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CLERK
SUPREME COURT OF VIRGINIA



IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 780065

NORRIS G. ARMENTROUT, et al.,

Appellants

v.

JON M. FRENCH and
HELEN V. FRENCH,

Appellees

APPENDIX

Colin J. S. Thomas, Jr.
John W. Sills, III
TIMBERLAKE, SMITH, THOMAS & MOSES
The Virginia Building
Post Office Box 2566
Staunton, Virginia 24401

Counsel for Appellants

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SIMON M. PAINTER, SR.,
T/A VALLEY REALTY

vs.

JON M. FRENCH AND
HELEN V. FRENCH

AFFIDAVIT OF
SUBSTANTIAL DEFENSE

STATE OF VIRGINIA
CITY/COUNTY OF Wayside, TO-WIT:

On the 17th day of February, 1976, Carter R. Allen appeared before me in my City/County and State aforesaid and, having been first duly sworn, deposed and said as follows:

(1) That he is counsel for Jon M. French and Helen V. French, Defendants herein.

(2) That Jon M. French and Helen V. French have a substantial defense to this action.

(3) That the Defendants are not liable to the Plaintiff in the amount of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00) or any amount due by breach of contract; that the Defendants have not in any way breached any contract entered into with the Plaintiff; that the existence of a defective septic system in the house offered for sale rendered the house unsaleable and unfit for occupancy without correction.

(4) That Jon M. French and Helen V. French reserve unto themselves the right to assert all other defenses to the Motion for Judgment which they may hereafter discover.


Carter R. Allen
Counsel for the Defendants

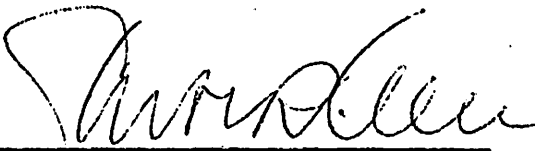
Subscribed and sworn to before me this 17th day of February, 1976, by Carter R. Allen, Counsel for Jon M. French and Helen V. French.

My commission expires: June 5, 1978.


Sandra C. Harper
Notary Public

CERTIFICATE OF MAILING

I certify that a copy of the foregoing Affidavit of Substantial Defense was mailed, postage prepaid this 17 day of February, 1976, to John W. Sills, III, Esq., Timberlake, Smith, Thomas & Moses, Post Office Box 2566, Staunton, Virginia 24401.



Attorney

NORRIS G. ARMENTROUT AND
ALMA M. ARMENTROUT

:
:

vs.

:

AFFIDAVIT OF
SUBSTANTIAL DEFENSE

JON M. FRENCH AND
HELEN V. FRENCH

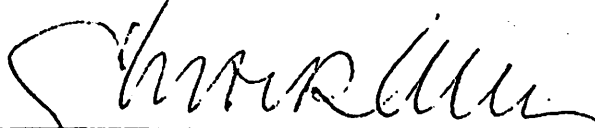
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STATE OF VIRGINIA

CITY/COUNTY OF Haywood, TO-WIT:

On the 16th day of June, 1976, Carter R. Allen, Attorney for the Defendants, appeared before me in my City/County and State aforesaid and, having been first duly sworn, deposed and said as follows:

- (1) That he is Attorney for Jon M. French and Helen V. French, Defendants herein.
- (2) That Jon M. French and Helen V. French have a substantial defense to this action.
- (3) That the Defendants are not liable to the Plaintiffs in the amount of TWO THOUSAND FIVE HUNDRED FIFTY-TWO & 89/100 DOLLARS (\$2,552.89) or any amount due by breach of contract; that the Defendants have not in any way breached any contract entered into with the Plaintiffs; that the existence of a defective septic system in the house offered for sale rendered the house unsaleable and unfit for occupancy without correction.
- (4) That Jon M. French and Helen V. French reserve unto themselves the right to assert all other defenses to the Motion for judgment which they may hereafter discover.


Carter R. Allen
Counsel for the Defendants

Subscribed and sworn to before me this 17th day of June, 1976, by Carter R. Allen, Counsel for Jon M. French and Helen V. French.

My commission expires: _____

July 29, 1979

Kaye Foster
NOTARY PUBLIC

CERTIFICATE OF MAILING

I Certify that a copy of the foregoing Affidavit of Substantial Defense was mailed, postage prepaid this 17th day of June, 1976 to John W. Sills, III, Esquire, Timberlake, Smith, Thomas & Moses, Post Office Box 2566, Staunton, Virginia 24401.

Carter R. Allen
Attorney

NORRIS G. ARMENTROUT
and
ALMA M. ARMENTROUT

v.

O R D E R

JON M. FRENCH
and
HELEN V. FRENCH

Came the parties, in person and by their attorneys, and the jury sworn to try the issue in this cause, again appeared according to their adjournment.

And the plaintiffs, by counsel, having moved for summary judgment at the conclusion of the plaintiffs' evidence and having moved the court to strike the defendants' evidence and for a directed verdict at the conclusion of the defendants' evidence did renew their motion that the defendants' evidence be stricken and for a directed verdict, all of which motions were overruled by the court, to which rulings, the plaintiffs, by counsel, excepted.

And the jury, after hearing all of the evidence, receiving the instructions of the court and hearing argument of counsel, retired to its room to consider of a verdict, and after some time returned into court and presented its verdict in the following words, to-wit:

"We, the jury, upon the issues joined, in the case of Norris G. and Alma M. Armentrout v. Jon M. and Helen V. French, find for the defendants, Jon M. and Helen V. French.

S. N. Loving
Foreman Dec. 16, 1976"

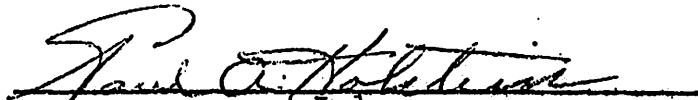
Thereupon the plaintiffs, by counsel, moved the Court

to set aside the verdict of the jury on the ground that said verdict was contrary to the law and the evidence, which motion the Court overruled, to which ruling of the Court the plaintiffs, by counsel, excepted. The Court thereupon did and it hereby does enter judgment on the verdict of the jury.

Whereupon the plaintiffs, by counsel, moved the Court for a stay of execution of the aforesaid judgment for a period of thirty (30) days after entry of order granting judgment, in order that the plaintiffs might apply to the Supreme Court of Virginia for a writ of error and supersedeas, if they be so advised, which motion the Court granted.


This Order is entered pursuant to remand order of the Supreme Court of Virginia.

ENTER:

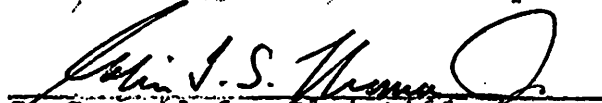

Judge

Date: 10/20/77

Requested:


Counsel for Defendants

Seen, and objected to - exceptions noted:


Counsel for Plaintiffs


Co-Counsel for Plaintiffs

Entered Oct. 20, 1977

Common Law Order Book No. 41

ASSIGNMENTS OF ERROR

The Armentrouts and Valley Realty, plaintiffs and appellants, make the following assignments of error pursuant to Rule 5:21:

1. The trial court erred in failing to grant the plaintiffs' motion for summary judgment at the conclusion of the evidence.
2. The trial court erred in refusing to strike the defendants' evidence on motion of the plaintiffs at the conclusion of all evidence.
3. The trial court erred in refusing instruction 9 tendered by the plaintiffs.
4. The trial court erred in refusing to give instruction 14 tendered by the plaintiffs.
5. The trial court erred in giving instruction F tendered by the defendants over plaintiffs' objection.

1. (Jury selection.)

2. (Witnesses sworn and separated.)

3. (Opening statements.)

4.

5.

WITNESS - JEAN BYRD

6. Direct Examination by Mr. Thomas:

7. Q. You are Mrs. Jean Byrd?

8. A. Correct.

9. Q. Where do you live, Mrs. Byrd?

10. A. Route 5, Staunton.

11. Q. Are you employed?

12. A. Yes, I am employed by Simon M. Painter, sole proprietor
13. of Valley Realty.

14. Q. He does business, as I understand it, as Valley Realty?

15. A. Yes.

16. Q. And you are employed by him in what capacity, Mrs. Byrd?

17. A. Sales agent.

18. Q. All right. Mrs. Byrd, how long have you been in the
19. real estate business?

20. A. Four years.

21. Q. Mrs. Byrd, do you have in your hand a sales contract?

22. A. Yes, I do.

23. Q. Is that an original sales contract?

24. A. Yes, sir.

1. MR. ALLEN: Right.

2. MR. THOMAS: If it please the Court, we'll
3. happily stop all these ancillary
4. issues, if we can agree to that.

5. COURT: Well, to move the case along, it
6. might be well, gentlemen. There's
7. no issue joined, as I understand it,
8. as to whether these people were
9. financially able, and did negotiate
10. a loan, and . . .

11. MR. THOMAS: That's right. Thank you. If we
12. may have that on . . . so far as
13. that.

14. Q. Mrs. Byrd, did you take Mr. and Mrs. French to the
15. Armentrout property?

16. A. Yes, I did.

17. Q. Do you happen to recall what day that may have been?

18. A. No, I'm afraid I don't.

19. Q. Was it sometime in . . .

20. A. It was approximately . . .

21. Q. . . . September, or so, of 1975?

22. A. It was approximately one week before the contract was
23. signed.

24. Q. All right. Did you and Mr. French--or did you and Mr. and

1. Mrs. French go through the home?

2. A. Mr. and Mrs. French were with me.

3. Q. When you went, did you go through the home, or what did
4. you do? Can you tell the jury whether you just looked
5. at it from the outside, or went in, or what?

6. A. We went through each room.

7. Q. You and Mr. and Mrs. French . . .

8. MR. ALLEN: I would like for him to be a little
9. less leading; but I don't want to
10. delay--he's getting down now where
11. we're starting to be interested in
12. the case.

13. COURT: All right.

14. Q. Could you tell us whether or not you went into every
15. room?

16. A. Yes, we did.

17. Q. Do you have any idea how long this visit lasted?

18. A. Approximately forty-five minutes, I would say.

19. Q. All right. After that, did Mr. French make any request
20. of you insofar as a second visit?

21. A. He said that he wanted to go back with a friend of his
22. that was a builder, and let his friend inspect the house.
23. So they went on their own; I did not go with them.

24. Q. All right. Do you know whether or not Mr. French and his

1. friend did go back and inspect the home?

2. A. Well, I talked with them later, and the Armentrouts, and
3. they say they did; but, of course, I was not with them.

4. Q. All right. Now, after you had understood there had been
5. a visit, was the contract signed?

6. A. Yes. But it was somewhere between five and seven days, I
7. would say, before it was signed.

8. Q. Did you have . . . Did you discuss the property with Mr.
9. and Mrs. French, as to whether it was good, or poor, or
10. bad, or high--or anything like that?

11. MR. ALLEN: I object to that. I think he can
12. ask what she discussed; but to come
13. along and just say, "Did you discuss
14. this," is a leading question.

15. COURT: I would sustain the objection, if
16. you are objecting.

17. MR. ALLEN: Yes, sir. Thank you.

18. Q. Did you discuss this property with Mr. and Mrs. French?

19. MR. ALLEN: Same objection.

20. A. Yes.

21. MR. THOMAS: Your Honor, I don't see how I'm
22. going to ask her . . . I'll ask her
23. what she discussed with them, and
24. I think it's . . .

1. MR. ALLEN: Ask her just what she discussed.

2. MR. THOMAS: I want to prove she discussed it,
3. first.

4. Q. Now, did you . . . What did you discuss, insofar as the
5. property, with Mr. and Mrs. French?

6. A. Well, they were very impressed with the house; and they
7. asked me why the Armentrouts were moving. And they felt
8. there had to be a reason, because the house was very nice.
9. And they wanted to know why they were moving.

10. Q. Did you tell them? Or did you know why they were moving?

11. A. Well, the Armentrouts had told me they wanted to move
12. back in town, that their little girl was not satisfied
13. at the new school.

14. Q. Did you discuss anything else with them, insofar as
15. this house--as to any particular parts or aspects of it?

16. A. They asked me if anything was wrong with the house, and
17. I told them not to my knowledge.

18. Q. Did you go into any detail, or did they go into any
19. detail, in any particular part of the house?

20. A. No.

21. Q. Did they ever, after you had understood that Mr. French
22. and his friend had been there--did you ever receive from
23. Mr. French another request to make another visit or check
24. on it?

1. A. I believe he went back twice--or maybe three times. He
2. took a termite man back to the house, and possibly the
3. builder two times. I'm not positive whether the builder
4. went back once or twice; but I think it was twice.

5. Q. Did you ever do any act which would have prevented . . .

6. MR. ALLEN: Objection.

7. Q. So far as you know, from your conversation with Mr.
8. French, was he ever, by you, requested not to visit that
9. home or to check it out?

10. A. No.

11. MR. ALLEN: Same objection. But I'll withhold
12. it. I think that's a harmless
13. question.

14. COURT: Well, let's move the case along,
15. gentlemen.

16. MR. THOMAS: Your Honor, I can string it out
17. forever, but . . .

18. COURT: I'm not going to let you string it
19. out forever. We're going to move
20. this case along, gentlemen.

21. MR. THOMAS: All right.

22. Q. Mrs. Byrd, were you . . . Let me go into the matter of
23. when Mr. and Mrs. French took possession. Do you know
24. when they, so to speak, took possession of the home?

1. A. It was approximately three weeks, I would say, before the
2. closing date on the contract.

3. Q. Can you tell the jury why, or what happened, and how they
4. came to take possession?

5. A. Well, the Armentrouts wanted to stay in the house a little
6. bit longer, but the Frenches wanted to close at least by
7. the twenty-eighth of November. And they wanted some time
8. to get in and clean up the house and paint. So the
9. Armentrouts went ahead and found a place to move, and they
10. rented a house in town. And, therefore, they gave me the
11. keys, and I gave them to the Frenches; and they went in
12. and started cleaning up the house.

13. Q. And do you have any exact date to which you can pin
14. that, or can you pin that down--that time--as closely
15. as you can?

16. A. Well, I would say it was approximately three weeks before--
17. but I could be off a little bit. I imagine Mr. Armen-
18. trout probably could go from the time he rented the
19. house--because we gave the keys to the Frenches right
20. away.

21. Q. All right, Mrs. Byrd, when you signed the contract, one
22. of the provisions as set forth in that contract states
23. that a hundred dollar (\$100.00) good faith money was
24. paid over by Mr. and Mrs. French to you as agent for

1. Mr. and Mrs. Armentrout.
2. A. That's correct.
3. Q. Was that done?
4. A. Yes, sir.
5. Q. Where is that hundred dollars?
6. A. It's still in the agent's account, of Valley Realty.
7. Q. Has anyone ever asked you for return of that?
8. A. No, sir.
9. Q. Mrs. Byrd, when did you first know, and how did you first
10. know, that Mr. and Mrs. French were not going through
11. with the contract?
12. A. Two days before the closing, we received a letter in the
13. mail from their attorney, stating they were not going to
14. close.
15. Q. What excuse did that letter give?
16. A. They felt there was a problem with the septic system.
17. Q. Subsequent to that, did you go to the property, insofar
18. as the septic system?
19. A. Before that time?
20. Q. After you received word from their attorney, two days
21. before the closing date, did you ever return to the
22. property . . .
23. A. Yes, I did.
24. Q. Who did you go with?

1. A. I called Mr. French on the phone, and we set up an
2. appointment that was in the morning--I think around ten
3. in the morning. And I had one of Welty Cline's men there.
4. And Mr. Painter, Mr. Rimel, and Mr. and Mrs. Armentrout
5. were also there.

6. Q. Who is Welty Cline?

7. A. He is in the septic tank business.

8. Q. And who--you say you had one of his men there. Do you
9. know the name of the man that was there?

10. A. Mr. Beathe.

11. Q. Were you there when Mr. Beathe was there?

12. A. Yes, sir.

13. Q. Did Mr. Beathe do anything, or . . . What did Mr. Beathe
14. do?

15. A. Well, the stool in the lower part of the house was
16. flushing slow; and he raised up the lid and noticed that
17. it just had a very low water level in the back of the
18. stool. So he adjusted it. And then, of course, the
19. stool flushed after that. And there was an odor in on
20. the carpet. But he said it was not from the septic
21. system.

22. Q. Mrs. Byrd, did you go out there again with a man . . .
23. Did you go out there again with anybody to check this
24. situation?

1. A. Mr. Painter and Mr. Rime1 met Mr. Lindsay there.
2. Q. I'm talking about what you did.
3. A. No.
4. Q. All right. When you and the Armentrouts and Mr. French
5. and Mr. Beathe were there, did Mr. French and Mr. Beathe
6. discuss this situation?
7. A. Yes.
8. Q. Was Mr. French present when Mr. Beathe adjusted the back
9. end of the toilet?
10. A. That, I'm not positive, because we were there about ten
11. minutes before Mr. French came in. I don't remember
12. whether that was done before he came in the house, or if
13. it was done in his presence.
14. Q. Did you flush the toilet in the presence of Mr. French
15. thereafter?
16. A. Mr. Beathe did.
17. Q. Did Mr. French make any comment about the way the toilet
18. flushed?
19. A. Not to my knowledge.
20. Q. Was Mr. French present when Mr. Beathe noticed the odor
21. in the rug?
22. A. Yes.
23. Q. Did Mr. French and Mr. Beathe discuss the odor in the
24. rug, and what may have caused it?

1. A. Yes.
2. Q. Can you tell us what Mr. French had to say about the odor
3. in the rug?
4. A. Mr. French felt that the septic system was broken under-
5. neath the house, and that it had come up through the
6. concrete floor, and that it was actually a septic odor
7. on the rug. And Mr. Beathe told him it was not a septic
8. tank odor, but something else.
9. Q. Have you since been in contact with the builder of the
10. house, Mrs. Byrd--Mr. Nuchols?
11. A. I have checked with Mr. Nuchols a couple of times, yes,
12. sir.
13. Q. Have you seen a sketch of the basement floor of the
14. home?
15. A. Yes, I have.
16. Q. Do you know who prepared that sketch?
17. A. The builder.
18. Q. That is Mr. Nuchols?
19. A. Yes.
20. Q. Was Mr. Nuchols, on his sketch, able to point out to you
21. where the sewer exited from under the home?
22. A. Yes, he knew exactly where it was.
23. Q. And on this sketch, did you locate . . .
24. MR. ALLEN: Is Mr. Nuchols not here?

1. MR. THOMAS: Yes, he is.

2. MR. ALLEN: I think the best evidence rule would
3. require him to testify.

4. Q. All right. On this sketch, you are familiar with . . .

5. Well, let me ask you this--you are familiar with the
6. area where the smell was?

7. A. Yes.

8. Q. And where the sewer exited?

9. A. Right.

10. Q. Are they similar?

11. A. No, sir.

12. Q. Would you describe for the jury where those . . . how
13. those locations relate?

14. A. Well, just like this was the family room (witness indi-
15. cating with her hands), the odor was in this corner; and
16. the line came across toward this end.

17. Q. I believe that's all.

18.

19. Cross Examination by Mr. Allen:

20. Q. Mrs. Byrd, you don't recall the precise day that you
21. took the Frenches out to visit the Armentrout house; but
22. wasn't it by virtue of an appointment?

23. A. Yes, sir.

24. Q. You called Mr. and Mrs. Armentrout, and arranged the

1. Q. You did not . . . You don't recall that?

2. A. No.

3. Q. All right. Now, then, subsequent to Mr. and Mrs. French's
4. refusal to go through with the contract, did your firm
5. handle the sale of that house to Mr. Drumheller?

6. A. Yes, we did.

7. Q. Some several months later?

8. A. I did; yes, sir.

9. Q. And was that for the same commission that was paid--or
10. payable--under this contract which is in evidence?

11. A. It was for five hundred dollars (\$500.00) more.

12. Q. It was five hundred dollars more? Two thousand dollars
13. (\$2,000.00), as opposed to fifteen hundred (\$1,500.00)?

14. A. Yes, sir.

15. Q. When you were there sometime preceding the tenth of
16. October, 1975, did you detect any odor of sewage, urine,
17. or otherwise, in the home?

18. A. At the time that I showed it to the Frenches?

19. Q. Yes, ma'am. The first time.

20. A. No, sir.

21. Q. No detection whatsoever?

22. A. No, sir.

23. Q. Subsequently, you were back at the house on the twenty-
24. fifth of November, in the presence of Mr. Rimel, Mr. Painter,

1. Mr. and Mrs. Armentrout--or at least either one or the
2. other, or Mr. Armentrout, at least, I believe--and Mr.
3. Beathe and either one or both Mr. and Mrs. French. At
4. that time, did you detect an odor in the house of sewage
5. or . . .
6. A. There was an odor, but I wouldn't say it was sewage.
7. Q. You wouldn't say what it was?
8. A. No.
9. Q. And isn't it true that prior to that visit, Mr. Wade
10. of the Augusta County Health Department had reported that
11. he detected the odor of sewage at this house?
12. MR. THOMAS: Objection.
13. COURT: Objection sustained.
14. Q. Were you aware of what Mr. Wade . . . Had you talked to
15. Mr. Wade?
16. A. I had not talked to Mr. Wade at that time.
17. Q. All right. Now, when you went back on the twenty-fifth
18. of October--or the twenty-fifth of November--do you
19. recall looking at the carpet in the family room?
20. A. Yes.
21. Q. And was it turned back, so you could see it?
22. A. Yes, sir.
23. Q. But just a portion of it was turned back so it could be
24. seen?

1. A. Just a portion was, yes, sir.
2. Q. And do you recall what the carpet looked like?
3. A. It was two-tone green shag.
4. Q. I mean when it was turned back?
5. A. Yes, sir.
6. Q. Does that fairly represent the appearance of the carpet?
7. (Showing the witness two photographs.)
8. A. Yes, sir.
9. Q. And the stain shown on the carpet?
10. A. Yes, sir.
11. Q. And was the carpet turned back any more than that, to
12. your knowledge?
13. A. No.
14. Q. It was just basically that corner? You don't know what
15. the stain was, if any, on the residue of the carpet?
16. A. Well, I got down on my hands and knees and smelled it,
17. and it smelled like a dog odor.
18. Q. It smelled like a dog odor?
19. A. Yes, sir.
20. Q. Did you have to get on your hands and knees to smell it?
21. Couldn't you smell it standing up?
22. A. I could smell it some, but not that good.
23. Q. You couldn't smell it when you came into the house?
24. A. No, sir.

1. Q. On November the twenty-fifth, I'm speaking of?

2. A. No, sir.

3. MR. ALLEN: We would offer these photographs
4. into the evidence, Your Honor, as
5. Defendants' Exhibits.

6. MR. THOMAS: If it please the Court, may I see
7. what's on the back of them?

8. COURT: It seems to be just the date they
9. were taken.

10. MR. THOMAS: We have no objection.

11. COURT: All right. They are admitted into
12. the evidence and identified as
13. Defendants' Exhibits Numbers One
14. and Two. (Exhibits marked.)

15. Q. Now, Mrs. Byrd, on the November twenty-fifth meeting,
16. Mr. Beathe was there. Do you recall Mr. French stating
17. that he would agree to pay to dig up the septic system
18. from the house to the tank, to ascertain whether or not
19. it was defective?

20. A. He did not make the comment at that moment, no, sir.

21. Q. Did he not make that comment that morning, the twenty-
22. fifth of November?

23. A. His comment was that he wanted the whole thing dug up,
24. which would mean you'd have to dig up the cement floor,

1. too.

2. Q. And did he indicate that this would be done at his
3. expense?

4. A. He said that it would be done at his expense if there
5. was no problem.

6. Q. And what was Mr. Painter's response?

7. A. I don't recall Mr. Painter making a response.

8. Q. Isn't it true that Mr. Painter looked at Mr. French and
9. said, "It's your problem. You bought the house. If
10. there's a problem, it's your problem."

11. A. No, sir. No, sir.

12. Q. He didn't say that?

13. A. No, sir.

14. Q. He didn't go further and say, "It's either your problem
15. or it's the Augusta County Health Department's problem"?

16. A. No, sir. No, sir.

17. Q. He didn't make either of those comments?

18. A. No, sir.

19. Q. Weren't you in favor of digging up the system, to prove
20. that it was satisfactory, or not satisfactory?

21. A. Out in the front yard, around the septic tank, we were
22. willing to--but not the cement floor.

23. Q. All right. At the time you showed the house, of course,
24. you were unaware of the stench on the carpet . . .

1. Q. Mr. Armentrout, were you present when Mrs. Byrd brought
2. Mr. and Mrs. French into your home?
3. A. I was.
4. Q. Do you recall . . . Can you tell, for the jury, what they
5. did when they came in?
6. A. Well, they just went all through the house.
7. Q. Do you know whether or not they went into every room?
8. A. Yes, sir. We was down in the rec room at the time, and
9. then he went outside and looked, and I walked out with
10. him, and so forth.
11. Q. Did you and he have a conversation about the house?
12. A. Well, he just asked me why I was moving, and I told him
13. that--the same what I just told you.
14. Q. When you moved into the home originally, after you
15. bought it from the McIntoshes, did you notice any odors
16. anywhere?
17. A. Nothing that upset me.
18. Q. All right, sir. Will you tell me--tell the jury--what
19. odors you did notice, and where they were located?
20. A. There was this odor in the carpet in the rec room down-
21. stairs. There's a bath upstairs and a bath down. And
22. the odor was in the carpet there when we moved in; and
23. these people, we was rushing them to get out, and they
24. had a dog and a cat, and when he was moving a chair, my

1. wife seen him pick up some dog manure. And . . .

