

Transcript of Joe Birl's Talk at Bones Fest III

How I Patented the Black Plastic 'Rhythm Bones'

September 25, 1999

Brightwood, Virginia

Note: This transcript by Steve Wixson was made from the video from Bones Fest III. It was done quickly with minimal editing. Spelling, punctuation and other errors should be expected. The Exhibits referenced were presented to the Rhythm Bones Society (formed later that day.)

Everett Cowett, Executive Director, Rhythm Bones Society. Now we are about to hear a real story about bones from the only person I know who could patent such a unique instrument, build them, retire and enjoy them. Now he is going to tell us how he patented the black plastic bones. Joe Birl.

Joe Birl: Hi, you all. I started playing bones by getting a ruler in school, broke it in half and shook it right to left. I was about 7 or 8 years old. We got hardwood flooring put into our house. I got some of the dark trim, and I made a pair of bones. I was a newspaper boy, worked a little bit and got a little money. When I got a little more money, I went up to Zapf's Music Store, still in business today, and I got a set of bones. My neighbor was Mr. Wrigley. He said, Joe play with both hands - I am left handed - and I just started and I played and played. The more I played, the more they would slip through my fingers. I would get sores and blisters. I would play for hours. But if I were told to do it I wouldn't do it. But as a hobby I did it. I was all set to go to high school, but that summer I signed up with the Mass Vol Vocational School for a job. This was right at the beginning of the depression. The first day of high school I came home and there was a postal card, I had a job. So we talked about it, and it was decided that I would not go to high school. I took a job for 17 cents an hour, seven dollars a week, which was a lot of money. I was the only fellow in our crowd that was working. This was 1931 and children turned over their pay to their parents to support the family. NRA came along in 1933 and the minimum wage was raised to \$12 per week. At 18, I went and worked in the machine shop. And that's how I started to figure out about bones.

The speaker right before me someone mentioned about the minstrel shows. Here are things I collected. This was on radio - the Coatesville Minstrel Show (**Exhibit 1**). This was a Sinclair minstrel (**Exhibit 1**); the Sinclair Oil had a minstrel show on radio. Here was another cutout; the Grand Minstrel Show, November 1916 (**Exhibit 2**). And here was the White Star Minstrel Show (**Exhibit 2**). Somebody wrote into the Baltimore Inquirer - What happened to the Dumont Minstrels (**Exhibit 2**)? They were...Gee, I didn't have my glasses...They were at 11th and Ludlow Street, Philadelphia, PA. They tore the building down in 1911, and he moved to 9th and Arch Street. And he died in 1919, and Emmett Welch took over the minstrel business and changed the name. And with the advent of the motion pictures, minstrel shows went down the tubes, and that happened in 1928.

At that particular time, you heard of Ted Mack and Major Bowes, the Amateur Hour.

OLDE AMERICAN COLLECTIBLES

13 NATHALIE COURT PEEKSKILL, N.Y. 10566

AUCTION CATALOGUE #4 914 739
4930

BIDDING WILL CLOSE ON SATURDAY, AUGUST 2, 1997 AT 10:00 P.M. E.S.T.

Minstrels Delight Hundreds With Song and Dance



PENNA.

Troupe of Coatsville Lions Minstrel Show which netted \$150, which the club will use to buy glasses for children



Radio best Records of the Month Continued



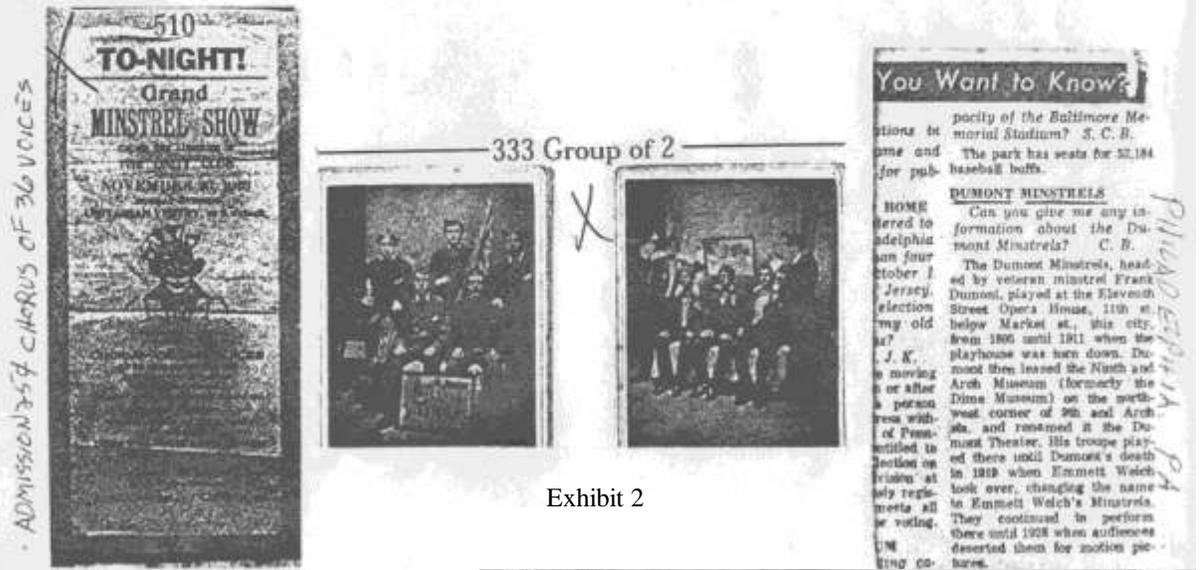
RADIO AND TELEVISION MAG. FEB. 1949



Old timers will recall brilliant Coatsville Minstrels of yesteryear.

510. Broadside for a Grand Minstrel show under the auspices of the Unity Club, November 20, 1916. A few tiny edge tears (70-90)

333. Extremely unusual pair of cabinet cards of five minstrel players known as the "White Star Minstrels" before and after they put on their black faces. Some dirt and discoloration to mount and photos. Still intriguing. (150-200)



During the depression, a lot of amateur shows were in theaters. And we would get letters. Here's one, 1937, to appear in Morristown Theater (Exhibit 3). Oh, here are two postal cards they sent (Exhibit 4). Dear Joe, this is February 13, 1936. "Don't forget me on Saturday evening, February 15th, for I have you listed for a stage show to be held at the beautiful Liberty Theater in Camden, NJ. To report at 7 o'clock at Broad and Girard, and the cars would pick us up and take us to Camden. But this is the beauty part. The prizes are \$4, \$3, \$2 and \$1. And those who came along and were not put on the show got 50 cents. So keep in mind during the depression professionals weren't working, they also toured the circuit. Then what happened a few fellows became agents and they had a few theaters so the

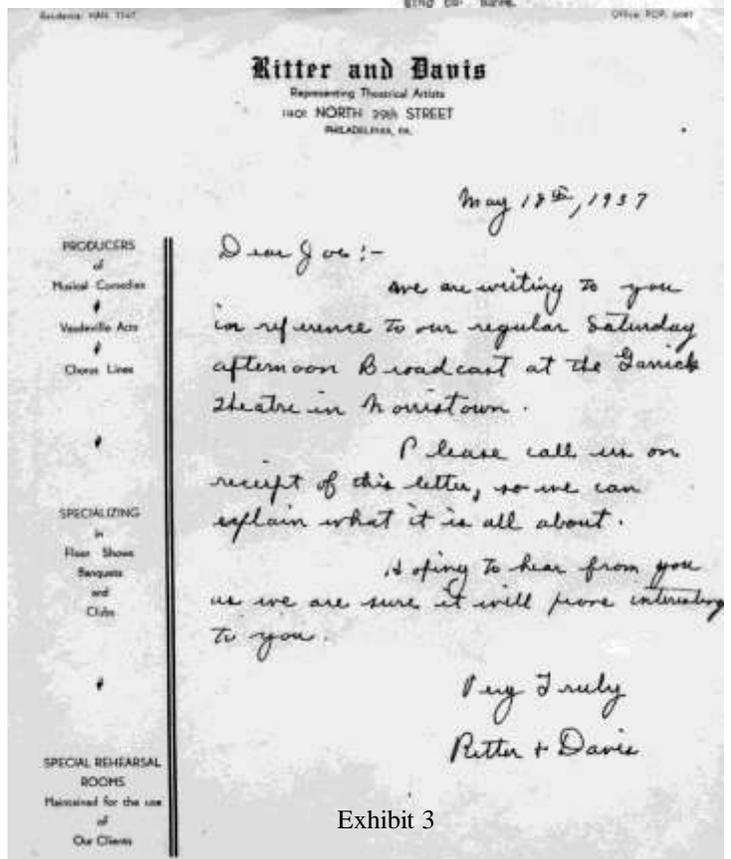


Exhibit 4



Mr. Joe Birl,
4619 Rising Sun Ave;
Phila. Pa.

Dear Mr. Birl;

Will you kindly report this Sunday Oct. 25th, to St. Ignatius Parish Hall, 636 N. 45rd St. Phila. at 1.30 p.m. for an audition for Murphys Minstrels?

If you use music in your act, bring it with you.

Very truly yours,

Joe Murphy

Granite 170C.

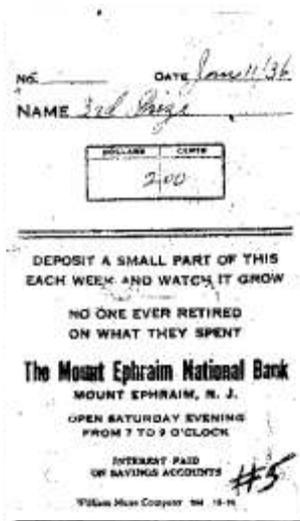


Exhibit 5

manager wouldn't have to be bothered with the neighborhood crowd and all. So the agents would send out cards to us. And the neighborhood people would come in, if it were 12 or 13 he would take three, next week you come. Therefore he always had 4 or 5 of his own so they would squeeze us in and those who didn't go on stage also got 50 cents.

