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THE LAW OFFICES OF)	IN THE DISTRICT COURT
G. DAVID WESTFALL, P.C.)	
)	
Plaintiff,)	
)	
v.)	294TH JUDICIAL DISTRICT
)	
UDO BIRNBAUM)	
)	
Defendant.)	VAN ZANDT COUNTY, TEXAS

* * * * *

VIDEOTAPED DEPOSITION OF DAVID WESTFALL

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COPY

July 3, 2001

Canton, Texas

April L. Struck

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CAUSE NO. 00-00619

THE LAW OFFICES OF)	IN THE DISTRICT COURT
G. DAVID WESTFALL, P.C.)	
)	
Plaintiff,)	
)	
v.)	294TH JUDICIAL DISTRICT
)	
UDO BIRNBAUM)	
)	
Defendant.)	VAN ZANDT COUNTY, TEXAS

* * * * *

VIDEOTAPED DEPOSITION OF DAVID WESTFALL

* * * * *

ANSWERS AND ORAL DEPOSITION OF DAVID WESTFALL,
 being produced as a witness at the instance of
 the Defendant, taken in the above-styled and numbered
 cause on the 3rd day of July, 2001, before April L.
 Struck, Certified Shorthand Reporter in and for the
 State of Texas, by machine shorthand, at the Van
 Zandt County Courthouse, in the City of Canton, County
 of Van Zandt, State of Texas, in accordance with the
 Texas Rules of Civil Procedure and the agreements
 hereinafter set forth.

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A P P E A R A N C E S

LAW OFFICE OF G. DAVID WESTFALL, P.C.
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BY: Mr. G. David Westfall

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APPEARING ON BEHALF OF CHRISTINA
WESTFALL & STEFANI PODVIN

UDO BIRNBAUM
540 VZ 2916
Eustace, Texas 75124

APPEARING PRO SE

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I N D E X

VIDEOTAPED DEPOSITION OF DAVID WESTFALL
Taken on July 3, 2001

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E X H I B I T I N D E X

VIDEOTAPED DEPOSITION OF DAVID WESTFALL
Taken on July 3, 2001

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E X H I B I T I N D E X

VIDEOTAPED DEPOSITION OF DAVID WESTFALL
Taken on July 3, 2001

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1 (Deposition commenced at 2:53 p.m.)
2 (Deposition taken pursuant to the
3 rules.)

4 MR. BIRNBAUM: Mr. Westfall, will
5 you be able to answer questions on behalf of the
6 law office?

7 MR. WESTFALL: Yes.

8 DAVID WESTFALL
9 having been first duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. BIRNBAUM:

12 Q Mr. Westfall, I refer you to item 1 in the
13 folder. This is Udo Birnbaum's -- Udo Birnbaum's
14 legal claim.

15 And I'm going to ask you, do you know of
16 any party having filed any document challenging this
17 pleading, yes or no?

18 A Yes.

19 Q What document?

20 A I don't know the --

21 Q You can provide the answer with me next
22 time.

23 A All right.

24 Q Second question. Do you know of any
25 evidence any party has or might have that could

1 challenge the specific averments in this proceeding?

2 A Yes.

3 Q Will you provide them to me at some time?

4 Do you have any reason to claim legal insufficiency
5 of this pleading?

6 A Yes.

7 Q How do you intend to present that to me?

8 A I wouldn't present it to you. I would
9 present it to the court.

10 Q Would you do that? Whatever motion you
11 want to file, would you file that?

12 A Yes.

13 Q Do you have any reason to claim evidentiary
14 insufficiency of this pleading?

15 A Yes.

16 Q How do you intend to do that?

17 A With the proper motions with the court.

18 Q Would you do that?

19 A Yes.

20 Q Do you have any reason to claim lack of
21 particularity or specificity of this pleading?

22 A Yes.

23 Q Will you so state in your thing, whatever
24 you file?

25 A Yes.

1 Q Okay. I refer you to item No. 2. And I
2 want to enter these all.

3 MR. FLEMING: Just so we're clear,
4 are we entering the book later as an entirety?

5 MR. BIRNBAUM: No. We need to
6 mark them as we go through.

7 MR. FLEMING: Well, Deposition
8 Exhibit --

9 Q (By Mr. Birnbaum) No. 2. 5th Circuit
10 pattern jury instruction. Okay. Will you agree that
11 a jury having heard evidence should be able to follow
12 these instructions to make a finding upon the
13 evidence?

14 A I'm not sure I understand that question.

15 Q Will you agree that a jury having heard
16 evidence should be able to follow these instructions
17 to make a finding as to what a jury is called to do
18 upon the evidence that they have heard?

19 A I'm sorry. Mr. Birnbaum. I do not
20 understand what you're trying to get me to agree to.

21 Q Okay. Thank you. Next question. Do you
22 have any reason as to why a jury cannot make a
23 finding upon the evidence by following these
24 instructions?

25 A I haven't viewed. I was about to view

1 this. I believe it -- what I was about to see,
2 whatever, you took it from me earlier. And I really
3 haven't had the chance to look at it, what -- you
4 know, the document that you were referring to.

5 Q Next question. Mr. Westfall, you took it
6 back -- I took it back. Okay. You understand about
7 jury instructions, do you not, Mr. Westfall?

8 Do you have any reason to believe that the
9 jury cannot make findings upon jury instructions?

10 A In a vacuum I agree that juries may make
11 findings on -- with -- with instructions and based on
12 evidence they can make findings.

13 MR. BIRNBAUM: Nonresponsive.

14 Q (By Mr. Birnbaum) Will you agree that the
15 matter -- that the matter a jury is to find in a
16 civil RICO case is whether there was a violation of
17 RICO and whether the plaintiff was injured by reason
18 of the violation?

19 A I believe those are two findings that
20 are -- would be necessary, yes, sir.

21 Q Will you agree that the matter a jury finds
22 in the civil RICO case is whether there was a
23 violation of RICO and whether the plaintiff was
24 injured by reason of the violation, yes or no?

25 A There's much, much more to it than that,

1 Mr. Birnbaum.

2 MR. BIRNBAUM: Nonresponsive.

3 Q (By Mr. Birnbaum) Do you see any flaws in
4 these pattern jury instructions?

5 A I haven't had a chance to really look at
6 them, as I mentioned to you. I was just coming to
7 those when you took the little booklet from me at our
8 break.

9 Q Do you have any reason to believe that
10 there are flaws in pattern jury instructions pulled
11 down from the 5th Circuit?

12 A I just -- I don't have an opinion on that
13 without first having had the opportunity to look at
14 it.

15 MR. BIRNBAUM: Nonresponsive.

16 Q (By Mr. Birnbaum) Are the jury
17 instructions in conflict with any case law that you
18 know of?

19 A Mr. Birnbaum, before I can comment on that,
20 I need to review the instructions, and as I mentioned
21 to you, I have not had that opportunity.

22 Q Do you understand these pattern jury
23 instructions?

24 A I don't understand them in the sense that I
25 haven't viewed them yet.

1 Q Mr. Westfall, you have brought a civil RICO
2 suit in my behalf, have you not? What is it that
3 despite supposedly doing \$38,121.10 worth of work in
4 my RICO case that you do not understand about civil
5 RICO or civil RICO instructions?

6 A I'm sorry. I guess I don't understand that
7 question.

8 MR. BIRNBAUM: Nonresponsive.

9 Q (By Mr. Birnbaum) Will you agree that a
10 jury, after having heard the evidence, would need
11 very thorough instructions as to the RICO law, more
12 thorough than in a garden variety case, before they
13 would be qualified to make a finding under RICO under
14 these instructions?

15 A Yes. And I answer that yes without even
16 seeing those, just based upon the complexity
17 generally speaking of a RICO case.

18 Q Will you agree that a jury would have to be
19 thoroughly instructed in the requirements of RICO
20 before they could understand the evidence as it is
21 being taken?

22 A No.

23 Q You believe that they can listen to the
24 evidence and then go through the RICO instructions
25 afterwards?

1 A Yes.

2 Q They do not need to know anything about
3 RICO before they hear the evidence. Is that what you
4 are saying?

5 A That is not what I said.

6 Q What are you saying?

7 A I'm trying to respond to the question that
8 you're asking me.

9 MR. BIRNBAUM: Nonresponsive.

10 Q (By Mr. Birnbaum) I refer you to the
11 suggested RICO interrogatories at the end of the
12 pattern jury instructions on page 7. Look toward the
13 end of the document. A jury will give their answers
14 in the form of yes, no and dollar amounts upon these
15 special issues.

16 Is that not so Mr. Westfall, yes or no?

17 A Is what not so?

18 Q Will the jury give their answers upon these
19 issues?

20 A If the judge gives these and includes those
21 special issues in the charge, the court's charge, the
22 answer is yes.

23 Q Mr. Westfall, these are the sections for
24 the A, that if there is a violation for A, these are
25 the -- pass. I have a question on 1962-A. I refer

1 to you section 1962-A in here, starting on page 1.