2. Q. Mr. Armentrout, I'll have to ask you to speak louder.

3. A. Okay. And they were--while they were moving out, we
4. was waiting to get moved in, because we had sold our
5. house in town.

6. Q. Mr. Armentrout, is that the only place you smelled any
7. odor?

8. A. Yes, sir.

9. Q. Mr. Armentrout, were you there when Mr. French and his
10. building expert came back to visit?

11. A. I was there, but I was in bed at the time.

12. Q. Were you there when Mr. French came back with the termite
13. expert?

14. A. I don't think Mr. French was with the termite man when
15. he came, but I was there when the termite man came.

16. Q. Do you know whether or not Mr. French made other
17. inspections of the house before you-all moved out?

18. A. Well, he was there with this builder. My wife told me
19. he was.

20. Q. Other than that, you don't know of any inspections?

21. A. No.

22. Q. All right. Now, on how many occasions before the contract
23. was signed did you talk to Mr. French, either in person
24. or on the telephone?

1. A. Well, I believe it was three times.

2. Q. And where were you when you talked to him before signing
3. the contract?

4. A. I talked to him at the house there.

5. Q. So you know of about three times that he was there, as I
6. understand it?

7. A. No--I'd say twice he was there.

8. Q. All right. Now, on those times when you talked to Mr.
9. French when he was at your home, what did you-all discuss
10. about the home?

11. A. Well, just general . . . I really didn't discuss anything
12. with him, really, I mean as far as . . . all about, you
13. know, where the lines run, and so forth, and stuff like
14. that, we did.

15. Q. What line?

16. A. Well, the property line--and what went with it, and whose
17. fence this was, and whose that one was.

18. Q. Fence, lines, and what else?

19. A. Oh, just the outbuilding--there was a utility building
20. there, and he wanted to know if that went with the
21. property. And that was all.

22. Q. All right. Mr. Armentrout, when you purchased the
23. home from the McIntoshes, did you have any work done on
24. the septic tank or the sewer system of your home?

1. A. After I lived there a while, I did. I had the septic
2. system pumped.

3. Q. Who pumped it?

4. A. I had Cline's come over there. I don't know the fellow's
5. name that came. Beathe, or something like that. Anyway,
6. he was back down later.

7. Q. All right. Do you know . . . you had him to pump out
8. the septic system, or whatever you did. Did you do any-
9. thing else with regard to the septic system?

10. A. I had this . . . when we'd been there about, I guess,
11. two months, I had this boy from Waynesboro come over,
12. because it was slow. And he put a Roto-Rooter through it,
13. and then I had this Cline pump it, which it was caked
14. where it comes into the septic system--it was just caked
15. up there. And he told me to get some stuff, you know,
16. to keep it soft, and it wouldn't do that again. So we
17. never had no more problems with it.

18. Q. After Mr. Beathe came, or Mr. Cline's man that you think
19. was Mr. Beathe, and the Roto-Rooter man came--did you
20. have any further difficulty with the septic system?

21. A. No, sir.

22. Q. Were you present when Mr. Beathe at one time adjusted
23. the bulb in the back of the toilet?

24. A. Yes, sir, I was.

1. Q. Did you at one time use a toilet plunger . . .

2. MR. ALLEN: You're leading the witness terribly.

3. Can't you just ask him what he did?

4. MR. THOMAS: All right.

5. Q. Did you do anything else, yourself?

6. A. Well, after they had--all this had come up . . . they,
7. the Frenches, had been in the house, or had possession
8. of it, for about two and a half weeks, I suppose. And
9. after they didn't close, we was trying to satisfy them,
10. and we checked everything out; and we--the top one was
11. slow, then, flushing, after they'd been there. So we
12. called the man from Cash, and I was supposed to meet him
13. down there at eight o'clock that morning, after I got
14. off from work. And I took just a regular plunger with
15. me, and when I went upstairs, I just hit it one time, and
16. it just went on, and it was flushing all right then.
17. And I told the man from Cash that I had done that; so
18. he looked at 'em, and said he didn't see anything wrong
19. with 'em, so he . . .

20. MR. ALLEN: Now, don't testify to what he said,
21. please, sir. Excuse me, Your Honor.

22. COURT: That's all right.

23. Q. All right, Mr. Armentrout, after Mr. and Mrs. French had
24. been to the home several times, and Mr. French and Mr.

1. Bradley had been to the home, a contract was signed; is
2. that correct?

3. A. Now, I suppose . . . the contract was signed before they
4. were there. No, you . . . No. It was signed, yes.

5. Q. All right. Now, before signing, you were aware of the
6. fact that Mr. French was there, and, as I understand your
7. testimony, the termite man, Mr. French and his expert,
8. and Mr. French again--these had taken place before the
9. contract was signed?

10. A. Yes, sir. Right.

11. Q. Now, when did you give up possession of your house, and
12. why?

13. A. I moved on the first of November.

14. Q. Where did you move to?

15. A. I moved to 1403 North Augusta Street. And I moved
16. because the Frenches wanted possession of the house so
17. they could do whatever they was wanting to do. Of course,
18. I had wanted ninety days, on the contract; and then they
19. came back with wanting me to move, so I did.

20. Q. And did you pay rent where you moved?

21. A. Yes, sir.

22. Q. Do you have your rent checks with you?

23. A. Yes, sir.

24. Q. May I see them, please?

1. COURT: And that is the defense that is
2. being made by the Defendants in this
3. case.

4. MR. ALLEN: Right--the condition of the septic
5. system, and the odor that was in
6. the house . . .

7. COURT: Right.

8. MR. ALLEN: . . . regardless of the source.

9. COURT: And that is the sole defense. So
10. if we can move this case along on
11. that issue . . . All right. Call
12. the jury back in.

13. (Jury returns.)

14. Q. All right, Mr. Armentrout, in order that we get back on
15. the track, I believe you testified about Mr. Beathe and
16. several other things, and toward the end, you indicated
17. that you had, at one point, used a toilet plunger down
18. one of the toilets?

19. A. Yes, sir--upstairs.

20. Q. Subsequent to that, did you ever, yourself, do any work
21. on the septic system, or sewer system?

22. A. No, sir.

23. Q. Did you ever employ or cause . . .

24. MR. ALLEN: You're leading again.

1. MR. THOMAS: All right.

2. Q. Did anyone on your behalf ever do any work?

3. MR. ALLEN: Ask him who did the work.

4. A. Just when they pumped it, is all, and I had the Roto-Rooter
5. man.

6. Q. I'm talking about after that--after those people that
7. you've mentioned?

8. A. No, sir.

9. Q. To your knowledge, has anyone . . .

10. MR. ALLEN: Can't you just ask him who, if any-
11. one, has done the work?

12. MR. THOMAS: All right.

13. Q. Who, if anyone, did any work after you did?

14. A. No one.

15. Q. Are you sure?

16. A. Positive.

17. Q. All right. That's all.

18.

19. Cross Examination by Mr. Allen:

20. Q. Let me see, Mr. Armentrout--you are still living on
21. North Augusta Street?

22. A. No, sir. 103 Harper Court.

23. Q. Oh, you bought a house?

24. A. Yes, sir.

1. Q. On this October day that Mr. and Mrs. French came out to
2. look at the house, this was on 612, just west of what
3. used to be Paxton's Service Station--and now it's called
4. Stump's Service Station, or something like that, at New
5. Hope?

6. A. Yes, sir.

7. Q. On the way to Crimora. On that particular day, do you
8. recall that an appointment was made for them to come?

9. A. Yes, sir.

10. Q. Several days in advance?

11. A. I don't know how many days in advance, but it was made.

12. Q. Well in advance. Do you recall what time they arrived?

13. A. Approximately around seven-thirty or eight--something to
14. eight maybe.

15. Q. That late? At that point, were there fires in the down-
16. stairs family room?

17. A. I believe there was one in the downstairs.

18. Q. How about the upstairs?

19. A. No, sir.

20. Q. None upstairs?

21. A. No.

22. Q. This would be early October?

23. A. Yes, sir.

24. Q. Was there an odor of food, that your wife apologized for?

1. A. No, sir, not that I know of.

2. Q. You don't recall what you had to eat that evening, or
3. whether she apologized for it?

4. A. No, sir.

5. Q. Then they looked around the house, and, as you say, you
6. went outside and showed him the property lines and so
7. forth. And did he ask you about the septic system?

8. A. No, sir.

9. Q. He didn't ask you about the septic system?

10. A. No.

11. Q. Did you tell him about the septic system?

12. A. I may have . . . I think I told him that I had it
13. pumped.

14. Q. And did you say why you had it pumped?

15. A. No.

16. Q. This is a relatively new house--what, four years old,
17. maybe, at that time?

18. A. Approximately four years old.

19. Q. Approximately. And you had had it pumped when--in per-
20. haps June, like June the seventeenth?

21. A. Mmm hmm.

22. Q. And why did you have it pumped?

23. A. Well, they was flushing slow, you see, and as Mr. Beathe
24. told me when he pumped it . . .

1. Q. No--not what he told you. But what was your reason for
2. having it pumped?
3. A. I just told you--they was sluggish.
4. Q. You had it pumped because of the sluggish toilets?
5. A. They was flushing slow--the one downstairs was, yes, sir.
6. Q. In other words, you'd flush it, and the water would come
7. almost to the brim and then go down very slowly?
8. A. Well, it was a little slow.
9. Q. Slow? You didn't tell Mr. French at that time anything
10. about an odor in the house, did you?
11. A. No, sir.
12. Q. And you didn't tell him that you . . . But did you tell
13. him you had had it pumped and checked at that time?
14. A. I think I did.
15. Q. How about the Roto-Rooter? Did you tell him about the
16. Roto-Rooter?
17. A. No, sir, I don't think so.
18. Q. All right, sir. Now, subsequently, after you vacated the
19. house, which I believe was the fifth of November--but
20. your check says the first; and then you paid rent, two
21. hundred and fifty dollars a month, for November, December,
22. January, until the sixth of March, when you sold the
23. house. Subsequently, did Mr. French not call you up and
24. ask you about the odor?

1. A. He did. He asked me about it.

2. Q. And didn't you say to him, "What odor?"

3. A. No. I said . . . Well, he asked me what was I going to do
4. about it. And I told him I didn't know. I didn't know
5. what he wanted me to do.

6. Q. Mr. French called you up, and said, "Mr. Armentrout, what
7. about the odor in this house, the sewage odor, the septic
8. odor?"

9. A. I didn't know anything about any sewage odor.

10. Q. That's what I said--you said you didn't know anything
11. about . . . You said, "What odor," isn't that what you
12. said?

13. A. That's right.

14. Q. And then he said, "Now, come now--you know what odor
15. we're talking about." Isn't that correct?

16. A. No, sir; that's not correct.

17. Q. All right. What transpired? Go ahead.

18. A. Well, he asked me about an odor, and he said something
19. about a sewage odor; and I didn't know anything about a
20. sewage odor.

21. Q. Well, go ahead. What'd you say then?

22. A. I didn't say any more to him.

23. Q. You didn't make any further explanation about the odor?

24. A. No, sir.

1. Q. Did he tell you about the stain on the carpet in the
2. family room, as well as the stain and odor that was in
3. the child's bedroom?

4. A. No, sir.

5. MR. THOMAS: Objection, Your Honor.

6. MR. ALLEN: What's your objection?

7. MR. THOMAS: You've held--we've been held now . . .

8. We were told we didn't have to

9. prove that the contract was satis-

10. factory; now we're getting stains

11. on carpet in the children's bedroom,

12. and things like that. And I think

13. that's outside of the defenses.

14. We were prepared, and we . . .

15. COURT: Is it your position here that that's

16. attributable to the septic system?

17. MR. ALLEN: It's our position that this odor

18. is attributable to the same source--

19. be it septic system, pets, or other-

20. wise--and that it was concealed from

21. our clients until after the contract

22. was entered into.

23. COURT: I don't believe, Mr. Allen, that--

24. since we did agree that the issue

1. by the odor--but not to the fact that
2. dogs may have been in the house, and
3. that that was concealed.

4. COURT: Gentlemen, it is my opinion--and I
5. won't delay this case, proceeding with
6. the case, any longer--but I think
7. that the Defendant is limited to the
8. defective septic system.

9. MR. ALLEN: May we save our point, please, sir.

10. COURT: All right. Now, is there anything
11. else that we should take up in the
12. absence of the jury? If not, bring
13. the jury back in.

14. (Jury returns.)

15. Q. Mr. Armentrout, as I understand it, you had, perhaps in
16. June--and I think the specific date was the seventeenth
17. of June--you had had the septic system pumped?

18. A. Yes, sir.

19. Q. And did you expose the top of the tank at that time?

20. A. Yes, sir; I had to, so they could pump it.

21. Q. And was it at the same time that you had the Roto-Rooter,
22. or was it subsequent to that?

23. A. No. That was probably three weeks after that.

24. Q. Some two or three weeks later?

1. A. Yes, sir.
2. Q. You were still having some difficulty, so you had a
3. Roto-Rooter? What is a Roto-Rooter?
4. A. No, I had . . . he was first. I had him there first.
5. Q. Oh, he was there before the septic tank was pumped?
6. A. Mmm hmm. I just had it pumped, and it was caked around
7. where it drops into the septic system itself--in the
8. tank--which I think is very common. And as Mr. Beathe
9. said there . . .
10. Q. Well, you can't tell us what he said, but . . . The
11. Roto-Rooter, is that an auger that's put through the line?
12. A. Mmm hmm.
13. Q. It's a kind of an auger--and that was put through from
14. the inside of the house, out into the tank?
15. A. Mmm hmm.
16. Q. And at that time--or subsequently, some several weeks
17. later, you had the tank pumped?
18. A. Yes, sir.
19. Q. And you advised Mr. French that both of these . . . that
20. you had both of these things done?
21. A. No, sir; I didn't tell him about the Roto-Rooter, I
22. don't think.
23. Q. You did not tell him about the Roto-Rooter. Did you tell
24. him that the system was checked, and found okay?

1. A. I don't recall.
2. Q. The basement drain--is there not a basement drain in the,
3. what I guess you would call a utility room?
4. A. Yes, sir, there is.
5. Q. Do you know whether or not there was a rag stuffed down
6. that drain?
7. A. No, sir. I'm pretty sure there wasn't.
8. Q. Had you stuffed a rag down there?
9. A. No, sir.
10. Q. And do you recall whether that drain was quite slow in
11. draining when you lived in the house?
12. A. No, I wouldn't have any reason to put anything in it,
13. really.
14. Q. All right, sir. So you didn't have any feedback of
15. water through that drain from your system--the floor
16. drain? Had it ever flooded back into the utility room?
17. A. Not to my knowledge.
18. Q. Not to your knowledge?
19. A. No.
20. Q. Had you bent the bulbs down on the tanks on the toilets,
21. so as to reduce the amount of water that was flowing
22. into the system?
23. A. No, sir.
24. Q. You hadn't done that?

1. A. No, sir.

2. Q. That was done, then, by somebody prior to your occupancy
3. of the house?

4. A. If it was done, it was. Because I didn't do it.

5. Q. And if there was a rag in there, that was done prior to
6. your occupancy of the house?

7. A. If there was.

8. Q. Thank you, sir.

9. COURT: Is that all of this witness?

10. Q. One other question, if I may. Did you tell Mr. and
11. Mrs. French, or Mrs. Byrd, that you were being trans-
12. ferred by Smith's Transfer to Covington?

13. A. No, sir.

14. Q. You didn't tell them that that was the reason for your
15. sale?

16. A. I said that I was . . . after I have ten years in there,
17. I'm going to Covington--which I still am.

18. Q. Thank you, sir.

19.

20. Re-Direct Examination by Mr. Thomas:

21. Q. Mr. Armentrout, did you use Air Wick?

22. A. Yes, we had Air Wick there.

23. Q. Where?

24. A. We've had them in the rec room.

1. Q. And where was that placed?
2. A. We had it up on the mantle of the fireplace.
3. Q. You have heard, Mr. Armentrout--you have heard Mrs. Byrd
4. discuss the situation with the Drumhellers, as to the
5. second contract?
6. A. Mmm hmmm.
7. Q. Did you agree to a reduction in the price?
8. A. Yes, sir.
9. Q. Why?
10. A. Well, I was paying two hundred and fifty dollars a month
11. rent, and two hundred and fifty-six dollars a month
12. house payment; and that was rather hard to swing.
13. Q. All right. Now, did you have any knowledge from Mr.
14. Drumheller, as to what he wanted that for?
15. A. Yes, sir, to put the downspout out from the house--and
16. the carpet.
17. Q. When there's talk of replacing carpet--how large is the
18. carpet that had to be replaced?
19. A. Oh, I would say it's probably twelve by eighteen--some-
20. thing like that.
21. Q. Could you describe the carpet?
22. A. The one that was there?
23. Q. Yes.
24. A. It was a long shag carpet.

1. Q. That's all.

2. COURT: All right. Thank you.

3. A. Can I say something?

4. COURT: It depends on what you want to say.

5. A. Well, if I was trying to conceal anything from these
6. people, I wouldn't have turned the house over to them to
7. start with.

8. COURT: Well, your attorneys can argue that.

9. That's all.

10. MR. ALLEN: Let me ask a question.

11.

12. Re-Cross Examination by Mr. Allen:

13. Q. You turned the house over to them after the contract had
14. been signed; isn't that correct?

15. A. Yes, sir.

16. Q. Thank you, sir.

17.

18. WITNESS - WARREN DOUGLAS DRUMHELLER

19. Direct Examination by Mr. Thomas:

20. Q. Will you state your full name?

21. A. Warren Douglas Drumheller

22. Q. And how old are you, Mr. Drumheller?

23. A. Twenty-nine.

24. Q. Are you married?

1. A. Yes, sir.
2. Q. How long have you been married?
3. A. Seven years.
4. Q. Do you have any children?
5. A. Two.
6. Q. How old are they?
7. A. Two years and four years.
8. Q. Where do you work, sir?
9. A. General Electric, in Waynesboro.
10. Q. In what capacity?
11. A. I am a manager of a group of engineers.
12. Q. Mr. Drumheller, how long have you been employed as a
13. manager of a group of engineers?
14. A. Three years.
15. Q. Are you originally from this area?
16. A. Yes, sir.
17. Q. Mr. Drumheller, did you buy a home from Mr. and Mrs.
18. Armentrout?
19. A. Yes.
20. Q. Were you aware of the . . . Do you know whether or not
21. this is the same home that the Frenches were interested
22. in?
23. A. I was told that that was the same one they were interested
24. in.

1. Q. When you discussed this . . . When you first went to see
2. this home, who did you go with?

3. A. Jean Byrd.

4. Q. Did she discuss anything about Mr. and Mrs. French with
5. you?

6. A. Yes. She told me that there was a previous contract on
7. the home, that was no longer--that wasn't followed through.

8. Q. Did she tell you why?

9. A. She told me that there was a question about the septic
10. system of the house, arising from the odor that was coming
11. from a downstairs room.

12. Q. All right. Did you discuss in detail with her about
13. the septic system and the odor or something?

14. A. I questioned her about, you know, what was the problem,
15. and what . . . I tried to determine if there really was a
16. problem. And she told me that she had had a number of
17. people--and I'm not sure who exactly she said had been
18. there--but people, I think, from the Health Department,
19. and plumbers, who had been there and inspected the septic
20. system; and they couldn't find a problem. So I accepted
21. that.

22. Q. Did you buy the house on March sixth, 1976, and move in?

23. A. Yes.

24. Q. Have you done any work, or caused any work to be done on the

1. septic system or the plumbing?

2. A. I haven't done any work on the septic system or the
3. plumbing. I did some work on the guttering outside the
4. house.

5. Q. Will you describe for the jury how the septic system and
6. everything has worked?

7. A. It's worked fine, to my knowledge. I haven't had any
8. trouble with the plumbing or the septic system.

9. Q. When you moved into the home, Mr. Drumheller, was there
10. an odor in the rec room?

11. A. Yes.

12. Q. Could you describe that odor for the jury?

13. A. It smelled like animal urine, to the best of my knowledge.
14. It was a very offensive odor downstairs in the . . .

15. MR. ALLEN: Very what?

16. A. Very offensive, and unmistakable odor, downstairs. When
17. you walked into the downstairs room, you noticed it.

18. Q. All right, sir. Were you aware of this odor, and of the
19. septic system problems, before you signed the contract?

20. A. Yes. I was aware that there was a question about a septic
21. system problem; and I decided, based on the conversations
22. that I'd had, that that wasn't a problem. And my own
23. flushing of the toilets--I could see that they . . .

24. Q. After you moved into the home, did you have anything to

1. do with the rug in the cellar, or the rec room?

2. A. After I moved into the home--in fact, immediately after
3. I moved in--I cut the rug in that family room downstairs
4. out. And I took it out. Because I could tell that that
5. was the source of most of the odor. So I immediately
6. took that thing out. And I scrubbed the basement floor;
7. and I had a new rug installed down there in that room.

8. Q. When you removed the rug, would you tell the jury what
9. effect that had on the odors?

10. A. Yes. Nearly all of the odor disappeared. Some odor
11. lingered for several weeks. But nearly all of the odor
12. that was there disappeared with that rug. And I took the
13. rug outside.

14. Q. Is there any odor remaining now?

15. A. There is a little bit of odor in one of the downstairs
16. bedrooms; if you get down very close to the rug in the
17. corner--in a closet, in a corner--you can detect that
18. same odor downstairs. But you have to really look for it.
19. It wasn't offensive enough, to me, to tear the rug out.
20. Because that's an expensive thing for me to do. It was
21. bad enough in the family room, and I did take the rug
22. out. The little bit that lingers doesn't bother me, and
23. I don't notice it unless I get down there to check.

24. Q. This area where it remains in the closet in a bedroom--

1. is this near to a toilet?
2. A. It's across the house from the toilet. The toilet is on
3. one side of the house, and this area is across the house
4. against the far wall.
5. Q. And what . . . Is there a rug in the closet where this
6. odor is?
7. A. Yes, the same . . .
8. Q. What kind?
9. A. It's a shag carpet--the same shag carpet that is in the
10. bedroom, and was in the family room before I tore it out.
11. Q. All right, sir. Before you moved in, did you have any
12. work done on the septic system?
13. A. No, sir.
14. Q. Have you had any since you moved in?
15. A. No, sir.
16. Q. Do you recall the exact date that you did move in?
17. A. The day after the closing date. And I think it was the
18. sixth or seventh of March.
19. Q. Of what year?
20. A. This year.
21. Q. All right, sir. Did you notice whether or not the
22. toilets were a little sluggish or anything?
23. A. I checked the toilets, and I couldn't tell if they were
24. sluggish at all.

1. Q. All right, sir. Have you ever noticed any other odor,
2. other than what you have described to the jury; and, if
3. so, would you describe it?

4. A. No, sir.

5. Q. Mr. Drumheller, when you signed the contract to purchase
6. this house, will you tell the jury how much you agreed
7. to purchase the house for originally?

8. A. Forty-four thousand dollars.

9. Q. Forty-four thousand?

10. A. Forty-four thousand dollars.

11. Q. Mr. Drumheller, I exhibit to you a copy of a sales con-
12. tract, and ask you if that is the contract that you and
13. your wife signed to purchase the Armentrout home?

14. A. Yes, sir.

15. MR. THOMAS: May I ask that this be entered as
16. an exhibit.

17. COURT: Any objection, Mr. Allen?

18. MR. ALLEN: No objection.

19. COURT: It will be received into the evidence
20. and identified as Plaintiffs' Exhibit
21. Number Six. (Exhibit marked.)

22. Q. Mr. Drumheller, on that contract, is the original price
23. forty-four thousand?

24. A. Yes, sir.

1. Q. Did you pay forty-four thousand?
2. A. No, sir.
3. Q. What did you pay?
4. A. I paid forty-three thousand for the house.
5. Q. Why the one thousand dollar difference?
6. A. After inspecting the house more--after the sales contract
7. was signed--I found water in the basement, dampness in
8. the basement, in a corner under a rug. And I found rotted
9. carpet backing there. And I went out and looked outside,
10. and it appeared that the back fill had sunk and that the
11. water draining off of the roof of the house was staying
12. around the house and seeping under the house. So I
13. called the realtor, and told them that I thought someone
14. should install drain lines to carry the gutter runoff
15. water away from the house, to keep water from getting in
16. the basement--and that I expected them to do that. They
17. got back in touch with me later, and said that they
18. didn't want to do that, but they would reduce the price
19. of the house a thousand dollars. And since I felt like
20. I could do that work for less than a thousand dollars
21. myself, I said, "Fine; we'll do that, and I'll take the
22. responsibility for getting the roof runoff water away
23. from the house."
24. Q. Maybe I misunderstood you. Did you discuss just that, or

1. did you discuss the rug, and the replacement of that rug?

2. A. I think we discussed the rug, too. I told them that the
3. carpet backing on the rug was rotted there; and I'm not
4. sure that I said in order to replace the rug . . . or to
5. replace the rug, and take the drainage away from the
6. house. But I know that I said that the trenches will have
7. to be dug, and the pipe will have to be put in, to carry
8. the roof water drainage away from the house. And I'm
9. not sure whether I said to replace the rug.