Here's another one, from Philadelphia (**Exhibit 4**). "Kindly be at the Morgan Café, 56th and Lansdowne Avenue. Prizes, \$4, \$3, \$2 and \$1." I never got first prize, naturally, because of the pros. Here's an envelope I got at the Mt. Ephraim Theater, I got \$2. There is the original envelope (**Exhibit 5**). Big deal. (Applause).

I then wanted to get something familiar in plastics, like bakelite. I wanted a solid piece. And I came up with Spalding Fiber. I got 4 pieces in June 1939 for \$1.88. And I filed them out and ground them out and there is the receipt (**Exhibit 6**). Oh, at that particular time I was thinking



Exhibit 6

There they referred me to a patent attorney by the name of Fairbanks, and we talked a little bit. And the first thing you do in a patent is get a search. He contacts his attorneys in Washington, they see what they can find and report back to him. This is May 1945. He now has asked his attorneys and they have come back with 3 patents that they have cited which are not too important (**Exhibit 8**). One of the patents was by a Samuel Sussman and he calls it Musical Instrument Known as Bones, January 1918 (**Exhibit 9**). There is the man playing with, I hope you can see it or not, but that's what it is. I'm going to leave it all here. And with that there was another one, December 1891, Castanet (**Exhibit 10**). But that's what the castanets are and they mention those things that shook between there. We also had a patent in

May 21, 1945.
106 E. Gargas Lane
Philadelphia-19, Pa.

Re: SEARCH=BONES OR CLAPPERS

Dear Mr. Birl:

My Washington associate reports that the enclosed patent to Sussman, No. 1,254,547, Jan. 22, 1918, was the only ordinary "bones" patent found which is in combination with an electrical sounder.

Also enclosed are the patents to Wheeler, No. 464,684, Dec. 8, 1891, and to Covel, No. 1,072,248, June 5, 1928. These last two are for clappers and they do not show your construction although Covel shows the broad idea of a shoulder at the upper end of a striker support.

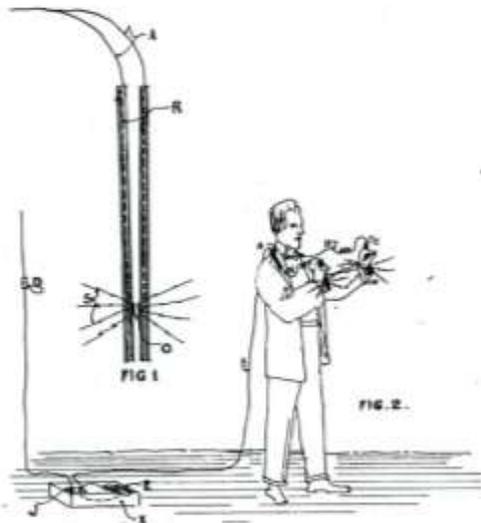
I will be glad to go over these with you at your convenience.

Yours very truly,

H.S. Fairbanks

Exhibit 8.

S. SUSSMAN.
MEDICAL INSTRUMENT KNOWN AS BONES.
APPLICATION FILED JUNE 15, 1917. Patented Jan. 22, 1918.
1,254,547.



Rev. B. B. B. H. B. B.

Exhibit 9

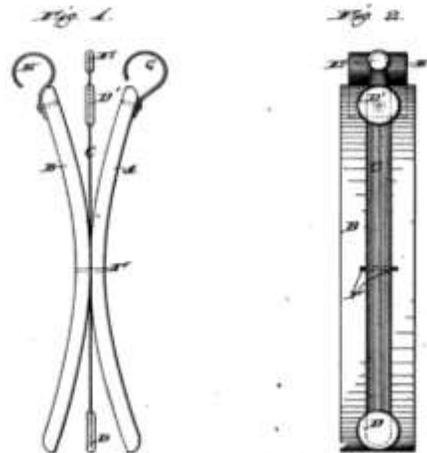
Samuel Sussman
Inventor:
My Atty. Robert B. B.

(No Model.)

O. A. WHEELER.
CASTANET.

No. 464,684.

Patented Dec. 8, 1891.



Witness
Ed. B. B.
Am. B. B.

Inventor
Orrin A. Wheeler

Exhibit 10

1928 (**Exhibit 11**). This was called a Sounding Toy. It was like a bell, but there was a little groove on top, and that little thing shaking there was a lollipop (laughter). We cited these and then he wrote up what my patent was. There is no date on that, but that happened shortly after we were all set to go (**Exhibit 12** on next two pages).

September 19th, a few months later the examiner, Warren Fisher, it's coming up, Fisher and Tsukamoto, rejected my patent (**Exhibit 13**) because of

OFFICE OF
HERBERT S. FAIRBANKS
108 E. GORGAS LANE
PHILADELPHIA 19

September 19, 1945.

Re: Application for Bones, Serial No. 599,411

Dear Mr. Hirtl:

The Examiner has acted on this case and has rejected the claims as filed on Fisher in view of Tsukamoto, stating "It would not amount to invention to provide parts A and D of Fisher with shoulders to prevent movement of the fingers held therebetween in a manner suggested by Tsukamoto.

Copies of these two patents are enclosed and as soon as you have had an opportunity to consider them, please return them to me with your views so that an amendment can be filed to overcome the objections raised.

Also enclosed is a copy of the drawing for your file.

Yours very truly,
H. S. Fairbanks

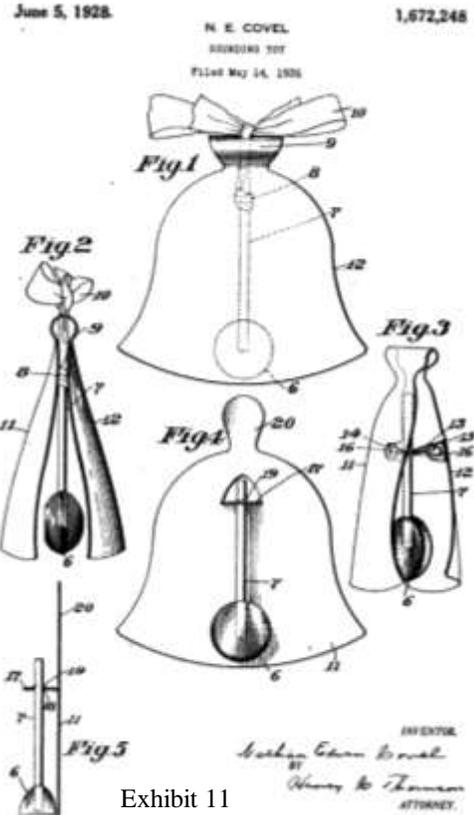


Exhibit 11

this patent, called Castanet, and this was in 1881, cite of that patent (**Exhibit 14**). The next one was something called Rhythm Sticks (**Exhibit 15**). That was by a Japanese man, and that was 1934. And there are half round timbers with little grooves on top, and they cited that as a recess and knocked me

down. On that particular instrument in the Business Week of 1969, this adv is a girl from Okinawa has those same wooden sticks in her hand (**Exhibit 16**).. One of these things I like to

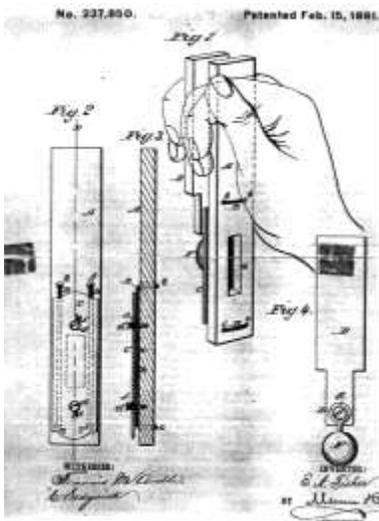


Exhibit 14

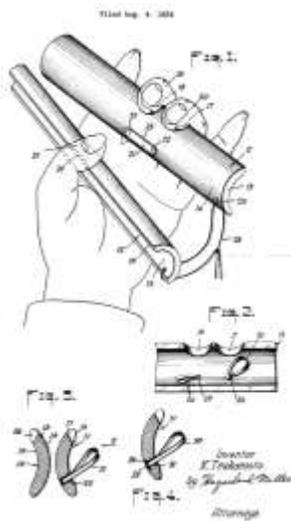


Exhibit 15



The following information will give the examiner a better explanation of my invention.

As stated in my application, that in the device heretofore made, the bones have a smooth surface and there is a tendency for them to slip from the fingers of a player. This slipping is very undesirable and very annoying to the player because he must stop playing and adjust the bones. With the ordinary bones the player has no control of this slipping and on numerous occasions the slipping is so great that one or both bones fall from the player's fingers. To say the least, this is very embarrassing. Also, the ordinary bones are not satisfactory; they are too thick and they are very clumsy, consequently they cannot be handled conveniently therefore making it very difficult to play them. Because of the thickness of the bones there is a pressure on the fingers which causes soreness at the finger-joints and makes the fingers themselves very sore.

Since I knew these things from my own experience, I wondered if the other players encountered the same difficulties. This prompted me to conduct a survey among bone-players. I found that they had the same problems as I had and had the same sad experiences namely slipping of the bones and sore fingers.

Through my knowledge of the bones and with the information which was obtained through the survey, I knew what the problems were and my next step was to correct this condition and solve the problems. After many hours of experimenting with numerous designs and models, the present bone was found to be the best.

Advantages of New Bones with Finger-Fit Control

- 1 There is no possibility of the bones slipping in the fingers of a player or the bones falling from his hands, and consequently the problem of adjustment is eliminated.
- 2 This new design will enable the player to control the action of the bones and thereby achieve better results.
- 3 The pressure on the fingers will be eliminated thereby doing away with sore fingers and sore finger-joints.

