true? Isn't
24 that correct? You are responsible for taking care of
25 that property, aren't you, Mr. Birnbaum?

1 A I have a soil conservation plan on the thing,
2 which I leave it alone.

3 MR. RAY: I asked you a simple question and I
4 object to your answer. That's nonresponsive.

5 Q You own the property and you are responsible for
6 its care and maintenance, aren't you, yes, or no? Yes,
7 is that true, Mr. Birnbaum? You are the responsible party
8 for taking care of your property, aren't you? That's
9 logical.

10 A Mr. Ray, in my answer to _your ...

11 Q Just answer the question I have asked you,
12 Mr. Birnbaum. A simple answer you can give me, and it's
13 a yes or no, but you tell me whether you are responsible
14 for the maintenance and care of your property.

15 A That would be a legal opinion, Mr. Ray. You
16 are correct.

17 Q You are responsible?

18 A For my land, but not on the live stream.

19 Q So in other words you are not responsible for
20 what happens on the stream, and this is the answer you
21 have given me after consulting with Mr. Thibideaux, is
~ that correct?

23 A No, this is the answer I was trying to give to
24 you before you interrupted me, because I'm going to read
25 to you right here. I'm going to read to you.

1 Q I don't want to hear you, Mr. Birnbaum, so
2 you stop right there. I didn't ask you a question so
3 you have no response to give, okay?

4 Let me ask what that is. What is that?

5 A It's a Christmas card.

6 MR. RAY: I'm going to ask that it be marked
7 as Exhibit 1 to this deposition.

8 (Document, consisting of two pages, marked
9 Ex-1 for identification and attached hereto.)

10 Q Where did that Christmas card come from?

11 A I handed it to your secretary.

12 Q Who is it to?

13 A To you.

14 Q Who is it from?

15 A Me.

16 Q Read me what the Christmas card says. Read
17 the front of it first. Read that right there. What
18 does it say, Mr. Birnbaum?

19 A "Sleigh bells rihg, are you listening?"

20 Q Okay, and then when you flip it over to the
21 second page inside what does it say?

22 A "It is time to end these proceedings ..."

23 Q No, I'm talking about the very top. Start
24 with the top.

25 A It says, "You better be, or you'll get your butt

run over." That's what it says.

2 Q On the inside, now read it to me again slowly,
3 so I understand.. Mrs. Pearson can take it down. Go
4 ahead, Mr. Birnbaum.

5 A The Christmas card, as it says: "Sleigh bells
6 ring, are you listening?"

7 Q Uh-huh.

8 A It says, "You better be, or you'll get your
9 butt run over."

10 Q Or you'll get your butt run over, right?

11 A That's what it says on the Christmas card.

12 Q And that's the printed information on the
13 Christmas card, is that right?

14 A That's correct. It also says "Happy Holidays"
15 on the bottom.

16 Q Okay. And then in between those two areas of
17 print there is some handwriting, is there not?

18 A Right.

19 Q And what does that say?

20 A "It is time to end these proceedings ..."

21 Q Before that.

22 A It says, "Dear Ricky:"

23 Q Uh-huh.

24 A HIIt is time to end these proceedings. If you
25 were to draw up a simple motion, we could sign it jointly.

Q And it's dated, isn't it?

2 A It's dated December 2, 1997. It's signed
3 simply "Udo" on the bottom.

4 Q Were you trying to send me Christmas greetings
5 with this Christmas card, Mr. Birnbaum?

6 A I was trying to be conciliatory and just like
7 it said right there bring these proceedings to an end.

8 Q Well, do you want to enter into an injunction
9 then to agree to keep your stream clear of beaver dams
10 or anything so it won't back water up on Mr. Jones?

11 A No problem there; the answer is no. It's not
12 applicable.

13 Q You won't agree to that?

14 A I mean, not the subject of... I don't understand
15 you.

16 Q In Mr. Jones' prayer et seq. he asked that
17 you be perpetually enjoined from obstructing the spring
18 creek and the flow, a natural flow of water therein,
19 or permitting or causing the same to be so obstructed.

