



Covey Neatherlin stood by while a pipeline company destroyed the pecan trees he spent years growing for retirement income. PHOTO: WYATT MCSPADDEN

# Eminent Disdain

Farmland protection advocates say the power to condemn land is the power to legally destroy the farm.

BY DEL DETERLING

**I**t's been four years since Covey Neatherlin watched a pipeline company cut a mile-long, 60-foot-wide swath through his 200-acre farm to bury a 42-inch-diameter natural gas pipeline 4 feet underground. But there is still a distinct catch in his voice as he recalls the scene.

"Why did they have to take the trees?" he laments, shaking his head.

Using the power of eminent domain, the company swept directly through an 80-acre orchard of pecan trees that Neatherlin had planted and nurtured for more than 45 years. Adding insult to injury, the company refused to pay compensation for the trees, only for the easement through his property. A previous court ruling, company lawyers informed Neatherlin, set a precedent that a condemning authority did not have to pay compensation for removal of trees.

"These were not ordinary trees. I spent sweat and blood for many years to develop them," Neatherlin argues. The trees were not only his pride and joy, but they also represented his retirement income.

Located near Waller, Texas, an easy 25-minute drive northwest of the booming Houston city limits, ►



involving electric transmission lines and gas pipelines. Clint Stoutenburg is one of his clients.

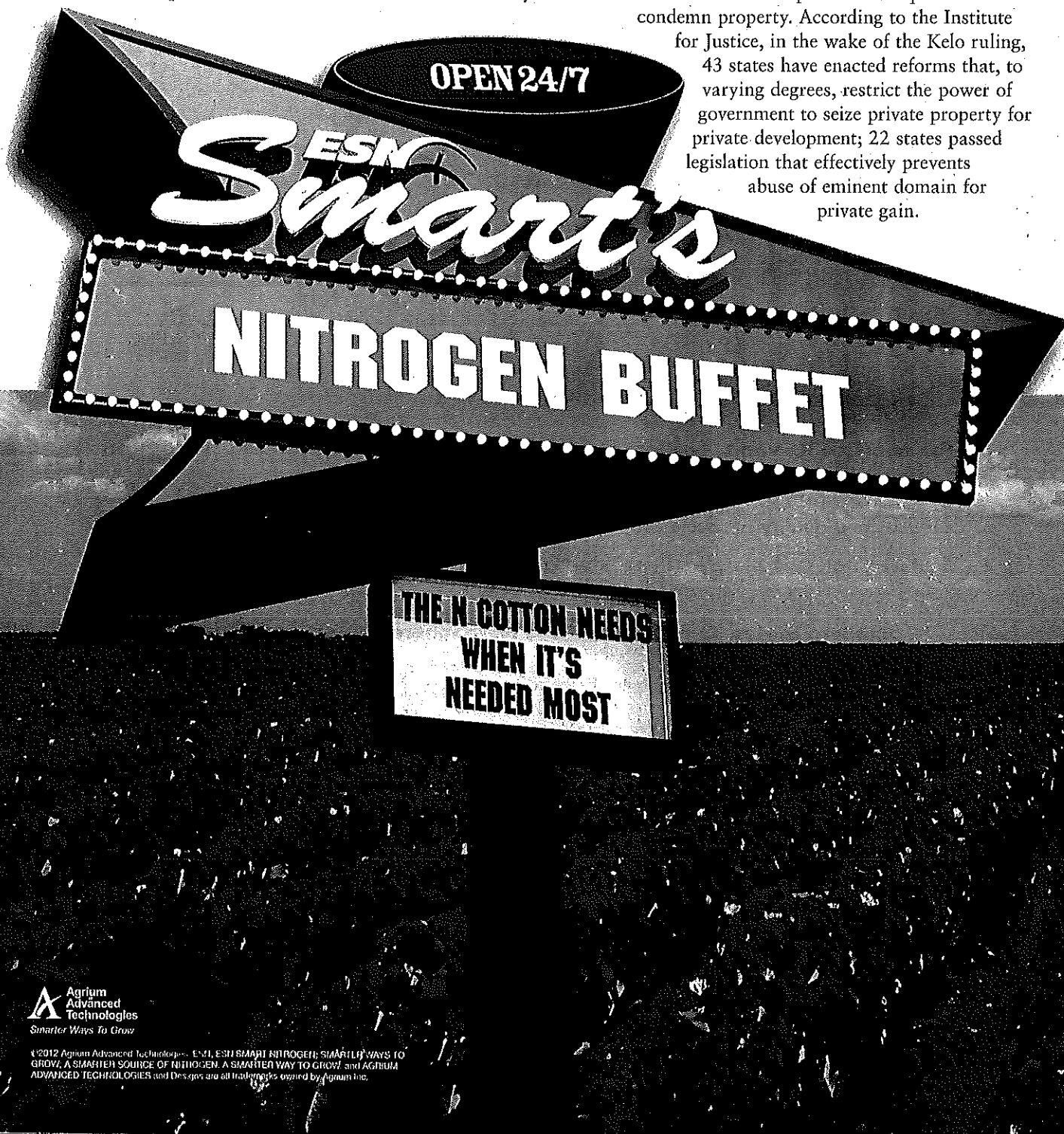
"My firm probably handled fewer than 50 eminent domain cases involving electric transmission lines during my first 35 years of practice," he says. "During the past three years, we've had at least 130."