- 4 A good, easy, comfortable, finger-fit feeling is obtained and assured.
- 5 The discovery of this new design actually improved the tone quality of the bones.
- 6 My invention lends itself very well to mass production economies. The economies and the benefits of a better device would only be made possible and passed onto the public if I made and marketed these bones; and I would only produce and market this device embodying my invention if I had patent protection.

The purpose of the patent law would then be served by giving protection to this contribution of the art.

Patent tactics : Law by Roger Sherman Hoar

- Page 99 Being an improvement over prior art - in which case certain earlier patents will be cited.
- Page 99 A mere "paper patent" is one covering a mere idea never put into actual use, will be very narrowly construed.
- Page 101 But the fact remains that no one did actually do it, until the invent came along and solved the problem.
- Page 111 Demand for Explanation.
- Page 115 A claim once allowed requires overwhelming reasons or new art for its rejection.
- Page 119 Conference with Examiner.

INVENTION OVER PATENTS CITED.

show off there. They rejected us on all that. Now we come over here. On March 10th of 47, permission has been granted to change a figure which is one of the diagrams. The cost of modifying the drawing and adding new figures will be \$4 (**Exhibit 17**). Further prosecution under the Examiner is closed under the two doctrines set by law. However, March 11th..March 10th, enclosed is a copy of the action just received in the above case that as soon as the drawings have been

HERBERT S. FAIRBANKS
 PATENT ATTORNEY
 108 E. GORDES LANE
 PHILADELPHIA 18, PA.
 ESTABLISHED 1922
 March 11, 1947.

Re: Application for Bones

Dear Mr. Biri:

Enclosed is a copy of an action just received in the above case. I understand that as soon as the drawings have been taken care of the case will be passed to issue. This matter is receiving attention.

Yours very truly,

H.S. Fairbanks

Exhibit 18

By answer:

3-17-47

Mr. Herbert S. Fairbanks
 108 E. Gorde Lane
 Phila 18 Penna.

Dear Mr. Fairbanks:

This will acknowledge receipt of your letter of March 11, and a copy of the action taken on my patent for bones. Attached please find a money order for \$4.00 to cover the cost of adding and correcting drawings. Thank you very much.

Yours very truly
 Joseph J. Biri

HERBERT S. FAIRBANKS
 PATENT ATTORNEY
 108 E. GORDES LANE
 PHILADELPHIA 18, PA.
 ESTABLISHED 1922
 April 30, 1947.

Dear Mr. Biri:

Enclosed is a copy of an action just received on the application for Bones.

I am surprised at this because in the former action the claims were allowed and the prosecution closed and the only formality was the addition of Figure 5 to the drawings.

Copies of the new references are being ordered and as soon as they are received they will be forwarded to you for your consideration.

Yours very truly,

H.S. Fairbank

Exhibit 20

J.J.Biri, Serial No. 599,411, Filed June 14, 1945.
 For: Bones
 Action dated March 11, 1947

In response to amendment filed Nov. 30, 1945.

Claims 6, 7 and 8 appear to be allowable.
 Correction of the drawing as required in the last Office action is repeated.
 Permission is hereby given to add proposed Fig. 5.
 The cost of correcting the drawing and adding new Fig. 5 will be \$4.00.
 Further prosecution before the Primary Examiner is closed under the doctrine set forth in ex parte Quayle 1925, C.D. 11.

Exhibit 17 Examiner.

taken care of the case will pass to issue. This matter is receiving attention. Fairbanks, that's the attorney (**Exhibit 18**).

We now get a response in April which is about a month later, April 1947 (**Exhibit 19**),

Biri Serial No. 599,411
 Bones
 Action dated April 29, 1947.
 In response to letter of March 12, 1947 and amendment filed Nov. 30, 1945.

Additional references made of record:

Lincoln	1,151,189	Dec. 15, 1914
Daker	1,168,845	Jan. 18 1916

On reconsideration and in view of the references cited above, the claims are rejected on either of said references.

No invention would be involved in providing bones or clappers with reduced portions to facilitate handling in view of the teaching of either of the above references.

Exhibit 19

and the little paragraph reads by the patent office: on reconsideration and interview with the reference cited above the claims are rejected on either of said references. Then Fairbanks writes to me (**Exhibit 20**) Enclosed is a copy of the action just received. I am surprised at this because in the former action the claims were allowed. And the prosecution closed and the only formality

was the revision of Figure No. 5. I am going a little fast so to not take up your time.

Then on June 30th, enclosed are copies of the two new patents cited by the examiner, namely by a fellow named Baker and a fellow by the name of Lincoln. Baker on July 14th patented a Base-ball Bat with a recessed portion so it wouldn't slip from the hand (**Exhibit 22**). And they knocked me

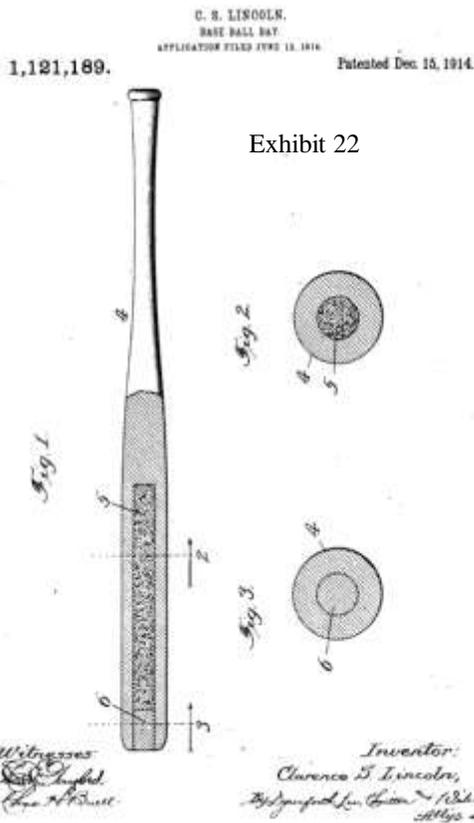


Exhibit 22

HERBERT S. FAIRBANKS
 PATENT ATTORNEY
 108 E. GORDON LANE
 PHILADELPHIA 18, Pa.
 CORRESPONDENCE 1947

~~June 28, 1947~~
 June 30, 1947.

Dear Mr. Birl:

Enclosed are copies of the two new patents cited by the Examiner, namely Baker and Lincoln. Please return these to me with your views so that an amendment can be filed to overcome the objections raised.

Yours very truly,
H. S. Fairbanks

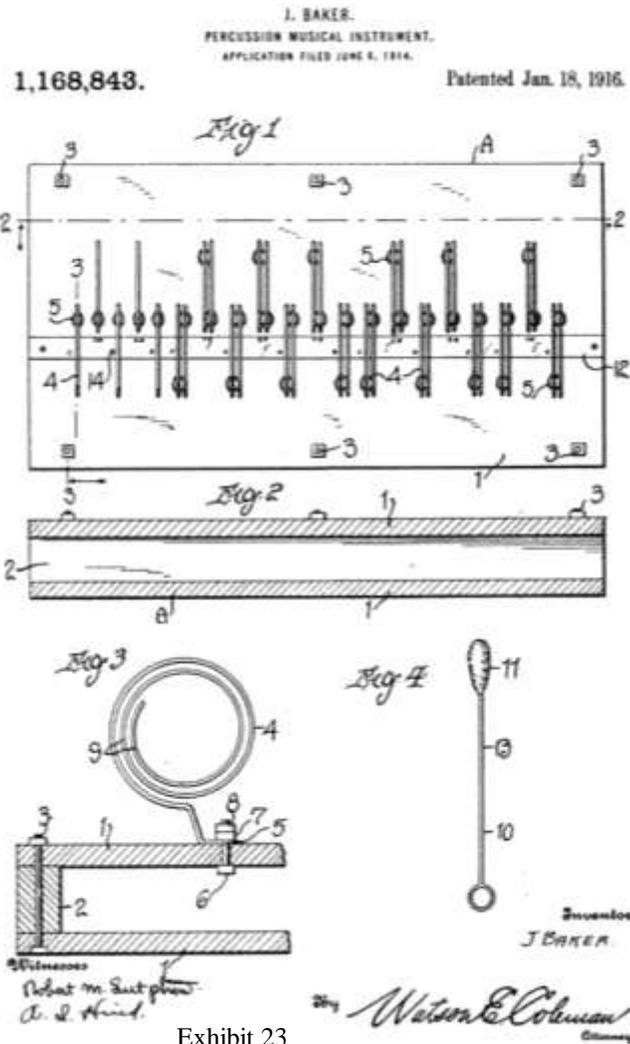


Exhibit 23

down on that. They now have a Percussion Musical Instrument, July 1916 (**Exhibit 23**). This looks like a xylophone where they bang something, and they cited that. There were seven patents they cited knocking me down. On July 17, 47, the Examiner is of the opinion that what the applicant has done is merely a matter of mechanical skill and not an invention, from slipping from the hand in not amounting to invention and an issue having been reached this section is made final.- they dis-

agreed (**Exhibit 24**). On the other side, he writes to me and says This is a final action and I will be glad to go over it with you at your convenience. And we have six months to appeal from July 17th to early 1948 (**Exhibit 25**).

So it's getting late in December of 1947, I went to Fairbanks and I said Let me go to

J.J.Birl--Bones---Serial No. 599,411
 Action dated July 17,1947.
 In response to letter of July 10,1947.
 The case has been reconsidered.
 The Examiner is of the opinion that what applicant has done is merely a matter of mechanical skill and not of invention. To provide a shoulder on a bone so as to prevent the fingers from slipping past it is a mechanical expedient not amounting to invention.
 An issue having been reached, this action is MADE FINAL.