2 You see the top of section 1962-A?

3 A Are you now referring to the same matter
4 that's behind tab 2?

5 Q Yes.

6 A Okay.

7 Q I have alleged that you, your wife and your
8 daughter violated the section and that I was injured
9 by reason of this violation, have I not?

10 A I believe that's the allegation that you've
11 made among other things.

12 Q Yes or no?

13 A I believe that among other things that you
14 have made that allegation.

15 Q Do you agree that the law office is an
16 enterprise under RICO as a matter of law?

17 A No.

18 Q Would you provide that law to me some time?
19 And I want to follow-up on that.

20 Why do you believe that the law office is
21 not a RICO enterprise under 18 United States Code
22 Section 1961 and so forth?

23 MR. FLEMING: On behalf of Stefani
24 and Christina, I'm going to have to finally
25 object and just say I object to the basis of the

1 form. It calls for the witness to give a legal
2 conclusion, and that's not my understanding of
3 why this witness is here.

4 Q (By Mr. Birnbaum) Do you agree that
5 Westfall Farms is an enterprise under RICO as a
6 medical law?

7 A No.

8 Q Do you agree I have pleaded proper
9 enterprise from -- in my 1962 claims?

10 A No.

11 Q I hereby designate whatever documents you
12 have filed in your recent bankruptcy proceedings and
13 all the things I said before to designate the
14 racketeering activity constituting the specific
15 pattern of racketeering by you, David Westfall.

16 Is there any questions as to what I am
17 designating?

18 A Yes.

19 Q What?

20 A Well, I don't understand what you're
21 designating when you use the broad sweeping
22 terminology that you use.

23 Q I hereby designate whatever documents you
24 filed in your recent bankruptcy proceeding claiming
25 you had more than twelve creditors against you, the

1 series of documents between you and your daughter
2 designating you as director of the law office, your
3 tax return using that representation, our retainer
4 agreement in the cause 696 and the Dallas federal
5 court, your retainer agreement in Jerry Michael
6 Collins RICO cause, the documents you call your bill
7 and what I allege to be your fraudulent pleading.

8 A My fraudulent what? I'm sorry.

9 Q Your fraudulent pleading in this case to
10 try to get more money out of me. I designate them as
11 constituting a specific pattern of racketeering
12 activity by you, David Westfall, and others and
13 designate all the evidence I have provided, all the
14 persons I have named, their affidavits together with
15 whatever else they have as showing this pattern of
16 racketeering activity.

17 Is there any question as to what I am
18 designating?

19 MR. FLEMING: Objection, form.

20 MR. WESTFALL: Objection, form.

21 MR. BIRNBAUM: I will provide
22 them -- nonresponsive.

23 Q (By Mr. Birnbaum) Using the 1962-A pattern
24 jury instructions in front of you and the evidence I
25 have designated, can you give me a specific reason as

1 to why I cannot convince a jury of a violation of
2 1962-A?

3 MR. FLEMING: Objection, form.

4 MR. WESTFALL: I would raise the
5 same objection, form.

6 MR. BIRNBAUM: The answer is --
7 the answer is you can't, Mr. Westfall.
8 Nonresponsive.

9 MR. WESTFALL: And I also object
10 to your --

11 MR. FLEMING: Sidebar comment.

12 MR. WESTFALL: -- sidebar remark.

13 Q (By Mr. Birnbaum) Using the 1962-A pattern
14 jury instructions and the evidence I have designated,
15 can you give me a specific reason as to why I cannot
16 convince a jury to find affirmatively as to the
17 existence of an enterprise and its effect on
18 interstate commerce by an affirmative finding to
19 elements No. 1 and 2 on page 2?

20 MR. FLEMING: Objection, form.

21 MR. WESTFALL: Object to the form.

22 MR. BIRNBAUM: I will give you all
23 of these in writing. You've already received
24 these before.

25 Q (By Mr. Birnbaum) Using 1962-A -- this is

1 on the bottom of page 2, using the 1962-A pattern
2 jury instruction and the evidence I have designated,
3 can you give me a specific reason as to why I cannot
4 convince a jury to find affirmatively as to
5 participating as a principal?

6 MR. FLEMING: Objection.

7 MR. WESTFALL: Objection to the
8 form.

9 MR. FLEMING: Form.

10 Q (By Mr. Birnbaum) Using pattern jury
11 instructions, can you give me any reason as to why I
12 cannot convince a jury to find affirmatively as to
13 mail fraud by an affirmative finding?

14 MR. WESTFALL: Same objection.
15 Objection as to form.

16 Q (By Mr. Birnbaum) Do you see any flaws in
17 the 1962-A jury instructions?

18 A I haven't had an opportunity to view them.

19 Q I refer you to section 3. This is the May
20 5, 1999 contract between us.

21 Did you promise that you would bill me
22 monthly?

23 A I don't believe so.

24 Q Why don't you believe so, Mr. Westfall?

25 A Because I don't know that I've ever

1 promised anyone that I would bill them monthly.

2 Q Never promised anybody you would bill them
3 monthly?

4 A Not that I recall.

5 Q Would you look on page 2, first paragraph?

6 A Okay.

7 Q Let me ask you the question again,
8 Mr. Westfall.

9 A Okay.

10 Q Did you promise that you would bill me
11 monthly?

12 A It is contained in the agreement that you
13 will be billed monthly for the time expended and
14 expenses incurred.

15 MR. BIRNBAUM: Nonresponsive.

16 Q (By Mr. Birnbaum) Did you bill me monthly,
17 as you contracted?

18 A I don't believe so.

19 Q Did you bill me at all?

20 A Yes, sir.

21 Q When did you bill me? When did you start
22 billing?

23 A Can you give me the tab that's immediately
24 in front of --

25 Q Mr. Westfall, where would we have to look

1 to find out when you started billing?

2 A I guess we'd have to look at the contract.
3 Possibly May the 5th.

4 Q Mr. Westfall, what documents at a law
5 office would I have to look at to find out when you
6 started billing me monthly?

7 A You would look at the agreement would be
8 one thing, I would say.

9 Q Well, look at it. You got it in front of
10 you.

11 A May the 5th is the date of it. And that's
12 the day that it was prepared and the date that you
13 signed it.

14 Q Is that the date you should have started
15 billing or the day you did start billing?

16 A I guess -- the day I did or the day I
17 should? I guess it's the date that I should start
18 billing.

19 Q Monthly?

20 A I guess I'm not understanding that
21 question. Were you expecting a monthly bill on the
22 5th of May?

23 Q Mr. Westfall, look at line number --
24 paragraph 2, says, You will be billed monthly.

25 Did you promise to bill me monthly?

1 A The contract contains that language. I
2 don't know that I promised to bill you monthly.

3 Q Mr. Westfall, did you sign this contract?

4 A Yes.

5 Q Did you intend to bill me monthly?

6 A I guess that depends on the amount of time
7 that we expended. I mentioned to you at the
8 beginning of this that this was going to be time
9 consuming, particularly initially, and that's why --
10 that there would be a \$20,000 retainer.

11 Q Mr. Westfall, would you explain to me your
12 understanding of monthly?

13 A Monthly is pretty plain.

14 Q It is to me. I took that to mean that you
15 were going to bill me monthly. All right.

16 A Did you ever complain to me for not -- for
17 doing it any differently than was done?

18 MR. BIRNBAUM: Nonresponsive.

19 Q (By Mr. Birnbaum) What all sort of
20 information did you put in such bills?

21 A I beg your pardon?

22 Q Did you ever bill?

23 A Yes, sir. I billed you on December the
24 31st of 1999. I sent you a remainder on February the
25 1st of 2000. I sent you another on April the 3rd of

1 2000. I sent you another on June the 1st of 2000.
2 And I sent you another on 7/31/2000.

3 Q Who-all do you designate as having actually
4 prepared those bills as you claim you sent?

5 A I beg your pardon?

6 Q Who-all do you designate as having prepared
7 such bills as you sent?

8 A My secretary, Beverly Hearn.

9 Q What evidence do you have of actually
10 mailing such bills? Mr. Westfall, do you have any
11 evidence of having mailed me any bill before you
12 mailed this piece of paper? Do you have any
13 evidence?

14 A I can tell you that I know that the billing
15 went out to you at the end of 1999.

16 MR. BIRNBAUM: Nonresponsive.

17 Q (By Mr. Birnbaum) Mr. Westfall, do you
18 have any evidence of having billed me, ever having
19 mailed me anything?

20 A Yes.

21 Q What?

22 A My statement that we did it, Beverly Hearn's
23 statement that we did it. I think we even have a
24 green card finally that you signed.

25 Q According to your own documents, you had

1 already eaten up the entire \$20,000 retainer
2 agreement by July of 1999, in just two months; is
3 that correct?

4 A I haven't bothered to view it in that
5 fashion. I can certainly go through it if you'd like
6 me to do that.

7 Q Do you have any reason to doubt that that's
8 what you did?

9 A I do not doubt that we spent \$20,000 worth
10 of time on your case within two months. I have no --

11 Q Okay. So the answer is yes, according to
12 your own documents you had already eaten up or may
13 have already eaten up the \$20,000 agreement by July
14 1999; is that correct?