A newer wrinkle in eminent domain law is condemnation of land for private use. The U.S. Supreme Court created considerable controversy

in 2005 when it ruled in *Kelo versus City of New London* that private property could be condemned for private commercial development.

In the minds of many landowners and farmland protection advocates, that decision vastly expanded how state and local governments could interpret what constitutes "public use" when using eminent domain to condemn private property.

But many states have acted to restrict how the law can be used when private developers seek to condemn property. According to the Institute for Justice, in the wake of the *Kelo* ruling, 43 states have enacted reforms that, to varying degrees, restrict the power of government to seize private property for private development; 22 states passed legislation that effectively prevents abuse of eminent domain for private gain.



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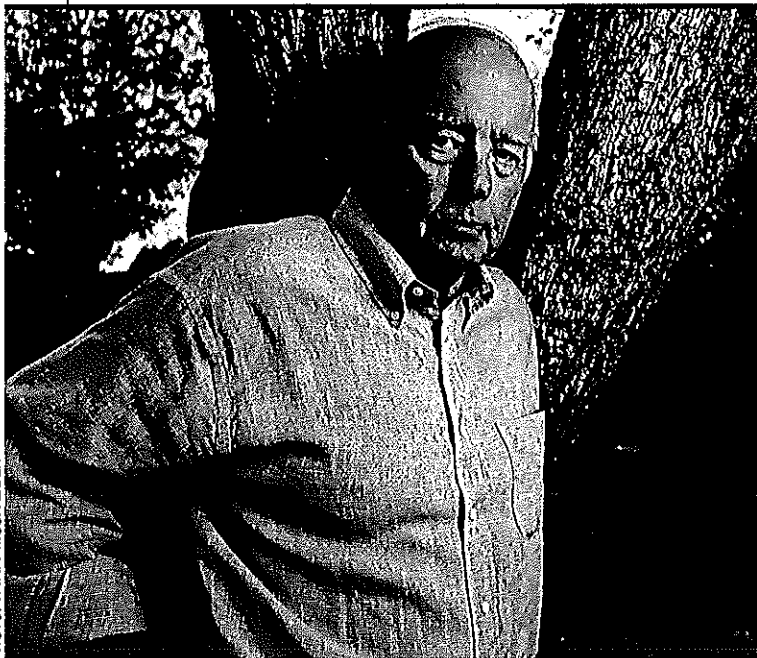


PHOTO: WYATT MCSPADDEN

**“The pipeline company could easily have gone between the rows without taking out any trees. There was plenty of room.”** —COVEY NEATHERLIN

Neatherlin had deliberately spaced his trees far enough apart in anticipation that someday the land could be subdivided for housing.

“The pipeline company could easily have gone between the rows without taking out any trees. There was plenty of room,” he maintains. Instead, they brought in a chipping machine and ground 100 of his best trees into sawdust.

**CONTROVERSIAL ISSUE.** Eminent domain has long been a bone of contention for agricultural landowners. Eminent domain gives a public entity the right to acquire private property for public purposes, such as highways, utility lines and recreation areas. In many cases, the land is totally lost to agricultural production. In other cases, management efficiency is reduced because the property is split in half or because of restrictions on fencing, irrigation and cultivation.