20 MR. BIRNBAUM: I object. Your question is out
21 of context again.

22 A Jones' petition refers to a dam that he says
23 I built. You are questioning me about a dam that the
24 beavers built. You are comingling those two.

25 Q Let me ask you something, Mr. Birnbaum.

1 Q You just told me you bought this Christmas
2 card to be conciliatory, and to try to reach some
3 resolution of this case. Is that right? Is that the
4 purpose of the Christmas card, or was there some other
5 purpose?

6 A I just thought it went on for three years,
7 and I guess I got tired of monkeying with it.

8 Q Well, was the Christmas card intended to be
9 a peace offering of some sort to try and resolve this
10 case? Was it, Mr. Birnbaum? That calls for a simple
11 yes or no answer.

12 A There was nothing to resolve.

13 Q Well, if there is nothing to resolve how are
14 we going to resolve anything?

15 A Get it out of court.

16 Q So in other words your idea of a conciliatory
17 offering of the Christmas card is that Mr. Jones
18 merely dismiss his case and forget the whole thing
19 ever happened? Is that right? Is that what you are
20 suggesting?

21 A I didn't think about it. I was looking for
22 an input on your part.

23 Q And I just asked you a question because you
24 just told me you got the Christmas card to be
25 conciliatory. I just asked you a question. Would you

agree. to a perpetual injunction being put in place that
2 you will not, and I say you will not obstruct the stream
3 that goes across your property, or allow it to be
4 obstructed in such a fashion that it overflows on
5 Mr. Jones' property and damages his property, and you
6 won't agree to that kind of an injunction?

7 A It's not applicable. The subject matter is
8 subject to an argument before the Court. I didn't say
9 anything about that and didn't mean to say anything about
10 that.

11 Q Now the second part of Mr. Jones' plea seeks
12 to compel you to remove the dam construction and restore
13 the flow of water. And it's my understanding that that's
14 occurred. I may have different impressions as to how
15 it's occurred but the water is flowing okay now, isn't
16 it? Is that a fair statement?

17 A Mr. Jones, in his answers to my interrogatories
18 admitted that the water is flowing.

19 Q The water is flowing now, is that right,
20 according to you?

21 A I haven't been up there recently.

22 Q The last time you were there was it flowing?

23 A Yes. It's always been flowing.

24 MR. RAY: I'm going to take a short recess at
25 this time, Mr. Birnbaum. I probably don't have but just

a few more minutes with you.

(RECESS)

MR. RAY: Let's go back on the record.

Q Mr. Birnbaum, would you tell me what a beaver is: what kind of animal it is?

A State animal.

Q Is it a rodent?

A I don't know. It's a fur bearing animal.

Q You don't know whether it's a rodent or not?

A It might be classified as a rodent. It's got teeth. It's got rodent teeth.

Q Did you send me a letter on December 26, 1994, Mr. Birnbaum?

A Yes.

Q Is that the letter?

A Yes.

MR. RAY: Would you mark both of these.

(Document dated December 26, 1994, marked as EX-2 and document dated January 11, 1995, marked as EX-3 for purposes of identification and copies of both attached hereto.)

Q Mr. Birnbaum, I am going to hand you another letter which is dated January 11, 1995, under your signature, and ask you if that is also a letter which you wrote to me.

1 A Yes.

2 Q Be certain that you look at the contents of
3 these two letters because I don't want you later on to
4 tell me that these letters were changed in any way.

5 A Appears to be. I don't see any difference.

6 Q You say appears. I want you to look at them.
7 This one here, that is a letter by you, under your
8 signature, and everything in there is true and correct,
9 isn't it?