15 A I said that I do not have any reason to
16 doubt, based upon the amount of time that we were
17 spending on your matter, that we would have spent
18 \$20,000 worth of time within the first couple of
19 months.

20 Q So you're running in the red ever after,
21 after the first two months; is that correct?

22 A Running in the red, in other words, you now
23 owe me more money?

24 Q No. Your accounting system had a negative
25 balance. I'm not saying who owed who. Your

1 accounting system showed a negative balance when the
2 \$20,000 was eaten up; is that correct?

3 A I don't know that our accounting system is
4 as you've stated. We just simply keep time records.

5 Q What sort of flag does running into the red
6 raise in your bookkeeping system?

7 A We don't -- well, I don't understand that
8 question.

9 MR. BIRNBAUM: Okay.
10 Nonresponsive.

11 Q (By Mr. Birnbaum) You contracted in this
12 contract -- look toward the end of the page 3 of
13 that. You contracted to explain in detail the
14 ramifications -- look at the last sentence of that
15 paragraph. You contracted to explain in detail the
16 ramifications and effect of Section 1983 civil RICO.

17 Why would you need to explain to me Section
18 1983 civil RICO? You were signing on to what you
19 knew were two existing parallel civil RICO causes,
20 were you not?

21 A Yes.

22 Q And we had been talking civil RICO, had we
23 not?

24 A Yes.

25 Q Why would you want to explain -- let me

1 rephrase it. Why would you need to explain to me
2 Section 1983 civil rights? You were signing on to
3 what you knew were two existing parallel civil RICO
4 causes, my cause and Collins' cause, were you not?
5 >And we'd been talking civil RICO for some time, had
6 we not?

7 MR. FLEMING: Objection,
8 relevance.

9 A We were talking civil RICO, but we were
10 also talking facts that conceivably give rise to 1983
11 claim.

12 Q (By Mr. Birnbaum) The contract gave you
13 permission to hire another attorney. You never told
14 me you had hired another attorney, yes or no?

15 A I didn't tell you that I had hired another
16 attorney, because I did not hire another attorney.

17 Q You told others you were having problems
18 contacting me.

19 A Yes.

20 Q How did you contact me in those cases, and
21 were you always able to contact me in that manner if
22 you really needed to?

23 A We had trouble calling you or getting you
24 to respond to letters. And those were the only two
25 ways that we were attempting to communicate with you.

1 Q Did you ever tell me that you were having
2 trouble communicating with me?

3 A Yes.

4 Q I refer you to item No. 4. This is
5 Collins' civil RICO contract with you.

6 A Okay.

7 Q Under what circumstances did you first meet
8 Mr. Collins?

9 A I first met him, as I recall, with Cathy
10 Young.

11 Q Anything else?

12 A Well, I think that answers the question
13 that you asked me.

14 Q When was your first meeting with
15 Mr. Collins?

16 A I don't recall specifically when that was.

17 Q You do not recall your first meeting
18 Mr. Collins?

19 A No I --

20 Q Mr. Westfall --

21 A Just a second. I don't recall the date of
22 it.

23 Q Do you recall your first meeting?

24 A I believe so.

25 Q What do you mean you believe so?

1 A Just that. I believe that I recall my
2 first meeting with him.

3 Q At the meeting with Mr. Collins, what, if
4 anything, was it that Mr. Collins wanted?

5 A The first thing he wanted was food. He was
6 complaining about he hadn't eaten in a day or two.

7 Q Did you know at that time that Mr. Collins
8 was a certified pauper?

9 A I did not know that he was a certified
10 pauper, no.

11 Q You knew he didn't have much money?

12 A I would -- he gave every impression that he
13 didn't have a lot of money.

14 Q Did you do significant work for
15 Mr. Collins?

16 A At what point in time?

17 Q In the civil RICO suit.

18 A Yes.

19 Q For whom did you do more work, for me or
20 for Mr. Collins?

21 A Without having the time to compare, we
22 probably did more for Collins than for you, because
23 you would do an awful lot for yourself.

24 Q Next question. Did you monthly bill
25 Mr. Collins as you promised?

1 A I don't believe so.

2 Q Why did you not?

3 A I don't believe he had the money to pay me.

4 Q You do not believe Mr. Collins had the
5 money to pay you, and that's why you did not bill
6 him; is that correct?

7 A Well, that's one of the reasons that I
8 didn't bill him, yes, sir.

9 Q What's another one?

10 A Well, we were busy meeting an awful lot of
11 deadlines that both you and he, by reason of having
12 filed these cases pro se, and then all of a sudden
13 come with various defenses, pleadings. It was
14 getting. It was about all we could do for the first
15 30 days there to meet all of those deadlines that
16 were occurring. And candidly, for the next --
17 probably next 60 days.

18 Q Well, all in all --

19 MR. FLEMING: I need to put
20 another tape in, if you don't mind.

21 MR. BIRNBAUM: Time out.

22 (Off the record.)

23 Q (By Mr. Birnbaum) Let me continue after we
24 have all reloaded our tapes right here. It is about
25 3:20.

1 Just to recap, Mr. Westfall, if I
2 understand you right, you did -- you said you did
3 more work for Mr. Collins than you did for me; is
4 that correct?

5 A We spent more time on Mr. Collins' matter
6 than we spent on yours.

7 Q And give me again the reasons as to why you
8 did not send bills to Mr. Collins ever.

9 A Well, I'm not sure that I can give you all
10 of the reasons. I did comment to you earlier that I
11 didn't think he could pay a bill, even if we sent it
12 to him. I think I also told you that for the first
13 30 to 60 days we were really spending a lot of time
14 on the combination of your matter and his matter.

15 Q Did he ever actually stay at your office
16 during that period of time?

17 A Yes.

18 Q About how long?

19 A You mentioned earlier something about a
20 week. And I sure would not disagree with that.

21 Q Did he stay there five days, a week or how
22 much did he stay there?

23 A Well, there was a time that he was there
24 for approximately a week.

25 Q Was he there day and night, Mr. Westfall?

1 A Just about, yes, sir. He spent the night
2 there.

3 Q Okay. Did you ever -- you never sent him
4 any bill on that matter; is that correct?

5 A I'm not sure that that's correct. I
6 believe that we sent him a bill at year end, the same
7 as we sent you.

8 Q Okay. Mr. Westfall, what is the status of
9 his account, Mr. Collins' account, at this time?

10 A You know, I'm not sure that I need to be
11 disclosing that to you.

12 MR. WESTFALL: In fact, I think I
13 will object as attorney/client privilege at this
14 time. I don't particularly have a problem
15 responding, but he might object to my responding.
16 So I'm going to respectfully invoke that
17 privilege at this time.

18 Q (By Mr. Birnbaum) Well, let me ask the
19 question differently. You said you did \$38,000 worth
20 of total work for me.

21 And you said you did more work and spent
22 more time for Mr. Collins; is that correct?

23 A I did say that.

24 Q Would you explain once again why you would
25 not send Mr. Collins a bill, why you didn't quit

1 working on Mr. Collins' case or why you took
2 Mr. Collins' case in the first place?

3 MR. WESTFALL: Well, I'll
4 respectfully object to that question as to form.

5 Q (By Mr. Birnbaum) What were some of the --
6 were there some high ranking public officials
7 involved in that lawsuit, Mr. Westfall?

8 A I beg your pardon?

9 Q Name some of the high ranking defendants in
10 that lawsuit that you prosecuted for Mr. Collins.

11 A Mr. Birnbaum, I'm happy to discuss your
12 matter any way that you want to discuss it. But I'm
13 hesitant to discuss Mr. Collins' matter with you
14 until he's waived the privilege, and up to this point
15 in time he has not done that.

16 MR. WESTFALL: And I'm just
17 hesitant to inform you of matters involving his
18 case at this time, and I therefore respectfully
19 invoke the attorney/client privilege.

20 Q (By Mr. Birnbaum) Mr. Westfall --

21 MR. FLEMING: Mr. Birnbaum, could
22 you move to the right about six inches? Thank
23 you very much.

24 MR. BIRNBAUM: Sure.

25 Q (By Mr. Birnbaum) Mr. Westfall, I have, of

1 course, sued you for racketeering, and I can sure see
2 why you don't want to disclose, okay. Of course, my
3 Deceptive Trade Practices Act is all about failure to
4 disclose.

5 So would you care to tell about the
6 sanctions federal Judge Solis put on you for that
7 cause for suing certain state district judges? They
8 were severe, were they not?

9 MR. FLEMING: Objection, form.

10 MR. WESTFALL: I object not only
11 to the form, but I also object on attorney/client
12 basis unless and until Mr. Collins waives that
13 privilege.

14 Q (By Mr. Birnbaum) In my pleading I allege
15 certain matters about you and former Van Zandt
16 sheriff, Gerald Cockerham.