10. Q. All right. Did you do whatever needed to be done, to
11. take the drain water from right next to the house away?

12. A. Yes, sir, I did.

13. Q. Did you do that yourself?

14. A. Yes, sir.

15. Q. Can you tell the jury, with relationship to the drain
16. field--or what you did?

17. A. I got some four-inch plastic pipe. And I dug trenches
18. about twelve inches deep, away from the gutter--the
19. locations where the gutters came down from the corner of
20. the house. I dug these trenches about twenty feet away,
21. to a place where the water would drain and run on out
22. into the yard, and stay away from my house. And I put the
23. pipe in and covered it back up, so that now, when the
24. water drains out of the gutters, it drains about twenty

1. the drain off to the west, so that it would drain to the
2. back yard. It drains down a little slope, and towards
3. the back yard. On the east side of the house, I took the
4. drain down a little hill and it drains to the driveway.
5. I know that the septic system is in the front yard of
6. the house. You know, the house faces south; and the
7. septic system is toward the south--so that the run-off
8. water doesn't drain into my septic field.
9. Q. Does the run-off water follow the lay of the land?
10. A. Yes.
11. Q. No further questions.

12.
13. Cross Examination by Mr. Allen:

14. Q. Are these pictures of your house? (Showing witness two
15. photographs.)
16. A. Yes, sir.
17. Q. Does that show, as you are looking at it, on the left,
18. as the house fronts on the right side, the installation
19. of that drain that you're talking about?
20. A. That's not the drain that's there.
21. Q. Not now--but it was at that time?
22. A. Yes, it was for a couple of weeks. Yes. Before I
23. closed the deal on the house. I put that there.
24. Q. You put that there temporarily, and then you put it

1. underground?

2. A. Right. That's temporary; and that's not where it goes
3. underground.

4. Q. Is the same true here?

5. A. Okay. Now, your arrow shows that the line . . . right--
6. that's where I put it on a temporary basis.

7. Q. And your septic system is actually out in the front of
8. the house, in front of the front door?

9. A. Right.

10. MR. ALLEN: These photographs would be offered
11. as Defendants' Exhibits Three and
12. Four, Your Honor.

13. MR. THOMAS: No objection, Your Honor.

14. COURT: They will be received, and identi-
15. fied as Defendants' Exhibits Three
16. and Four. (Exhibits marked.)

17. Q. Then as I understand your testimony, the Armentrouts
18. voluntarily agreed to reduce their sale price to you a
19. thousand dollars, to enable you to take care of your
20. complaints. And this was after you had entered into the
21. contract?

22. A. Yes, sir.

23. Q. And prior to entering into that contract, it is my
24. understanding that you were aware of the fact that there

1. was an odor in the house? As a matter of fact, the house
2. was empty at that time, when you viewed the house, and
3. you could smell the odor, couldn't you?

4. A. Certainly.

5. Q. And the realtor brought this to your attention?

6. A. Yes.

7. Q. Were either Mr. or Mrs. Armentrout there at that time?

8. A. No.

9. Q. Did you ever talk to them in person?

10. A. No, sir. I never talked with the Armentrouts in person
11. until we met them to close the transaction.

12. Q. All right. And then, after you closed the transaction
13. to purchase the house, did you not find a rag or some-
14. thing stuffed into the drain in the utility room floor?

15. A. I thought about that. I tried to think about that last
16. week, when I was questioned about that. I'm not sure
17. that there was a rag in that utility room floor. There
18. is a drain there, and I used that drain to drain some
19. water a couple of months ago, into that drain. I'm not
20. sure whether I took a rag out of that thing to do that, or
21. not. I do know that there is a drain for the washer
22. that's about two feet up the wall; and I had to pull a
23. rag out of the washer drain. But, you know, that's a lot
24. higher up. That's higher up . . .

1. Q. That's a lot higher up--a couple of feet higher than the
2. one in the floor?

3. A. Right. Yes. But I can't remember whether I took a rag
4. out of that floor drain or not.

5. Q. Now, this was brought to my attention by Mr. French.
6. Mr. French was at your house ten days or so ago, was he
7. not?

8. A. Yes. Right.

9. Q. And he discussed this with you and your wife?

10. MR. THOMAS: Your Honor, I believe Mr. Allen is
11. testifying now.

12. MR. ALLEN: This is cross examination, Your
13. Honor.

14. COURT: Go ahead.

15. Q. Did he not discuss with you and your wife the situation
16. as he found the house, before you purchased it?

17. A. Yes.

18. Q. And at that point, did your wife not say, to remind you
19. of the fact that you found--that you unstuffed a rag
20. from the drain in the basement floor?

21. A. She said . . . she reminded me that there was a rag
22. there. And you asked me if I remembered it was there.
23. I really can't say for sure that it was there, or that
24. it wasn't. It wasn't important to me at the time. I

1. drained the water into the drain.

2. Q. All right. You just don't remember it; but your wife
3. reminded you, and did state the fact of what I have
4. stated? She said, "Don't you recall that the basement
5. floor drain had a rag stuffed in it?"

6. A. She said that.

7. Q. Thank you, sir. That's all the questions I have.

8.

9. Re-Direct Examination by Mr. Thomas:

10. Q. Let me just clarify one thing. The pictures that the
11. jury have show the drain pipes apparently leading toward
12. the drain field. Were they temporary?

13. A. Yes, sir; they were temporary, and they were above the
14. ground. That was just something that stayed there for
15. about two weeks, between the time I signed the sales
16. contract and the time that I closed the deal on the house.
17. And when I gained possession of the house, then I went
18. in and I dug my trenches to carry the water to the sides
19. of the house.

20. MR. ALLEN: Away from the drain field?

21. A. Away from the drain field.

22. Q. I have no further questions.

23. MR. THOMAS: We would call Mr. French, as an
24. adverse witness, as our next witness.

1. MR. ALLEN: Is he contending the fact then that
2. he has a right to examine him by
3. leading questions?
4. COURT: I don't know what he's going to do.
5. MR. ALLEN: In what way is he . . . he's only
6. adverse in party; and Mr. French
7. hasn't testified as to anything
8. adverse at this point. I don't
9. object to Mr. French being called as
10. a witness at all--it gives me a
11. chance to cross examine one of my
12. clients.
13. COURT: I think he's got a right to call
14. him.
15. MR. ALLEN: I make no objection.
16. COURT: Go ahead, Mr. Thomas.

WITNESS - JON M. FRENCH

19. Direct Examination by Mr. Thomas:

20. Q. Mr. French, what is your full name?
21. A. Jon M. French.
22. Q. Where do you live now, Mr. French?
23. A. It's in the County. It's near the Ladd area in
24. Waynesboro.

1. Q. In Augusta County, Virginia?
2. A. That's right.
3. Q. Mr. French, before you signed the contract . . . Before
4. you signed the contract to buy the Armentrout home, did
5. you go inside the Armentrout home?
6. A. Yes, I did.
7. Q. And how long did you stay there?
8. A. Well, let's see--the first time we went to see the house
9. was with the realtor. I'd say roughly half an hour.
10. Q. What did you go inside the house for?
11. A. We went in to see the house.
12. Q. Do you know anything about houses or construction?
13. A. Just what I had read prior to starting to look for a
14. new house.
15. Q. What had you read?
16. A. Everything I could get from the library. And just any-
17. thing I could find on the subject.
18. Q. Where do you work, Mr. French?
19. A. Vepco.
20. Q. Roughly how much did you read?
21. A. I beg your pardon?
22. Q. How much did you read about houses?
23. A. Oh, let's see--most of it was spent . . . maybe three or
24. four books on real estate purchasing and so on.

1. Q. Now, as a result of reading these books, you went to
2. inspect the home?
3. A. That's correct.
4. Q. And you say you stayed there around a half an hour?
5. A. Roughly.
6. Q. Did you feel that a half hour was sufficient investiga-
7. tion of the home, in light of the three or four books
8. you had read?
9. A. At that time, yeah. I had actually called Jean Byrd
10. that Sunday night, prior to visiting that home--that's
11. when she set up the appointment for that Wednesday--and
12. drove by the house that Sunday, and then told her by
13. return phone call that I wanted to visit the house. But
14. we, as far as I knew, we had seen everything that I
15. wanted to see in that half hour.
16. Q. All right. Now, in reading your books, did it suggest
17. that you have other experts check the house?
18. A. It suggested that if you could afford to pay someone to
19. come in the house, that that would be a very good idea.
20. That the fifty dollars (\$50.00) or so invested, would
21. be well worth it. It also suggested that . . . well,
22. I forgot what I was going to say. Go ahead.
23. Q. All right. Did you get a termite man to go in and
24. investigate the house?

1. A. That was after the contract was signed, yes, sir.
2. Q. After the contract was signed?
3. A. After it was signed. Yes, sir.
4. Q. Why didn't you do it before the contract was signed?
5. A. Mr. Painter objected. When I went in to have the changes
6. made in the contract, Mr. Painter seemed to object to
7. my making the changes on the contract. He inferred that
8. Mr. and Mrs. Armentrout were a little shaky on the deal,
9. and they might back out. I didn't want to . . . We
10. really--you know, this was a beautiful house; and we
11. really wanted it. And I didn't want to jeopardize that
12. deal in any way.
13. Q. All right. Well, now, Mr. Painter inferred that the
14. Armentrouts were a little shaky, and you wanted the
15. house; is that as I understand it?
16. A. That's correct.
17. Q. Didn't his inference that maybe the Armentrouts were a
18. little shaky--didn't that make you want to sign right
19. then and there?
20. A. It had a tendency to make me want to sign right then and
21. there.
22. Q. And did you sign then and there?
23. A. No. He had to make the changes on the contract, and then
24. return it for initialing to the Armentrouts. I signed it

1. that night.

2. Q. What changes were made?

3. A. Well, on the original contract, there was no indication

4. as to what was to go along with the sale of the house.

5. And the draperies, and the--let's see, the traverse

6. rods, and the utility shed out back was to go along . . .

7. and none of this was on the contract. And through my

8. reading I learned that anything that isn't on the

9. contract doesn't go with the house. In other words, you

10. have to take them at their word--they can legally move

11. things out, unless you do.

12. Q. And were all those things added in, that you requested be

13. added in?

14. A. That's correct.

15. Q. And everybody initialed it, and you got it and initialed

16. it yourself, that same night?

17. A. That same night, yeah--at eleven o'clock at night, he

18. brought the contract by.

19. Q. Did Mr. Painter say anything else to you, other than that

20. the Armentrouts might back out of the deal if you didn't

21. sign?

22. A. He said they were edgy, and he was going to deliver their

23. copy of the contract that night. And he also said,

24. "Well, you've got yourself a house." And I said, "Yeah,

1. I'll believe that when the closing date comes." And he
2. says, "No, there's no way out of it now."
3. Q. All right. Now, did you have another man to go through
4. the house with you, or at your request?
5. A. Yeah, my boss, Mr. C. D. Allen, at work. He's a . . .
6. well, he's the supervisor at work. He expressed a desire
7. to see the house, and he had purchased a few other
8. houses himself before, being transferred around the area.
9. So I thought he'd be a good man to take by it. From
10. previous testimony, they said I had a builder in; but
11. that's not true. The builder was in after the contract
12. was signed, to investigate the odor.
13. Q. Did Mr. Allen . . . you figured he had bought a lot of
14. houses, and he knew about houses--so you went in with
15. him; is that right?
16. A. That's right. Yes.
17. Q. Is Mr. Allen here today?
18. A. No, he isn't.
19. Q. Now, did you and Mr. Painter have any discussions,
20. other than what you told us?
21. A. As far as what?
22. Q. The house, the sale--anything?
23. A. Is this prior to, afterward, or what?
24. Q. Prior to the contract.

1. A. Well, let's see . . . I'm trying to think. Oh, I can't
2. think of anything really specific. Maybe it's just stage
3. fright, but I just can't think of anything specific right
4. now, that we spoke of.

5. Q. I'm not telling you that there is something you have to
6. remember. I'm asking you these questions.

7. A. I realize that. But I'm saying that it seems to me like
8. there is something, but I just can't . . .

9. Q. Did you and Mrs. Byrd have any specific comment, or
10. discuss specifically the house, prior to your signing
11. the contract?

12. A. Oh, absolutely.

13. Q. Sir?

14. A. Absolutely.

15. Q. All right. What did Mrs. Byrd tell you?

16. A. Well, on the night we went over to see the house, we had
17. a discussion on the way to see the house. Naturally, we
18. asked her why the Armentrouts were selling, how old the
19. house was, how long the house had been on the market,
20. etcetera. First of all, she said the house had been on
21. the market for four months. Now, this was in October;
22. that would have put . . . that would have meant that he
23. would have put the house on the market sometime in June.
24. And she also said that the house was three to four years

1. old. And I asked why exactly were they selling, and she
2. said that Mr. Armentrout was being forced to move to
3. Covington, and that's one of the reasons why the house
4. had been already reduced two or three thousand dollars,
5. because they had to sell it fast--he was being forced, or
6. pressured, to move to Covington.

7. Q. Well, now, what else did she say?

8. A. Well, let's see--the only other conversation I can think
9. of was . . . oh, when we left the house, on the way back,
10. I commented something to the effect that there were no
11. storm windows on the house. And at that time, she said,
12. "Well, if I don't hassle Mr. Armentrout too much on the
13. price, he might be convinced to add storm windows," or
14. something to that effect. And I told her that the following
15. day I would notify her by telephone what our decision
16. was, after my wife and I had discussed it.

17. Q. Did you ever have any discussion with Mr. Rimel, Mr.
18. Painter's associate?

19. A. Mr. Rimel? I had . . . there was a disclosure to be
20. signed, I think; but that was . . .

21. Q. I'm talking about before you signed the contract?

22. A. I beg your pardon?

23. Q. I'm talking about before you signed the contract.

24. A. Oh, no. Let's see--we called Mrs. Byrd on Sunday; she

1. took us to the house. I called her back and gave her the
2. offer. That night she called me and . . . I offered
3. forty-two five.

4. Q. Mr. French, just . . .

5. A. I'm trying to refresh it in my own mind, so I can answer
6. your question. I mean . . . And then--let's see--that
7. evening she told me they rejected the offer. And the
8. next day . . . Oh, I told her that evening that we'd
9. offer forty-four thousand. And the house was forty-six
10. five, or something like that. And she said that was the
11. second reduction on the house in four months. Okay.
12. Oh, that's . . . Okay, that Friday at lunch time when
13. I came home, she said that she had--that the Armentrouts
14. accepted, and that she would be right over with the
15. contract. That's some of the conversation I forgot. She
16. also said that . . . she asked me if there was anything
17. I wanted on the contract; and, here again, that's where
18. this addition to the contract came in, about the contingent--
19. that the contract was contingent upon obtaining satis-
20. factory financing. Well, within an hour, she had the
21. contract at the house. And we looked the contract over
22. that night, and we determined that--these items that I
23. had earlier discussed were not on the contract, and . . .
24. Q. Let me foreshorten this. Did you and Mr. Painter, Mrs.

1. Byrd, or Mr. Rimel, ever discuss the septic system of
2. this house . . .
3. A. Before we signed . . .
4. Q. . . . prior to the signing of the contract?
5. A. Mr. Armentrout . . .
6. Q. I asked you whether Mr. Painter, Mrs. Byrd, or Mr. Rimel,
7. and you, ever discussed the septic system, with regard
8. to this house, before you signed that contract, sir?
9. A. Not Mrs. Byrd . . . not any of those three.
10. Q. All right. Now, before you signed the contract, did you
11. have a discussion with Mrs. Armentrout about the septic
12. system?
13. A. Before we signed the contract? No. I had a discussion
14. with Mr. Armentrout.
15. Q. That leaves only Mr. Armentrout. Now, will you tell us
16. what discussion you had with him?
17. A. All right. When we were in the house, we were, I believe,
18. shown the basement first. We had come into the house,
19. and she apologized for a heavy cooking odor. It was real
20. garlicky or oniony. And she apologized for it. She said
21. she had cooked barbequed chicken, and it was one of Mr.
22. Armentrout's favorites, or something like that. Anyway,
23. we were shown the downstairs. We didn't spend too much
24. time downstairs, but when we started upstairs, Mr. Armentrout

1. started pointing out and discussing the things he had
2. done to improve the house while he was there. And let's
3. see--he added two storm doors, he said; and there was
4. some painting done. And then he said the septic tank was
5. pumped--and that stopped me right there. Because Jean
6. Byrd had already told me the house was three to four years
7. old. And I've been living in a house for eight, and we
8. never had it pumped. And the people living there prior
9. to that time had lived there three years--so that's
10. eleven years on a septic tank. So I inquired, I said,
11. "Why did you have it pumped?" And he said, "For my own
12. satisfaction." I said, "I see." And he said, "I had it
13. checked while I had it out," and I said, "How did it check?"
14. And he said, "It checked fine." And that's where that
15. subject dropped.

16. Q. You didn't discuss the fact that he, when he had it
17. pumped, the man from Welty Cline, or anybody, had pumped
18. it, and said it worked fine?

19. A. We discussed the fact that it had been pumped. And he
20. said he had it checked while it was--after it was pumped,
21. and everything works fine, is what he said.

22. Q. All right. Did you have any further discussion with him
23. about the septic system?

24. A. Not before the contract was signed.

1. Q. All right, sir. Mr. French, did Mr. Armentrout, or Mrs.
2. Armentrout, before you signed the contract, ever prevent
3. you from coming into their home and seeing it?

4. A. No. No, they didn't. They said that any time we wanted
5. to come back to the house, we could. And this--you know,
6. I really appreciated that. They said that if we just call
7. them before we bring somebody to the house, they'd be
8. more than happy to, you know, let us in to look around.

9. Q. So before you signed the contract, was there any doubt
10. in your mind that you could have availed yourself of
11. taking anybody you wanted there, virtually at any time?

12. A. That's right.

13. Q. And the one person you took was Mr. Allen?

14. A. Right.

15. Q. Did you go back with him?

16. A. Go back when?

17. Q. With Mr. Allen?

18. A. Did I return to the house with him? Yes, I did.

19. Q. And did either you or he ever again question Mr. Armen-
20. trout about the septic system or anything?

21. A. No. We had no reason to. The fire was going in the rec
22. room, when we walked in, and the only thing we could
23. smell in there was the fireplace. We had no reason to
24. question anything.

1. Q. Yes, sir. All right, now, one last question, Mr. French.
2. The three or four books that you read were with regard to
3. the things that you ought to know about buying a house?
4. A. Mmm hmmm.
5. Q. Did it suggest that you read the contract?
6. A. Yes, it did.
7. Q. And did it suggest that you check things out, to make
8. sure that everything was . . .
9. A. It suggested making inquiries into the plumbing, the
10. electrical system, etcetera.
11. Q. Did you make inquiry into the electrical system?
12. A. Certainly, I asked him. He'd already said he had it
13. checked.
14. Q. Did you make inquiry into the plumbing?
15. A. Into the plumbing? No, I didn't. I had no reason to.
16. Q. Did you make inquiry into the septic system, beyond what
17. you have told us?
18. A. No. This was a beautiful house. We overlooked a whole
19. lot. It was our first house, too.
20. Q. Did you read the contract?
21. A. Yes, I did.
22. Q. Did you understand it?
23. A. Most of it, yeah.
24. Q. Was there any part that you didn't understand?

1. A. Well, I can't remember offhand; the "whereas's," and
2. "therefore's" and "hereto's" get in the way sometimes,
3. you know. But basically I'd say I understood it.

4. Q. That's all.

5.

6. Cross Examination by Mr. Allen:

7. Q. Mr. French, when you visited the house the first time,
8. you say there was a strong odor of food?

9. A. Yes, sir.

10. Q. And Mrs. Armentrout apologized for that strong odor of
11. food?

12. A. Yes, she did.

13. Q. And this was a visit that was made on an appointment that
14. was made three days previous to that time?

15. A. Yes; that's correct.

16. Q. And were you able to detect any odor such as you subse-
17. quently detected, on that particular visit?

18. A. No.

19. Q. All you could smell was the food and the fireplace?

20. A. That's right.

21. Q. When you went back subsequently with Mr. C. D. Allen, did
22. you detect any odor?

23. A. Just fireplace odor. The fireplace was going in the rec
24. room; and that's the only thing we could smell at that

1. time.

2. Q. And when was it that you first . . . And was there any
3. mention made to you about any odor, or about any pet
4. problem in the basement?

5. A. No.

6. Q. When was it that you first detected an odor, Mr. French?

7. A. That was when we had picked up the keys, and . . .

8. MR. THOMAS: Objection, Your Honor. I don't
9. believe it's proper. This is not
10. proper cross examination. I have
11. limited myself to the--prior to the
12. contract. And I've been very care-
13. ful to limit myself . . .

14. MR. ALLEN: All right. I'll call him back. I'll
15. withdraw that question.

16. COURT: What's the difference? In other
17. words, he can do it right now, or
18. call him back. So if you want to
19. stand on it, it's all right.

20. MR. ALLEN: I'm perfectly willing to go ahead.

21. MR. THOMAS: Your Honor, I have a motion to make
22. at the conclusion of my evidence; and
23. I'd like to have it made properly,
24. without the Court hearing any evidence

1. error; I don't admit that I'm wrong,
2. in the record.

3. Q. All right. At that time, you, in the course of the
4. visit to the house, as I understand it, Mr. Armentrout
5. pointed out certain things, and then he said he had the
6. septic tank pumped, and you said, "Why?" And he said,
7. "For my own satisfaction."

8. A. That's correct.

9. Q. "I had it pumped, and it checked, or worked fine." Is
10. that what he stated?

11. A. That's right. That it checked okay.

12. Q. Was there any indication to you that the basement drain
13. was stopped?

14. A. Not at that time, no.

15. Q. No other problems indicated to you?

16. A. That's right.

17. Q. Thank you, sir.

18. COURT: Now, you have the right to call him
19. back at the proper stage.

20. MR. ALLEN: Thank you, sir.

21. MR. THOMAS: That's all the evidence of this
22. gentlemen. We would call Mr. Buddy
23. Nuchols.
24.

1. possible that, you know, it did settle; but in my own
2. personal opinion, it's not likely.

3. Q. Was this with regard to breaking sewer pipes?

4. A. What, the settling?

5. Q. Yes, sir.

6. A. Yes, that's what the question was asked in reference to,
7. you know, if it could happen.

8. Q. Do you recall how long ago it was that you talked to Mr.
9. French?

10. A. Last week..

11. Q. Did he tell you whether or not there was a broken sewer
12. pipe?

13. A. No, sir.

14. Q. Did he tell you what, if anything, was wrong with the
15. septic system?

16. A. No, sir.

17.

18. Cross Examination by Mr. Allen:

19. Q. Mr. Nuchols, you built this house, and you sold it to a
20. Mr. McIntosh on May twenty-fourth, 1973, for thirty-four
21. thousand five hundred dollars (\$34,500.00). How long did
22. Mr. McIntosh . . . did he live in it until the Armentrouts
23. bought it?

24. A. I think so. I'm, here again, not real sure.

1. Q. And during that period of time, were you ever back at the
2. house, or in the house?

3. A. When McIntosh was there? Maybe once. The wife and I may
4. have dropped in.

5. Q. You may have dropped in?

6. A. Yes, sir.

7. Q. During the course of Mr. McIntosh's living there, isn't
8. it true that he complained to you about the operation of
9. the septic system?

10. A. Not long after he moved in--three or four or five or six
11. months--he called me one night. Of course, I was, at
12. the time . . . he was a builder. And he was building a
13. couple of houses. So we were corresponding back and
14. forth on the houses, as far as me wiring them. And he
15. had asked me if I'd had any problems with it, and I
16. said no. You know, the wife and I had the baby, and
17. used the washing machine, and hot water, and the whole
18. thing, daily--and had no problem. But, you know, in the
19. event he was having problems, not to hesitate to give me
20. a call. And I told him, you know, if he'd run into some-
21. thing he couldn't handle, to, you know, give me a call
22. back. And I never heard anything back from him.

23. Q. But he called you and asked you . . . Did he indicate
24. to you that he was having some problems?

1. A. I think there was a line or something stuck--stopped up.
2. Here again, if memory serves me right--and we're talking
3. about, what, three or four years ago?

4. Q. Yes, we're talking about quite a while ago. But he did
5. call you and tell you he was having a problem with the
6. septic system. But the problem, specifically, you don't
7. know?

8. A. Well, no, he didn't specifically say he was having a
9. problem. He just asked me . . . I assume he was having a
10. problem, or he wouldn't have asked me, if . . .

11. Q. Right.

12. A. . . . he hadn't been having a problem.

13. Q. Right. No further questions.

14. MR. THOMAS: We have no further questions.
15.

16. WITNESS - JOHN MICHAEL LINDSAY

17. Direct Examination by Mr. Thomas:

18. Q. Mr. Lindsay, would you state your full name, sir?

19. A. My name is John Michael Lindsay.

20. Q. Have you and I ever talked before?

21. A. No, sir.

22. Q. Mr. Lindsay, where do you work?

23. A. I work for the Augusta County Health Department.

24. Q. How long have you been working there?

1. A. It will be eight years in March.
2. Q. In what capacity do you work there?
3. A. Sanitarian.
4. Q. Mr. Lindsay, did you get called by Mr. Buddy L. Nuchols
5. to inspect a sewage disposal or septic system for him?
6. A. Yes, sir.
7. Q. Now, do you recall the date?
8. A. 11/5/71.
9. MR. ALLEN: 1971?
10. A. Yes, sir.
11. Q. Mr. Lindsay, in your capacity, do you issue permits for
12. septic systems?
13. A. Yes, sir.
14. Q. Do you have to make inspections before you may issue a
15. permit?
16. A. We do the soil study and percolation tests, if necessary.
17. Q. Did you do a soil study and percolation test on this
18. home?
19. A. Yes, sir.
20. Q. This was a home owned by Mr. Nuchols?
21. A. Yes, sir.
22. Q. Do you know subsequently whether or not Mr. and Mrs.
23. Armentrout lived in it?
24. A. Do I know whether they lived in it after that?