Exhibit 24

HERBERT S. FAIRBANKS
 PATENT ATTORNEY
 136 E. GORRAS LANE
 PHILADELPHIA 19, Pa.
 August 4, 1947.
 Re: Application for Bones
 Dear Mr. Birl:
 Enclosed is a copy of an action in the above case from which you will see that the Examiner has made his action final. Apparently, his rejection is based on the fact that the device is simple and not on the art which he cited.
 I will be glad to go over this with you at your convenience. We can ask to have the case reconsidered, and if the Examiner is not willing to do this, we have six months from July 17, 1947 to appeal.
 Yours very truly,

Exhibit 25

Washington. I went to Washington, I got to the Examiner's office and he was going to lunch. I showed him the bones and the blueprint again, and he said I didn't know it was like that. He said come back at 1:30 or so and we will talk about it. This is also another letter from the Patent Office rejecting my claim (**Exhibit 26**). After I spoke to the Examiner in his

Ex. 57 Bones 599 411
 DEPARTMENT OF COMMERCE
 UNITED STATES PATENT OFFICE
 WASHINGTON, D. C.
 Paper No. 12
 NOV 11 1947
 MAILED
 Applicant: Joseph J. Birl
 Ser. No. 599,411
 Filed June 14, 1945
 For Bones
 In response to letter of Sept. 5, 1947.
 On reconsideration of the references of record, Teukanoto is found to show indented portions for facilitating handling of the sticks with the fingers. It would not require invention to make one reduced portion out of the two shown in Teukanoto.
 It is again held that the change made by applicant over old devices of the same type is insufficient to warrant the grant of a patent thereon.
 The final rejection of July 17, 1947 is therefore adhered to.

Exhibit 24 Continued

IN THE UNITED STATES PATENT OFFICE
 IN THE MATTER OF THE APPLICATION OF
 Joseph J. Birl
 Fort Sumner
 Serial No. 599,411
 Filed June 14, 1945
 Division 57, Room 2080
 Jan. 9, 1948.
 Philadelphia, Pa.
 Sir,
 I hereby amend my application as follows:
 Claim 6, line 1, cancel "having a recess extending" and insert flattened (after "along" insert a portion of
 Claim 7, line 1, cancel "having a recess extending" and insert flattened (before "opposite" insert portion of
 Claim 8, line 4, cancel "width" and insert length; cancel "that" and insert a width.
 REASON
 In view of an oral interview of applicant with the Examiner, the claims have been amended as agreed and it is understood that the final rejection will be waived and the case passed to issue. Such action is therefore respectfully requested.
 The art cited does not show a true flattened longitudinally along a portion of one face, or the feature of the recess being of greater length than a width of a finger.
 Respectfully submitted

Exhibit 26

a

office he said your patent looks ok to me. So you feel good going home on the train. You feel like you won gold medal. We had to change three words or so (**Exhibit 27 and 28**). And then the next paragraph it says, in view of an oral interview of the applicant

with the Examiner, the claim has been amended as agreed and it is understood that the final rejection will be waived. And the case passed to issue and such action is respectfully requested. Enclosed for your files is your patent (**Exhibit 29**), and bingo that is what you get from Patent Office (**Exhibits 30 and 31 on the next two pages**) (Applause) All this bull-shit if you want to know, it's the wording or whatever. And it was a lot of fun, and I guess if you persevere - I don't know.

HERBERT S. FAIRE
PATENT ATTORNEY
106 E. GORRAS LAM
PHILADELPHIA 19, P.
—
GERMANTOWN 1948

Jan. 17, 1948.

Dear Mr. Birl:

Your application for BONES was officially allowed under date of Jan. 15, 1948 with three claims.

Enclosed is a statement covering the final Government fee and a small charge for the amendments.

Yours very truly,



Exhibit 28

IN THE UNITED STATES PATENT OFFICE

IN THE MATTER OF THE APPLICATION OF

Joseph J. Birl
For: Bones
Serial No. 599,411
Filed June 16, 1945
Division 57, Room 3090

Jan. 5, 1948.
Philadelphia, Pa.

Hon. Commissioner of Patents
Washington, D.C.

Exhibit 27

Sir:

I hereby amend my application as follows:
Claim 6, line 1, cancel "having a recess extending" and insert flattened; after "along" insert a portion of
Claim 7, line 1, cancel "having a recess extending" and insert flattened; before "opposite" insert portions of
Claim 8, line 4, cancel "width" and insert length; cancel "that" and insert a width.

ARGUMENT

In view of an oral interview of applicant with the Examiner, the claims have been amended as agreed and it is understood that the final rejection will be waived and the case passed to issue. Such action is therefore respectfully requested.

The art cited does not show a bone flattened longitudinally along a portion of one face, or the feature of the recess being of greater length than a width of a finger.

Respectfully submitted

283

21.



2436283

THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Whereas **JOSEPH J. BIRL,**
of

Philadelphia, Pennsylvania,

PRESENTED TO THE **Commissioner of Patents** A PETITION PRAYING FOR
THE GRANT OF LETTERS PATENT FOR AN ALLEGED NEW AND USEFUL IMPROVEMENT IN

BONES,

A DESCRIPTION OF WHICH INVENTION IS CONTAINED IN THE SPECIFICATION OF WHICH
A COPY IS HEREUNTO ANNEXED AND MADE A PART HEREOF, AND COMPLIED WITH THE
VARIOUS REQUIREMENTS OF LAW IN SUCH CASES MADE AND PROVIDED, AND

Whereas UPON DUE EXAMINATION MADE THE SAID CLAIMANT is
ADJUDGED TO BE JUSTLY ENTITLED TO A PATENT UNDER THE LAW.

NOW THEREFORE THESE **Letters Patent** ARE TO GRANT UNTO THE SAID

Joseph J. Birl, his heirs **OR ASSIGNS**
FOR THE TERM OF **SEVENTEEN** YEARS FROM THE DATE OF THIS GRANT

THE EXCLUSIVE RIGHT TO MAKE USE AND VEND THE SAID INVENTION THROUGHOUT THE
UNITED STATES AND THE TERRITORIES THEREOF.



In testimony whereof I have herunto set my
hand, and caused the seal of the Patent Office
to be affixed, at the City of Washington
this seventeenth day of February,
in the year of our Lord one thousand nine
hundred and forty-eight, and of the
Independence of the United States of America
the one hundred and seventy-second.

Attest:

J. Schimmel
Law Examiner.

Lawrence S. King
Commissioner of Patents

UNITED STATES PATENT OFFICE

2,436,283

BONE

Joseph J. Birl, Philadelphia, Pa.

Application June 14, 1945, Serial No. 599,411

3 Claims. (Cl. 46-191)

1

This invention relates to bones or clappers, a pair of which are held between the fingers of a player to produce, when shaken, rhythmic sounds. A pair is played either alone or with other musical instruments.

In devices of this character as heretofore made, the grasping portion had a smooth unbroken surface and there was a tendency for them to slip between the fingers of a player. This made it difficult to control the relative position of the bones and to retain them in varied relative positions to produce different rhythmic sounds by causing one bone to contact different portions of the other bone.

The purpose, therefore, of this invention is to construct the bones in a novel manner so that they can be retained between the fingers without slipping and are easier to play to produce variations and modulations in rhythmic sounds.

With the foregoing and other objects in view as will hereinafter clearly appear, my invention comprehends a novel construction of a bone.

It further comprehends a novel bone having a shoulder above its grasping portion to prevent slipping, and in some cases having a grasping portion of reduced thickness.

In the accompanying drawings, preferred embodiments are shown which I have found in practice to give satisfactory and reliable results, but these embodiments are typical only.

Figure 1 is a side elevation of a pair of bones in spaced relation as they would appear when held in the hand of a player.

Figure 2 is an elevation of a bone, showing the inner face thereof.

Figure 3 is a section on line 3-3 of Figure 1.

Figure 4 is a section on line 4-4 of Figure 1.

Figure 5 is a side elevation of another embodiment of my invention.

Similar numerals of reference indicate corresponding parts.

Referring to the drawings:

Each one of a pair of bones is of the same construction. The bones are preferably made of a hard material, and may be straight or curved as may be desired.

1 designates a bone embodying my invention, and which as shown in Figures 1 and 2 has a recess 2 in its inner face near its upper end, thereby forming a shoulder 3. The recess at its lower end curves outwardly to merge with the inner face of the bone. The shoulder 3 engages the top portion of the finger positioned between the bones when they are held in the hand in playing position, and prevents relative downward movement of a bone with respect to the fingers of the player. The marginal portions of the recess preferably have a slight curvature towards the edges

2

of the bone, see Figure 4. The recess 2 provides a grasping portion of reduced thickness which is off-center from the median line of the bone. It will of course be apparent that the recess and shoulder can be formed on both sides of the bone if desired or on either side, but I prefer to have the recess on the inner face of the bone.

The broad feature of the invention is having a shoulder above the grasping portion at the upper end of the bone to prevent the bone slipping out of position between the fingers when playing, and I prefer to employ a recess which will cause the bone to be of reduced thickness at the grasping portion.

The shoulder and recess can be provided on both sides of the bone near the upper end as shown in Figure 5. This materially reduces the thickness of the bone at the grasping portion which is held between juxtaposed fingers during the playing operation.

It will be apparent from the foregoing that bones constructed as herein disclosed will be easier on the fingers, can be more accurately controlled, and are easier to play to produce varied rhythmic sounds than those heretofore employed.

Having thus described my invention, what I claim as new and desire to secure by Letters Patent is:

1. A bone flattened longitudinally along a portion of one face to reduce the thickness at the grasping portion, said recess forming a shoulder near the upper end of the bone.

2. A bone flattened longitudinally at portions of opposite sides of the bone to reduce the thickness of the grasping portion to be held between the fingers, said recesses forming shoulders near the upper end of the bone.