17 Do you dispute the matters I stated in my
18 pleadings about Cockerham, yes or no?

19 A Can you refer those to me? Refresh my
20 recollection what it is you're talking about.

21 MR. FLEMING: I'm going to object
22 on the basis of relevance.

23 MR. BIRNBAUM: Next question.

24 Q (By Mr. Birnbaum) Did you sign a retainer
25 contract with him?

1 A Mr. Birnbaum, you're asking me about
2 matters involving other clients, and I'm hesitant to
3 respond to you.

4 MR. WESTFALL: I know that you
5 don't respect the attorney/client privilege, but
6 I do. And I'm hesitant to give you any response
7 to that at this time without his formally waiving
8 that attorney/client privilege.

9 MR. BIRNBAUM: Nonresponsive.

10 Q (By Mr. Birnbaum) You did send him a bill,
11 did you not, for about \$13,000, yes or no?

12 MR. WESTFALL: Same objection and
13 invoking the same privilege.

14 MR. BIRNBAUM: Non-responding,
15 responsive.

16 Q (By Mr. Birnbaum) And remember,
17 Mr. Westfall, I am cross-examining you upon what I
18 alleged as racketeering enterprise, so keep that in
19 mind.

20 MR. WESTFALL: Object to the
21 sidebar remark.

22 Q (By Mr. Birnbaum) Did Mr. Cockerham ever
23 work for you at Westfall Farms?

24 A Mr. Cockerham did come to the farm a few
25 times, yes.

1 Q Did Mr. Cockerham ever work -- work, work,
2 work -- for you at Westfall farms?

3 A I'm not sure what he did when he was there,
4 because I was not there most of the time when he came
5 there.

6 Q About how long did he, as you call it, come
7 there?

8 A I don't know.

9 Q Do you know of him working there?

10 A I believe that he did come there and assist
11 with the plumbing problem, and he may have even come
12 and fed the animals at some point in time or watered.
13 I'm not sure exactly what he did.

14 Q What sort of work did Cockerham do?

15 A I beg your pardon?

16 Q You have explained that. How much did you
17 pay him? Was he hourly, yes, no?

18 A I didn't pay him.

19 Q Did you --

20 A As I recall, I didn't pay him.

21 Q Would you find out if you paid him and
22 provide that information to me?

23 A If that's material, I will do that.

24 Q Did you take anything off of his legal fees
25 for the labor he provided?

1 A I don't believe so.

2 Q What do you mean you don't believe so?

3 A I mean just what I said.

4 Q Why cannot you give me an answer? How
5 would -- let me ask you the question the other way.

6 How would you trade and handle trade-off in
7 legal fees against labor in your law office's
8 accounting system?

9 A I don't know that we would do it through
10 any accounting system.

11 Q How would do you it?

12 A We would just try to -- at the conclusion
13 of something, try to work out something that would be
14 fair.

15 Q So you did trade labor for legal fees?

16 A I have done that before, yes.

17 Q What other cases have you done that?

18 A I know I did it in the case of Cathy Young.
19 I know I did it in the case of Matt Chitty. And I
20 know I did it in the case of Glen Cox.

21 Q Did you ever get feeds and medicines from
22 Collins Feed Stores?

23 A Yes.

24 Q Did you pay Collins for all the feed and
25 medicine or was the feed an offset for Collins' legal

1 fees?

2 A I did pay him some, whenever the first time
3 was that we did that. Thereafter, there was an
4 agreement that we would offset it on his legal fees.

5 Q Was that in writing?

6 A I don't believe it was.

7 Q At what rate did you trade feed for
8 Westfall Farms against Collins' legal fees?

9 A Whatever the cost was of the feed or salt
10 or whatever it was that was involved.

11 Q How did you handle that in your law office
12 accounting system and in your accounting system at
13 Westfall Farms?

14 A I don't know that it's involved in the,
15 quote, accounting system. Either of the farm or the
16 law office.

17 Q You're saying it is not in the accounting
18 system; is that correct?

19 A I said what I said. I thought I said I
20 don't believe in there --

21 Q Well, is it in the accounting system?

22 A I don't believe so.

23 Q Do you have reason to believe why it's in
24 there?

25 A I don't understand that question.

1 Q Well, you have just told me that you
2 customarily sort of make some deals outside of the --
3 you mentioned Cathy Young, Matt Chitty, Glen Cox,
4 Michael Collins, where you were making some sort of
5 outside deals outside the normal system; is that
6 correct?

7 A I would say yes.

8 Q Okay. Okay. So Westfall Farms benefited
9 money-wise from the legal fees that you were getting
10 from Mr. Collins; is that correct?

11 A Well, if it -- I -- I think that to be the
12 subject of some argument.

13 Q Did value flow from Michael -- value flow
14 associated with your legal fees at the law office at
15 \$200 an hour -- did that value flow through the feed
16 for whatever dollar it is to Westfall Farms?

17 MR. FLEMING: Objection, form.

18 A I don't understand your question. I
19 apologize to you.

20 Q (By Mr. Birnbaum) Did value flow from your
21 legal fees in the Collins case? Did value flow from
22 your time as an attorney in the Collins case? Did
23 value flow to Westfall Farms?

24 MR. FLEMING: Objection, form.

25 A I'm still having trouble with your question

1 in understanding.

2 MR. BIRNBAUM: Nonresponsive.

3 Q (By Mr. Birnbaum) Who are the owners of
4 Westfall Farms or whatever it's called?

5 A Well, I'm an owner. Chris is an owner.
6 Our son, John, is an owner. Our daughter, Stefani,
7 is an owner. Our grandchildren are owners.

8 Q Anybody else?

9 A No.

10 Q Who are the owners of the law office?

11 MR. FLEMING: Objection, form.

12 Q (By Mr. Birnbaum) What is the legal
13 structure of the law office?

14 MR. FLEMING: Objection, form.

15 Q (By Mr. Birnbaum) Whose top dog at the law
16 office?

17 MR. FLEMING: Objection, form.

18 Q (By Mr. Birnbaum) How does the money that
19 comes into the law office go out of the law office?

20 MR. FLEMING: Objection, form.

21 Q (By Mr. Birnbaum) Who-all receives money
22 out of the law office?

23 MR. FLEMING: Objection, form.

24 MR. BIRNBAUM: Nonresponsive.

25 MR. WESTFALL: Let me say that I

1 join in the various objections that have been
2 made here to the last four, five questions.

3 Q (By Mr. Birnbaum) Did you ever give
4 Collins a list of chores you wanted him to perform at
5 Westfall Farms?

6 A I believe so.

7 Q What did you want him to do?

8 A I can't honestly recall at this time. I
9 think I made a list of things that I thought were
10 important at the time. I don't know today -- today I
11 just can't say. Things would be different in the
12 wintertime as opposed to the summertime and that sort
13 of thing.

14 Q Did you want him to move out there?

15 A Well, I know that he did move out there.

16 Q Have you ever referred to Westfall Family
17 Farms or whatever it's proper name is as Westfall
18 Family Prison Farm?

19 A No.

20 Q Have you ever heard it referred to by
21 anyone else by that name; that is, Westfall Family
22 Prison Farm, your comments?

23 A No.

24 Q No. 5. This is your July 31 billing
25 statement sent to Mr. Collins, is it not?

1 A It appears to be, yes.

2 Q Is it?

3 A It appears to be.

4 Q Did you bill Mr. Collins monthly in this
5 matter?

6 A No.

7 Q Did you bill Mr. Collins?

8 A Yes.

9 Q Did Mr. Collins sign a contract with you on
10 this matter?

11 A No, sir.

12 Q Can you explain to me how you can bill it
13 if you have not signed a contract with him?

14 A If I spend the time on it, yes, sir.

15 Q Is this a valid bill?

16 A Yes, sir.

17 Q For what?

18 A For services rendered in connection with
19 the case of Collin versus Wal-Mart.

20 Q Could you sue him to collect on this?

21 A Is it legally possible, yes.

22 Q Is this --

23 MR. FLEMING: Is there a question?

24 Q (By Mr. Birnbaum) Does this billing
25 statement contain the offsets for the feed through

1 the feed store?

2 A I don't believe so.

3 Q Why does it not?

4 A I beg your pardon?

5 Q Why does it not?

6 A Well, I -- I didn't say it didn't. I said
7 I didn't believe so.

8 Q Did this bill come through your systematic
9 billing system?

10 A I'm not sure that I understand what you
11 mean "your systematic billing system," but it came
12 from our law office.

13 Q You claim in your pleading against me that
14 the law office has maintained systematic records and
15 regular and routine records, is that correct, that
16 entitles you to bring suit on account against me; is
17 that correct, Mr. Westfall?

18 A Yes. That is true.

19 Q You claim you have regular and systematic
20 records that are being kept at your office; is that
21 correct?

22 A Yes.

23 Q Okay. From the time that an entry is made,
24 would you describe how it finally winds up to be a
25 bill, just quick?

1 MR. FLEMING: Objection, form.

2 A We try to maintain records. We try to do
3 it on a daily basis. We don't necessarily get it
4 done every day, but I can assure you that we get it
5 done at least weekly where we maintain records of our
6 time spent in connection with handling the matters in
7 the law office.