10 A It is mine.

11 Q Everything said in there you said, right?

12 A Yes. It appears to be the regular paper •

13 Q And what about the 'proposed Exhibit 3?

14 A That's my letter.

15 Q And you said everything in that letter also,
16 didn't you?

17 A Yes.

18 MR. RAY: Mr. Birnbaum, I am going to at this
19 time pass you as a witness. I have no further questions
20 of you today. I want to keep you subject to deposition
21 in case I discover I need additional information I need
22 to ask you. Normally I don't, but I always do that in
23 every deposition just in case that occurs.

24 That concludes our deposition today. Thank you
25 for coming.

(Deposition concluded.)

CORRECTIONS AND SIGNATURE

PAGE LINE CORRECTION REASON FOR CHANGE

I have read the foregoing deposition and hereby affix my signature that same is true and correct except as noted herein.

Witness

SUBSCRIBED AND SWORN to before me this the _____ day of _____ ----' 199

Notary Public in and for
The State of Texas

My Commission expires _____

2 GIVEN UNDER MY HAND AND SEAL OF OFFICE on this
the 29th day of December, 1997.

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Muriel I. Pearson

Muriel I. Pearson, CSR

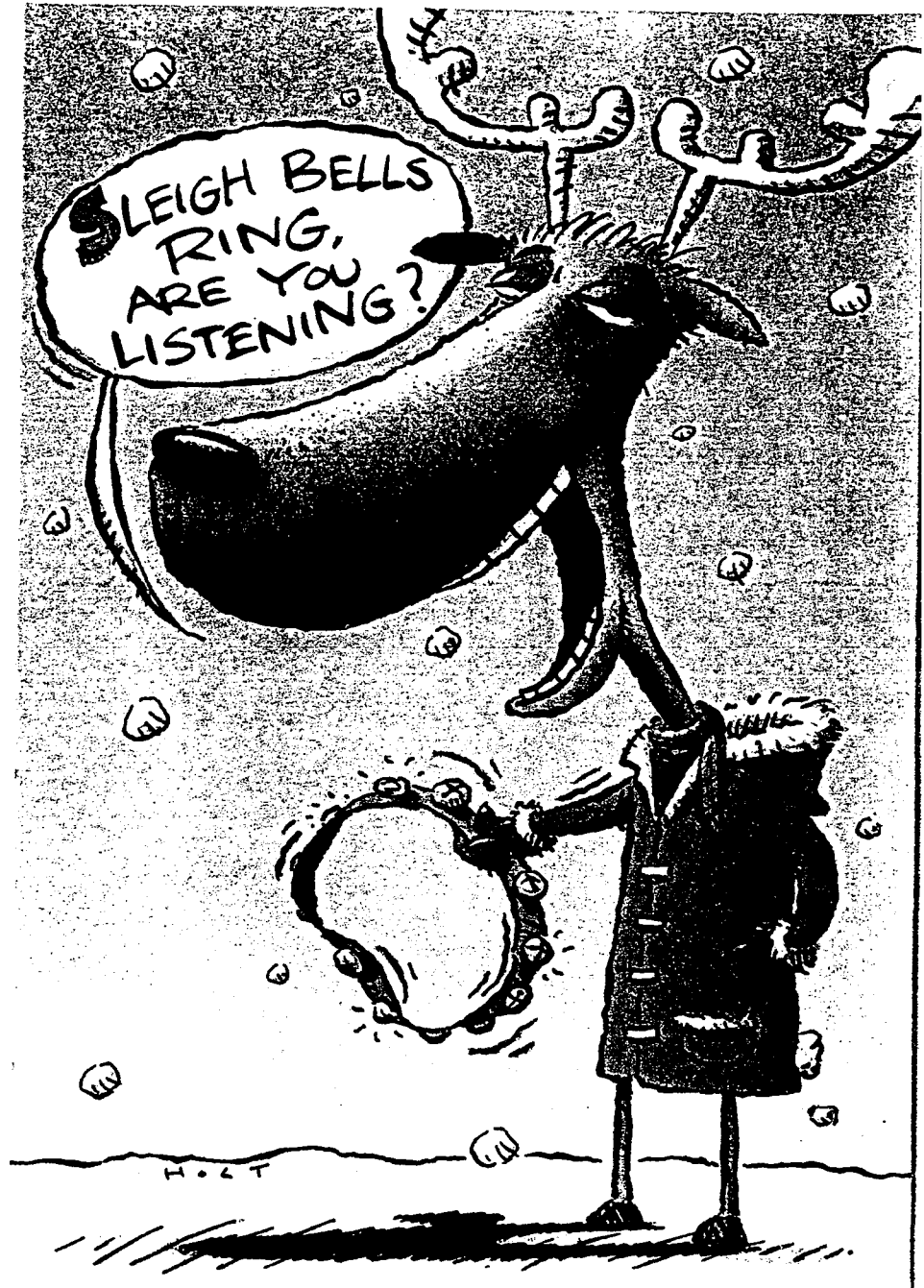
Certificate No. 552

Expiration 12/31/98

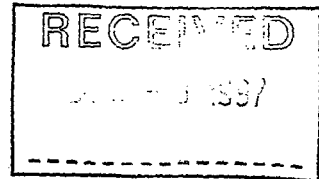
Route 3, Box 839

Emory, Texas 75440

903/473-3609



EX-1



YOU BETTER BE, OR YOU'LL
GET YOUR BUTT RUN OVER.

Dear Ricky:

It is time to end these
proceedings. If you were
to draw up a simple motion,
we could sign it jointly.

December 2, 1997

HAPPY HOLIDAYS

Aldo

RECEIVED
DEC 28 1994

December 26. 1994

Mr. Richard L. Ray
300 S HWY 19
Canton. Texas 75103

... ..

Dear Mr. Ray:

This is to inform you that I received your letter dated December 7. 1994. I was totally offended by the tone of your letter particularly in light of the misrepresentation of the facts.

I have been the owner of these premises since 1981 and have not heard any such assertions until a few months ago.