3. A bone oval in cross section having one side cut away near one end to form a longitudinally extending recess merging at its lower end into the face of the bone, the recess being of greater length than a width of a finger and forming a shoulder at the upper end to overhang one of the fingers between which the bone is held during the playing operation.

JOSEPH J. BIRL.

REFERENCES CITED

The following references are of record in the file of this patent:

UNITED STATES PATENTS

Number	Name	Date
237,850	Fisher	Feb. 15, 1881
1,121,189	Lincoln	Dec. 15, 1914
1,168,843	Baker	Jan. 18, 1916
1,982,888	Tsukamoto	Dec. 4, 1934

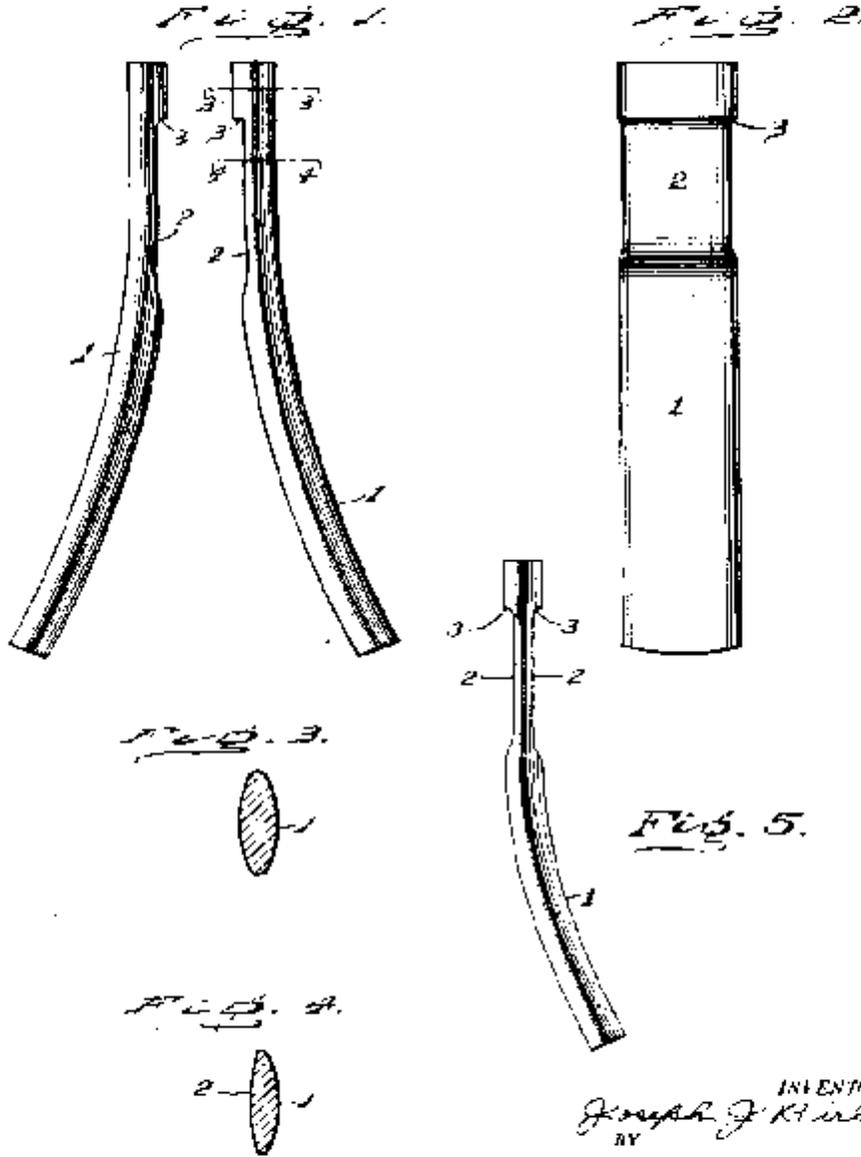
Feb. 17, 1948.

J. J. BIRL

2,436,283

BONE

Filed June 14, 1945



INVENTOR
Joseph J. Birl
BY
Herbert S. Hamburger
ATTORNEY

Now the thing is when you get a patent - so what - what are you going to do with it. There are many patents on the shelves and file cabinets just lying dormant. This could be that way too. So the thing was now to find a molder. I knew from that Spalding bill I made something out of bakelite, but now Proctor had big presses to make handles for their irons and toasters, and I learned a little bit from that. And they're the ones who recommended this patent attorney.

But something was happening. Right around that time on the west coast, Brother Bones, Tempo Records, was out and doing a big business. Brother Bones had reached Billboard Magazine that week on February 5, 1949 (Exhibit 32). So I was a little late. My mold

was being made - the bones weren't made yet - that's the way it goes. Of course I went to Aggie Frank, molded insulation and plastics and Willie Strauss and two others. They wanted an arm and a leg. Willie Strauss was a consultant engineer for Stokes Machinery that makes machinery to make pills for the drug industry. So he had a little research lab, oh no bigger than this porch, and he said I'll do it for you. I was his second customer. Since then he moved up to Philmont and he has a place so big. He has more than 100 injection machines and a couple of compression machines.



Maybe not too subtle, but nevertheless effective, is this shot dreamed up to illustrate a new disk light signing his latest record contract. Who else would we be talking about but Brother Bones, who with his Shadows zoomed oldie "Sweet Georgia Brown" on the Tempo label to a dominating position on virtually all best selling and most played charts. Cal Irving Fogel, Tempo's proxy, says the platter has hit a half million and looks like it will ride for some time yet. In the meantime Brother Bones has a new Tempo etching which could be the follow-up to "Georgia." It's "I Know That You Know," backed by "Red Wing." Who's the skeleton? Brother and the Colonel say it's the real head of the Bones family, Granddaddy Bones himself.

Exhibit 32

These plastics (bones) are made by compression molding. The difference is injection molding curing time. Bingo, one, two, three, four - six seconds and it done. Compression molding has to be baked 60, 70, 80, 90 seconds. That's the difference. We now have the molds made and we now ran into a little problem. As they were made there is a flash, there is a flash on the bone, oh, there it is. To get the flash off at the ends and here - that is where the molds come together - the best way is to tumble them. And in tumbling them, this finger groove very thin. It would chip against there and break it out. So we had to stop. At my home I got a hard piece of steel on a vice and started scraping to remove the flash plastic.

So the thing is now you have the bones, you have the bones and what are you going to do with them. The 45 records were big, So I said it, I will never forget it - it was a Tuesday night. I got on a Broad Street subway and went to Broad and South street - the Paramount Record Shop. I walk along the street from Broad to 15th. The street was wet - the lights acted like a mirror. Nobody's on the street. I came to the store, and bingo there were 8 or 10 people in there or more. So I walked in and they were all black. I talked to the manager. I said due to the popularity of Brother Bones record, etc, this maybe an item for you. In a million years, you would not know what that man said to me. Brother bones was in the back room. (Audience reacts). He came from California coming east, hitting major cities, the radio stations to plug his record. And unbeknownst to me, he must have said on WDAS, the black radio station, that he was going to be at the Paramount Record Shop. That's why the people were there. A photographer from a black newspaper was there by the name of Sykes, and he took our picture. I was there with a bunch of people all holding bones. I told a white lie the day. I called Sykes and said "I talked to my friends and they don't believe that I saw Brother Bones. I would like to have a couple of those pictures. He said fine. A couple of days later he delivered me the pictures and there is Brother Bones with all the crowd (**Exhibit 33**). And you'll see the people



Exhibit 33

who are holding the bones - I had a few pairs of rhythm bones - I that I filled in with white paint to highlight the name on rhythm bones as seen in Exhibit 33. There he signs it "To a real guy, Brother Bones, 4/5/49, and his right name is Freeman Davis. I know he is in Long Beach, California.

He was coming east to appear on the Ed Sullivan show for the third time. He then told me that the Tempo record was made on the West Coast. Because there was great demand, they sent the master, one to Chicago and one to Philadelphia. There

\$3.85 and \$4.85.

Exhibit 35

Merchandising Pays Off: Ya Got Troubles Selling Wax? Then Talk to Felix in Philly

PHILADELPHIA, Oct. 22. — Retailers belonging to the order of the crying towel can pursue their hobby of weeping about the state of the record business until doomsday as far as Felix Valdera is concerned, for his two Paramount Record Shops at 1819 South Street and 1801-03 Ridge Avenue continue to show an upswing regardless of the so-called trends in the retail business.

According to 33-year-old Valdera, the people still like their music on records as much as ever, and will continue to buy the product so long as the best of the biscuits are brought to their attention. A firm believer in the adage, "Advertising is the life of business," he has demonstrated thru his successful operation that it pays to advertise.

Radio Ghumick
Thru his radio show, *Jumping at the Record Shop*, a full hour starting

customers which has now branched out all over the world. Today, customers as far away as the Mariannas, Hawaii, Japan, Alaska and even Ethiopia purchase records from his stores.

Heavy Ad Budget
To build up his mailing list, which gets his own catalog listing every month, Valdera has been using such media as the national editions of *The Pittsburgh Courier*, a weekly, and *Grit*, a farm circulator reaching half a million residents of small towns. Starting in November, Valdera will begin a schedule in *American Weekly*, largest of the Sunday newspaper supplements. While record manufacturers have used *American Weekly* in the past, this will be the first time that a local record retailer has done such national advertising.

Another factor in the...



was an independent producer at 13th and Callo Hill (Exhibit 34). I located him and got in touch with him, and he gave me - or I bought some - Brother Bones Records, Sweet Georgia Brown and others, and that's a picture of the album - I have the album here. That is a photostatic copy (Exhibit 35). On the

Exhibit 34

inside cover is a story of Brother Bones (Exhibit 36). He was like you. He worked in a Chinese restaurant, whistling and playing bones when Tempo Records got him. The rest is history

A DARK STAR SHINING BRIGHTLY!