8 Q Mr. Westfall, in suing me you claim
9 systematic records. What you are describing are not
10 systematic. You are describing, get around to it
11 when you want to get around to it. Your comments?

12 MR. FLEMING: Objection, form.

13 MR. WESTFALL: I'll join in that
14 objection.

15 Q (By Mr. Birnbaum) Mr. Westfall, look at
16 the date of this document. It says July 31, 2000.
17 The billing statement of that date includes a entry
18 for that date; is that not correct?

19 A It looks like it, yes, sir.

20 Q Things sure pass through your billing
21 system very quickly, Mr. Westfall, don't they?

22 MR. FLEMING: Objection, form.

23 Q (By Mr. Birnbaum) Next. No. 6, this is a
24 fax that I sent you. Why did you not respond?

25 MR. FLEMING: Objection, form.

1 A I believe we did talk about this, Udo. In
2 fact, I know we talked generally about this, quote,
3 appeal. I told you that you were premature about it.

4 Q (By Mr. Birnbaum) Did we talk about
5 Judge -- federal Judge Buchmeyer and Stickney
6 consciously ignoring the law? And did we talk about
7 the problem is they got caught?

8 A I don't believe we talked about that. I
9 see that in your note to me, but I don't know that
10 you and I talked about that.

11 Q Do you remember telling me on one of the
12 entries we made to Judge Buchmeyer says, He never saw
13 it.

14 Do you remember that comment in the
15 presence of myself and Mr. Collins?

16 A I think I opined to you that I -- that I
17 didn't think he saw it.

18 Q Do you think he saw it?

19 A I do not believe he saw it. That's the
20 reason --

21 Q What did he do?

22 A That's the reason that I told you that.

23 Q What did you do upon being my lawyer for
24 \$38,000 or something and the only judge you got in
25 the federal court who was our judge, you believing

1 that he never saw our cause, what did you do upon
2 that, Mr. Westfall?

3 MR. FLEMING: Objection, form.

4 A I don't understand your question as to what
5 I did.

6 Q (By Mr. Birnbaum) You believe he never saw
7 that; is that correct?

8 A That is my personal belief, yes.

9 Q Okay. How often is it, Mr. Westfall, that
10 you believe a federal judge didn't see something
11 despite the signature on it?

12 MR. FLEMING: Objection, form.

13 A You would like to think that they see
14 everything, but I'm -- there is a practical side of
15 life, and they cannot, as a practical matter, see
16 everything that goes through their court.

17 Q (By Mr. Birnbaum) Okay. You don't very
18 often have discussions with your clients where you
19 talk about the judge never having seen that document.

20 Does that happen frequently in your local
21 practice?

22 A No. No, no, no. I said to you -- and
23 because I believe that I didn't think that he had
24 seen that. I don't think he had read it is probably
25 the more correct.

1 Q Who had been the one that had been handling
2 everything before that? Which judge was handling
3 everything before this? Do you remember the name of
4 the magistrate?

5 A Well, I get your case and Mr. Collins' case
6 confused. It's not -- is it -- was Stickney the --
7 I'm sorry. I just can't recall, as I sit here.
8 Because I know that we had Judge Solis, I think in
9 Collins' case. We had Judge Buchmeyer in your
10 matter.

11 Q We had magistrate Stickney in both cases;
12 is that not correct?

13 A I believe that is true.

14 Q And who was our judge?

15 A Judge Buchmeyer.

16 Q Okay. Do you remember what the thing was
17 that we were trying to get with this document that we
18 said he never saw? Do you remember what the
19 significance of that document was?

20 A Udo, I can't read your mind.

21 Q If I were to tell you it was to ask for de
22 novo determination to get it before a judge instead
23 of Magistrate Stickney, would that ring a bell with
24 you?

25 A If you're saying did we file an appeal to

1 have him hear it, is that -- is that what --

2 Q That was a seeking a de novo determination
3 by our judge, whom we had never seen in the case; is
4 that correct?

5 A Again, I can't read your mind. I could
6 just listen to the question. And that question is
7 confusing.

8 Q Let me tell you what it was. It was the
9 objection to the magistrate's findings.

10 Does that ring a bell to you?

11 A I know that we did file objections to the
12 recommended findings.

13 Q Okay. And what does one seek when one
14 files an objection to the magistrate's finding?

15 A You seek a hearing before the court.

16 Q Upon what issue and what is the --

17 A Upon the proposed finding of fact and
18 conclusions of law.

19 Q Is that what's called a de novo
20 determination?

21 A It can be.

22 Q Can you tell me why it is not?

23 A I'm not saying that it is not.

24 Q You agree that we had never had a hearing
25 in the case. You agree to that?

1 A I guess the answer is no.

2 Q No, you cannot remember that?

3 A I don't remember saying that, Udo.

4 Q Do you remember having a hearing before
5 Judge Buchmeyer or Magistrate Stickney?

6 A There were no hearings before them in their
7 court; that is correct.

8 Q Okay. Okay. Isn't a de novo an objection
9 to the magistrate's findings and objection to what
10 the magistrate has done and don't you think that the
11 judge should at least look at it so you get to talk
12 to your judge and you're telling me the judge never
13 saw it?

14 MR. WESTFALL: I object to your
15 proposed questions as to form.

16 Q (By Mr. Birnbaum) Okay. Next item, No. 7
17 is another fax --

18 MR. FLEMING: Before you start
19 that. I'd just like to state for the record so
20 we're clear, I think we've gone about an hour
21 with this. Is that about right? You're welcome
22 to use any time the way you want to. If we have
23 to get out at five, we have -- I didn't know that
24 until we stated that awhile ago.

25 I think almost every question

1 you've asked up until now is irrelevant. You've
2 stated that you don't have a malpractice claim,
3 and you're talking about legal issues. And I
4 just want to state in case there's an objection
5 about not giving you plenty of time, I'd like
6 state that I think the last hour has been pretty
7 much wasted as far as the issues in this lawsuit.

8 Q (By Mr. Birnbaum) Look at No. 8. This is
9 your letter urging me to sign the -- whatever motion
10 you had to withdraw; is that correct?

11 A Yes.

12 Q Okay. Now, let me show you -- okay. Do
13 you remember about what time you notified me that I
14 was pro se again? Does this refresh your memory?
15 And I want to enter that as my number -- it will be
16 23. That would be my No. 23 finally.

17 Do you have any questions about that?

18 A No.

19 Q Okay. Come back to the document No. 8.
20 Why is it important that I get to sign your motion to
21 withdraw?

22 A Well, if you don't indicate your approval
23 by signing it, then it may be necessary to have a
24 hearing with the judge relative to it.

25 Q Okay. I enter No. 9. No. 9. Your failure

1 to approve the motion and order would cause us to
2 have a hearing. You are urging me of that, your
3 failure to approve --

4 You are urging me, are you not,
5 Mr. Westfall?

6 A I am urging you to sign the -- you know.
7 You had discharged me earlier. But I was not
8 released from the court. I was still your attorney
9 of record at the courthouse, and I was seeking to be
10 withdrawn from that responsibility.

11 Q Mr. Westfall, I want you to refer to No. 3
12 again. We reserve the right to terminate our
13 attorney/client relationship for any of the reasons.
14 One, your nonpayment of fees and costs.

15 Can you tell the jury as why you needed my
16 signature at all in order to withdraw if the account
17 was \$18,000 in the hole, and we had agreed by
18 contract that you could terminate for nonpayment? If
19 the account had been in the hole for about eight
20 months, why would be -- why would you be dallying
21 around fishing for my signature?

22 You did not need my signature. You needed
23 it for who knows what procedural purpose. Why else
24 would you go to get -- go to all that trouble to get
25 my signature? Please explain.

1 MR. FLEMING: Objection, form.

2 MR. WESTFALL: I respectfully
3 object as to form.

4 Q (By Mr. Birnbaum) Get to No. 10. Now,
5 this is the document that you filed on the 17th of
6 March, right? No. 10.

7 A It bears a file mark of the 20th. So I
8 must have put it in the mail on the 17th.

9 Q Now, the same that you're making in there,
10 are they true as of the date that you filed that?

11 A Yes.

12 Q You're saying you're withdrawing for the
13 reasons you stated. Okay?

14 A Yes, sir.

15 Q The court signed this document in two days
16 even with my signature block blank. You did not need
17 my signature at all, did you, Mr. Westfall?

18 MR. FLEMING: Objection, form.

19 Q (By Mr. Birnbaum) Please explain again in
20 simple terms why all the first -- for more than three
21 months and your extreme interest in my signature.

22 Could my signature have been all that
23 valuable you to under the circumstances?

24 A Your signature represented your agreement,
25 and the court, when it can get agreement, prefers

1 agreement. When it can't, it could have. It doesn't
2 necessarily always require a hearing, but it could
3 have required a hearing.