1. Q. Yes.

2. A. Yes, I do.

3. Q. And you have gone out there, since 1971?

4. A. Yes, sir.

5. Q. All right. Now, going back to 1971, after you do a soil
6. test, or whatever, do you go back after the installation
7. of a septic system and re-examine it, and study it, and
8. pass it or fail it?

9. A. Prior to covering it, yes, sir.

10. MR. ALLEN: What'd you say?

11. A. Prior to covering.

12. MR. ALLEN: I don't know--he's leading so; I'd
13. prefer you not lead. I don't want to
14. keep on objecting, but this man is
15. to testify--not the attorney.

16. Q. All right, now, on your inspection--do you know what
17. date you inspected it?

18. COURT: Ask him if he returned to inspect it.

19. MR. THOMAS: Yes, sir.

20. Q. Did you inspect it in 1971, on November the fifth?

21. A. Yes, sir.

22. Q. Will you tell the jury what your inspection showed?

23. A. Well, I passed the drain field. I just passed it--in
24. other words, I approved it at that time.

1. Q. All right. When you inspected it, will you describe for
2. the jury where the--how it's laid out, whether it's
3. covered up, or open, or . . .
4. A. It's completely open at that time.
5. Q. And that was in 1971?
6. A. Yes, sir.
7. Q. Did you have any occasion to subsequently visit the same
8. house and inspect the same septic system?
9. A. You mean after it was covered up?
10. Q. Yes, sir.
11. A. To inspect it . . . no, not inspected it, as such.
12. Q. Did you return to the Armentrout home--the former
13. Nuchols home, then the Armentrout home--and look over the
14. system?
15. A. Yes, sir.
16. Q. What did you do when you went there?
17. A. On my visit, the second time I was out there, we did
18. some digging--I did some digging around the footings of
19. the house, to see whether there was any evidence of
20. water around the footings, that could be seeping back
21. into the house. And at that time, I checked the drain
22. field, to see if there was any sewage in the drain field.
23. I dug some holes out there. And I checked the depth of
24. the tank, when I was there--you know, dug down to the top

1. of the tank.

2. Q. All right. Now, you say that was your second visit?

3. A. Yes.

4. Q. Had you made a . . . Let's keep this in chronological
5. order, if we can.

6. COURT: Why don't you get the date of this
7. second visit?

8. Q. What was the date of your second visit--not your . . .

9. A. The second visit after . . . in other words, the first
10. visit after the inspection?

11. Q. Yes.

12. COURT: You visited on November the fifth
13. of 1971. Now, when was your second
14. visit?

15. A. November eighteenth, 1975.

16. Q. And on whose behalf did you go out there?

17. A. Mr. French.

18. Q. And was he there when you were there?

19. A. Yes, sir.

20. Q. And did you, at that time, drill any holes or anything?

21. A. No, not at that time.

22. Q. What did you-all do that day?

23. A. We went into the house, to investigate some things that
24. Mr. French wanted us to look at. One was the flushing of

1. the toilets, that he said were slow. And also to check
2. some spots in the rug--some wet spots--that he said he
3. thought might be sewerage.
4. Q. All right, sir. Did you check the slow toilets?
5. A. Yes.
6. Q. Did you find . . . what did you find?
7. A. They were not flushing very well at that time. They were
8. very slow and sluggish.
9. Q. Did they flush?
10. A. They flushed, but they were very slow in flushing.
11. Q. All right, sir. Now, did you inspect the spot on the
12. rug?
13. A. Yes, sir; we looked at that.
14. Q. And where was the spot on the rug located?
15. A. Near the corner of the family room, as I recall.
16. Q. All right. If you call the house as facing south, so
17. that if you stood in the front doorway of the house
18. looking out, you would be looking south . . .
19. A. Outside, yes.
20. Q. . . . could you tell the jury where the spot on the rug
21. was--north, east, south, or west--or what corner?
22. A. Looking south--I was standing in the room looking south,
23. toward the front of the house, it would be in the south-
24. eastern corner of the room.

1. Q. You're sure it would not be in the southwestern corner?
2. A. Southwestern corner? I'm trying to figure . . . I
3. believe it would be the southeast, Crimora being on the
4. eastern side of the house.
5. Q. Thank you, sir. Now, Mr. Lindsay, that inspection was
6. made on what day?
7. A. On November eighteenth, 1975.
8. Q. Could you tell whether or not, at that time--what the
9. cause of the toilets' flushing slowly was?
10. A. No, sir.
11. Q. Did you again go back out to the home?
12. A. On this visit that I spoke about prior to this; yes, I
13. made another visit myself.
14. Q. Did you go out there with anybody?
15. A. No. I was alone--other than . . . Do you mean from our
16. Department?
17. Q. Mmm hmm.
18. A. Just myself from our Department.
19. Q. And that was the time you checked the toilets?
20. A. Yes, sir. Mmm hmm.
21. Q. And this spot on the rug. Now, Mr. Lindsay, did you
22. check to see whether or not the toilets had a lot of
23. water in the tank?
24. A. No, sir; we didn't look in the tank.

1. Q. In other words, your entire inspection, as I understand
2. your testimony, had to do with the septic system which
3. was outside of the house?

4. A. Yes, sir.

5. Q. All right. Now, after that visit, you came back another
6. time; is that right?

7. A. Now you're confusing me. Do you mean . . .

8. Q. After the visit . . . All right, you came out there in
9. November of 1975, for the second visit?

10. A. Right.

11. Q. Did you make a third visit?

12. A. Yes, sir.

13. Q. Do you know when?

14. A. I don't have the exact date on here. Oh, on November
15. twenty-fifth. Yes.

16. Q. And what did you find on November twenty-fifth; and what
17. did you do?

18. A. I looked again at the toilets inside the house, to see
19. whether or not they were flushing. The one on the ground
20. floor was flushing satisfactorily, and the one upstairs
21. was still a little bit sluggish, but it was flushing.

22. Q. Would it be fair . . .

23. MR. ALLEN: Don't lead him now.

24. Q. Let me ask you this: Was there a difference in the toilet

1. upstairs from the first day you were there to the second
2. date?
3. A. It was flushing somewhat better, but still sluggish.
4. Q. Did you make any inquiry as to why the one downstairs
5. may have worked a little better?
6. A. No, sir.
7. Q. Did you, on this visit, drill the holes?
8. A. Yes, sir.
9. Q. What was your purpose in drilling the holes?
10. A. To determine whether water could possibly be getting into
11. this corner of the building from the outside, to see
12. if there was any evidence of any water in the ground
13. down around the footers.
14. Q. Water or sewage?
15. A. Sir?
16. Q. Water or sewage?
17. A. Sewerage.
18. Q. Did you find . . . what did you find when you drilled the
19. holes?
20. A. It was dry.
21. Q. Did you do anything out in the septic field itself?
22. A. Yes, sir.
23. Q. What?
24. A. I checked on the depth of the drain field, to see if

1. it was still at the depth that it was at the time that I
2. inspected it.
3. Q. And what did you find?
4. A. It was still the proper depth, in the drain field area.
5. Q. What is the depth?
6. A. A thirty-inch depth--in other words, about a twelve- to
7. fourteen-inch cover over the drain field digging, over
8. the gravel in the ditch.
9. Q. Did you check the height of the top of the septic tank
10. itself?
11. A. Yes, sir.
12. Q. What did you find?
13. A. To the best that I can recall, it was approximately
14. thirty inches down to the tank top.
15. Q. Did you make a report?
16. A. No, sir, not in writing. I just have the letter that
17. Mr. Wade wrote.
18. Q. Was Mr. French with you at this time?
19. A. No, sir.
20. Q. Did you subsequently report to Mr. French, as a result of
21. your two visits?
22. A. I did not, myself.
23. Q. Did he ever call you, or talk to you, as a result of the
24. visits?

1. A. No, sir.

2. Q. What did you do with this information you had obtained?

3. A. I turned it over to my supervisor.

4. Q. Who is . . .

5. A. Mr. O. B. Wade.

6. Q. Mr. O. B. Wade?

7. A. Yes, sir.

8. Q. Mr. Lindsay, in your capacity with Augusta County, you

9. have to pass and fail sewage systems, or septic tank

10. systems, as I understand it; is this correct?

11. A. Yes, sir.

12. Q. When you . . . as a result of your two investigations, or
13. your investigation when you drilled the holes, would you
14. pass or fail the septic system as you found it?

15. MR. ALLEN: That's a question for the jury. It
16. was made three weeks after the house
17. was empty. He has testified it was
18. a spot check; that he found, where
19. he spot-checked it, the proper depth.
20. I know what his answer is going to
21. be, what he found--he found nothing
22. wrong. He has already testified to
23. that.

24. COURT: He has already testified to what he

1. found.
2. MR. THOMAS: I believe I am entitled to ask him,
3. Your Honor, if . . . He's an expert;
4. it's his job to pass or fail them,
5. and he was there; and I'm asking him
6. if he would pass it or fail it.
7. COURT: I don't think so. I think he can
8. testify to what he observed--and
9. that's a question for the jury.

10. Q. All right. Did you observe anything wrong with the septic
11. system?

12. A. No, sir.

13. Q. That's all.

14.

15. Cross Examination by Mr. Allen:

16. Q. This third visit, I believe you testified, was made
17. approximately three weeks after the house was vacated?

18. A. (No response.)

19. Q. Well, November twenty-fifth?

20. A. Yes, sir.

21. Q. You don't know when the house was vacated; but the visit
22. was made November the twenty-fifth. And that house was
23. empty at that time?

24. A. Yes, sir.

1. Q. And presumably the septic system drains when it's not
2. used, like any other system?

3. MR. THOMAS: Objection, Your Honor.

4. MR. ALLEN: What's the matter with the question?

5. MR. THOMAS: I think that's . . . I don't know
6. whether a septic system--how a septic
7. system works.

8. MR. ALLEN: I'm asking him if the septic system
9. and the soil around it doesn't drain,
10. like anything else.

11. COURT: This is cross examination. I think
12. it's permissible to ask the question.

13. MR. THOMAS: What evidence do we have that the
14. house was vacant?

15. COURT: Are you objecting to it?

16. MR. THOMAS: Yes, sir.

17. COURT: All right. I'll overrule your
18. objection. Continue, Mr. Allen.

19. A. Would you repeat the question?

20. Q. Isn't it true that the soil around a septic system, when
21. it's not in use, the lines and so on drain, dry, if it's
22. dry weather?

23. A. It will drain, yes, sir.

24. Q. And you were making a spot check . . .

1. A. Just around the footings, yes, sir.
2. Q. . . . periodic checks, in spots here and there?
3. A. Yes, sir.
4. Q. Actually, when you checked the system, in 1971, it was
5. uncovered?
6. A. Yes, sir.
7. Q. And you haven't checked the system uncovered since that
8. time?
9. A. No, sir.
10. Q. And what damage in places that you didn't check, that
11. could have been caused by backfilling, or settling, or
12. whatever--there is no way for you to check that without
13. uncovering the system?
14. A. That's correct.
15. Q. Now, on November the eighteenth, when you checked it,
16. did you make a record of that?
17. A. On the eighteenth?
18. Q. Yes, sir.
19. A. Just what was in the letter.
20. Q. I wonder if I could see your documents here?
21. A. Yes, sir.
22. Q. Right on the bottom of this sheet, it's dated November
23. 5, 1971, but it has a notation on the top, visited . . .
24. what?

1. A. Property, on Tuesday, November eighteenth, 1975.
2. Q. And at the bottom there is a hand-written notation?
3. A. Yes, sir. Do you want me to read that?
4. Q. Yes, sir--please.
5. A. (Reading.) Mr. Wade and myself visited property November
6. eighteenth, 1975. Mr. Wade smelled raw sewerage in
7. corner of basement in rug. And the notation by Mr. Wade
8. at the bottom is: Appeared to have ammonia, NH_4 odor,
9. ammonia odor.
10. Q. Ammonium hydroxide, NH_4 ?
11. A. Right.
12. Q. That Mr. Wade smelled raw sewage, and that's . . .
13. A. Fresh sewerage, it should be.
14. Q. Sir?
15. A. Fresh sewerage. Well, raw--fresh.
16. Q. Fresh, or raw?
17. A. Mmm hmm.
18. Q. And that was made on the bottom of your inspection record?
19. A. Yes, sir. I made that after we made the visit.
20. Q. All right. I think that's all my questions.
- 21.
22. Re-Direct Examination by Mr. Thomas:
23. Q. Mr. Lindsay, I believe I already asked you . . .
24. MR. ALLEN: Excuse me--before you get started,

1. I'd like to put that report into the
2. evidence, the inspection report.

3. This will be Number Five.

4. COURT: It is admitted into the evidence and
5. identified as Defendants' Exhibit
6. Number Five. (Exhibit marked.)

7. Q. Mr. Lindsay, I believe I asked you if you and I had ever
8. talked together?

9. A. Yes.

10. Q. And what was your response?

11. A. I don't believe I have talked to you before. I thought
12. I talked to Mr. Sills.

13. Q. Have you talked to Mr. French, or anyone on behalf of
14. Mr. French, about this situation?

15. A. I have not, myself.

16. Q. Whose writing is on this pink slip?

17. A. Mine.

18. Q. And that pink slip appears to have been filled out on
19. two separate occasions?

20. A. Right. Yes, sir.

21. Q. All right. On the . . . on which occasion did you note
22. this sewage situation with Mr. Wade?

23. A. That was on the eighteenth--November eighteenth of 1975,
24. when we made our first visit as a result of the complaint.

1. Q. On which occasion did you . . . Did you note sewage again,
2. when you went back and checked?

3. A. No, sir.

4. Q. You did not?

5. A. This is a smell. We smelled it.

6. Q. Now, when you noted that you said raw sewage, and then
7. you added something to that--would you explain what you
8. smelled, or what was smelled? What's the difference
9. between "raw" and "fresh"?

10. MR. ALLEN: I think that's . . . we're almost
11. in the rule of parol evidence, if
12. it please the Court. I am putting
13. the exhibit in, for what's stated,
14. at the time.

15. COURT: And what is your question, Mr. Thomas?

16. MR. THOMAS: "Raw" sewage is one thing; "fresh"
17. is something else. Now, "fresh,"
18. I believe, is going to explain what
19. the smell was.

20. COURT: Can you differentiate between "fresh"
21. and "raw"?

22. A. Well, "fresh" would be that which is--I assume, would be
23. flushed right out of the commode.

24. COURT: And then "raw"?

1. A. "Raw" would be as it first enters the septic tank, or
2. right into the septic tank, prior to treatment, in other
3. words.

4. COURT: Now, does that satisfy you?

5. A. Untreated sewage.

6. Q. Now, Mr. Lindsay, what I am trying to get at here, you
7. have listed ammonia, and something else. I want to know
8. whether that is sewage that was smelled, or could have
9. been sewage?

10. COURT: Just a minute--before you answer
11. that. Are you a chemist?

12. A. No, sir.

13. COURT: I don't think he can answer that.

14. MR. ALLEN: I agree with the Court's point.

15. COURT: I don't think he's qualified to
16. tell--the effect of ammonia and
17. sewage . . . unless the man's a
18. chemist.

19. Q. Mr. Lindsay, can you differentiate between . . . What
20. I'm trying to say is: Could the smell you have smelled
21. been produced by a dog on the rug?

22. MR. ALLEN: That's a self-serving, speculative
23. question; and it's equally objection-
24. able. That's the very thing he

1. wants to argue to the jury.

2. COURT: It's all a fact to be determined by
3. the jury, all from the evidence.

4. The jury are the triers of fact.

5. MR. THOMAS: Well, that's fine with me, Judge.

6. But are you going to allow me to

7. ask that question, or are you

8. denying me my right?

9. COURT: No, I'm not allowing you to ask it

10. before the jury now. It's up to

11. them to determine.

12. MR. THOMAS: May I rephrase the question, and

13. then object . . .

14. COURT: All right; let me see the changes in

15. it.

16. Q. All right, sir, when you noted that Mr. Wade smelled

17. something there, was that his smelling it, or yours?

18. A. To the best that I can recall, he smelled it.

19. Q. Did you smell it?

20. A. Not that I can recollect.

21. Q. Are you able to say anything other than what Mr. Wade may

22. have told you he smelled?

23. A. No, sir.

24. Q. You went with Mr. Wade?

1. A. Yes, sir; I was there in the room with him.

2. Q. That's all.

3.

4. Re-Cross Examination by Mr. Allen:

5. Q. Isn't it true, Mr. Lindsay, that you were suffering from a
6. sinusitis attack that morning?

7. A. Yes, sir.

8. Q. Thank you. And your--whatever the big word is--your
9. smeller was impaired?

10. A. Yes, sir.

11. Q. Thank you. That's all.

12.

13. WITNESS - ORIN B. WADE

14. Direct Examination by Mr. Thomas:

15. Q. What is your full name, sir?

16. A. Orin B. Wade.

17. Q. And, Mr. Wade, do you work with the Health Department?

18. A. Yes, I do.

19. Q. Whose, and in what capacity?

20. A. I am supervisor sanitarian for the Augusta County,
21. Rockbridge County, Staunton, Waynesboro Health Department.

22. Q. Thank you, sir. Did you go with Mr. Lindsay, who just
23. passed you in the hall, to see a home owned by Mr.

24. Armentrout?

1. A. Yes, I did.
2. Q. And on whose behalf--or why--did you go there?
3. A. Mr. French asked me to go there.
4. Q. Mr. Wade, when you went to the house, did you take any
5. positive action, or what--can you describe for the jury
6. what you did?
7. A. Well, Mr. French was concerned about the commodes on both
8. floors of the house not working, and about an odor in a
9. corner of the--I reckon you'd call it the rec room, in
10. the lower floor. And I observed, when he flushed the
11. commodes, how they acted. And I also smelled the odor
12. that he wanted me to smell, in the corner of the rec
13. room.
14. Q. After you made your inspection on the eighteenth, did you
15. ever report to Mr. French?
16. A. No, I didn't talk to Mr. French any more after that, to
17. the best of my knowledge, other than what I told him on
18. the day I was there.
19. Q. All right. Now, I believe you have in your hand a pink
20. sheet? (Defendants' Exhibit Number Five.)
21. A. Yes, sir.
22. Q. And on that pink sheet is a note by Mr. Lindsay that you
23. smelled raw sewage?
24. A. That note is on here, yes.

1. Q. Can you tell the jury what . . . I'm not asking you to
2. say what Mr. Lindsay meant by that; but it's your smell--
3. what did you smell?
4. A. I smelled a urine odor, is what I called it to Mr. French.
5. I based this on it having an ammonia-type of odor, which
6. would indicate stale urine or stale sewage odor; and I
7. did not indicate where it came from. I did say it was
8. urine, or sewage, in the first stages of decomposition.
9. Q. And where did you smell this?
10. A. It was the front--I guess you'd call it the southeast
11. corner of the recreation room, I believe it was.
12. Q. And could you tell, from what you . . . what was causing
13. the smell?
14. A. No, I could not.
15. Q. Could you tell whether it was as a result of sewer or
16. dogs or what?
17. A. No, I could not tell.
18. Q. Did you make any inspection whatever of the septic system?
19. A. Nothing more than a visual inspection, and my observation,
20. just looking at it in the front yard.
21. Q. Was it up to Mr. Lindsay to go out and make that type of
22. an inspection later?
23. A. Do you want to clarify your question--I don't really . . .
24. Q. Did Mr. Lindsay, after November eighteenth, when you

1. were there and smelled this smell . . .

2. MR. ALLEN: He has testified that he did go
3. back--there's no question that he
4. went back.

5. Q. Why didn't you personally do it?

6. A. Go back? Mr. Lindsay would be the proper person to do
7. it. He's the sanitarian that works out there.

8. Q. I see. And did you subsequently report your findings
9. and everything to Mr. Simon Painter?

10. A. Yes, I did. I wrote him a letter.

11. Q. Did he ask you to write him a letter?

12. A. Yes, he did.

13. Q. Thank you very much. No further questions.

14.

15. Cross Examination by Mr. Allen:

16. Q. As I understand then, Mr. Wade, you were unable to tell,
17. from the odor that was in this downstairs room, which I
18. guess we can call a family room--you were unable to tell
19. what that was, other than that you called it "raw sewage,"
20. or stale sewage or stale urine?

21. A. Yes. I indicated it possibly could be a urine odor, yes,
22. sir; that is correct. Stale urine.

23. Q. On that copy then, there, I believe it was called "raw
24. sewage;" is that right?

1. A. Now, are you talking about this note here?

2. Q. Yes, sir. Down at the bottom, on that note. Just read
3. it again, please, sir.

4. A. Mr. Lindsay made a note on this, which we do quite often
5. so we can remember later on how things went. (Reading)
6. Mr. Wade and myself visited property on November eighteenth.
7. Mr. Wade smelled a raw sewerage in corner of basement in
8. rug.

9. And then, as you will notice, I put under that:
10. Appeared to have an ammonia odor. Of course, I couldn't
11. say for sure just what it was.

12. Q. That's all the questions I have, Mr. Wade.

13.

14. Re-Direct Examination by Mr. Thomas:

15. Q. Let me get one thing straight, so that . . . After Mr.
16. Lindsay had put the comment about raw sewage, that's your
17. writing that says underneath a urine odor, or ammonia
18. odor?

19. A. Ammonia odor, yes.

20. Q. That's all. Thank you very much.

21.

22. WITNESS - KENNETH RAY SNYDER, SR.

23. Direct Examination by Mr. Thomas:

24. Q. Will you state your full name, sir?

1. A. Kenneth Ray Snyder, Sr.
2. Q. And, Mr. Snyder, what is your occupation?
3. A. I am the plumbing inspector for Augusta County.
4. Q. Mr. Snyder, did you have an occasion to go to a home
5. owned by Mr. and Mrs. Armentrout, to inspect the plumbing?
6. A. I did.
7. Q. What did you find?
8. A. Well, when I entered the house, I detected sewer gas
9. odor. I informed Mrs. Byrd as to what they could do with
10. this--and also the water closet on the second floor was
11. sluggish.
12. Q. Did you inspect the septic system?
13. A. No, sir.
14. Q. Did you inspect the plumbing any further?
15. A. From what I could see. Most of it was concealed.
16. Q. Were you able . . . Are you sure you had sewer gas, or
17. could it have been anything else; or do you know?
18. A. No, it was sewer gas.
19. Q. Do you know from where it came?
20. A. From my detection, it either came from a floor drain, or
21. an automatic washer drain. These traps are protected by
22. water; if they're not in use, the water will siphon out
23. and let the odor come back through 'em.
24. Q. If they're what?

1. A. If they're not in use. All traps have water to 'em, to
2. a seal. And the water will evaporate, letting the odors
3. come back into the house.
4. Q. What was the date of your visit?
5. A. I don't know, sir.
6. Q. Did you visit with anyone else?
7. A. No, sir.
8. Q. At the time you visited, was the house occupied?
9. A. No, sir.
10. Q. Did you do anything to change what you found?
11. MR. ALLEN: Now, don't . . .
12. Q. Did you take any action at the house, other than inspect?
13. A. Other than word of mouth, no, sir.
14. Q. Did you give any advice as to what could be done?
15. A. Yes, sir.
16. Q. What advice did you give, and to whom?
17. A. I suggested that they went to each fixture--that I did
18. not try them to see if they were operating--and put water
19. into the traps. This would give it a seal. This would
20. eliminate the sewer gas coming back into the house. The
21. water closet, they had a number of drinking cups around
22. the area, and I thought perhaps maybe one of those had
23. got stuck in the trap of the stool when it was flushed,
24. causing an obstruction. The other thing was, the vent

1. could have possibly been stopped up. And I suggested they
2. flush those out.

3. Q. And who did you make these suggestions to?

4. A. Mrs. Byrd.

5. Q. That's all.

6.

7. Cross Examination by Mr. Allen:

8. Q. You don't know when this was?

9. A. No. It's been a year.

10. Q. Was it shortly after the house became vacant, to the
11. best of your knowledge?

12. A. I don't know, sir. I don't know how long it had been
13. vacant.

14. Q. That's all of my questions.

15.