It's a far cry from the naked savage in his jungle clearing stamping in time with the throbbing impulses of a native drum to a gowned-by-Schiaparelli debutante on a Conga line. And yet each, in his own fashion, is responding to that great impelling force we know as Rhythm.

Because the appeal of Rhythm is an all-pervading—because the world has always responded to Rhythm—it has reserved a very special place in its affections for those who make it. Proof of this may be found in the tremendous popularity enjoyed by the great band and orchestra leaders. And it's even more strongly attested to by the fact that almost overnight Brother Bones became a national figure. For upon this uniquely talented artist has been bestowed the gift of Rhythm in its purest essence.

When Brother Bones—whose real name is Freeman Davis—was discovered by the president of Tempo Record Company, he was playing in a Chinese restaurant in downtown Los Angeles. That is to say, he was playing there on Saturday nights for the extra revenue it brought in. The rest of the time he was busy at his trade of carpentering; for as a good family man and a substantial member of his community, he realized the obligations imposed upon him as the head of a household. His heart had always yearned toward the entertainment world—he had never ceased practicing with his bones, his whistling and his dancing—but he knew all too well that a career in show business was a chancy thing and that the door was opened to all too few of the countless thousands who knocked thereon demanding admittance.

But for him that door was to be opened and it was to reveal a vista brighter by far than even his fondest dreams had led him to hope for. A recording session was arranged—and the rest is history. Because one of the tunes waxed at that session was that great old favorite, "Sweet Georgia Brown", which, embellished by the wizardry of Freeman Davis' bones, plus his supermelodic whistling, took on a completely new flavor; so new—and so distinctive—that in practically no time the sales of the record zoomed past the half-million mark. And they've never stopped. Today Brother Bones' interpretation of "Sweet Georgia Brown" has come to take its place as one of the great records of all time. Upon it, the world has very definitely set the seal of its approval.

And we do mean the world; Freeman Davis' records are just as popular in Italy and France and Switzerland and England and Germany as they are in America. His star burns today with a steady brilliance in the glittering galaxy of Show Business. He divides his time between appearing as a headline attraction in vaudeville and smart night spots and making records for Tempo, to whom he is under exclusive contract.

So Brother Bones' dream has come true—because of you—and millions of others like you all over the world—who were quick to recognize that in every Brother Bones record—and in every fibre of the man himself—is that wondrous quality to which we made reference before—the quality of Rhythm. It's here in generous measure for your enjoyment. Happy listening to you.

Exhibit 36

TEMPO RECORD COMPANY OF AMERICA

HOLLYWOOD, CALIFORNIA

CUSTOM-MADE RECORDS

the crack name bands are not on the tube—the rest of the plugs can be bought in an afternoon's pluck call.

Who's the Villain?

Nobody seems to be able to put his finger on the people who are responsible. Song pluggers blame their bosses for making the deals without the pluggers' knowledge. Publishers blame their employees for buying plugs out of their own pockets. The established professional men with solid contacts blame the newcomers who hire scream. All agree that the plug is distasteful in its value toward establishing a name, especially with the cheap payola artists receiving as many as a dozen songs (depending on the tempo), one chosen each, into a 15-minute slot.

Patrols, in one form or other, is as old as the music business. Before radio, in the vaudeville heyday, the vaude performer was the song creator. It was not considered unethical in the early days to furnish individual performers with special plugs copies treasured in their keys. Many vaude singers were on publishers pay rolls, openly carrying the dual function of song pluggers and performer. It was now common then, than now to cut in a stand-out performer on the song. Because of the concentration of audiences, a single singer could well make a song.

The great music business crusade against payola was the late John G. Payne's attempt in the late '30s to create an industry code under the eye of the federal Fair Trade Commission. Payne was head of the Music Publishers' Protective Association (MPPA) at the time Joseph W. McKee, one-time mayor of New York, was lined as front man. He made several trips to Washington in behalf of the cause. Payne moved in as general manager of ASCAP during this period and continued to push for a code as a labor of love. But the movement was torpedoed by the publishers themselves, because, as an old-line dirty record, "that's how they wanted to operate."

HARRIS HEADS AFAP

DETROIT, Oct. 22.—Jerry Harris, songwriter, vocalist and former orchestra leader, has been named public relations director of the American Federation of Authors and Publishers (AFAP), independent music licensing organization, according to Robert Seibert, national president. Harris, who is also an AFAP publisher, heading the Park Avenue Music Publishers, will make headquarters at 2613 Grand River Avenue, Detroit.

Along functional lines in order to expedite decisions will be up for study action by the House Interstate Commerce Committee. In view of the bill's unanimous passage by the Senate, it is guaranteed almost certain passage.

Radio Tax Session

The first item on the agenda of the Senate Ways and Means Committee's reports of the 193-1934 tax or otherwise excise laws. Hearings are slated to begin in late January. Those have been indications that the administration may drop its opposition to changes in excise, but with or without administrative support the House is ready to act now, if not all excises.

About the only obstacle in the way of excise cuts is the possibility of a presidential veto. Should the President veto a tax-cutting measure, there is no certainty that it could be passed over the veto.

Despite the general favorable congressional attitude toward excise tax cuts, it may be necessary for some business to get on the pressure to make sure that the admissions and the excise levies are included for cuts. Other new favor cuts for stimulus as well as for other sectors, but there is a strong blue in Congress sympathetic toward reducing the so-called "luxury taxes." Less than an even chance is given proposals to cut the liquor levy. Not only the high-tax congressmen but also the days will fight such a reduction to the last ditch.

Technically, the Inter-American Copyright Convention will be on the agenda of the Senate Foreign Relations Committee. However, with the State Department backing the global copyright proposal to the bill, treaty has been given the brush-off and will probably be permanently pigeon-holed.

Pigeon-Hole Bill?

Also slated for the pigeon-hole is the bill of Sen. John Rankin (D., Miss.), to force stations to appoint persons in each State to be available to accept papers in the event of a label suit. Rankin himself has evinced little interest in his bill since he introduced it after making a brief demonstration of colonial and sales commissioner Dew Pearson.

Little chance is given in the coming session for legislation to force label operators to pay royalties to composers for disks used in automatic phonos. Such a measure was strongly pushed in the 80th Congress but failed to make the grade. So far in this session, no such bill has been introduced. If one should

who sent out his three Midwest ballrooms to ATE two and a half years ago. Johnny Doherty, the Blue Moon's owner, said to the Chicago chain owners. Up to the present time, the Blue Moon has been operating as a full-scale ballroom spot. During the summer, an outdoor dance behind the ballroom was opened. A three-day week-end policy is currently utilized by Doherty under the new country label over.

Wiley Velvet Label Moves to Cincinnati

HOLLYWOOD, Oct. 22.—Good radio records recently lost a new-comer when Wally Wiley moved his Velvet label headquarters to Cincinnati. Wiley decided in favor of the Queen City to facilitate distribution thru Clay's centralized location. Also, Wiley intends to escape Coast's high labor and manufacturing costs. Wiley's product will continue to appear on unshakable flex.

Wiley's latest roster includes Dick Farney, American-Banquet ballroom now calling south of the border; Jimmy Hadda, Clay club-owner; Redd Harzer, Western warbler, and the "Old Haglimer," old-time novelty piano player. Wiley will visit back to Cincy, hitting studios and disk jobs on route. Doherty head is currently negotiating with various Cincinnati bankers to sponsor a U. S. Tour for Farney.

Mornies Starts Diskery

NEW YORK, Oct. 22.—Latic piano-masters Mornie Mornie has started his own record company, Mornie Records. The outfit, which will aim at the local Latin-American market, will employ local Latin talent. The disks will be unbreakable and will retail for 75 cents. Mornie himself will continue to cut for MGM, to whom he is under exclusive contract.

Jubilee Buys 20 Kidlioks

NEW YORK, Oct. 22.—Jerry Heine's Jubilee Records has purchased 20 disk masters from Albert Records. The disks, which were issued on Kidliok Time label, previously sold for \$1.00. Heine is turning them on unbreakable material at 75 cents. He will continue to use the Kidliok Time name.

SWEETER THAN EVER!
"SWEET GEORGIA BROWN"
TR #652
THE RECORD THAT MADE BROTHER BONES A STAR
AND LAUNCHED THE BONES CRAZE
TEMPO
RECORD CO. OF AMERICA
1934 Bona Ave. Hollywood, California

RECORD STAMPERS
MAKERS' MOTHERS DUBBING
NEW PLANT
Under Expert Operation
NEW LOW PRICES
(Write for List)
CENTRAL LOCATION
Fast Service
SHAW RECORD PROCESSING, INC.
1934 Bona Ave. Hollywood 17, Calif.

TOOT, TOOT, TOOTSIE!
(Good one)
Featured by
AL JOLSON
in The Columbia Picture
"John Sings Again!"
on
Decca Records
100 PERCENT

NEW VICTOR, COLUMBIA
\$12.00 per 100
OTHER LABELS—\$10.00 PER 100
In 1934 volume, Volume C. S. S.
Under the LATED CATALOG
300 Different Records and 164 Tunes
VEDEX COMPANY
474 10th Ave. New York 17, N. Y.

Billboard 02729 1949 R473

Exhibit 37

(Exhibit 37). He sold way more than a million records. So, knowing that fellow, he now gave me pictures of Brother Bones and Bing Crosby (Exhibit 38), Brother Bones and Pat O'Brien



Exhibit 38



Exhibit 39

(Exhibit 39). Of course, somehow or other I saved all this stuff (Exhibit 40). This is another



new contract, Brother Bones gets helpful pointers from the original Bone Shaker himself.