4 Q Mr. Westfall, you just told me that the
5 presence of my signature means agreement.

6 Can you explain what the absence of my
7 signature on there means?

8 A It simply means for some reason or another
9 you didn't sign it.

10 Q Look at No. 3 on the motion itself.
11 Westfall has delivered a copy of this motion to
12 pleading to plaintiff and has noticed him in writing
13 both certified and regular mail of his right to
14 object.

15 Mr. Westfall?

16 A Yes, sir.

17 Q Did you deliver this motion to me at the
18 time that you filed it?

19 A I had delivered it to you well before the
20 time that I filed it. Well before.

21 Q Mr. Westfall, where is my right to object
22 if the court just signs it?

23 A Well, Udo, are you telling me that you did
24 object?

25 MR. BIRNBAUM: Nonresponsive.

1 Q (By Mr. Birnbaum) Look at No. 11. This is
2 your March 20, 2000 letter telling me, quote, the
3 case is now ripe for appeal, unquote, and, quote, all
4 of the appropriate rules are now in effect relative
5 to your appeal, unquote. I fully addressed this
6 letter in my pleading. I had been in the appeals
7 court for nearly four months.

8 You have not responded to that matter in my
9 plead, have you, Mr. Westfall?

10 MR. FLEMING: Objection, form.

11 MR. WESTFALL: We join in that
12 objection.

13 Q (By Mr. Birnbaum) No. 12, you brought this
14 pleading on behalf of your law office, is that not
15 correct, Mr. Westfall?

16 A Yes.

17 Q Who is the owner of the law office?

18 A I guess I am the owner of the law office.

19 Q What do you mean you guess?

20 A Well, let me ask you this question, Udo.
21 How high is up?

22 MR. BIRNBAUM: Nonresponsive.

23 Q (By Mr. Birnbaum) The law office is
24 distinct from you, Mr. Westfall, isn't it?

25 A Yes. It's another entity.

1 Q Is it another person?

2 A It's another entity.

3 Q Is it a person?

4 A It's an entity.

5 Q What sort of a legal entity is it?

6 A It's a P.C.

7 Q You are not the owner of the law office; is
8 that correct?

9 A That's not correct.

10 Q You are the owner?

11 A I believe I'm the owner, yes, sir.

12 Q You believe you're the owner?

13 A Yes, sir.

14 Q Why do you believe that you are the owner?

15 A I've been operating as a professional
16 corporation for approximately ten years. I don't
17 know precise time, but we obtained the business. We
18 work on the business. We sign the pleadings. We do
19 everything that's done.

20 Q All the testimony regarding to the law
21 office given by you in the bankruptcy case is, of
22 course, truth; is that correct?

23 A Yes, sir.

24 Q Look at this pleading and look at your
25 signature block.

1 A And what are we now talking about?

2 Q The pleading, No. 12.

3 A Okay.

4 Q Who prepared this document for your
5 signature? Do you notice anything missing?

6 A Yes.

7 Q Would you tell us what's missing?

8 A P.C. after G. David Westfall.

9 Q Uh-huh. Anything else?

10 A Anything else missing?

11 Q Yeah. Where is your state bar number?

12 A It's not on there.

13 Q Why is it not on there, Mr. Westfall?

14 A I suspect that's an oversight.

15 Q Mr. Westfall, is this block normally copied
16 as a whole group or would that have to be
17 intentionally submitted? Or I don't see how that can
18 just fall out of there. Your comments.

19 MR. WESTFALL: Objection, form.

20 MR. BIRNBAUM: Nonresponsive.

21 Q (By Mr. Birnbaum) Look at No. 14. Look at
22 an entry down there, entry 5/11/99, reflecting a
23 total of 3.5 hours.

24 Do you see the name of Roxie Cluck? Who is
25 Roxie Cluck? Is Roxie Cluck a defendant in my case?

1 A Roxie is one of the attorneys here in Van
2 Zandt County.

3 Q Mr. Westfall, I know who Roxie Cluck is.
4 Was she a party to my suit?

5 A I don't believe so.

6 Q Who was Roxie Cluck? Which suit was she
7 in?

8 A I believe she was in Mr. Collins' case.

9 Q Mr. Westfall, do you have any reason to
10 believe that if I had ever seen any of this stuff
11 here before, I would not have gotten you to remove
12 Roxie Cluck out of that document?

13 MR. FLEMING: Objection, form.

14 MR. WESTFALL: I would object as
15 to form as well.

16 Q (By Mr. Birnbaum) Look on 6/9/99. It
17 refers to an 11-B.

18 What's an 11-B, Mr. Westfall?

19 A It's one of the various motions that can be
20 done under the Federal Rules of Civil Procedure.

21 Q Would you be more specific? Isn't Rule 11
22 about sanctions?

23 A It can be.

24 Q What works of any kind would you have done
25 on 11? All we have is 12-B motions; is that correct?

1 A That's incorrect.

2 Q Look at 6/11. In 6/11 you talk about staff
3 and staff. Who is staff?

4 A That would have been Beverly Hearn.

5 Q You put on your bill every time you confer
6 with Beverly?

7 A Not every time, no, sir. If we are
8 stopping the flow of the work in the office to
9 discuss a very specific thing, then the answer is
10 yes.

11 Q Look on 12/6. It says, Receipt and review
12 plaintiff's pro se appearance.

13 A Yes.

14 Q And correspondence and telephone conference
15 was Michael Collins?

16 A Yes.

17 Q That was another one of your clients, is it
18 not?

19 A Yes.

20 Q Did you charge me for looking at
21 Mr. Collins?

22 A No.

23 Q Do you charge me for looking at the
24 document firing you?

25 A I did charge you for receiving and

1 reviewing plaintiff's pro se appearance and the
2 correspondence that was attached to it.

3 Q Okay. Now, if you charge that on your
4 billing statement here, you must have been fired some
5 time around the -- shortly after this; is that
6 correct?

7 A I beg your pardon.

8 Q You must have been fired -- you must have
9 received this some time around the 2nd, 3rd or 6th at
10 least, right?

11 Would you look at the entry for the 8th of
12 December in there, telephone conferences?

13 A Yes.

14 Q Had those parties not been -- likewise been
15 notified that you were not my attorney? So to whom
16 were you talking?

17 A From the bill I can't determine who I was
18 talking to.

19 Q I can't either, Mr. Westfall. Look at No.
20 9. Telephone conference with the district clerk's
21 office and the judge's briefing clerk.

22 Mr. Westfall, tell me, what are you doing
23 in the federal court at that time? You've been
24 fired.

25 A I still had an arrangement insofar as the

1 court was concerned. I was your attorney of record.

2 Q Did we still have any other arrangement?

3 A I beg your pardon?

4 Q Did we still have an arrangement?

5 A Yes.

6 Q How much was I in the hole by that time
7 already, Mr. Westfall, according to your accounting
8 records?

9 A I'm sure the records will demonstrate what
10 it was, but at the end of -- by the end of that year,
11 the end of that month, it was a little over \$18,000.

12 Q Well -- okay. All right. Here you are
13 still working. You're receiving -- on the 10th,
14 receiving and reviewing Young's response. Charged me
15 an hour for that. You are no longer my attorney,
16 Mr. Westfall. Look at 12/11/99, draft motion and
17 order to withdraw, 1.2 hours. \$240 to review the
18 motion to withdraw that you've been working on and
19 didn't file until three months later.

20 Look at 12/14, telephone conference with
21 court clerk and other attorneys, three. Look at
22 12/20, telephone conference with court clerk. 12/21,
23 finalize the motion in order to withdraw
24 correspondence. And then you didn't get around to
25 filing the motion for three or four months after

1 that. Look at No. 16. Correction, No. 15.

2 You filed suit or mailed it to the court on
3 September 20, 2000; is that correct, Mr. Westfall?

4 A I beg your pardon?

5 Q You filed suit about September 20; is that
6 correct?

7 A No.

8 Q Look at No. 12, Mr. Westfall. At the end
9 of No. 12, there is a letter from your law offices
10 signed by Beverly Hearn to Nancy Young, district
11 court, September 20, 2000.

12 Is that when you mailed it? Did you file
13 suit about September 20, Mr. Westfall?

14 A Yes.

15 Q I asked you to look at No. 15,
16 Mr. Westfall.

17 A Okay.

18 Q You were scheduled for a major hearing for
19 September 20, 2000 in the federal bankruptcy case in
20 the Northern District of Dallas, No. 300-34287, in an
21 involuntary bankruptcy against you personally which
22 hearing was held; is that correct?

23 A Yes.

24 Q And another hearing was held on September
25 22, 2000; is that correct?

1 A I know that it listed more than one day.

2 Q But that September is about -- September
3 20th is about the same September that the two things
4 happened; is that correct?

5 A Yes.

6 Q Was a suit against me prepared before,
7 after or sort of concurrent with the bankruptcy
8 proceedings and the hearing in particular?

9 A Before.

10 Q And I filed and provided you a copy of the
11 transcript of those bankruptcy proceedings of
12 September 20, 2000 in that cause; is that correct?