16. WITNESS - RAYMOND BEATHE

17. Direct Examination by Mr. Thomas:

18. Q. Will you state your full name?

19. A. Raymond Beathe.

20. Q. How old are you, sir?

21. A. Thirty-four.

22. Q. And where do you live?

23. A. Weyers Cave.

24. Q. Where do you work?

1. A. Welty Cline, construction.
2. Q. How long have you worked for him?
3. A. Eleven years.
4. Q. Do you drain septic tanks for him?
5. A. Yes, I do.
6. Q. Did you drain the Armentrout septic tank?
7. A. Yes, I did.
8. Q. For whom did you do it?
9. A. Mr. Armentrout, the first time.
10. Q. Who did you do it for the second time?
11. A. I'm not sure which one called. I don't know if it was
12. the real estate . . . or Mr. French. I'm not sure--it's
13. been so long ago, I don't remember which one.
14. Q. Drumheller? Is that the name of the second person?
15. A. (No response.)
16. Q. Well, never mind, Mr. Beathe; let me ask you this: Did
17. you drain it for Mr. Armentrout?
18. A. Yes, sir.
19. Q. Do you recall when that was?
20. A. No, I don't.
21. Q. What do you do, in the course of draining it?
22. A. Dig it up, take the top off it, take everything out, and
23. make sure all the lines are working.
24. Q. And you did this while Mr. Armentrout was living in the

1. home?
2. A. Yes, sir.
3. Q. Did you find any problems when you dug it up and cleaned
4. it out?
5. A. Yes. It was stopped up between the tank and the house.
6. Q. And what did you do about that?
7. A. Brought the line open--got it open and in working con-
8. dition.
9. Q. When you closed it up, was there anything wrong with the
10. septic system?
11. A. No, sir.
12. Q. Did you go back into the house after you did that for
13. Mr. Armentrout?
14. A. Yes, sir.
15. Q. At whose request?
16. A. His.
17. Q. Mr. Armentrout's?
18. A. (Witness indicating by nodding head affirmatively.)
19. Q. Did you take the top off of . . . Or, what did you do when
20. you got into the house?
21. A. Well, this is Mr. Armentrout--right? (Indicating Mr.
22. Armentrout.)
23. Q. Yes.
24. A. Well, he just wanted me to come in and check the odor

1. in the house, as far as I can remember--or do something
2. in the house.
3. Q. What did you do? Did you check odors?
4. A. Yes. And it was a drain in the utility room, where it
5. was coming up in; and I think we run some water in that,
6. to make sure it was going on into the septic tank--as
7. far as I remember.
8. Q. And did you check any other odors?
9. A. No.
10. Q. Did you go out there again after that, with a number of
11. people?
12. A. Yes.
13. Q. At that time, when you went out there with a number of
14. people, do you recall who the people were?
15. A. Valley Real Estate, that guy, Mr. French . . .
16. Q. And what did you do on that occasion?
17. A. They wanted me to come in the house and check the odors--
18. a leakage, or spill or something, that had been on the
19. carpet in one corner of the house. And they wanted me
20. to check the odor, and see if it was sewer odor. And I
21. couldn't tell, because it had done been lime and stuff
22. put down, and tried to correct the odor. And there wasn't
23. no way of telling what it was or nothing, professionally,
24. by me.

1. Q. Did you do anything in any of the bathrooms?
2. A. I flushed the commode several times, the second time I
3. was there.
4. Q. And what did you find, and what did you do, in that
5. regard?
6. A. Well, as far as I can remember, I adjusted the float in
7. the back of one of them, to make it flush a little better--
8. or something--and flushed it several times, to make sure
9. it was working.
10. Q. And on that occasion, was Mr. French with you?
11. A. Yes, sir.
12. Q. Did you find anything wrong?
13. MR. ALLEN: Now, don't . . .
14. Q. All right; let me ask you this: As a result of your ad-
15. justing, how did the . . . would you describe for the
16. jury how the commode flushed?
17. A. At that time, I think it was flushing all right.
18. Q. And at that time, Mr. French was with you?
19. A. Yes.
20. Q. Did you and he have any discussion about this?
21. A. Yes, we did.
22. Q. And what did you-all discuss?
23. A. We just . . . He was asking me whether it would be
24. possible for a line to be busted, and leaking back. And

1. I told him there wouldn't be no way of telling unless
2. you'd dig down about four foot on the outside of the
3. house to see if it was wet or anything--been seepage out
4. there. And we looked at the carpet and stuff that had
5. been ruined, or wet.

6. Q. That's all.

7.

8. Cross Examination by Mr. Allen:

9. Q. You told him that the only way you could tell was to dig
10. down and expose the line . . .

11. A. Yes, sir.

12. Q. . . . to ascertain whether or not there was some defect
13. in the sewage line? And was this statement made in the
14. presence of Mr. Painter and Mr. Armentrout?

15. A. (No response.)

16. Q. They were all there at the same time, weren't they?

17. A. Well, I was in the house talking to him first, before
18. they arrived.

19. Q. All right. But did you make the same statement after they
20. had arrived?

21. A. I think so.

22. Q. And did Mr. French offer to have the line exposed, to
23. ascertain whether or not this was true?

24. A. Yes. Mr. French wanted to dig the tank up, at his expense--

1. as far as I can remember--and check it out and everything.
2. And somebody said no, that there wouldn't be no digging
3. done.
4. Q. Who said that?
5. A. I don't remember.
6. Q. Mr. Painter?
7. A. I don't remember that.
8. Q. Mr. Armentrout? And did they say, "That's your problem.
9. You bought this house. And you're not going to dig it
10. up." Is that what they said?
11. A. It's been so long, I couldn't actually recall.
12. Q. You're not saying I'm wrong--but you just say you don't
13. recall?
14. A. Yes, sir.
15. Q. But it was stated, "You're not going to dig it up"?
16. A. I can remember someone saying that; yes, sir.
17. Q. All right. Now, you found there were odors in the utility
18. room. Actually, Mr. Armentrout had complained to you
19. about odors down in that utility room, hadn't he?
20. A. Yes. It had backed up.
21. Q. Did he tell you water had backed up in the utility room?
22. A. Yeah, because there was stoppage in the pipe.
23. Q. It was stopped in the pipe. That's the same pipe that
24. drains from that utility room, drains in the same pipe

1. that drains all the sewage into the septic system?
2. A. Yes, sir.
3. Q. Right?
4. A. Right.
5. Q. And one reason to cut the bulbs down, and not have water
6. in the tanks on the stools in the closets, is so you
7. don't put much water down that line, so it doesn't back
8. up; isn't that right? It could be one reason . . .
9. A. Yeah, some people thinks they're saving water by doing
10. that.
11. Q. It also prevents the water from backing up where the
12. lines are stopped up; isn't that correct?
13. A. It also prevents the commode and stuff from working right,
14. too.
15. Q. Right. They get sluggish and slow--but they don't back
16. into your basement, or are not as likely to back into your
17. basement, because . . .
18. A. Right. Because there's not as much water going down.
19. Q. . . . there's not as much water going down. And then,
20. when a house sits for two or three weeks empty . . . It's
21. in evidence you were there on November the twenty-fifth.
22. When a house sits for two or three weeks empty, that line
23. is going to seep out, so that the commodes will work a
24. little better, won't they?

1. A. Yes, that can happen.

2. Q. Did you ever . . . Did you know the line had been Roto-
3. Rootered out?

4. A. Not only except when I done it.

5. Q. You rooted it out one time? And did somebody . . . You
6. didn't Roto-Rooter it out, though, did you?

7. A. No. I just had one of those regular tapes you run
8. through it.

9. Q. A tape that you run through and clear the line out?

10. A. Yes.

11. Q. That was done when you pumped the tank?

12. A. Right.

13. Q. And you weren't aware of the fact that it had been
14. Roto-Rootered, in addition to that?

15. A. No, sir.

16. Q. I believe that's all the questions I have.

17. MR. THOMAS: No further questions. Your Honor,
18. we rest. We would have a motion we'd
19. like to make, but in the understanding
20. of what the situation is, I'll
21. reserve that, and make it after
22. Mr. Bradley . . .

23. COURT: Well, it's right near lunch time.

24. MR. ALLEN: Can I call Mr. Bradley? It should

1. be brief. It should be very brief.
2. COURT: All right. Then we'll recess for
3. lunch; and I'll hear your motion
4. after lunch.

5. MR. ALLEN: Mr. Bradley--I don't want to go into
6. his health situation, but he is not
7. well and hasn't been well. And I
8. appreciate the Court allowing me to
9. call him out of order. He would not
10. normally be our first witness.
11. COURT: That's perfectly all right. All
12. right.

WITNESS - C. T. BRADLEY

15. Direct Examination by Mr. Allen:

16. Q. You are Mr. C. T. Bradley?

17. A. Yes, sir.

18. Q. And you live at Stratford Hills?

19. A. Stratford Farms.

20. Q. Stratford Farms? That's just this side of Waynesboro?

21. A. Yes, sir.

22. Q. And your business is what?

23. A. I'm a building contractor. I haven't been doing any-
24. thing for quite a while.

1. Q. You have been ill for some time?
2. A. Yes, sir.
3. Q. How long did you build, Mr. Bradley?
4. A. Well, I haven't started anything new since back in the
5. early summer. My partner, he finished that part up.
6. Q. Prior to that time, how many years have you been building?
7. A. Oh, nine or ten, roughly. I can't say exactly.
8. Q. Do you know Mr. French?
9. A. Yes, sir, I've met Mr. French.
10. Q. How do you know Mr. French?
11. A. It hasn't been too long. I think it was last November,
12. I think, or maybe a little before that, I met him.
13. Q. Did you know him prior to that time?
14. A. No, sir, I did not.
15. Q. Did Mr. French ask you to go out to look at a house?
16. A. Yes, sir; he told me he was in the process of buying
17. a home, and he asked me if . . . my daughter had talked
18. to his wife, or something, about some problems--and
19. would I go out with him and . . .
20. Q. Did you go visit the house?
21. A. Yes, sir. He came down and picked me up, and I went out
22. with him.
23. Q. And would you tell us how you went in the house, and go
24. ahead from there, please, sir?

1. A. He drove in the back, and we went in the back door. It
2. looked to me like maybe a washer room, or utility room.
3. Q. Do you remember when this was?
4. A. When?
5. Q. Yes, sir.
6. A. It seems to me like it was in around November.
7. Q. All right. Of last year? A year ago?
8. A. Yes, sir.
9. Q. November--thirteen months ago?
10. A. Yes, sir.
11. Q. Go ahead, sir.
12. A. And he said he had an odor in the house, and that it
13. was right bad, and . . .
14. Q. Had what in the house?
15. A. An odor.
16. Q. An odor?
17. A. Yes, sir.
18. Q. All right.
19. A. And it was right bad, because when I went in the door,
20. I stood there a minute or two, and it didn't take me
21. very long to find out.
22. Q. Go ahead.
23. A. And we went on in the . . . it was a split foyer house,
24. or maybe a split foyer. Anyway, you went up so many

1. steps to the landing, and then you went on up to the
2. second floor.

3. Q. All right.

4. A. And he went over to the corner and pulled up some carpet,
5. and he said, "Right here's where I'm having a lot of that
6. odor coming from, or most of it," it seemed to me, "and
7. I've tried to dry it up, and I've tried to put everything
8. that I know of on it, to . . ."

9. Q. This is what he said?

10. A. Mr. French.

11. Q. Go ahead, sir.

12. A. That, "We've used most everything, and it's not helping."

13. Q. What did the odor smell like to you, Mr. Bradley?

14. A. It smelled to me like urine, and . . . septic tank--I
15. mean, a septic tank was spilling out, or overrunning,
16. or something like that.

17. Q. All right. Go ahead, sir.

18. A. And he asked me about it, what did it smell like. And I
19. told him that's what it smelled like, to me. And I said,
20. "Well, you're going to have to open up the front door."
21. I had walked up there on the steps, and I said, "It's
22. getting in my eyes," and the tears were running down
23. my eyes.

24. Q. You mean it was bad enough to make tears come to your eyes?

1. A. Yes, sir. And it was strong; it was really strong.

2. And, of course, the house had been shut up, I guess, all
3. day. And he opened the front door, and took me on up-
4. stairs. He says, "Let's walk up to the commode." And I
5. said, "How's your commode?" and he said, "Well, it
6. flushes slow." And he did, and the water went down real
7. slow.

8. Q. How high did the water come up in the commode?

9. A. Well, the water was already up--some water already up in
10. it, you see.

11. Q. But after you flushed it, what happened?

12. A. It just went . . . it didn't go all the way down. I mean,
13. it just went down in the basin, and just started filling
14. up real slow. It never did flush right. It'd fill right
15. on up to the lid, and I thought it was coming over on the
16. floor. But it did, it'd just fill up real slow and stop.

17. Q. All right, sir. Have you been back to that house since
18. that time?

19. A. No, sir. I haven't talked to Mr. French, I don't believe--
20. maybe just maybe have spoke to him, or something.

21. Q. And you say that odor was so bad that you had to open
22. the front door; and it brought tears to your eyes?

23. A. I told him to open the front door, it was just burning my
24. eyes so bad I couldn't stand it.

1. Q. And from your observation, and your experience as a
2. builder, what about the livable condition of that house
3. with that odor?

4. A. I told him I couldn't move my family into that house.
5. I couldn't live in it myself. And I couldn't move my
6. family in there, under the conditions, unless it was
7. fixed. And I couldn't.

8. Q. That's all.

9.

10. Cross Examination by Mr. Thomas:

11. Q. Mr. Bradley, how many septic systems have you built?

12. A. How many which?

13. Q. Septic systems, have you built?

14. A. Oh, I haven't built none, myself. I contract them out
15. to build. But I've been around a lot of older houses,
16. where, you know, there's . . .

17. Q. Do you have a septic system at your home?

18. A. Not where I'm at right now. I did at the one I moved
19. out of.

20. Q. Do you know what may have been put on that corner of the
21. rug to get the smell up?

22. A. No, I don't know what he was using. He told me he had
23. disinfected it, and used everything he could think of.

24. Q. He had used everything he could think of to put on it?

1. A. Everything that he thought would clear it up.

2. Q. Might ammonia have been used; or do you know?

3. A. I didn't smell any ammonia. I know ammonia.

4. Q. Well, what was making your eyes water, and you cry--or
5. do you know?

6. A. Well, it was sewage of some kind. I mean, that's what it
7. seemed like to me.

8. Q. Have you ever had occasion to have been called on to make
9. an expert opinion as to a sewer smell or not before?

10. A. No, I haven't. I've been around a lot of it, but I
11. haven't been called out any, because it wasn't my line of
12. work. Mr. French said he didn't know anybody around--he
13. was new in the neighborhood. And he'd found out through
14. his wife that I was a builder. And he was trying to find
15. out where it was at, and what this was.

16. Q. And as you faced the house . . . As you were standing in
17. the front door, breathing air, if you would be looking
18. south, as you were standing in the house looking out the
19. front door--if you would be looking south--could you tell
20. us which . . . could you give us directional signals as
21. to which corner you went to--north, south, east, west,
22. whatever?

23. A. Which . . . I beg your pardon?

24. Q. Which corner . . . If the house faces exactly south, and

1. as you stood in the front door you would be looking
2. south, could you tell us what corner you went and smelled?

3. A. Which floor?

4. Q. Which corner? Which corner of the house?

5. A. That I would be standing in?

6. Q. Yes, sir.

7. A. Well, I didn't look at the house that good, but I feel
8. like I'd be looking in the front of the house, somewhere
9. in the front of the house.

10. Q. All right. And . . .

11. A. Or maybe in the middle, or a little more, maybe, to the
12. upper side. Or something like that . . . where . . . It
13. was after dark, and I wasn't . . .

14. Q. Well . . . no further questions.

15. MR. ALLEN: Nothing further. Thank you, Mr.
16. Bradley.

17. (Lunch recess.)

18.
19. (Out of presence of jury.)

20. MR. THOMAS: If it please the Court, I'd like to
21. make a motion at this point that
22. the Court order and enter directing
23. a verdict in favor of the Plaintiffs.
24. Now, I would ask that on the

1. thus far. And so I don't believe,
2. in due respect to your position,
3. Mr. Thomas--I just don't believe
4. that it's well taken at this time;
5. and I would overrule your motion.
6. You may save your point.

7. MR. THOMAS: I'd like to, Your Honor.

8. COURT: All right, sir.

9. MR. ALLEN: Now, if it please the Court, on
10. behalf of the Defendants, I'd like
11. to make a motion to strike the
12. Plaintiffs' evidence.

13. COURT: I think there are sufficient facts
14. at this stage to go to the jury.

15. MR. ALLEN: May I save my point?

16. COURT: Yes, sir, you certainly may

17. (Jury returns.)

18.
19. WITNESS - DR. MALCOLM TENNEY

20. Direct Examination by Mr. Allen:

21. Q. You are Dr. Malcolm Tenney?

22. A. Yes, sir.

23. Q. Dr. Tenney, your present position is what?

24. A. I am the regional medical director for Northwest Virginia

1. for the Virginia State Department of Health.

2. Q. Did you ever have a similar position with the County of
3. Augusta, or a region of four or five counties?

4. A. Yes, sir; I was the District Health Officer for Augusta-
5. Staunton.

6. Q. And your medical background, your training, is what?

7. A. I went to the Medical College of Virginia, where I
8. received an MD degree; I went to Roanoke Memorial Hospital
9. and interned; and I went to Johns Hopkins University
10. in Baltimore, and received a Master's Degree in Public
11. Health.

12. MR. ALLEN: Any questions about Dr. Tenney's
13. qualifications?

14. MR. THOMAS: No, no question.

15. Q. Dr. Tenney, you don't have the records on this case, do
16. you?

17. A. I have just a copy of a letter I wrote.

18. Q. Do you have any of the records, such as the permit to
19. install a septic system?

20. A. No, sir; I don't have those with me.

21. Q. My opponents have already seen it--and I'm sure they'll
22. vouch for this being an accurate copy. I would ask you
23. whether or not this discloses the existence or non-existence
24. of . . . Well, first of all, identify what that is, if

1. you please, sir?

2. A. This is a permit to install or repair a sewage disposal
3. system.

4. Q. And does that permit identify the nature of the building
5. to which it is to be . . . which it is to serve?

6. A. It indicates a house.

7. MR. ALLEN: And I guess by stipulation this
8. could be stated to be the house that
9. was occupied and sold to the Armen-
10. trouts, and to be purchased by the
11. Frenches; is that all right?

12. MR. THOMAS: Fine.

13. Q. Does that disclose whether or not there was a garbage
14. disposal?

15. A. Let's see--I can't read the writing; it's blurred. Oh,
16. I'm sorry. I'm looking at the wrong place. Right. It
17. says: Garbage disposal, no. There was to be no garbage
18. disposal.

19. MR. ALLEN: We would offer this as an exhibit.
20. This is the license itself. We
21. would offer it as Defendants' Exhibit
22. Number Six.

23. COURT: It is received and so identified.
24. (Exhibit marked.)

1. Q. Now, Dr. Tenney, what is the effect of a garbage disposal
2. in connection with the septic sewage system?

3. A. A garbage disposal system--in a garbage disposal system
4. you grind up cellulose and other organic matter--bones,
5. and other matter--that . . . food that has not passed
6. through the digestive tract of a human--and you put it
7. into the sewage system. This particular type of material
8. is extremely difficult to digest in relationship to human
9. waste.

10. Q. Is it ordinarily advisable not to have a garbage disposal
11. unit on a septic system?

12. A. If you are going to have a garbage disposal unit, you have
13. to design a system to begin with that is considerably
14. larger than you would have if you were not going to have
15. one.

16. Q. And this system was designed not to have a garbage
17. disposal?

18. A. According to that permit, that is correct.

19. Q. Do you recall the problem that was discussed with you,
20. perhaps by telephone, by Mr. French and Mr. Wade, and
21. maybe others, concerning the house that was owned by
22. Mr. Armentrout?

23. A. Yes, sir.

24. Q. Did you also have an occasion, if you please, to discuss

1. this problem with Mr. Wade?
2. A. I'm sure I did. I can't say specifically when--but I'm
3. sure this was discussed with Mr. Wade.
4. Q. And Mr. Lindsay?
5. A. I wouldn't say Mr. Lindsay. I usually work with the
6. supervisor, and he takes care of the other people.
7. Q. What is the effect, if you please, of test borings; and
8. how conclusive are test borings in checking a septic
9. system after it has been covered?
10. A. Well, the point is, if you are trying to check a system
11. to see if it's leaking, for example, and you do test
12. borings, and you happen to bore where the leak is, you
13. would find it. If you bore where it is not leaking, you
14. won't find it. The evidence you get from this can't
15. be conclusive, unless you hit the leaky water.
16. Q. Then a periodic test boring, as a rule, would you state--
17. are or are not conclusive?
18. A. They certainly aren't conclusive.
19. Q. Well, then, what must be done to check a system?
20. A. The only way that a system that you suspect of leaking,
21. or malfunctioning, when you've got back-up in the house,
22. would be to dig up the pipe that connects the house to
23. the septic tank, and to examine the pipe to see if the
24. pipe is ruptured. If there is a leak anywhere along this

1. pipe--even at the septic tank--and it is getting back into
2. the house again, the water usually will run back down the
3. ditch that was dug to lay the pipe in, underneath the
4. pipe. So if you can get and expose the under part of this
5. pipe at the house, and there is no water present, and
6. no sign of leakage, then it would be fairly conclusive,
7. I think--almost a hundred percent conclusive--that it
8. would not be . . . that the water would not be coming
9. into the house from pipe leakage.

10. Q. So you have to dig the pipe up?

11. A. Yeah.

12. Q. You have to expose it?

13. A. Yes.

14. Q. What about slow toilets? What's that an indication of?

15. A. Oh, any number of things.

16. Q. Among other things?

17. A. Well, I mean, of course, when you have a toilet that
18. doesn't function properly, there are so many things that
19. can cause it--all the way from not having sufficient
20. water in the tank at the back of the toilet to being
21. stopped up in the house, to a stoppage anywhere along
22. the pipe, a broken pipe, to a filled septic tank or a
23. flooded drain field and septic tank--anything that
24. obstructs the flow of water.

1. Q. Am I correct then--or tell me whether I am . . . Would
2. it be, Doctor, or would it not be, a condition that would
3. cause you to have some suspicion, perhaps, about a septic
4. system?

5. A. Oh, I think that's one of the things you have to rule
6. out.

7. Q. All right. Now, after the system is initially laid, as
8. the lines are dug, and the tank is set, and all this--
9. when does the inspection take place?

10. A. The inspection takes place after the system has been
11. completed; and then the sanitarian goes out and shoots
12. the lines, to be sure they have the proper amount of
13. fall in them, which is a very critical thing--to look
14. to see that the proper amount of tile and gravel is in
15. the ditches, and that it has been constructed in accordance
16. with the permit. And when everything is constructed, and
17. he can see that this is put in according to the permit,
18. the system is then approved, and the approval slip is
19. filled out and the system is completed.

20. Q. And does the inspector have the permit when he is
21. checking the system?

22. A. Yes.

23. Q. He is aware of the fact, then, that the permit does not
24. provide for a garbage disposal?

1. A. Yes.
2. Q. After that inspection is made, is it after that that the
3. lines are covered?
4. A. Yes.
5. Q. And by covering the lines, or subsequent, what events
6. can occur that could cause problems in the system, that
7. weren't apparent at the time of the inspection?
8. A. Well, of course, again, when you cover the system after-
9. wards, you can have anything from tilting the distribu-
10. tion box, which is probably the most common thing to
11. have happen when you have a malfunction . . .
12. Q. Tilting?
13. A. Tilting the distribution box.
14. Q. It's a form of settling?
15. A. Well, no. If you run over it with a piece of machinery,
16. and cause the box--which is supposed to be perfectly
17. level, so that the water is distributed equally to each
18. one of the lines--if you tilt that box, then all the
19. water will be shunted to one line instead of to each
20. one of them equally; and usually the system malfunctions
21. fairly soon afterwards. Other things you can . . .
22. Q. And you say that can be caused by a piece of equipment,
23. such as a piece of equipment used to fill the lines?
24. A. To fill it--yes.

1. Q. To fill the lines with dirt.

2. A. Right. They are supposed to be careful and not do that,
3. but it can happen.

4. Q. All right. Go ahead.

5. A. And then you can, of course, crush any pipe. You can
6. crush the pipe coming out of the house; the house can
7. settle slightly, and when you've got a cast-iron pipe
8. coming from the house, there's no give in this pipe to
9. amount to anything. And if the house settles a half an
10. inch, it usually breaks the pipe. This happens from
11. time to time. There are just so many things that can
12. happen, it's just hard to list them all. There are just,
13. you know . . . sometimes they use plastic pipe. I think
14. this called for cast iron.

15. Q. What about a Roto-Rooter?

16. A. Well, of course, the biggest problem with a piece of
17. machinery like this is, it breaks the "T" off in the
18. septic tank.

19. Q. It breaks what?

20. A. It breaks the "T" off, in the septic tank, if they
21. aren't careful. And if you do that, then you will have
22. a malfunction because the sewerage that comes into the
23. septic tank comes in through a "T" which introduces the
24. sewerage about eighteen inches under the surface of the

1. water in the septic tank. And the floating material in
2. the septic tank is floating up at the inlet level, which
3. is eighteen inches above, you know, the "T", the bottom
4. of the "T". So that if the "T" breaks off, then the
5. solids can enter the line that comes in, and cause a
6. stoppage that way. And it can interfere with the proper
7. operation of the septic tank. There are so many things.

8. Q. Then the only way to ascertain this is what?

9. A. Dig it up and look at it.

10. Q. Did it up and look at it?

11. A. Right.

12. Q. Did you make that known to Mr. French?

13. A. I told . . . yes, this was told to him on the telephone,
14. verbally. And, also, I wrote a letter that I was requested
15. to write to a Mr. Lee Hickok. This was December first,
16. 1975. And then I tried to explain to him in that letter
17. that it was necessary--that, if I was . . . they asked
18. me to come and look at it. And I said, "There's no
19. point in me going out and looking at the thing, unless
20. you can expose these pipes, and I can look and see whether
21. there is damage to them; and then I can make a judgment."
22. And I wrote him a letter, and informed them of this, and
23. told them as soon as they exposed the pipes I would be
24. happy to come out and look at it. I think I have a copy

1. of that with me here.

2. MR. ALLEN: Your witness.

3.

4. Cross Examination by Mr. Thomas:

5. Q. Dr. Tenney, for my sake and for the jury's sake, we've
6. had some witnesses, and I've gotten confused a little
7. bit. We're talking about a septic system, and we've
8. also had a plumbing inspector for Augusta County to
9. look at it. Now, the septic system--am I correct when
10. I state that the septic system is that part of the system
11. from the house outward?

12. A. Right. Right.

13. Q. So that a problem from the house, the edge of the house,
14. in, is a plumbing situation?

15. A. Technically, right.

16. Q. All right. Now, when you stated that the drain field as
17. dug was made not for anything such as a garbage disposal,
18. you got that information by looking at this--is this
19. correct? (Defendants' Exhibit Number Six.)