HER BONES

g forgotten Bone Playing Art
Carpenter Fame and Fortune.

Bones, real name Freeman Davis, ex- may revive the almost forgotten musical art, bone playing. Fond of helped organize a band, but because ny instrument, his job was to furnish l whistle an obligato. He started to hinese-food-loving impresario heard ued, he signed the band on the spot, an will be heard on Tempo Records es too. Brother Bones, Bing Crosby's vive a nearly forgotten art for fans.



Song Writer Frank Loesser registers great amazement as he hears Brother Bones heat up "Baby It's Cold Outside".



for all the nice things
you said about me
in your
wonderful publication

CURRENT RELEASES

TR SAN
698 LISTEN TO THE MOCKINGBIRD

TR JINGLE-JANGLE-JINGLE
692 THE WORLD IS WAITING
FOR THE SUNRISE

and a very special release in
which I had the pleasure of
working with

JOE VENUTI

The Greatest Hot Violinist In The World

and

BOBBY MAXWELL

Swing Harpist Supreme

TR SKELETON AT MIDNIGHT
(DANSE MACABRE)

416 IT AIN'T NECESSARILY SO

Sincerely yours,

Brother Bones
GENERAL ARTIST
OUT

MUSIC CORP
NEW AGENT
EXCLUSIVE

TEMPO

thing in a magazine with Brother Bones in the picture (Exhibit 41).



Exhibit 41

We now missed out on that. The next thing is I am a manufacturer now. The Musical Wholesalers Association have meetings, one year in New York, one year in Chicago. This particular year, 1956, it was in New York. My wife and I went up to New York. My main purpose was to get on the Steve Allen Tonight Show. Also I went up there and talked to some of my distributors, the west coast, etc. because they all attended. The show went to the hospitality room, and said I would like to have tickets to the Tonight Show. He said there are 7,000 people at the convention, and I am getting 15 tickets. I'll have them here tomorrow.

I got the tickets - the Hudson theater on 44th street. Called them on the phone, and spoke to the associate producer, Sam Hamsey. I said, "I'm attending the Musical Wholesalers Convention. I'm a bone manufacturer, and I would like to get on the show, and show Steve Allen how to play the bones, Sketch Henderson and Gene Rayburn, the announcer. He said I'll get back to you."

Here he sent me a teletype (Exhibit 42). Please call Sam Halsey. I called him - He said, "You're on." We got into the theater and my wife and I sat in the fourth row in front of the stage. A couple of minutes before show time a page came down. Opening number was Andy Williams singing a love song. He comes off the stage, and he had to sing to two women. He sang

to my wife for 5 or 10 seconds, I don't know, and that girl for a couple of minutes and went back on stage. They now had guests appearing on the show. One of the fellows tried to control Steve's motions by working his nerves. Couldn't get to first base. And you are very conscious of time, and he was up there for 20 minutes. And I knew I wouldn't be on that night. They took the bones off the grand piano. The news came on, and that's it.

I paged Sam Hamsey and said you can't guarantee that I can be on the show. You want me to come tomorrow night - fine. The next night we had about the same seats on the left side. Everything's fine, And Steve Allen came out and said hi to the crowd. He said I have a very important announcement to make. Not about me, but "Due to the sinking of the Andrea Doria we're going to get some passengers and news film. I said Hun, we're not going to be on tonight.

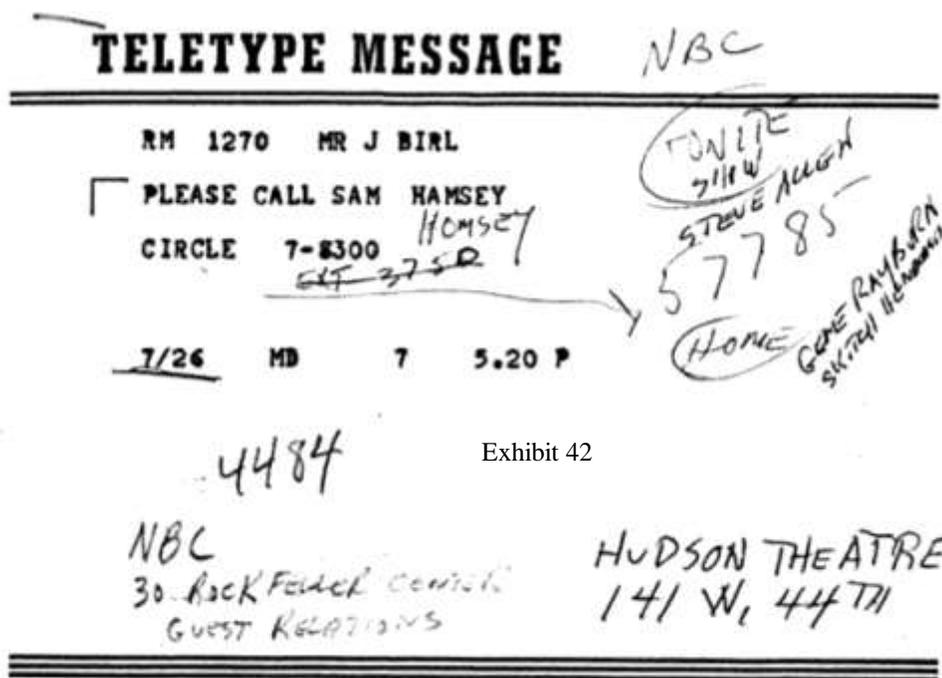


Exhibit 42

To be assured of BETTER Service
We suggest that you make it a practice to call at the Mail Desk often for mail, telegrams, telephone messages, etc., thus avoiding possible delays

CHUBBY CHECKER

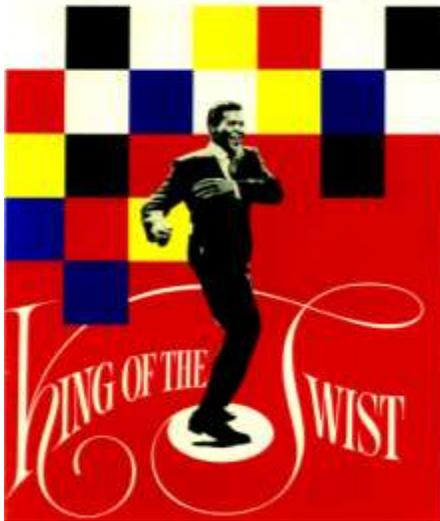


Exhibit 43

So therefore, that actually happened. We left the theater. Went up to Canada, the thousand islands. Came back through New Hampshire and Vermont, and that was it. We were so close.

The next big thing was Chubby Checkers (**Exhibits 43 and 44**). Chubby's from Philadelphia. The two big restaurant chains in Philadelphia are Horn and Hardart, and Lintons. My boyfriend, we were kids together, he is one of the big shots in Lintons. They buy a lot of their chickens from Sonny Calibianca. But its Sonny's cut-up chickens, 9th and Washington. His brother is Henry Calibianca. He's in the turkey business, frozen turkeys. Linton's also buys turkeys.

So I went down to the Camio Parkway Label at Broad and Locust street, and mentioned something about bones, as they had another song coming out and I thought bones would be good. No dice, but the bones at that time were on the table down there. And at that time my name was on the inside, Joe Birl, Philadelphia. Henry Calibianca, they changed his name on the record to Henry Colt. You'll also see Kalman Colt changed to Kal Mann. They used Kal Mann as the producer. So they changed the names. They invested about \$9,000 in Chubby. How to talk and how to act, how to dance and whatever.

And he had opening night at Sciolli's Café and Nightclub. Herb Peters and I were there sitting at the bar facing the stage. After the show, a few people went downstairs to Tony Si-ciolli's office and banquet room. Must have been 20 people. Finally I got up near Chubby, and Henry (I knew Henry a little bit) said "This is Joe Birl." Chubby said "You're the bone man" because he must have seen my name on the inside of the plastic rhythm bones that he saw at Cameo Record's office. I said Chub this is not a miracle thing, but I'll try and help you. You can put it in your bag and you'll never know when you might need it. Henry played bones as a kid. Tony said he was in the small banquet room. He was getting dressed. I put my head inside the door and said "Hi Chub. You don't know who the hell I am. He said "You're the bone man." I said "Look Chub, I'm still here to help you. Chubby was scheduled to appear at Sciolla's in about 6 or 7 weeks later for a weeks engagement. I went early. Tony said chubby was in the small banquet room getting dressed. He was all set to go to Las Vegas. Chubby, when you go to Las Vegas, send me a postal card.

This is the book that shows Bobby Ridell and Fabian (**Exhibit 45**). They're all from South Philadelphia. Mario Lanza, the Four Aces, they're all

THE MAN BEHIND CHUBBY CHECKER . . .



Chubby with manager, HENRY COLT, was discovered several years ago by Mr. Colt who brought him to Parkway Records . . . THE REST IS HISTORY.



Mr. Colt feels that because of Chubby's love of show business and his great talent, he will be ranked with the greats in the entertainment world.

Exhibit 44

FANS and FRIENDS



1
Chubby with his good friend Bobby Rydell taken while they were recording their first album together. The name of the album is simply CHUBBY CHECKER AND BOBBY RYDELL . . . and it's the greatest.

2
SOPHIE TUCKER last of the Red Hot Mama's, shows that she still has plenty of the old steam left in her as she does the twist along with CHUBBY CHECKER, FRANKIE AVALON, and LADA EDMUND of Bye Bye Birdie.



3
CHUBBY uses much of his leisure time doing benefits for worthy causes. So much of his time been devoted in the fight against Muscular Dystrophy, that he has been made Honorary Vice-President of the Muscular Dystrophy Chapter in his Home Town of Philadelphia. Here, Chubby received a citation of merit for his great time and devoted work.