I do not want to be forced to spend any more time countering these ridiculous allegations. Before proceeding any further, be sure to inform yourself personally of the validity of your assertions.

I am however willing to negotiate with you.

Sincerely

Udo Birnbaum

Udo Birnbaum

UB:ub

January 11, 1995

Mr. Richard L. Ray
300 S HWY 19
Canton, Texas 75103

~m@md1Wll:f.
Jill JAN 12 19951

.....0.....0.....0

Dear Mr. Ray:

I acknowledge receipt of your letter dated December 29th, 1994.

There was no clarification of your previous points or reference to my request that you personally inform yourself of the matters which you raised. I am therefore forced to assume that you have chosen not to do so nor to confer again with my neighbor.

I previously met with my neighbor to discuss the same issues you raised in your first letter. My neighbor was beginning to see our wetlands as a recent problem. The meeting was rapidly becoming counterproductive.

I will persue self representation if you force me into litigation. By again answering your charges I am already cast into the same role that you have chosen to fulfill, namely that of the potential attorney. I am entitled to the same professional courtesy that you would extend to another member of your profession.

I request that you attend to the following matters:

- i. Your PERSONAL, PHYSICAL INSPECTION of my neighbor's property.
- 2. My neighbor's and my property contain the junction of three live creeks. These areas have always been wetlands. Please confer with the Soil Conservation Service or other applicable authorities regarding the status of these lands and any special environmental rules applicable to these wetlands.

I am a consulting electrical engineer, a teacher, and a rancher. I consider my time more valuable then you consider yours.

Your advice to my neighbor constitutes legal counsel. I will hold you personally responsible for deluding my neighbor and thereby further inciting him against me. You are rapidly becoming a major intrusion into my life.

I am however willing to negotiate with you.

Sincerely

Udo Birnbaum

Udo Birnbaum

.UB:ub

ex-3