20. A. Yes, that's correct.

21. Q. Dr. Tenney, in the area where it speaks of garbage dis-
22. posal system, is that area headed with things that the
23. owner may do and may not do, or that he desires at that
24. time to do?

1. A. This indicates that the system is approved for a house
2. without a garbage disposal.

3. Q. Now, this does, itself?

4. A. Right.

5. Q. If I may ask you, does this state--where it says garbage
6. disposal unit, yes or no--does that whole heading of
7. that paragraph, it says: Owner desires to . . . and
8. then various other things?

9. A. Are you talking about . . . Okay--owner desires to . . .
10. right. In other words, we ask the owner, "What are you
11. going to put in this house?" And then we'll design a
12. system to take care of what they tell us they are going
13. to have in the house.

14. Q. All right. Now I will show you the Record of Inspection,
15. Sewage Disposal System. (Defendants' Exhibit Number
16. Five.) And I will ask you, Dr. Tenney, whether or not
17. you have anything there which denies the owner the right
18. to put a garbage disposal system on that particular thing,
19. with the measurements as it is set up, and set forth
20. there? Now, you have the size of the box, etcetera?

21. A. Right. Yes. In other words, I guess the easiest way for
22. me to explain this is that when somebody comes to us and
23. asks for a permit for a house, to install a sewage disposal
24. system, we ask them, "What do you intend to do in this

1. house," you see; and they say . . . We'll say, "Are you
2. going to have a garbage disposal?" And they'll say,
3. "No, there's no garbage disposal." So we design a
4. sewage disposal system for a house without a garbage
5. disposal system. And this house . . . and that is on the
6. permit, the permit. And the permit says that there is
7. to be no sewage disposal system with a garbage disposal
8. on it attached to this house. The inspection then only
9. looks to a dwelling without a garbage disposal. So it
10. is approving a system as it was . . . as the owner told
11. us he planned to install it. And this is what he got--
12. a sewage disposal system for a house without a garbage
13. disposal. If he put a garbage disposal on it, he would
14. have had a different system than he has without one. It
15. would have cost him more.
16. Q. Well, let's get down to what I'm trying to get at, Dr.
17. Tenney. Now, you have on the pink slip the location,
18. the soil condition; and the fact that an iron house sewer
19. line was used; the size, etcetera, of the septic tank, and
20. distribution box; the subsurface absorption field, and
21. the surface drainage. Now, if Mr. Nuchols had known he
22. had wanted a disposal in the outset, would he have had to
23. change the type of septic tank, etcetera?
24. A. Yes.

1. Q. What would he have had to do?

2. A. This, I would say, to get the specifics of what he'd have
3. to do, you'll have to ask the sanitarian that issues the
4. permit. He would have to . . . and it would depend on
5. that sanitarian's evaluation of the soil conditions, and
6. the . . . And since I don't have all the data, I can't
7. tell you how much additional drain field, and how much
8. of a larger septic tank you would have to have. But in
9. order to accommodate a garbage disposal unit, and a
10. septic tank and drain field, you have to have considerably
11. more drain field and considerably larger septic tank.
12. So, I mean, it's impossible to . . .

13. Q. You are sure of that?

14. A. Yes.

15. Q. All right. Then can you tell . . . Are you aware of the
16. fact that Mr. Lindsay--is he the sanitarian?

17. A. Yes, sir.

18. Q. Are you aware of the fact that he, armed with the infor-
19. mation that you have there, made not one, but two, visits
20. to this home for inspection purposes; and that Mr. Wade
21. was with him--does he work with you?

22. A. Yes.

23. Q. And that these men inspected the house and reported on
24. the house?

1. A. Right.

2. Q. And did they say that this septic system wasn't proper
3. for what was in the house?

4. A. Well, you know, they didn't say anything to me about it
5. being not proper for what was in the house.

6. Q. Well, as the sanitarian, would you not have heard, if
7. there was something going on?

8. MR. ALLEN: I think that's a speculative
9. question.

10. Q. Well, Dr. Tenney, aren't these people supposed to report
11. to you if they find errors and omissions, and things
12. such as that?

13. A. No, honestly--not really. They . . . what they're
14. supposed to do is to take care of the problem. And if
15. they have difficulty getting a problem solved, then it
16. comes to me.

17. Q. So they take care of the problem?

18. A. Yes.

19. Q. All right. Now, let's get down to brass tacks, Dr.
20. Tenney. Have you ever seen this house, or the septic
21. tank, or the field--or anything about it?

22. A. This house? No, sir.

23. Q. Have you ever been asked to go out there?

24. A. Yes, sir.

1. Q. And you did not?

2. A. No, sir.

3. Q. Now, you wrote a letter on December 1?

4. A. Yes, sir.

5. Q. And in that letter you said that you don't know what
6. caused the system not to function?

7. A. That's right.

8. Q. Do you know whether it was functioning or not?

9. A. No, sir.

10. Q. Well, how did you write about a system that wasn't
11. functioning if you didn't know whether it was or not?

12. A. Somebody told me of a situation that existed. I did not
13. observe it myself. They told me what was occurring, and
14. asked me what could cause it--and wanted me to come and
15. look to see what was causing it. And I said, "There is
16. no point in my looking unless you do certain things, and
17. then I'll be glad to come out there and look, and I can
18. give you some opinion that means something." Because there
19. are so many things that can cause this, you can't tell
20. by just looking at the outside. You have to see what's
21. really going on.

22. Q. Now, who told you, in written form . . . you have that
23. there, do you not, Dr. Tenney?

24. A. I have the . . . I have here the letter from . . . Well,

1. I received a letter from a Mr. Hickok, asking me,
2. apparently. I don't have that letter with me; but I
3. have my letter, which indicates that I was answering a
4. letter from him.

5. Q. Do you know who Mr. Hickok was, or did you . . .

6. A. Somebody told me today that he was a lawyer for these
7. people that owned the house.

8. Q. So you got a letter from a lawyer of the people who
9. owned the house, or the Frenches?

10. A. Well, I understood it was the people that owned the
11. house. I really don't know.

12. Q. You got a letter from a Mr. Hickok, who wrote to you,
13. who was a lawyer, and he told you what was wrong with the
14. house; and you told him what you thought might be the
15. answer as to what was wrong with it?

16. A. Well, I had received some telephone communications from
17. people about the house, explaining what the problem was.
18. And I received a letter from the attorney, asking me--
19. I don't remember exactly what he asked me, because I
20. don't have that letter. But I know that in answer to his
21. letter, I wrote a letter spelling out the conditions
22. under which I would be willing to look at this and make
23. a judgment.

24. Q. Did you talk to Mr. French?

1. A. I believe I did.
2. Q. Did Mr. French tell you that Mr. Hickok was his lawyer?
3. A. He may have.
4. Q. Did Mr. French also tell you that the septic tank was
5. five or six feet down in the ground?
6. A. That--yes, sir, I was told that.
7. Q. You are aware of the fact that Mr. Lindsay went down there
8. and dug it up, and it was twenty-nine or thirty inches?
9. A. I wasn't aware of that.
10. Q. But you went on and explained how that could have been
11. one of the problems, too, didn't you?
12. A. In this letter, yes, sir. But if the system was five or
13. six feet in the ground, it could have been one of the
14. problems, yes.
15. Q. Did you ever check and go over with Mr. Lindsay and Mr.
16. Wade the fact that they had been out to the house, and
17. actually seen it?
18. A. I talked to them about the fact that they had gone to
19. the property and looked at it, and that's why I said
20. there was no point in my going, because there was nothing
21. to be seen.
22. Q. Did they report to you that there was anything wrong with
23. this septic system?
24. A. I can't answer that specifically. I don't recall whether

1. they told me there was or was not something wrong with the
2. system.

3. Q. Well, wasn't your curiosity peaked just a little bit?
4. You had written a letter, and you had talked to these
5. men . . .

6. MR. ALLEN: That's an argumentative question.
7. It's pointless, in the record, and
8. Mr. Wade is in evidence, of his
9. inspection.

10. COURT: Well, this is cross examination; and
11. cross examination, as you gentlemen
12. recognize, is broad.

13. Q. Do you have anything in your records, or to your
14. knowledge, Dr. Tenney, which in any way, shape, or form
15. gives you any ability to say that the septic tank is
16. not proper?

17. A. No, I can't.

18. Q. That's all.

19. MR. ALLEN: Your Honor, without the court
20. reporter, could we see you just one
21. second in chambers?

22. COURT: All right.

23. (Counsel and Court in chambers.)
24.

1. WITNESS - FRANK WISEMAN

2. Direct Examination by Mr. Allen:

3. Q. You are Frank Wiseman?

4. A. Yes, sir.

5. Q. And where do you live, Mr. Wiseman?

6. A. I live in Rockingham County, just across the line, about
7. a quarter of a mile in Rockingham County, on Route 11.

8. Q. And your employment?

9. A. Right now I'm employed at AMP, Incorporated, in Weyers
10. Cave.

11. Q. And do you have any other, moonlighting, employment?

12. A. Well, I have in the past. I've built houses, and put in
13. plumbing, and various remodeling, and things like this.

14. Q. Are you familiar with a house on Route 612, formerly
15. owned by a man by the name of McIntosh?

16. A. Yes, I am.

17. Q. Can you tell me whether or not you've done any work on
18. the septic system at this house?

19. A. I run a snake through the drain, to try to open it up.

20. Q. And for whom?

21. A. McIntosh.

22. Q. And on how many occasions?

23. A. Twice, that I can remember of.

24. Q. And have you been back to the house since that time?

1. A. No, sir--not since he moved away.
2. Q. This would be a snake? That's a different thing from
3. a Roto-Rooter, isn't it?
4. A. Yes. It's the same type of thing, only it's not electric--
5. it's just one you run through by hand.
6. Q. You run it through by hand?
7. A. Yes.
8. Q. And he was having difficulty, and you assisted him, I
9. believe?
10. A. Yes, sir.
11. MR. THOMAS: Your Honor, that's a statement from
12. Mr. Allen, and not from Mr. Wiseman.
13. COURT: Yes, Mr. Allen, it's . . .
14. Q. Well, tell me, why did you run the snake through it?
15. A. Because he was having trouble with his system draining
16. from his house.
17. Q. Do you know the nature of the trouble he was having?
18. A. Not for sure. The only thing I did was to run the snake
19. through it and open it up, and then it drained okay, I
20. suppose. I never did hear any more from him, anyway,
21. after that.
22. Q. That's all.
23. MR. ALLEN: Your witness.
- 24.

1. Cross Examination by Mr. Thomas:

2. Q. Do you know when it was?

3. A. Just guessing, I would say about four years ago. But I
4. couldn't say for sure, exactly what . . . because time
5. goes, and all, and I don't exactly . . . Somewhere around
6. four years ago, I would say.

7. Q. That's all.

8.

9. WITNESS - JON M. FRENCH, recalled

10. Direct Examination by Mr. Allen:

11. Q. Now, Mr. French, to save time, if I may, I think we've
12. already been over the . . . Well, I'd like to ask you
13. again to go over your first visit to this house, please,
14. and I believe you stated that was on Wednesday?

15. A. Yes. Well, Wednesday, we met at the Fishersville school,
16. and took Mrs. Byrd's car--Jean Byrd's car--to the house,
17. Mr. and Mrs. Armentrout's. On the way to the house, I
18. asked the normal questions, that I had read about what
19. to ask, in these books that I had been reading.

20. Q. About what time was it when you arrived at the house?

21. A. Oh, between six and six-thirty. It wasn't quite dark.

22. Q. And this contract is dated October tenth. Can you tell
23. me approximately how much preceding that time it was?

24. A. I beg your pardon?

1. Q. The contract was dated October the tenth, that's in the
2. evidence here--can you tell me . . .

3. A. Well, from the time we went to see the house . . . We
4. went to see the house on Wednesday; made our offer on
5. Thursday; Friday, returned the contract to 'em; and
6. Saturday, signed it.

7. Q. All right. So this would have been about the sixth, or
8. seventh of October?

9. A. That we went to see the house?

10. Q. Yes, sir.

11. A. Yes.

12. Q. At that point, what, if anything, did you smell or
13. detect inside the house?

14. A. At the time we went to visit the house with Mrs. Byrd,
15. we noticed nothing except there was a cooking odor; and,
16. again, as I explained before, when we stepped inside--we
17. had our youngest son with us, and he made some comment
18. about it, and we reprimanded him about making . . . that
19. it was impolite to make a comment like that. And so at
20. that point, Mrs. Armentrout apologized for the cooking
21. odor that was in the house.

22. Q. How many children do you have?

23. A. I have three.

24. Q. And this is one of your youngsters--or, two of your

1. youngsters here? And you have a third youngster?

2. A. Yes, sir; he's in school. He's six years old.

3. Q. And tell the Court whether or not he has any physical
4. problems.

5. A. He has bronchial asthma. And he's allergic, and he
6. develops allergies as fast as they can make these
7. inoculations to offset them, or to desensitize him.

8. Q. All right. Now, on this particular house, you entered
9. into the contract, I believe it's in the evidence, on
10. Saturday, receiving your copy, or signing it, quite late
11. at night?

12. A. Yes. It was about a quarter to eleven, as a matter of
13. fact, when Mr. Painter stopped by.

14. Q. And you paid how much as a binder on your contract?

15. A. Well, we didn't have anything to pay at that time. We
16. had some money that we had saved, but it was in Harris-
17. burg, Pennsylvania. We had been transferred down here
18. by Virginia Electric and Power Company. And I told Mr.
19. Painter that I'd have to wait until this money came.
20. But he said it couldn't wait, because the Armentrouts
21. were hedging and there was a good chance they might back
22. out on the contract, and we ought to sign as soon as
23. possible. And so we had--on the fifteenth, which was
24. the following Wednesday, I was due to be paid; we get

1. paid on the fifteenth and the thirtieth--and we had
2. assigned on our budget a hundred dollars (\$100.00) for
3. the car payment. But instead of making the car payment,
4. we postponed it to my wife's pay, and gave him a hundred
5. dollars, a check, postdated.

6. Q. And your wife's employment is where?

7. A. At King's Daughters' Hospital, in the Operating Room,
8. a Registered Nurse.

9. Q. Now, then, when was it that you first . . . You went
10. back to the house, it's in evidence, with a man by the
11. name of C. D. Allen; isn't that correct?

12. A. Yes, sir; that's correct.

13. Q. On that occasion, what, if anything, did you detect inso-
14. far as an odor?

15. A. Again, there was no odor detectable. I mean, it was a
16. warm day, and we were in shirt sleeves, I remember--it
17. was almost like Spring out. That's what . . . he made
18. some comment to me on leaving the house, he said, "Isn't
19. it awfully strange that they had a fireplace going in the
20. rec room."

21. Q. This was Mr. Allen, who made the comment?

22. A. Yeah.

23. Q. And was there a fire burning in the rec room?

24. A. Oh, yes.

1. Q. Any place else in the house?

2. A. No. Not this time. The first time we went--the first
3. time we visited the house, there was one downstairs and
4. one upstairs.

5. Q. All right. Then you actually were able to . . . the house
6. was vacated, and the keys were given to you, when?

7. A. Let's see--I think, to the best of my recollection, it
8. was the first part of November. Somewhere around the
9. fifth . . . I think somewhere around the sixth, we picked
10. up--or, my wife picked up the keys.

11. Q. All right, then, when you went to the house, what did
12. you . . . what was the first thing you noticed?

13. A. There was only one thing there to notice. I honestly
14. don't see how we missed it the first time around; I
15. honestly don't. Of course, like the house had been
16. closed up for a day. We drove in the back, and pulled
17. into the carport, and came in through the utility room.
18. And when we opened the door to that rec room, oh, gosh--
19. that odor hit us, and . . . Maybe the best way to
20. describe this--have you ever stopped . . . have you ever
21. been out driving around and stopped in an old gas station,
22. and went to use the toilets, and the toilets weren't
23. any too clean? That's what it smelled like.

24. Q. All right. Then what did you undertake to do for the next

1. ten days or so?

2. A. My wife wanted . . . My wife wanted to call the Armen-
3. trouts, she wanted to call the realtor, she wanted to
4. call everybody but the infantry, to come out and get a
5. look at this, you know, and find out what was going on.
6. And I told her the people, we had asked them whether
7. there was any problem with the toilets and the septic
8. system, and they said there wasn't.

9. Q. That was the Armentrouts?

10. A. That's correct.

11. Q. And this was prior to entering into the contract?

12. A. Yes, sir.

13. Q. All right. Go ahead.

14. A. And I said these people were family people, like us,
15. and there was no reason, really, to distrust them. The
16. odor--whatever it was--I don't know; I thought for a
17. minute maybe the kids, that they had a child that
18. relieved theirselves on the rug; or maybe the previous
19. owner did. So . . .

20. Q. Well, what did you do? Tell the Court whether or not
21. you got in contact with Mr. Armentrout after you found
22. this odor?

23. A. Well, I did. We made several attempts to clean it.

24. Q. In what fashion?

1. A. I beg your pardon?

2. Q. How?

3. A. Well, we came back the following night with these two
4. real big cans of spray foam--this foam that you spray on
5. the carpet. While my wife was upstairs cleaning the
6. rest of the house, I was downstairs . . . I put on these
7. rubber gloves, and got down and worked this stuff into
8. the pile, and did the rugs all through the family room
9. there. And this was to no avail. We came back the next
10. day and vacuumed it again and that wasn't any good; so
11. I sprayed . . . I didn't spray foam it again; I did that
12. once, that time. We sprayed Lysol all around the house,
13. before we left that night. We came back the next day,
14. and the odor was still undiminished. And it was just
15. as bad as ever. Talking to some friends about the
16. problem, they suggested we bring--get a box of lime, and
17. put it in the room, that this has a way of absorbing
18. odor. So we did that. And my wife says, "Well, just
19. wait until I finish scrubbing down all the walls, and
20. washing all the windows, and everything that has to settle
21. to the floor, then let it settle to the floor, and then
22. in one cleaning operation you can come up, you know, and
23. do all the rugs, and get it all up." So I told her I
24. couldn't wait--I had to get that up then. It was getting

1. bad, and we wouldn't allow the youngest child in that
2. room any longer. As a matter of fact, any time we
3. could, we let them stay outside. So I rented one . . .
4. Q. For what reason? Why?
5. A. Well, his allergy, it was irritating him.
6. Q. All right. Go ahead.
7. A. And we--I got the Spray-N-Vac, and I sprayed all the
8. carpets. The house is fully carpeted, I think, except
9. the two bedrooms and the kitchen.
10. Q. How many bedrooms are in the house?
11. A. There are four bedrooms in the house.
12. Q. And the Spray-N-Vac--is that a vacuum spray cleaning
13. type of thing?
14. A. Yeah, it's . . .
15. Q. Do you rent this, or not?
16. A. Yes, I rented it.
17. Q. All right. Go ahead.
18. A. It's supposed to be pretty effective. It shoots out
19. a real fine jet, and then comes along and vacuums the
20. jet itself up, you know.
21. Q. All right.
22. A. And I used that, and that's when I determined . . . that's
23. when I . . . You fill one chamber full of water and this
24. detergent, and it in turn is pushed down onto the carpet,

1. is then vacuumed up, and put into the dirty water
2. compartment. Well, this is when I found out that the
3. floor drain in the utility room had been stopped up.
4. Because I took this

5. Q. By "had been stopped up," what do you mean?

6. A. Well, it wouldn't take water.

7. Q. All right.

8. A. I went over to the drain, and dumped this canister of
9. old water down it, and it came back over my feet. There
10. remained--I think there were six other canisters I had
11. to dump; and I had to dump them out on the driveway,
12. because this stuff was sitting in the floor. It was
13. going down very, very slowly. But I think by the time
14. I quit, at three o'clock the next morning, it . . . But,
15. at any rate, we came back I turned the heat up in
16. the house, to dry everything out real good; and we
17. allowed the whole house--actually, by the time we got
18. over there, it was about thirty-six hours of drying time.
19. And it was still bad.

20. Q. Any noticeable improvement?

21. A. Not much. There might have been a little bit of improve-
22. ment on it, but

23. Q. All right. Then what did you do?

24. A. Well, the . . . oh, we sprayed Lysol again. And in the

1. meantime, we were doing other things around the house.
2. Like, I put up pegboard in the utility room; and we had
3. started to paint the ceiling in the upstairs, because
4. there were fly specks on it, and we were trying to cover
5. it with paint. And my wife had put Con-Tact paper on all
6. the shelves. And we had done some repairing to the
7. drawers in the kitchen. And we had sprayed and closed
8. the downstairs.

9. Well, my son and I came back the following night.
10. And it was already . . .

11. Q. Which son is that? Your youngest son?

12. A. My older son. He's sitting back there.

13. Q. All right.

14. A. We decided that we were going to come back and finish
15. painting the ceiling. And when we walked in there, and
16. that Spray-N-Vac hadn't done anything--and all these
17. sprayings and cleanings we had done, which hadn't done
18. anything to it--I said, "Mike, I've got to find out where
19. this is coming from, where the source is."

20. So we had previously noted that the source was
21. stronger in this one corner; and that's the picture, I
22. think, that was shown. And I reached down and pulled
23. the carpet back; and when I saw that saturation in
24. there, I said, "I don't know what's going on." And by

1. this time, also, the toilets had slowed down to the
2. point where I told the kids no longer to use them--they
3. looked like the next time you used them, they were going
4. to start to go over. So we stopped using those.

5. And I noticed the saturation, and that, combined
6. with the odor, and the stain in the corner, and the
7. toilets--I decided to call Mr. Armentrout. So I got
8. Mr. Armentrout on the telephone, and I asked him what
9. the odor was in the utility room, or in the recreation
10. room. And he replied, "What odor?"

11. Q. What?

12. A. "What odor?"

13. Q. "What odor?" That was Mr. Armentrout?

14. A. Yes, sir.

15. Q. Go ahead.

16. A. And I said, "I know you smelled the odor in the room,
17. because there was an Air Wick on the mantle when we
18. walked in." And his reply to that was, "Oh, that odor."
19. And he said, "Yes, we'd noticed it." And then everything
20. was quiet. I thought he'd elaborate on it, but he
21. didn't. "What did you do," I asked him, or, "What is
22. the odor from?" And he said he didn't know. And I said,
23. "Well, I mean, didn't you try and check it or anything?"
24. And he said that he had vacuumed--not vacuumed, but

1. shampooed the carpets, also. And I asked him what he
2. had found, if the shampooing seemed to help it. And he
3. said that the shampooing seemed to help it for a little
4. while, and then it would return and then go away, and
5. then come--and be stronger at times than others. And
6. I asked him had it ever occurred to him that this could
7. be a septic tank problem, or a leakage? And he said
8. that had occurred to him, that it could be, but that he
9. had the system pumped and checked, and everything was
10. okay--he had eliminated that.

11. Q. Did he say who pumped it?

12. A. Oh, I asked him who pumped it. And he couldn't remember.
13. Because I, in turn, was going to call the guy that
14. pumped it, right after I spoke to him, to see if maybe
15. he could help me. But I didn't find out until much
16. later, when I met with everyone at the house, later
17. that month, who had pumped it.

18. Q. All right. Now, it's in evidence there was a meeting on
19. November the twenty-fifth. Tell us about that, please.

20. A. Well, the events leading up to it, or strictly the
21. meeting?

22. Q. Go ahead.

23. A. Well, this happened as a direct result of a letter our
24. attorney, Mr. Hickok, had sent to . . . it was addressed

1. to the Armentrouts. I don't know who received it; but
2. the first indication that they had received a letter was
3. when Mrs. Jean Byrd had called me, that night. And she
4. told me that she had talked with my attorney, and they
5. had discussed this letter that we had written saying
6. that we wouldn't be closing as scheduled because we
7. suspected a serious septic problem. And she said, "We
8. want to work the thing out." And I said, "Beautiful."
9. I mean, that's what we wanted, too. And it looked like
10. we were going to get somewhere. And she said, "What we
11. want you to do is to meet tomorrow the man from Welty
12. Cline at the house, show him your problem . . ."

13. Q. Was that Mr. Beathe?

14. A. It turned out to be Mr. Beathe. She said, "Show him
15. your problem, tell him exactly what the situation is,
16. show him your evidence, and so forth, and then let him
17. come back to us with a report." Well, that sounded fine
18. to me. But I asked her--I said, "Is it necessary at
19. this time to have my attorney there?" And she said,
20. "No, that won't be necessary, because," she said, "none
21. of us plan to be there." She said, "It'll be just you
22. and the man from Welty Cline; and you two talk it over,
23. and get things, you know, straightened out. And then
24. he'll come back to us with a report."

1. So I met the next morning with the man from Welty
2. Cline, and it turned out to be Mr. Beathe. And we went
3. inside, and I showed him the stain on the rug. And he
4. smelled it. And he said it smelled, at that time, before
5. anybody had come in, that it smelled like it could be
6. septic tank--it could be septic tank leakage. And he
7. also said . . . I showed him the toilet, and by this
8. time the toilets had begun flushing again. They were
9. still flushing a little sluggish, but they had begun
10. flushing again. They weren't like when Mr. C. T. Bradley
11. saw them; they weren't that bad then.

12. At any rate, he . . .

13. Q. Mr. Bradley had seen the toilets flushed prior to Mr.
14. Beathe's November twenty-fifth . . .

15. A. Mmm hmm.

16. Q. Go ahead, sir.

17. A. Okay. At any rate, he looked at the tank, and he looked at
18. the tanks behind the toilets. And he says that they have
19. been altered, or bent down--the floats in the tanks--in
20. order that the tanks wouldn't fill up so much with water.