4
CHUBBY has done more than 500 record hops throughout the country demonstrating his famous dances . . . THE TWIST, THE PONY, and THE FLY.





Exhibit 46



from the same neighborhood. And here they have pictures of Dick Clark. They're all from that area, Clark came from Syracuse. Here's a picture of Chubby and Ed Sullivan. I want to see Bobby Ridell and Fabian in here. Copies of all of this are inside. Chubby went to Las Vegas, and he sent me a postal card from the Sand's Casino (**Exhibit 46**). On the back of the postal card, "Hi, Joe, having a good time. How's your bones." So what happened. Nothing! (laughter) So then I had the name Rhythm Bones trademarked (**Exhibit 47**). It cost more to get the trademark than it did to get the damn patent. (laughter) So my last effort was - wouldn't I

RHYTHM BONES®

PATENTED GROOVES (EXCLUSIVE WITH RHYTHM BONES) MAKE IT EASIER TO HOLD AND PLAY AND WILL NOT SLIP FROM THE HAND

INSTRUCTIONS:

Make fist. Then place middle finger on edge of bone "A" and press to palm of hand. Slightly overlap third finger onto middle finger, this will permit bone "B" to be loose. Turn hand right then left striking bone "B" against bone "A". To obtain more rhythm and beats increase turning motion of hand.

SUMMARY: Always maintain fist and always hold inside bone "A" tight. Do not shake hand up and down but turn wrist right and left.

Exhibit 47



Exhibit 48

been a smart cookie if I got the Beatles to play the bones. Boy, wouldn't that have been sensational. But that was impossible.

So the next best thing was the Monkeys (**Exhibit 48**) and Monkey bones. So I went to New York to check out a licensing agency. There's two of them up there. One of them is fantastic - big, every

damn name in the book is up there. So the fellow says you can use the the Monkey's name for \$5,000. Just the name - they are not going to play them. So this is there toy show, and that was in 1967. I went by myself, scouted all around to see who was using the Monkey name, and I came across Transogram Toys (**Exhibit 49**). I went up to them and I said to the hostess "I only want to speak to someone for a couple of minutes guaranteed." Jerry Goldstein came out, his name is on the book here, and I said Jerry I am going to say bones to you and what does that mean. He said Dice, and I said right because dice are known as bones. I said I'm going to say bones again and I pulled out a set of bones. He said damn, look at that - red hot. Jerry played bones as a kid. But he said I can't do much myself, we'll have to get the committee. He wrote me a letter (**Exhibit 50 on next page**)- no good. So that's what happened.

We have had four chances you know - and we were so close and yet so far away. I never looked at these patents, or any of these things for 35 or 40 years. But since Ev called me, I had to get something ready. Oh, I've spent hours on these things. Therefore I came across bones, little black bones in there (Joe holds up some bones), and I have a photostatic copy. This is for the Rhythm Bones museum. On the back is 'Made by Service Industries, when I don't know. Maybe 50, 60 or 70 years ago. I now came across some little plastic bones.

SECOND FLOOR	
Midgley 1302 18th Ave., Bedford, Ill. The Cap Model Toy, Cars, Trucks, Trains, Airplanes, Full Range of Water-Fix, Back Washers, Round Automobiles, Snow Globes, Picture Frame Gift Box Sam Weisman	Room 209 Chicago 3-2099
Oshrin, David R., Co. 200 Fifth Ave., New York, N. Y. 10010 Electric Guitars & Amplifiers, Toys, Modeling Clay, Drawing Sets, Plans, Mechanical, & Building Toys David R. Oshrin Gene Fisher Pearl Fine	Room 210 Chicago 3-2099
Product Mixture of South Dakota, Inc. P. O. Box 43, Pawnee, Wisc. Little Model Toy Cars With Action Features, Water Gun-Propelled Action, Toy Truck & Sport Cars Set, Smokes, The Bear, Shark, Sport Cars-Gift Box, Racing Cars-Gift Box, Underwater Gift Pack, Police & Fire Chief Gift Pack, Rescue Squad & Yellow Cab-Gift Pack Sam Weisman	Room 209 Chicago 3-2099
Randolph, Earl Corporation 78 Prospect St., New Bedford, Mass. Clocks, Books, Casses, Table & Chair Sets, Storage Furniture Milton Jacobs S. R. Wickliffe Harvey Rosenfeld Betty Jacobs	Rooms 215-217 675-6886
Rubin, Sam, Company 200 Fifth Avenue, New York, N. Y. 10010 Brushes, Tool Tables, Sewing Tables, Accessories Sam Rubin Al Meyers	Room 203 WABusa 9-2038
Superior Toy & Mfg. Co. 14-125 Merchandise Mart, Chicago, Ill. Street Car, Banks, Doll & Coin Banks, Steel Safe Banks, POP Complete Bank Sam Weisman	Room 208 Chicago 3-2080
Transogram Company, Inc. 200 Fifth Avenue, New York, N. Y. 10010 Charles E. Rosen Eric R. Rosen Jacki Sully William A. Simon Larry Goldstein Larry Fisher Jack Davis Richard Rosenblatt Phil Sussman Larry Macklin Henry Dick Larry Schwartz Earl Rosenblatt Leo Mel Rosenfeld Sam Jacobs Joe Shickler Herbert Suss Marvin Goldfarb Jack Sussman Larry Schwartz Sam Shickler	Rooms 204 & 208 675-1000

Exhibit 49

JOE BIRL
THE RHYTHM BONE KING
557 DEVEREAUX STREET
PHILADELPHIA 15, PENNA.
PHONE 2-2447

March 13, 1967

Transogram Company Inc.
200 Fifth Ave.
New York, N. Y. 10010
Attn. Mr. J. Goldstein
Vice President

Dear Mr. Goldstein, I want to thank you very much for giving me a few minutes of your time to talk with me about my Rhythm Bones in your showroom offices last Thursday afternoon during the Toy Show.

Attached is a rough sample with a pair of Rhythm Bones and blister showing how I would like to have Rhythm Bones packaged. The wording "Rhythm Bones" will be changed to "Hokey Bones". You mentioned that you will be getting in touch with Mr. Ed. Justin shortly to discuss this idea with him and also the licensing of this idea.

Again, Mr. Goldstein, thank you very much for your consideration and your time.

Sincerely,

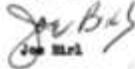


Exhibit 50

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encl.

Who the manufacturer is I have no idea. For the museum. Then I came across - they're called rhythm bones also. I came across these rhythm bones, just sticks of some kind, and they were manufactured by the Cole Corporation in Chicago. A photostatic copy. And somehow or other, these bones were called jazz bones, and who made them I don't know. For the museum. And these are some saw blades. I sawed them in half and had them chrome plated. I don't know - you can have them. (laughter). That is a little bones story, and we had a lot of fun. (Joe also included a copy of a Believe IT OR NOT article showing Bones Jenson of Des Moines, IA. It said He Plays the Rattlebones with Boxing Gloves On (**Exhibit 51**).)

Questions shown in italics: *How many rhythm bones did you make?* Real quick guess. I'm going to make a guess, between 125,000 and 150,000. But keep in mind they were much cheaper then. This is strictly a hobby. I didn't make any money on it, not

did I lose any money. But I had a lot of fun and met a lot of people. When I said I didn't make any money, if I made a hundred dollars a year, it was big. And that is a period of 40 years.

Who has the patent? He asked who has the patent? The patent has expired. Ok, the patent has expired - I'll tell you the truth. Anybody can use it. (*Follow-up - Like the one's we are getting from Danforth*) Danforth doesn't have - mine has the grooves in them. Danforth is just plain. Get the idea. See these have the groove in it so it doesn't slip from your hand. (*Danforth's do*) Oh, no. See the bones used to slip from your hand and get sore fingers and blisters. I'm a dreamer. (They have grooves) Percy's bones are flat (*I've got em. A little groove, about half inch*) When did you buy them? (*From Ederly within the last 3 years*). Could be, see I don't know this. OK.



Exhibit 51

Are the bones we buy now from the original batch or were they made since that time? What happened, I got rid of all my stuff 17 years ago when I retired, and I sold it to my wholesale distributor. I had about 14 distributors in the country. Maybe one in LA, San Francisco, Seattle, Chicago, Detroit and also Cleveland and then on the east coast. They were made in batches at a time, 10,000, 15,000 at a time. They had that groove in there with a sharp edge and when you tumbled them they would chip. So I had to do all these by hand. Then we changed this mold inside and made it round so when they tumble now they don't chip out.

Are they being made today? They are being made by Strauss Engineering, the fellow who made them for me, and the wholeseller is NHF, Nate Fraily in Pensauken, NJ.

You may also know that I did nothing for 17 years as far as the bones were concerned. So because we were on the seashore right South of Atlantic City in a town call Margate Longport, beautiful down there. We did a lot of fishing, etc and we were just lucky. Never had much money, but how we did it I don't know. We always went to nightclubs and everything. Somehow or other. Then I never knew the folk festival existed. Coming home about 8 years ago or 9 years ago, I turned on the late news and there was a folk festival and Percy Danforth. I had never met Percy, but I knew of him. I called him on the phone. We got together - it was a Friday night. Made the arrangements for Saturday. Saw him at a motel in King of Prussia, a big shopping center, and we talked for a couple of hours. And then the following year he was going to come. He called me that Wednesday and the show was going to start that Friday. Didn't show up. The following year he was going to come again, and then he died. I never heard him play except on his tape. So what is happening now. Because of the folk people are coming in I got the great idea to get back into the bones business. I now have these bones made a little bigger with a groove in it, and they are beautiful. (Applause). Here's to you my good man (gave a set to Mel Mercier). That's on the house. I hope I didn't bore you. (More applause)

Ev. Joe will be around and you can get into some questions with him. Later on you're going to play bone for us aren't you.

Joe: Yeh, I'll play a little bit.