13 A I believe it was attached to something that
14 you had filed.

15 Q I have also designated the entire file
16 including the transcript as being part of my
17 evidence. Do you agree?

18 A I agree that you've attempted to do what
19 you say. I do not agree that you've effectively done
20 that.

21 Q Regarding the bankruptcy proceedings, they,
22 meaning the party forcing you into the involuntary,
23 were trying to show that you were personal shell
24 using the law office, Westfall Farms, or whatever as
25 a scheme to keep them from collecting on a judgment

1 against you personally.

2 Am I stating that correctly? That's what
3 they were trying to do?

4 A I don't believe so. I don't believe you
5 are stating that correctly.

6 Q Did they claim you were a personal shell?

7 A I'd have to review the documents to
8 determine that specifically, but I don't recall that
9 they were contending that I was a personal shell.

10 Q Mr. Westfall, if I told you I read the
11 thing and I didn't even know what a personal shell
12 was and my word personal shell comes out of that
13 document, would you believe that the word personal
14 shell was used in that document?

15 MR. FLEMING: Objection, form.

16 MR. WESTFALL: I object as to form
17 as well.

18 Q (By Mr. Birnbaum) You were trying to show
19 you were not broke, were paying your creditors
20 timely, that there were more than twelve valid
21 creditors, emphasis on the twelve, and that they had
22 no right to put you into involuntary bankruptcy in
23 the first place all by themselves, i.e. that in the
24 absence of three creditors to that proceedings, they
25 could not proceed against you because you had more

1 than twelve creditors against you.

2 Am I stating that correctly, Mr. Westfall?

3 MR. FLEMING: Objection, form.

4 A I hear what you're saying. I'm not sure
5 that your stating it correctly, however.

6 Q (By Mr. Birnbaum) How would you state it?

7 MR. WESTFALL: Well, I object to
8 that question as to form.

9 MR. FLEMING: Objection, form.

10 Q (By Mr. Birnbaum) Were you trying to show
11 that you had more than twelve valid creditors?

12 A I think we were trying to show that we had
13 at least twelve valid creditors.

14 Q Was twelve the magic number or thirteen?
15 Was it at least twelve or more than twelve? What was
16 required?

17 A I'm sorry. I'm not a bankruptcy lawyer,
18 and I can't tell you.

19 Q Mr. Westfall, how many creditors did you
20 list on the documents that you filed in the court?

21 MR. FLEMING: Objection, form.

22 A I'd have to review those to tell you.

23 Q (By Mr. Birnbaum) You produced a document
24 or documents listing more than twelve creditors; is
25 that so? Yes or no or don't know?

1 A At this time I don't know. If you'll show
2 me the document that you're referring to --

3 Q Will you provide me that information?

4 A If you'll provide me with a document, I'll
5 answer it right this minute.

6 MR. BIRNBAUM: I may come back to
7 that one.

8 Q (By Mr. Birnbaum) If there had been more
9 than twelve valid creditors against you, you could
10 have gotten these particular proceedings against you
11 dismissed; is that correct?

12 MR. FLEMING: Objection, form.

13 Q (By Mr. Birnbaum) Mr. Westfall?

14 A Yes, sir.

15 Q If there had been more than twelve valid
16 creditors against you, you could have claimed that
17 there are more than twelve valid creditors against
18 you; is that correct?

19 A I don't understand your question.

20 Q In the list of creditors against you, you
21 included creditors to whom you personally owed no
22 money because the debts were not against you, i.e.
23 you were not the obligator. Is that yes or no?

24 MR. FLEMING: Objection, form.

25 A I don't understand your question.

1 Q (By Mr. Birnbaum) In the list of creditors
2 against you which you provided, you included
3 creditors to whom you personally owed no money
4 because the debts that you were claiming were not
5 against you but against who knows.

6 Next question. More than three of the
7 debts you were claiming as debts against you were
8 indeed debts upon which the law office had been
9 regularly paying, yes or no?

10 A Without looking at those, Udo, I just
11 couldn't say. If you'll -- obviously you have seen
12 what you're talking about and know what you're
13 talking about. And if you'll share that with me, I'd
14 be happy to answer the question.

15 Q Well, let me -- let me give you a moment to
16 comment on what I'm saying. It says to me, a
17 non-lawyer, it appears you were trying to perpetrate
18 a fraud in the federal court.

19 Can you tell me as to why I cannot convince
20 a jury that you were floating fraudulent documents in
21 that court?

22 MR. FLEMING: Objection, form.

23 MR. WESTFALL: And I respectfully
24 join in that objection.

25 MR. FLEMING: I would like to

1 raise the objection that this continuing line of
2 questioning is abusive.

3 Q (By Mr. Birnbaum) I refer you to document
4 No. 19. Mr. Westfall, we were both -- we are both
5 seeking judgment in this case. You're a lawyer, and
6 I am not.

7 Would you tell the jury what a judgment is?
8 Use some words to describe what does a judgment do.

9 MR. WESTFALL: I object to your
10 question as to form. I don't understand it.

11 Q (By Mr. Birnbaum) What does a judgment in
12 a case do?

13 A Generally speaking, a judgment disposes of
14 issues between parties.

15 Q I'm going to read you from document No. 17
16 not in this case titled, Final judgment. For the
17 reasons stated in the order signed today the
18 plaintiff's RICO claims against all of the defendants
19 are dismissed. It against uses the word dismissed.
20 Any pending motions are denied. This is a final
21 judgment.

22 Does it use all the magic words that are in
23 a judgment?

24 MR. FLEMING: I object on the
25 basis of form.

1 A Are you asking me opinion?

2 Q (By Mr. Birnbaum) Yes, sir.

3 A As to whether or not that's a final
4 judgment?

5 Q I'm asking you whether or not it has all
6 the right words in it for a final judgment.

7 MR. FLEMING: Objection, form.

8 Q (By Mr. Birnbaum) It uses the words
9 dismissed, denied, final; is that correct?

10 A Yes. You're right.

11 Q Look at No. 19, judgment. That's the
12 judgment in our case.

13 Can you find the word dismissed, denied,
14 final?

15 A No.

16 Q In fact, if you look at the first one, the
17 court is allowing me to amend my complaint; is that
18 correct?

19 MR. FLEMING: I'm sorry.

20 A I don't understand.

21 Q (By Mr. Birnbaum) No. 18, judgment.

22 Ordered, adjudged and decreed that plaintiff Udo
23 Birnbaum's motion for leave to amend complaint is
24 granted.

25 Does that look like it's closing anything

1 out, Mr. Westfall, or is it opening something up? It
2 is allowing me to amend my petition; is that not
3 correct?

4 A Yes.

5 Q So it's not closing out. It's not
6 dismissing anything. It doesn't say anything about
7 final.

8 It doesn't say final judgment on the top of
9 it, does it not?

10 A It simply uses the term judgment.

11 Q What is it dismissing, Mr. Westfall? Is it
12 dismissing the cause? Does it use words such as the
13 plaintiff's claims are dismissed? Any motions are
14 denied? This is a final judgment? It allows it to,
15 quote, amend the complaint. That is not a judgment,
16 Mr. Westfall.

17 And you were my lawyer at that time in the
18 case of this judgment, were you not? This is a fuzzy
19 judgment, is it not, Mr. Westfall? Explain.

20 MR. FLEMING: Objection, form.

21 MR. WESTFALL: I respectfully
22 object.

23 MR. FLEMING: This question is
24 abusive.

25 MR. WESTFALL: I object as to

1 form.

2 Q (By Mr. Birnbaum) Was there something
3 funny going on in the Westfall -- in the federal
4 court?

5 MR. FLEMING: Objection, form.

6 MR. WESTFALL: I object -- I join
7 in that objection.

8 Q (By Mr. Birnbaum) Mr. Westfall, did you
9 ever tell me what was going on here?

10 A No.

11 Q Your bill shows that you made a lot of
12 phone calls to the clerk's office, the 5th Circuit
13 court of appeals, did you not, Mr. Westfall, about
14 that time?

15 A About what time are we talking about?

16 Q The time of this judgment. I'm looking at
17 item No. 14. One of the pages on 9/20/99. Three
18 telephone conferences. 9/24 telephone conferences,
19 three. 9/25, legal research regarding the prospect
20 of appeal.

21 And you just told me that -- you told me it
22 was not ripe for the appeal yet?

23 A Yes, sir.

24 Q And yet I got a 2.3 hour charge for appeal?

25 A And that's because you were telling me --

1 you were on the phone saying we must appeal, and
2 we've got to do this and we've got to do that. And I
3 told you that that's incorrect, that this judgment
4 did not dispose of all issues between all of the
5 parties. It was not a final judgment. It could,
6 therefore, not be appealed.

7 Q Mr. Westfall, was it time for me to appeal
8 at that time?

9 A No.

10 Q Why not Mr. Westfall?

11 A Because the order disposing of all
12 parties -- all issues between all parties has not
13 been entered.

14 Q Mr. Westfall, were the matters in the --
15 when the court writes on it, Case closed, is it ready
16 for appeal?

17 A I don't know that it wrote on there, Case
18 closed.

19 MR. FLEMING: Objection, form.

20 Q (By Mr. Birnbaum) Mr. Westfall, were the
21 matters in the judgment or the order or whatever you
22 had, were the matters below still open?