21. Q. What is the effect of that?

22. A. That's what I asked him. And he says, "Well," he says,
23. "a lot of people do this, you know, when they have water
24. flushing out onto the floors frequently." He says,

1. "They'll do this so they don't get as much water, or
2. hardly any at all, out on the floor--or sometimes none."
3. And I asked him . . . I showed him the problem, and I
4. showed him the saturation in the corner; and he said he
5. had been here before. And I said, "Oh, you have?" And
6. that's when I found out that he was the man who pumped
7. the system before, for Mr. Armentrout. And he said
8. that the tank--and he was standing up--he says, "It's
9. this deep." And that's where I come up with the figure
10. on the tank depth--I was going strictly by what he said,
11. because he was the one who'd dug down and dug it up.
12. And I estimated, I'd say, it was about five feet, according,
13. you know, to his height.

14. So at any rate, we--as we were coming out of the
15. bathroom, we heard a car door slam, and Mr. Painter and
16. Mrs. Byrd, and Charlie something-or-other . . .

17. Q. Rimel?

18. A. Rimel. Right. And--let's see--Mr. and Mrs. Armentrout
19. came. They showed up at that time. At this time, Mrs.
20. Byrd came in, and she wanted to see where the odor was
21. coming from. And I pulled it back, and she smelled it,
22. and she declared it pet odor, on the spot. She said,
23. "It's definitely pet odor; no doubt about it." And she
24. asked Mr. Beathe what he thought. And he says, "I don't

1. know." He says, "It smells a whole lot like septic, to
2. me." She said, "But couldn't it also be pet odor?" And
3. he said, "Yeah, I guess . . ."

4. MR. THOMAS: Your Honor, I've been trying to with-
5. hold, just as long as . . .

6. MR. ALLEN: Mr. Beathe has testified. I think
7. we'll take . . .

8. MR. THOMAS: But he has testified substantially
9. different from Mr. Beathe; and I
10. don't want it to continue. It's
11. hearsay, anyway.

12. MR. ALLEN: I don't think he testified differ-
13. ently; but we'll go ahead and testify
14. to what Mr. French said, or what
15. was stated to him. And, of course,
16. this was stated in his presence.

17. Q. Go ahead, sir.

18. A. Okay. At any rate, Mrs. Byrd said, "All right;" and
19. she appeared to be the only one there that really wanted
20. to work out any problems at the time. She said, "All
21. right, tell us, Mr. Beathe, what do we have to do to
22. check out the system, once and for all, and clear the
23. air, and get it figured out exactly what's wrong, is
24. there is anything wrong, etcetera?" And he said, "There's

1. only one way I know of; and that's to dig it up."

2. Q. And then what?

3. A. And then I said, "Okay; let's dig it up."

4. Q. Did you offer to pay for it, or not?

5. A. Yes, sir.

6. Q. And then what?

7. A. Well, I offered to pay for it. And Mr. . . . I think it
8. was Rimel--either Mr. Rimel, or Mr. Painter--said
9. something to the effect that . . . Oh, I mentioned to
10. pay for it. And I said, "Dr. Tenney has offered to come
11. and look into the system when we uncover it. So, you
12. know, there's our expert, you know; he'll be able to tell
13. us one way or the other whether there's any problem. And
14. he says one of the problems may be that the tank's too
15. deep in the ground." And Mr. Rimel said, "Well, if the
16. tank's too deep in the ground, it sounds like . . . it
17. sounds like it's the Department of Health's problem."
18. And when I offered to pay for it, Mr. Painter said,
19. "Mr. French, as far as I'm concerned, you signed for
20. this house, and you've got a problem." And I told him,
21. "Well, Mr. Painter, maybe the Health Department has a
22. problem, and maybe y'all have a problem--but I don't."
23. And I said, "As far as I'm concerned, the discussion is
24. over." And I said, "You'll have to speak to my attorney."

1. Q. Did anybody refuse the right to dig the line up from the
2. house to the tank?

3. A. Absolutely. Mr. Painter did.

4. MR. ALLEN: Your witness.
5.

6. Cross Examination by Mr. Thomas:

7. Q. Mr. French, you say when you first met with Jean Byrd,
8. you asked her all the questions the books had told you to
9. ask?

10. A. Probably not all of them--but all I could think of on the
11. spot.

12. Q. Did you ask her about plumbing and septic?

13. A. When we entered the house . . .

14. Q. But did you ask her then?

15. A. Did I what?

16. Q. Did you ask her about plumbing or septic?

17. A. I asked Mr. Armentrout about the septic tank that night.

18. Q. Mr. French, you realize you have testified once this
19. morning?

20. A. Yes, sir.

21. Q. And you realize that you testified, when you testified
22. earlier, that Mr. Armentrout volunteered to you, when he
23. was telling you all the things he had done that were
24. good for the house--he volunteered to you that he had

1. had the septic tank drained?

2. A. And that's where he stopped.

3. Q. And did you continue it?

4. A. Yes, I did.

5. Q. And what did you continue with?

6. A. Since the house was only three or four years old, and
7. I was living in a house all that period of time and
8. never had to have the septic tank pumped, it sounded
9. fishy. So I asked him, "Why did you have the septic
10. tank pumped?" And he said, at that time, that he had it
11. pumped for his own satisfaction. And that he had it
12. checked while he had it open, and everything checked
13. good. That's how it was put.

14. Q. You said in earlier testimony--you or Mr. Allen said--
15. that you checked with him about the toilets. Did you
16. mention the word "toilet" to him?

17. A. Mention the word "toilet" to whom?

18. Q. Mr. Armentrout.

19. A. No. When he said the system was okay, I automatically
20. assumed that that included the toilets.

21. Q. Okay. So you went in on a particular night with Mrs.
22. Byrd?

23. A. Yes, sir.

24. Q. When did you make your appointment to meet up with Mrs.

1. Byrd on Wednesday?
2. A. It was done . . . We always got the Staunton paper to
3. read the real estate ads, because that was when they
4. seemed to be full, on Sunday; so it was made that Sunday.
5. Q. Okay. Now, do you know how . . . You went there, and
6. you say you smelled a cooking odor.
7. A. Yes, sir.
8. Q. A strong cooking odor?
9. A. Yes. Garlicky, or oniony, or I don't know.
10. Q. But despite that, a few days later, you gave a post-
11. dated check for one hundred dollars to Mr. Painter?
12. A. Right.
13. Q. Did you ever stop payment on that check?
14. A. No, I didn't.
15. Q. This was the car payment?
16. A. That's right.
17. Q. Did you ever ask Mr. Painter for the check back?
18. A. No, I didn't. There was . . . the main reason for that
19. was when we came . . . The problem took quite a few days
20. to get ironed out. We didn't know whether they were
21. going to dig up the system and allow us so much money for
22. it, or whether--how the whole situation was going to come
23. out. We knew that there was a problem there; we also
24. knew that we were sick and tired of the whole situation

1. by the time of . . . We had talked to a lawyer, and every-
2. thing else, and we were sick and tired of it. And we
3. were ready to give up the hundred dollars to get out of
4. the whole thing.

5. Q. That's exactly right, Mr. French. You just wanted out,
6. didn't you?

7. A. Eventually, I had to.

8. Q. Now, do you have--or are you prepared to offer--any proof
9. that that system, that septic system, doesn't work?

10. A. Right now?

11. Q. Yes, sir.

12. A. I can't.

13. Q. All right. Now, the only thing that you are here to
14. tell this jury is, you don't think it works--or you think
15. that there's a problem. Is that not right?

16. A. Well, I know a little bit more than that.

17. Q. Well, are you prepared to prove it?

18. A. I don't know what you mean by "prove" it. I spoke with
19. Mr. McIntosh by phone.

20. Q. Well, let me ask you this: Is there anything that
21. prevented you from summonsing Mr. McIntosh here?

22. A. He lives out of state. I couldn't find his address. I
23. sent him a registered letter, in care of the Post Office
24. in Loudon, Tennessee; and I called down there and asked

1. for his address, and they said they couldn't give it to
2. me. And he returned my phone call. They had delivered
3. the letter.

4. Q. Did you ask him to come?

5. A. I beg your pardon?

6. Q. Did you ask him to come?

7. A. Yes, I did.

8. Q. Did you offer to pay his expenses up here?

9. A. No, I didn't. But he wouldn't come. You wouldn't
10. either, if you'd dumped a bad house on somebody else.

11. Q. Did you . . . Is there anything here--did you tell Mr.
12. McIntosh any problem that he could have gotten into?

13. A. Any problem?

14. Q. What problem did Mr. McIntosh have with this house?

15. A. Well, he knew that there was one . . .

16. Q. All right--I don't want you to testify what . . .

17. MR. ALLEN: You're asking the questions.

18. MR. THOMAS: I asked him what problems Mr. McIntosh
19. had with the sale of the house, that
20. could have gotten him in trouble.

21. COURT: But you didn't give him a chance to
22. answer it.

23. MR. THOMAS: But I want him to be responsive to
24. that question. In other words, he

1. said, "You wouldn't come back here
2. either, if you'd dumped a bad
3. house," or something. And I'm
4. saying it sounds as though Mr.
5. McIntosh could get into some legal
6. difficulty by coming back here; and
7. that's incorrect.

8. Q. Or did you hint to him, or did he say he could get into
9. some legal difficulty?

10. A. I would have been happy to pay his expenses. I begged
11. that man to come up here. As a matter of fact, he's the
12. one that gave me the name of the plumber, Mr. Wiseman.
13. I would have never known it. But Mr. McIntosh told me
14. over the phone, he said, "You call Frank Wiseman; he
15. helped me unstop the system a couple of times."

16. Q. Well, you can't testify as to what he said.

17. MR. ALLEN: Well, you're asking the questions.

18. MR. THOMAS: But he's not being responsive.

19. Q. I'm asking you: Did Mr. McIntosh tell you, or did you
20. tell him, that he could get into legal difficulties if
21. he returned here?

22. A. No.

23. Q. Yes or no?

24. A. No.

1. Q. Thank you. Now, you testified in response to what Mr.
2. Allen said that you in particular asked Mr. Armentrout
3. about problems with the toilets and septic system. Are
4. you in error when you said that you asked him about
5. toilets and the septic system?

6. A. I asked him about the septic system, which I assumed
7. included the toilets.

8. Q. All right. And . . .

9. A. I mean, you talk septic system, I mean--legal-wise . . .
10. I suppose, you know, like you said, I didn't know there
11. was a legal definition for "septic system." But anything
12. below that pot, to me, is septic system.

13. Q. All right. So you never mentioned the word "toilets"
14. to him?

15. A. No, I didn't.

16. Q. Or "plumbing?"

17. A. No, I didn't.

18. Q. All right. Did he ever, in any way, interpose, or stop
19. you from coming in and checking any part of the house
20. you wanted?

21. A. No.

22. Q. Did he, as a matter of fact, suggest that you come and
23. check it?

24. A. They said any time that we wanted to visit the house, we

1. should call them and they would allow us to come and
2. visit. By the same token, we were told by Mr. Painter
3. that if we didn't soon sign that contract, that these
4. people were going to back out on the deal, and we'd
5. have no house at all.

6. Q. That's right. So what I am getting at is that you--there
7. was no doubt in your mind that you could have had that
8. house checked by anybody you wanted?

9. A. Absolutely.

10. Q. All right. Now, did you . . . You say you tried to clean
11. the rug?

12. A. To clean the what?

13. Q. The rug.

14. A. Yes, I did clean the rug.

15. Q. Where there was a stain on it, and where it smelled?

16. A. No, I cleaned the whole rug.

17. Q. All right.

18. A. Upstairs, and down.

19. Q. And you say there was a stain on the rug, and you pulled
20. back one corner of it; and you got pictures of that
21. corner?

22. A. Right. Mmm hmm. That wasn't the only place that we
23. had odor. We had one in the opposite corner, also. But
24. it wasn't . . . this was the primary source of the odor.

1. I didn't . . . I only pulled up a sample corner. I didn't
2. know what was going to come with this deal. I wasn't
3. going to pull up the whole rug.

4. Q. Mr. French, do you mean to sit here and tell me today
5. that you had problems in two corners?

6. A. I didn't say that. I said there was odor in the other
7. corner. I don't know--I didn't pull the rug up in that
8. corner to see whether it was saturated or not. There
9. was an odor, and this was about a four by five foot
10. triangle in this one corner. And I never did catch the
11. end of that stain, because it backed up underneath a
12. heater that was sitting . . . this little bar about this
13. wide, that it had tapered down to a little bar about this
14. wide--and it was backing up underneath the heater. Now,
15. how far under there, I have no idea.

16. Q. Okay. Well, let's get down to the main odor. Now, you
17. had people out there smelling in one corner.

18. A. Mmm hmm.

19. Q. You didn't have them smell but in one corner, did you?

20. A. That was the obvious corner to pick, since this was the
21. major source.

22. Q. All right. Now, what corner of the house was that? If
23. the house faces south . . .

24. A. If the house faces south . . . now, that's hard for me

1. to . . .
2. Q. Well, if you're standing in the doorway of the house
3. that you almost bought . . .
4. A. Looking out? Or in?
5. Q. . . . looking out, so that you're looking south . . .
6. A. Okay.
7. Q. . . . would you tell the jury which corner the main odor
8. was in?
9. A. Okay. Let's see--I've got to orient myself. See, if
10. I'm looking out the door, looking south . . . right?
11. All right, then it was on my right-hand side; and that
12. would be what? It would be east, I guess. No, wait a
13. minute--it was west, looking outside.
14. Q. Do you realize that everybody else has described the
15. corner where they smelled as being the southeast corner?
16. A. I mean . . . You're getting me all mixed up. I'm facing
17. the door. If you're facing the front of this house, and
18. here's the door . . .
19. Q. No, I mean--you just turn yourself around. You're
20. standing in the doorway looking out at the septic system.
21. A. Okay. I'm just not very good in front of people. It's
22. right in this corner right here--this corner, the lower
23. corner here on the photograph. The main odor was here--
24. right down in here.

1. Q. All right. Now, the rec room extends this way?

2. A. That's correct. You can see the end of it right here.

3. Q. And that would be the southwest corner, then?

4. MR. ALLEN: Why can't you just use the picture?

5. I'm thoroughly confused on north

6. and west and south and east now.

7. A. I am, too.

8. MR. ALLEN: I'd say the house faces west; he

9. says it faces south. I don't really

10. know.

11. COURT: I don't know; and the jury doesn't

12. know. I don't think anybody does.

13. Can you take the pictures of the

14. house, Mr. Thomas, and let him look

15. at the pictures?

16. Q. Mr. French, did you ascertain from Mr. Nuchols where the

17. sewer pipe exits the house?

18. A. Yes. As a matter of fact, I put a cable locator on it,

19. and found it myself.

20. Q. Was that in a different corner from where the corner was

21. that you-all had everybody smelling?

22. A. Excuse me--that was where it exited. It was . . . I

23. just . . .

24. Q. Just answer yes or no, Mr. French.

1. MR. ALLEN: Well, let him answer the question.

2. Q. I'm asking was it in a different corner--it's yes or no.

3. A. It wasn't in the corner, where it went out. It never
4. made the corner. It was . . . if you divided the utility
5. room in half, it went out on this half--but it also cut
6. back across the center of the room.

7. Q. What I am trying to get at is, where it exited was near
8. one corner?

9. A. That's correct.

10. Q. That was a different corner from where the main smell
11. was--is that correct?

12. A. Well, as I said, it didn't go out at the corner; but it
13. was within, say, eight or nine feet of that corner.

14. Q. And it was a substantial distance between where the
15. smell was and where the sewer pipe was; is that not
16. right?

17. A. Yeah, depending on what you mean by substantial.

18. Q. All right, sir. Now, were you there when Mr. Lindsay
19. came?

20. A. Which time? He was there . . .

21. Q. Were you there the time he drilled?

22. A. No. I wasn't invited.

23. Q. Well, I just asked you, were you there the time he
24. drilled?

1. problems. Okay, he couldn't smell anything.

2. Q. And did you ever . . . All right, now, have you had any
3. other inspections of this septic system, that you know
4. of?

5. A. Have I had any other inspections?

6. Q. Yes, sir.

7. A. They wouldn't let us inspect. I offered to, and they
8. refused. I offered to pay for it.

9. Q. All right, now, short of digging it up, was there any
10. other inspection made, by any other people? Did you have
11. other experts come look?

12. A. Well, now, we had a builder, and the Health Department,
13. and--I mean, that's . . .

14. Q. All the people that came in here today?

15. A. Yes.

16. Q. Are there any that you didn't have?

17. A. No, but there are a lot I wanted to get there--but they
18. wouldn't let me.

19. Q. Who wouldn't let you?

20. A. Mr. Painter wouldn't let me.

21. Q. Did Mr. Painter deny you the right to dig it up, or
22. have any more people look at it?

23. A. He denied me the right to dig it up, on that day when
24. that man was there to dig it up.

1. Q. What man was there to dig it up?
2. A. Mr. Beathe.
3. Q. Was he . . .
4. A. Mr. Beathe was willing, on that day, to dig it up. He
5. gave me a price for it, right there. And he's talking
6. forty or fifty dollars, and maybe two hours, to clear
7. up a situation I've spent a fortune on. I don't under-
8. stand it.
9. Q. Did you have any other people--other than Mr. Beathe,
10. that day . . .
11. A. That day?
12. Q. Well, let's get right down to it, Mr. French--have you
13. had other . . . Other than that, has anybody ever denied
14. you--other than Mr. Painter that day--that said, "Do
15. not dig this place up," or something like that?
16. A. Certainly. I offered twice after that, and I was denied.
17. Q. Who to?
18. A. Through the attorneys.
19. Q. When?
20. A. I don't know the exact dates. I don't have . . .
21. Q. All right. Now, other than digging it up, have you had
22. any other people out there?
23. A. Not beside Wade--Mr. Wade, Mr. Lindsay, and Mr. C. T.
24. Bradley; and all three recommended digging it up.

1. Q. So is it fair, then, to state, in sum and substance, that
2. you think there is something wrong with the septic system,
3. and that everybody that you have checked with, no one
4. has told you that there's anything wrong with it?

5. A. Everybody . . . It's safe to say that I seriously and
6. truly believe that there is a malfunction in that system.
7. The fact that it works now could have, or maybe was--I
8. don't remember--explained by Dr. Tenney. These things
9. have a way of clearing and re-occurring. Mr. McIntosh
10. told me over the telephone . . .

11. Q. I am not . . . You cannot say what he said, Mr. French.
12. But I want you to answer my question, please, sir--yes
13. or no, has any expert that you have had or that anybody
14. else has had out there told you for sure there is some-
15. thing wrong with that septic system, or do you just
16. suspect something's wrong?

17. A. I've had enough suspicion, and there was enough evidence
18. there to warrant going in and checking further, and
19. they wouldn't let me.

20. Q. So you are here today on what you think; is that right?

21. A. What I think, and the testimony you've heard.

22. Q. All right. I'm just asking you . . .

23. A. At different times, these things have been unclogged.

24. Q. You're here today on your strong suspicion; is that

1. correct?

2. A. No, it's not correct.

3. Q. Well, you're not here . . .

4. A. You're heard the testimony.

5. Q. . . . because you can prove the septic tank is wrong,
6. are you, Mr. French?

7. A. I beg your pardon?

8. Q. You cannot prove there's anything wrong with the septic
9. tank on . . .

10. A. They wouldn't let me prove it.

11. MR. THOMAS: Your Honor, I'm trying to ask him
12. today . . .

13. MR. ALLEN: I think he's answering the question.

14. COURT: I think it's a question of fact for
15. the jury to determine, whether they
16. found anything wrong.

17. MR. ALLEN: He's just arguing with the witness.

18. COURT: I don't think it's . . .

19. Q. All right. Has anyone ever given you any reasons or
20. told you that the septic system was at fault, or mal-
21. functioning?

22. A. All right, let me put it this way. No one came out and
23. said, "Here's the problem." They have said, "You have a
24. problem, and it should be checked." But no one has come

1. out and said, "Definitely, this thing is defunct."

2. Q. All right. What else, besides Lysol, spray foam, lime,
3. and one or two other unknown things did you put on the
4. floor?

5. A. That's all. Spray foam, lime, and whatever the Spray-N-
6. Vac was. I know it comes, a standard detergent, with it.

7. Q. Do you know, or can you say whether or not anything has
8. been done to that house since you left it?

9. A. Since I left it?

10. Q. As far as the septic system?

11. A. I don't know of any. Of course, I didn't go over there
12. and stand guard, either. I mean, I have no way of
13. telling that.

14. Q. That's all.

15.

16. WITNESS - HELEN FRENCH

17. Direct Examination by Mr. Allen:

18. Q. You are Helen French?

19. A. Yes, that's right.

20. Q. And this is your husband?

21. A. Yes.

22. Q. And you have three children?

23. A. Yes, sir.

24. Q. Your youngest child has bronchial asthma?

1. A. Yes, he does; he has--it's due to his allergies.

2. Q. It's an allergic bronchial asthmatic condition?

3. A. Right. Right.

4. Q. And is he under medication?

5. A. Yes, most of the . . . Yes, sir.

6. MR. THOMAS: May it please the Court, I object
7. to this line of questioning, insofar
8. as what we have gone over once
9. before today. I mean, this is . . .

10. MR. ALLEN: That's the last question. I have
11. no more questions on that subject;
12. I'm through with that. I wanted to
13. establish who her children were,
14. her family--this is a family-owned
15. house, and . . .

16. Q. How many bedrooms are there in this house?

17. A. In the house that we wanted to buy?

18. Q. Yes.

19. A. It was four.

20. Q. Tell the jury, please, your first visit to the home.

21. A. Well, I won't go all the way into it--my husband covered
22. it. We went into the home . . . Of course, driving over,
23. I was very excited. I was going to, you know--we looked
24. at it; we did a couple of drive-bys before that. I

1. loved the home. It was going to be our first. We had
2. never owned a home before. And I had gotten out of
3. nursing school, and we had saved up money to do this.
4. So all the way over, Jean Byrd kept telling us what a
5. beautiful home it was; and, of course, the whole time I
6. was just getting more and more excited.

7. So all it was, well, when we came in, we came in by
8. the front door. The first thing that happened, my son
9. said something about what stinks? You know--and I said,
10. "Oh, be quiet; that's not very polite." That's all that
11. hit us standing there--was just a strong cooking odor.
12. And I don't know what it was. I couldn't testify to
13. that.

14. Q. Was this at supper time?

15. A. It was . . . we met with Jean Byrd at the Fishersville
16. Elementary School, which was near the home we had been
17. renting; and that was at six o'clock, that we had the
18. appointment to meet her. So it was soon after that, I
19. guess--depending on who eats supper at what time.

20. And so we went in, and we said hello to everybody, and
21. this and that. And then we went downstairs. It was
22. very . . . I think there was only one small light on
23. there. Mrs. Armentrout's older daughter was sitting on
24. the floor like, and I think her boyfriend was there; and

1. they introduced me to him. And there wasn't much said.
2. We didn't stay downstairs long. It was just . . . the
3. fireplace was roaring, and that's all you could smell--
4. was the food and the fireplace going upstairs in the
5. living room and the fireplace roaring downstairs in the
6. rec room. The total effect, to me--I mean, you know,
7. like my husband testified, we had read . . . well, not
8. read--we skimmed through books, three or four books, to
9. see what to do when you look for a house. And fine; that's
10. what we did, and that's what we tried to do when we
11. looked at this house. But this is to buy a normal house,
12. with nothing wrong with it, you know--a no-problem house,
13. let's say, quote and unquote.

14. Q. Did you hear the discussion, or did you have a dis-
15. cussion with Mr. Armentrout.

16. A. No. But I was standing right there. Well, let me
17. finish. When we went up, you know--when we were down
18. in the rec room, we just stayed there several minutes,
19. just to say hello and look around and this and that,
20. quickly. It was very dark--like there was just this
21. one light on--and the fireplace was roaring. And that's
22. it. Then they showed us the bathroom and the two lower
23. bedrooms. And then we went right upstairs. We didn't
24. spend very much time down there at all. It was upstairs

1. that we stood and talked.

2. And Mr. Armentrout and Jean Byrd did most of the
3. talking that day. They were talking a lot between them-
4. selves. So my husband spoke with Mr. Armentrout--I was
5. right there when he asked about the septic system.
6. Because my ears perked up also, when he mentioned that
7. he had it drained--because that's the first thing that
8. came to my mind, and that's the first thing that came
9. to Jon's mind. Why? You know, such a new house--why?

10. But he said, "Everything's fine." So, again, you
11. know--we don't . . . we didn't have any reason to dis-
12. trust anybody. We were not like that--or we didn't used
13. to be, anyway.

14. Like I said, then we just finished looking around
15. upstairs, in the other two bedrooms and the bathroom;
16. and, I don't know--and my husband didn't bring this
17. out, but that home . . . the permit was also meant for
18. a three-bedroom house, and this was a four-bedroom. I
19. don't think he brought that out.

20. Anyway, that's all that happened. And we just drove
21. back and talked about some things, and as to why . . .
22. Well, on the way over, she had mentioned that the reason
23. he was moving out so quickly was because he had been
24. given a transfer by Smith's Transfer, to Covington, and

1. they had to move; and they kept reiterating the whole
2. time we were there, they couldn't have really left their
3. beautiful house, they just loved it, you know. That this
4. was the only reason that they were moving, was because
5. they were being transferred--being forced to leave. So
6. I accepted it. I didn't have any reason not to. What
7. else could I do? I mean, you know, I loved the house.
8. I fell in love with it right away.