Several large pipelines have been constructed or are being proposed to transport oil produced from shale in Canada to Gulf Coast refineries. At the same time, natural gas—which is plentiful in the South—is being moved via pipelines for underground storage in

depleted oil and gas fields in the Midwest, nearer to large consumption centers.

“If you have a highway running through your property, you may have to travel several miles to an underpass to move equipment or cattle from one side of your farm to the other,” says Ned Meister, with the Texas Farm Bureau. He considers eminent domain the organization’s top issue.

Not all condemnation proceedings are bad for agriculture. In Minnesota, Ron Ringquist, a certified land appraiser, deals with drainage code issues. Public drainage districts have the right to use eminent domain to construct drainage systems to benefit growers in a given area, with the costs prorated among the farmers receiving the benefits.

In Michigan, Clint Stoutenburg worries about lost efficiency. International Transmission Co. (ITC) is threatening to build a high-voltage power line that will cut a 200-foot-wide right-of-way more than four miles diagonally through one of the farms he operates with his father Al in the state’s Thumb area. ITC will erect 100-foot-high towers every 900 feet—about six per mile.

“We use a 48-row planter, two 100-foot-wide sprayers and an 18-row corn head. We’re going to switch to a 40-foot flex head this year,” Stoutenburg says. “We’re going to lose a lot of efficiency navigating around those towers.”

**AGAINST THE ODDS.** Agricultural landowners complain the deck is stacked against them because of the difficulty and cost of fighting against government lawyers.

Neatherlin’s attorney—to whom he had paid a \$10,000 retainer fee—recommended Neatherlin take the pipeline company’s offer rather than fight it in court.

“With all the company’s high-powered lawyers, he said they could tie me up in court for years,” Neatherlin says.

“Landowners seldom win the argument that the entity does not have the right to condemn land. They can only plead for just compensation,” says Rich Krause, with the American Farm Bureau Federation. “The condemning entity usually starts out with a low-ball offer. Then it is up to the landowner to try to get fair compensation.”

ITC has yet to make an offer to Stoutenburg. He’s heard rumors that they’re offering \$6,000 an acre. “Poor land is selling for that in the Thumb area,” he scoffs. “We’re in a high-rent area.”

Attorney Alan Ackerman, of Bloomfield Hills, Mich., who represents property owners in eminent domain cases, reports a major expansion in eminent domain proceedings in recent years ▶

### If You're Targeted for Condemnation

Attorney Alan Ackerman, of Ackerman & Dynkowski, in Bloomfield Hills, Mich., offers steps you should take if your land is targeted for condemnation.

- ▶ Seek out the services of an attorney with previous experience in handling eminent domain issues.
- ▶ Do not discuss any issues pertaining to the value of your property with anyone without first consulting with your attorney.
- ▶ Do not supply copies of leases, expense records, profit and loss statements, or similar documents to anyone without your attorney's consent.
- ▶ Get an appraisal of your property from an experienced appraiser.
- ▶ Do not make any changes in the operation of your property that may change its value during the eminent domain proceedings without consulting counsel. This includes obtaining building permits or variances, or applying for real estate tax assessment reductions.
- ▶ Do not permit anyone to conduct any tests, such as borings, explorations for hazardous waste or test wells for a water supply, without written agreements that you or your attorney will receive copies of all test reports.

### Choose A Knowledgeable Attorney

Eminent domain proceedings tend to be complicated. Rest assured, the entity that wants to take or have access to part of your property has experts in land-valuation issues. If you plan to challenge their right to take a portion of your property, you probably need to hire an experienced attorney to assist you.

What should you look for when hiring an attorney? Here are some suggestions from several attorneys and university specialists.

**QUALIFICATIONS.** How much experience has he or she had handling eminent domain cases? How many eminent domain cases has he handled and what type, how many has he taken to trial and appealed, and what has been his track record?

**COMMITMENT.** Is your attorney committed to looking out for your best interests? Be cautious of attorneys who have been on both sides of the fence in the past—representing the landowner in some cases and the condemning entity in others. They may be reluctant to antagonize the clients of a future case if they are too aggressive in defending you.

**FEES.** Get an estimate on the approximate total cost for the attorney's services. Does he have a set fee schedule, or does he charge by the hour? What about other charges, such as appraisal costs?

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