23 A I'm sorry. I don't understand your
24 question.

25 MR. WESTFALL: I object to it as

1 to form.

2 Q (By Mr. Birnbaum) Mr. Westfall, is not a
3 order final when the matters below the order are no
4 longer open?

5 A That's not necessarily the case.

6 Q Mr. Westfall, why did the 5th Circuit take
7 it?

8 A Because it became final at a later time.

9 MR. BIRNBAUM: Nonresponsive.

10 Q (By Mr. Birnbaum) I refer you to item No.
11 21 in this case, marked Exhibit B in that case, and
12 also docket entry 103 on the bottom.

13 Did not Judge Solis in that one find what
14 you did constituted a flagrant abuse of the judicial
15 system?

16 A Did he grant --

17 Q Page 6.

18 A Did he grant a sanction?

19 Q Did not Judge Solis find on page 7 that
20 you, quote, "acted in bad faith, wantonly and for
21 oppressive reasons" and "wondered out loud that an
22 attorney such as Westfall could file a complaint
23 against a state court judge based on the
24 circumstances in this record leaves the court nothing
25 short of bewildered"?

1 The court had previously ordered you to
2 respond to the sanction, had it not?

3 A Yes.

4 Q You did not respond to the court's order to
5 respond; is that correct?

6 A That's incorrect.

7 Q You did respond?

8 A Yes.

9 Q What did you tell the court, Mr. Westfall?

10 A It's contained in the response.

11 Q You did respond on that one in Michael
12 Collins' case?

13 A Yes.

14 Q What if I told you there's no reference to
15 that on the docket sheet?

16 A I don't know what I would say to that.

17 Q In the order you were ordered to pay the
18 clerk of court the sum of \$2,500; is that correct?

19 A Can you point out where you're talking
20 about?

21 Q Mr. Westfall, if I have to point it out to
22 you, you didn't pay it.

23 A I'm sorry?

24 Q If I have to point out here where it tells
25 you to pay \$2500, you didn't pay it.

1 MR. FLEMING: Objection, form.

2 Q (By Mr. Birnbaum) Look on page 7. Did you
3 pay the clerk of court, as you were ordered to do by
4 federal Judge Solis?

5 MR. WESTFALL: Objection, form.

6 MR. BIRNBAUM: Nonresponsive.

7 Q (By Mr. Birnbaum) After you became
8 Collins' lawyer about May 1999, you told Collins that
9 Judge Gohmert's motion for sanctions was too
10 ridiculous to respond to, yes or no?

11 A No.

12 Q Are you sure of that?

13 A Yes.

14 Q When Judge Gohmert separated his motion for
15 sanction, you told Collins that the motion was still
16 too ridiculous to respond to.

17 Did you tell him that?

18 A No.

19 Q Did you respond to it?

20 A Yes.

21 Q How did you respond?

22 A With a response.

23 Q Mr. Westfall, the record shows no response
24 on your part.

25 If I told you that, are you positive you

1 responded to that at the time that the motions were
2 made by Judge Gohmert? Do you positively claim you
3 responded to the motion of sanctions?

4 A I know that I responded to the motion after
5 I became Mr. Collins' counsel.

6 Q You categorically claim that you responded
7 to Judge Gohmert's motion after you became his
8 lawyer; is that correct? You categorically claim
9 that you responded to that; is that correct?

10 A Yes, sir.

11 Q And when Judge Gohmert put in his
12 supplemental motion for sanctions, you also
13 categorically say that you responded to it at that
14 time; is that correct?

15 A Yes.

16 MR. FLEMING: Let the record
17 reflect that it's now 4:30, and I think we once
18 again have gone through a whole series of
19 questions that don't have anything to do with the
20 pleadings in this lawsuit. And therefore, if we
21 run out of time, I'm going to say that you've
22 used your time the way you wanted to.

23 Q (By Mr. Birnbaum) I refer you to document
24 entitled, Order.

25 Coming back to the previous one, what was

1 your answer when I asked you whether you paid the
2 \$2500 fine to the court as ordered? Did you pay it?

3 MR. WESTFALL: I believe I
4 objected to the previous question you asked as to
5 form.

6 Q (By Mr. Birnbaum) Would you tell me what
7 the problem with the form is?

8 A No, sir. I'll let you figure that out.

9 Q Do you have any evidence on having paid
10 that --

11 MR. SPEAKER: Just about
12 arrangement, we're going to start shutting this
13 building down in about fifteen minutes because of
14 the holiday tomorrow. Okay.

15 Q (By Mr. Birnbaum) Do you have any evidence
16 of having paid that fine?

17 MR. WESTFALL: I'm going to object
18 to that.

19 Q (By Mr. Birnbaum) Okay. I'm going to look
20 at No. 22, another order asking you to pay some more
21 monies.

22 Did you pay those monies?

23 MR. WESTFALL: I'm going to
24 respectfully object to that as to form.

25 MR. BIRNBAUM: I think we are out

1 of time. Request the right to recall the
2 witness. Pass the witness.

3 MR. FLEMING: I'd just like to go
4 on the record and say I believe we've got another
5 fifteen more minutes. And if you have any
6 questions for this witness at this time, I'd like
7 to go ahead and get them over with as opposed to
8 calling him back later. Unless there is
9 something specific.

10 MR. WESTFALL: Well, he has passed
11 the witness. I'm going to take him at his word
12 for something.

13 MR. BIRNBAUM: You want to ask him
14 something?

15 MR. FLEMING: Yes.

16 MR. BIRNBAUM: Let me --

17 MR. FLEMING: May I ask you a
18 couple of questions, Mr. Westfall?

19 MR. WESTFALL: Sure. If you
20 insist.

21 CROSS-EXAMINATION

22 BY MR. FLEMING:

23 Q To your knowledge, did Christina Westfall
24 ever do anything for Udo Birnbaum except on behalf of
25 G. David Westfall, P.C.?

1 A No.

2 Q And to your knowledge, did Stefani Podvin
3 ever do anything for Udo Birnbaum other than work she
4 did on behalf of G. David Westfall, P.C.?

5 A No.

6 MR. FLEMING: No further
7 questions.

8 MR. WESTFALL: We'll reserve the
9 right to develop the facts more fully at the time
10 of trial. Thank you, ma'am.

11 MR. BIRNBAUM: Thank you.

12 (Deposition concluded at 4:41 p.m.)

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CAUSE NO. 00-00619

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3 THE LAW OFFICES OF) IN THE DISTRICT COURT
 4 G. DAVID WESTFALL, P.C.)
 5 Plaintiff,)
 6 v.) 294TH JUDICIAL DISTRICT
 7 UDO BIRNBAUM)
 8 Defendant.) VAN ZANDT COUNTY, TEXAS

9 REPORTER'S CERTIFICATION
 10 DEPOSITION OF DAVID WESTFALL
 11 TAKEN ON JULY 3, 2001

12 I, APRIL STRUCK, Certified Shorthand Reporter in
 and for the State of Texas, certify to the following:

13 The foregoing 19 pages are a true, complete
 14 and correct transcript of the proceedings had after
 the witness, DAVID WESTFALL, was made by me duly
 15 sworn on the 3 day of July, 2001;

16 That the original transcript, together with
 copies of all exhibits, was submitted to MR. UDO
 17 BIRNBAUM, who is the pro se for the Defendant for
 examination and signature of the deponent, DAVID
 18 WESTFALL, and is to be returned to the officer by the
9th day of August, 2001.

19 That the amount of time used by each party at
 20 the deposition is as follows:

21 Mr. Udo Birnbaum, 1 hour, 50 minutes
 22 Mr. Frank Fleming, 1 minute

23 That pursuant to the information made
 24 available to me at the time said deposition was taken,
 the following includes all parties of record:

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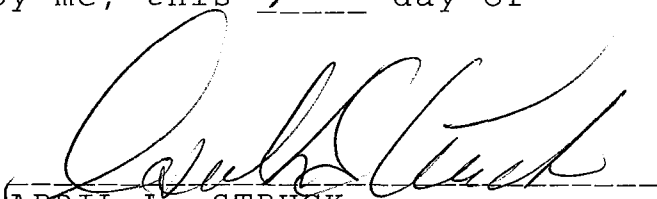
MR. FRANK FLEMING, Attorney for Christina
Westfall & Stefani Podvin
6611 Hillcrest, Suite 305
Dallas, Texas 75205

MR. UDO BIRNBAUM, PRO SE
540 VZ 2916
Eustace, Texas 75124

I further certify that I am neither counsel
for, related to, nor employed by any of the parties or
attorneys in the action in which this proceeding was
taken, and further that I am not financially or
otherwise interested in the outcome of the action.

Further certification requirements pursuant
to Rule 203 of the Texas Rules of Civil Procedure will
be certified after they have occurred.

July Certified to by me, this 16 day of
_____, 2001.


APRIL L. STRUCK
Certified Shorthand Reporter
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