9. Q. And then what? Go ahead, without being too repetitious.

10. A. Well, I don't know . . . Anyway, basically that's it.
11. Like I said, later . . . They also stated like we were
12. forcing them to move out. The only . . . All we ever
13. asked the Armentrouts was, "When are you moving out?"
14. so we could make plans at the bank about--because of
15. the money, that if you close at the beginning of the
16. month you, you know, you pay less interest and all this
17. type of thing. I mean, we even refinanced the car, to
18. get our closing costs on time. I mean, you know, like
19. I said--we just saved that year, we wanted a house, we
20. refinanced the car, and we were ready. So, I mean, those
21. things were because of the money situation, again, and . . .

22. Let's see. When we got the keys, I picked them up--
23. I picked them up after work one afternoon. And I was
24. talking to Mrs. Byrd for a couple of minutes, and she

1. said, "You know, the real reason they're moving is
2. because their children can't adjust to the area." Well,
3. I just took it, again, you know--just like the first
4. time. All right. Fine. If that's the real reason,
5. okay.

6. And then . . . I don't know. I'm on call a lot, and
7. between my kids' activities and stuff, we didn't get
8. back till the next night. We walked into the utility
9. room, and there was an odor. And then all of a sudden
10. we opened the door--there's a door between the utility
11. room and going into the rec room, or family room, or
12. whatever you want to call it--and that . . . it just
13. practically knocked you over. You just stood there
14. when you opened the door, and WHAM, you know. And Jon
15. said, "Do you think they knew about the odor?" And I
16. said, "Oh, I don't know." I said, "My god." And I
17. looked on the mantle and there was an Air Wick; and I
18. said, "Well, if that's there, they must have known about
19. the odor." And I wanted him to call and just find out
20. right away.

21. Q. Do you know where the sewer line exits from the house?

22. A. Towards the one end of the house, but there's pipes
23. leading . . . There's sewer pipes leading like from the
24. utility room, and from the bedrooms--so they all join and

1. converge into one, and then go out. So, I mean, we're--
2. like I said, when we've been in there, now, my husband
3. kept concentrating on the problem with the odor the
4. whole time. And I was washing walls and washing windows
5. and just doing . . . you know, just doing excitedly what
6. I had to do. And he kept cleaning down there--I mean,
7. just all we did . . . Let's see--we Lysoled just the
8. air; we foam shampooed the rug . . . this type of thing
9. that he talked about. We were just hoping to diminish
10. the odor, you know. It just smelled like an outdoor
11. toilet, you know. And we didn't know exactly what--
12. exactly what the problem was.

13. And then one night, like he's testified, he just
14. couldn't take it any more. And he overturned the rug in
15. that one corner. It's wall to wall carpeting, and we
16. knew enough . . . we read, you know, that if you destroy
17. anything, you're liable for that, too. So, you know,
18. he just pulled it up carefully, I mean, off the tacks--just
19. that one. So when I was cleaning, there was . . . well,
20. we all smelled it, and we had a lot of people. But it
21. was all along that one edge, and even in the child's
22. bedroom there was a urine smell. But when he upturned
23. that rug, and had me check it the next day--I mean, pee
24. is pee; and you don't have to be a nurse to know what

1. pee smells like. That's what it was. It was urine. And,
2. it just--I mean, right then and there, I just got sick.

3. From then on, we contacted . . . well, you know,
4. he had already . . .

5. Q. He has testified to what . . .

6. A. He had already called Mr. Armentrout the night before,
7. because I came the next day, and he showed me what he
8. had found. And from then on, we had talked to a lawyer;
9. and, like I said, he . . .

10. Q. Well, you can't tell what he told you.

11. A. Okay. No, but I mean . . .

12. Q. Your husband has testified basically to what happened
13. after that, has he not?

14. A. Yes, I guess.

15. MR. ALLEN: Your witness.

16.

17. Cross Examination by Mr. Thomas:

18. Q. Mrs. French, have you since bought a home?

19. A. Yes, we have.

20. Q. Did it cost substantially more than the one you didn't
21. buy?

22. A. It cost more.

23. Q. And you say when you went in there one night and smelled
24. this odor, you found . . . you turned around and saw the

1. Air Wick on the mantle?

2. A. Yes, sir.

3. Q. And I believe that was when you and your husband were
4. trying to clean up these things?

5. A. That was when we first walked in, period. We smelled
6. the odor.

7. Q. And that was when you came back, when?

8. A. The next night. We got the keys one afternoon, and the
9. next night we came back. And this was after the con-
10. tract was signed.

11. Q. And after these people had moved out?

12. A. Right. And there was no fire burning.

13. Q. And they left an Air Wick for you on the mantle?

14. A. Well, I don't know if they left it there, but it was
15. there. I don't know what the reason was.

16. Q. That's all.

17. MR. ALLEN: That's the Defendants' case, sir

18. MR. THOMAS: If it please the Court, I would like
19. to renew my previous motion.

20. COURT: You have no rebuttal testimony to
21. put on?

22. MR. THOMAS: Not at this point, no, sir.

23. (Jury out.)

24. MR. THOMAS: I would, if it please the Court, at

INSTRUCTION NO. 7

The Court instructs the Jury that if Mr. Armentrout represents as true what is really false, or conceals the difficulty he had experienced with the septic system in such a way as to induce a reasonable person to believe it, and Mr. and Mrs. French, to whom the representation is made, or from whom the facts are concealed, act on it, believing that no difficulty in the septic system has been experienced, ~~and in consequence thereof sustain damage,~~ there is such fraud as will justify a rescission of the Contract of Sale. Whether the representation is made innocently or knowingly, if acted on, the effect is the same. In the one case the fraud is constructive; in the other, it is actual.

Given
P.A.H.
12/16/26

INSTRUCTION 9

The Court instructs the jury that under the evidence they shall find their verdict in favor of the plaintiffs in both cases.

The Court instructs the jury that they shall find their verdict in favor of Simon Painter, t/a Valley Realty in the amount of \$~~1,500.00~~ ^{1,500.00}, and the Court further instructs the jury that with regard to Mr. Painter they may, if they see fit, find their verdict in Mr. Painter's favor and give him interest on his ~~1,500.00~~ ^{1,500.00} from November 8, 1975 until paid.

The Court instructs the jury that they shall find their verdict in favor of Norris G. and Alma Armentrout in the amount of \$2,552.89. As with Mr. Painter the Court further instructs the jury that the Armentrouts have sued for and the jury may, if they be so advised, grant interest as to \$1,768.82 from November 28, 1975 until paid, interest on \$250.00 from January 1, 1976 until paid, interest on \$250.00 from February 1, 1976 until paid, interest on \$250.00 from March 1, 1976 until paid and interest as to \$34.07 from March 6, 1976 until paid.

Verified
B. A. H.
12/15/76

INSTRUCTION 10

from a preponderance of the evidence
The Court instructs the jury that should they find their verdict in favor of the plaintiffs, they may, in the case of Simon Painter, t/a Valley Realty find their verdict in his favor in the amount of \$1,500.00, and if the jury be so advised they may further find that the plaintiffs shall owe interest on the said \$1,500.00 from November 28, 1975 until paid.

The Court instructs the jury that should they find their verdict in favor of Mr. and Mrs. Armentrout they may find in favor of Mr. and Mrs. Armentrout up to the extent of \$2,552.89. If the jury be so advised and *the jury* should find in favor of Mr. and Mrs. Armentrout in the amount of \$2,552.89, then the jury may grant interest as to \$1,768.82 from November 28, 1975 until paid, interest on \$250.00 from January 1, 1976 until paid, interest on \$250.00 from February 1, 1976 until paid, interest on \$250.00 from March 1, 1976 until paid and interest as to \$34.07 from March 6, 1976 until paid.

*Simon
T.A.H.
12/15/76*

INSTRUCTION 11 A

The court instructs the jury that the real estate sales contract between Mr. and Mrs. Armentrout and the defendants has been acknowledged and such acknowledgement creates a contract binding upon the parties. The defendants have further admitted and acknowledged that they refused to honor or be bound by the contract.

In order for the defendants to avoid what are otherwise their contractual obligations the burden is upon the defendants to come forward with proof by clear, cogent and convincing evidence that there has been, expressly or by a course of conduct, misrepresentation or concealment of a material fact which thereby induced the defendants to enter the contract which they otherwise would not have entered into.

And the Court further says that there is only one material fact at issue, this being whether or not the septic system was in such state of disrepair that it rendered the house unsalable and unfit for occupancy.

Given
P. C. H.
12/16/76

INSTRUCTION

13 A

The Court instructs the jury that in order for the defendants to avoid their contractual obligations under the contract with Mr. and Mrs. Armentrout, the burden is on the defendants to come forward with clear, cogent and convincing proof of the following:

1. That Mr. and Mrs. Armentrout expressly or by a course of conduct were guilty of misrepresentation or concealment with regard to the septic system.

2. That the septic system was in fact in such state of disrepair as to render the house unsalable and unfit for occupancy.

3. That such misrepresentation or concealment, if proved, of the fact that the septic system rendered the house unsalable or unfit for occupancy, if proved, induced the defendants to enter the real estate sales contract with Mr. and Mrs. Armentrout.

And unless you believe the defendants have come forward with clear, cogent and convincing proof of each of these three requirements, then you shall find your verdict for the plaintiffs and render your verdict accordingly.

Quinn
B.A.H.
12/16/76

INSTRUCTION

14

The Court instructs the jury that if they believe from a preponderance of the evidence that Mr. French read several books on purchasing homes and thereafter made partial inquiry regarding the septic system with full opportunity of a more complete investigation and ascertainment of all facts and then elected not to do so and to instead act upon the knowledge attained from his partial inquiry, and acted upon the facts secured by himself, then he may not offer as proof of fraud or misrepresentation any of the information as to the septic system given him by Mr. Armentrout.

Refused
J. A. H.
12/16/70

Pl. #1
12/15/76
V.O.H.

PL. EX. #1

VALLEY REALTY

P. O. Box 2284 438 Greenville Avenue
Staunton, Virginia 24401
Phone (703) 885-0339



F. Sumner T.H.
all

3

This CONTRACT OF PURCHASE made in 3 copies as of October 10, 1975
among Jon M. French and Helen V French (herein called "Purchaser"),
and Norris G. Armentrout and Alma M. Armentrout (herein called "Seller"),
and Valley Realty (herein called "Agent"),
provides that Purchaser agrees to buy through Valley Realty, as agent for Seller, and Seller agrees to sell the following described real estate, and
all improvements thereon, located in the County or City of Augusta, Virginia (all herein called "the property"):

dwelling, lot, drapes, carpet, dishwasher ovens and range, all light fixtures.
Also, T.V. antenna, garbage disposal, aluminum utility shed and all traverse rods.

Waynesboro, Virginia, and more commonly known as Route 1, Box 116
(street address).

1. The purchase price of the property is Forty-four thousand---
Dollars (\$ 44,000.00), and such purchase price shall be paid as follows:

By obtaining a conventional loan. This contract is contingent upon receiving
satisfactory financing.

2. If either F.H.A. or V.A. financing is involved in this transaction, one of the paragraphs on the reverse hereof shall be a part of this Contract of Purchase if such paragraph has been executed by both Purchaser and Seller. If a loan placement fee is required by any lender, Seller agrees to pay that part of any such fee in excess of one per cent, which Purchaser has agreed to pay.

3. Purchaser has made a deposit of One Hundred Dollars (\$ 100.00) with Valley Realty, receipt of which is hereby acknowledged, and such deposit shall be held by Agent in escrow until the date of settlement and then applied to the purchase price, or returned to Purchaser if the title to the property is not marketable.

4. Seller agrees to convey the property to Purchaser by General Warranty Deed with the usual English covenants of the title and free and clear from all encumbrances, tenancies, liens (for taxes or otherwise), except as may be otherwise provided above, but subject to applicable restrictive covenants of record. Seller further agrees to deliver possession of the property to Purchaser on the date of settlement and to pay the expense of preparing the deed of bargain and sale and the required grantor's tax.

5. Settlement shall be made at the offices of Valley Realty or at attorney's office on or before NOVEMBER Nov. 28, 1975, or as soon thereafter as title can be examined and necessary documents prepared, with allowance of a reasonable time for Seller to correct any defects reported by the title examiner.

6. All taxes, interest, rent, and F.H.A. or similar escrow deposits, if any, shall be prorated as of the date of settlement.

7. All risk of loss or damage to the property by fire, windstorm, casualty, or other cause is assumed by Seller until the date of settlement.

8. Purchaser and Seller agree that Valley Realty was the sole procuring cause of this Contract of Purchase, and Seller agrees to pay Agent for services rendered a cash fee of 1,500 flat per cent of the purchase price. If either Purchaser or Seller defaults under such Contract, such defaulting party shall be liable for the cash fee of Agent and any expenses incurred by the non-defaulting party in connection with this transaction.

9. Purchaser represents that an inspection satisfactory to Purchaser has been made of the property, and Purchaser agrees to accept the property in its present condition except as may be otherwise provided in the description of the property above.

10. This Contract of Purchase constitutes the entire agreement among the parties and may not be modified or changed except by written instrument executed by all of the parties, including Agent.

11. This Contract of Purchase shall be construed, interpreted, and applied according to the law of the State of Virginia and shall be

binding upon and shall inure to the benefit of the heirs, personal representatives, successors, and assigns of the parties.

WITNESS the following signatures and seals:

1 John M. French
Helen M. French

(SEAL)
Seller

(SEAL)
Seller

(SEAL)
Agent

Valley Realty

(SEAL)
Seller

(SEAL)
Seller

(SEAL)
Agent

(SEAL)
Purchaser

(SEAL)
Purchaser

(SEAL)
Agent

Deposit Rec'd \$ 100.00

Check

Cash

Sales Agent:

Byrd

Either of the following paragraphs shall be a part of this Contract of Purchase on the reverse hereof if executed by both Purchaser and Seller:

2(a) It is expressly agreed that, notwithstanding any other provisions of this Contract of Sale, Purchaser shall not be obligated to complete the purchase of the property or to incur any penalty by forfeiture of earnest money deposits or otherwise unless Seller has delivered to Purchaser a written statement issued by the Federal Housing Commissioner setting forth the appraised value of the property for mortgage insurance purposes of not less than \$ _____, which statement Seller agrees to deliver to Purchaser promptly after such appraised value statement is made available to Seller. Purchaser shall, however, have the privilege and option of proceeding with the consummation of this Contract of Purchase without regard to the amount of the appraisal valuation made by the Federal Housing Commissioner.

If Purchaser is unable to obtain his FHA loan, the cash deposit, less any expense incurred for appraisal and credit report shall be returned to Purchaser.

Purchaser

Purchaser

Seller

Seller

2(b) It is expressly agreed that, notwithstanding any other provisions of this Contract of Sale, Purchaser shall not be obligated to complete the purchase of the property unless Purchaser is able to obtain a Veterans Administration guaranteed loan of not less than \$ _____. If Purchaser is unable to obtain such loan, the cash deposit, less any expense incurred for appraisal, and credit report, shall be returned to Purchaser. However, Purchaser shall have the privilege and option of proceeding with the consummation of this Contract of Purchase without regard to the obtaining of any Veterans Administration guaranteed loan.

Purchaser

Purchaser

Seller

Seller

NOTE:

Defendant's Exhibits 1 through 4
Photographs

The above exhibits can not be reasonably reproduced.
The original exhibits are filed with the Clerk's Office,
Supreme Court of Virginia.

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WHICH TO PRINT

RECORD OF INSPECTION-SEWAGE DISPOSAL SYSTEM

DEF. EX.#5
48-7

Def. #56
12/17/75
located property on Tuesday Nov 18, 1975
Date 11/5/71 Case No.
Owner Buddy L. Nichols Address Rt. 1, Box 116, Waynesboro, Va. Phone
(Mailing Address)
Occupant Same Address (Mailing Address) Phone
Exact Location of Premises 1.53 acre lot on Rt. 612 - 1/2 mile East of Paxton's Store on left.
(Subdivision, Street or Road Name, Section or Lot No.)

WATER SUPPLY INSPECTION

Installed according to Permit Design ☒ Yes ☐ No. Distance to nearest House Sewer 7 feet. Distance to nearest Sewage Disposal System 5 feet. (Use Form LHS-143 for Detailed inspection of Water Supply Reference Materials.)

SEWAGE DISPOSAL SYSTEM INSPECTION

- (1) LOCATION
Allotted Area adequate ☒ Yes ☐ No. Distance from nearest lot lines 10 feet. Trees 0 feet. Water Supplies 10 feet. Buildings 0 feet.
- (2) INSTALLATION AND DESIGN
Installed according to Permit Design ☒ Yes ☐ No
Have additional Household Appliances been added NOT on Permit: ☐ Automatic Washer ☐ Garbage Disposal
☐ Other (Describe)
- (3) SOIL CONDITION
Are there soil conditions now evident which indicate system may be unsatisfactory as designed: ☐ Yes ☐ No. If Yes, show adjustments required under "Remarks" below.
- (4) HOUSE SEWER LINE
Installed ☒ Yes ☐ No. Type of material cast Size 4 Inches.
- (5) SEPTIC TANK
Constructed of concrete (Kind of Material)
Inside Dimensions Length 7 feet. Width 3 1/2 feet. Liquid Depth 1 feet. Depth of Air Space 12 inches.
Inside Fittings comply with requirements ☒ Yes ☐ No.
- (6) DISTRIBUTION BOX
Watertight and equal surcharge to each line by Water Test ☒ Yes ☐ No. Distribution Box provided with 5 (Number) extra outlets for future use.
- (7) SUBSURFACE ABSORPTION FIELD
Total Area in bottom of ditches 110 square feet. 30 inch
Number of ditches 6 Length of ditches 75 feet.
Grade of ditches Minimum 2 Inches per 100 feet.
Maximum 4 inches per 100 feet. Has system been checked by instruments (Level) ☒ Yes ☐ No.
Type aggregate used gravel
Depth of aggregate under Tile 6 inches
Total depth of aggregate 13 inches
Depth of backfill over aggregate 1 1/2 inches
- (8) SURFACE DRAINAGE
Storm Drains from House and Basement flowing away from Subsurface Drainage Field: ☒ Yes ☐ No. Was Surface Drainage required ☐ Yes ☒ No. If Yes, has this been provided ☐ Yes ☐ No. Has area been drained by lowering Ground Water Table: ☐ Yes ☐ No. ☒ Not required.
- (9) Are follow-up inspections necessary ☐ Yes ☒ No.

Septic Tank Contractor Augusta Construction Address Staunton Va. Phone
This Sewage Disposal System (Is) (Is Not) Approved by Augusta Co. Health Department.
Date 10-5-71 Signed Michael Smiley Date Approved (Sanitarian) (Health Director)
Date Approved (Advisory Sanitarian) Date Approved (Reviewing Authority - Other Agency)

With proper maintenance, approved Sewage Disposal systems may be expected to function satisfactorily, provided no overloading or physical damage occurs to the system. Remarks: Well not drilled at time of inspection and drilled to 100' - away from neighbors well is drilled and Drilled at 70' depth. well run at 20'
Mr. Wade + myself visited property Nov 18, 1975 on Wade smaller sewage in corner of basement in my.
Virginia Department of Health LHS - 141 Rev. 11-67
175

Def. # 6
11/15/71

PERMIT TO INSTALL OR REPAIR
WATER SUPPLY and/or SEWAGE DISPOSAL SYSTEMS
(VOID AFTER TWELVE (12) MONTHS)

DEF. EX. # 6

BEST COPY AVAILABLE
FROM WHICH TO PRINT.

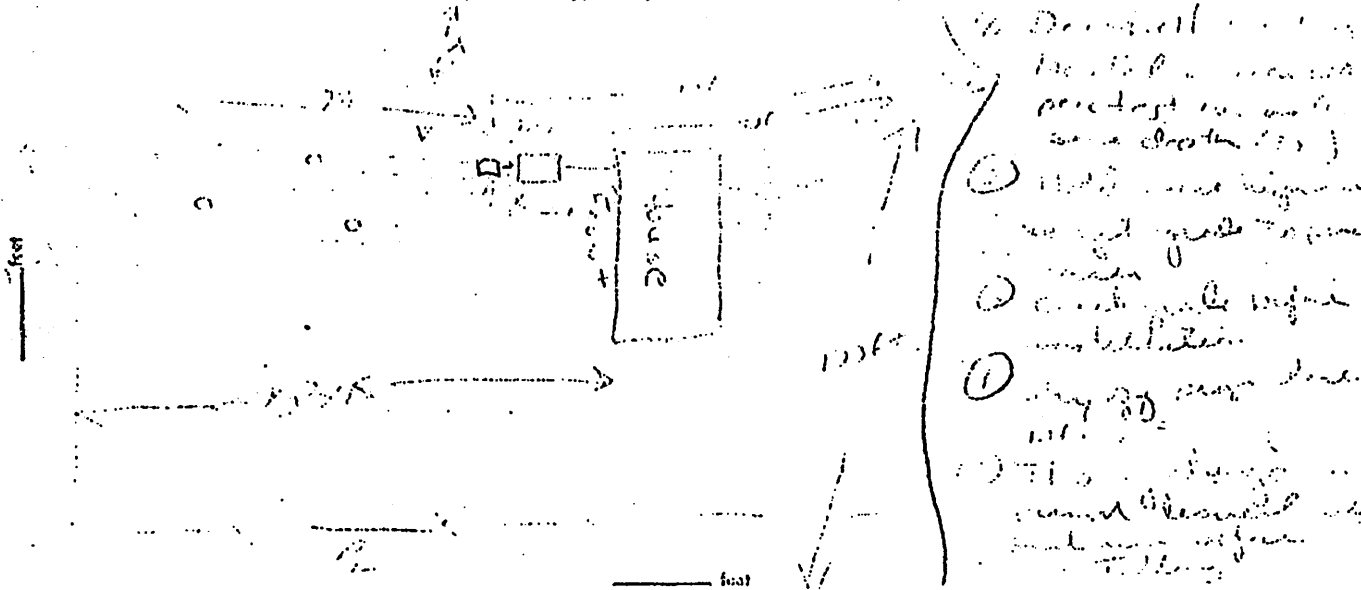
Owner John H. Smith Address 1111 N. 1st St. Richmond, Va. Phone 834-1234
(Mailing Address)
Occupant John H. Smith Address 1111 N. 1st St. Richmond, Va. Phone 834-1234
(Mailing Address)
Site of Location 1111 N. 1st St. Richmond, Va.
(Subdivision, Street or Road Name, Section or Lot No.)

OWNERS DESIRES TO
☒ INSTALL
☐ REPAIR
☐ Water Supply System
☐ Water Supply System
☐ Sewage Disposal System
☐ Sewage Disposal System
☐ Septic Tank
☐ Septic Tank
Health Department recommends Install

DETAILS OF RECOMMENDED SYSTEMS

(1) WATER SUPPLY Location to be approved by Sanitation. Type
☐ Drilled Well ☐ Driven Well ☐ Bored Well ☐ Dug Well
☐ Other Cased feet.
Casing to be properly sealed and vented if necessary. Casing to extend at least 6 inches above pump room floor. Grouted 6 feet. All surface drainage to flow away from water supply. Well to have a platform of concrete or other impervious material, at least 4 inches thick at casing, extending at least 24 inches in all directions from casing, gently sloped for drainage.
(2) SOIL STUDY Naturally drained, suitable by sight ☐ Yes ☐ No
Technical Classification Sandy ☐ Medium ☐ Clay ☐ Pipe
Clay. Percolation Test required ☐ Yes ☐ No. Rate 1 Minutes per inch. Depth of Water Table 1 feet (Estimated)
Surface drainage required ☐ Yes ☐ No. Area Drainage by Lowering Ground Water Table required ☐ Yes ☐ No
(3) DETAILS OF CONSTRUCTION Water-tight Septic Tank of 4 feet. (Kind of Material) Concrete Inside Dimensions Length 7 feet. Width 4 feet. Liquid Depth 4 feet. Depth of Air Space 1 feet. Liquid Capacity 112 gallons.
(4) HOUSE SEWER LINE Size 4 inches. Type of material required PVC. Distance from Water Supply 5 feet.
(5) SUBSURFACE ABSORPTION FIELD Distribution Box required. Ditches of equal length required. Number of square feet required 112. Type aggregate required ☐ Broken Stone ☐ Gravel ☐ Slag. Size range from 1/2 inches to 2 1/2 inches. Depth of aggregate from base of tile to bottom of ditches 12 inches. Total aggregate must equal minimum depth of 12 inches or more. Soil Cover over tile not to exceed 12 inches. Distance from well to septic tank 10 feet; distance from well to drainfield 10 feet.

Rough Sketch of Premises (including adjacent properties if pertinent), Showing Location of Lot Line, Buildings, Water Supplies, Sewage Disposal Systems, Trees, and Other Possible Sources of Contamination of Water Supplies, by Indicating Distances and Slope with regard to one another.



Note: Owner or his agent must notify Health Department, Phone 834-1234 when installation is ready for inspection. If any Sewage Disposal System, or part thereof, is covered before being inspected by the Health Department, it shall be uncovered at the direction of the Health Director or his agent. CONDITIONS DISCOVERED DURING INSTALLATION MAY REQUIRE ADJUSTMENTS OF SYSTEM DESIGN. Changes from above specifications require Health Department approval before being made.

Based on the above information, the undersigned recommends that this permit be issued.
Date 11/15/71 Approved John H. Smith (Reviewing Authority) Date 11/15/71 Signed John H. Smith (Sanitation or Health Director)