

Cease and Desist

Folks – this is a court of law – this is ridiculous!

Details in the herewith included court record

November 7, 2014

To: Judge Teresa Drum, 294th Judicial District, Van Zandt County
ppearman@vanzandtcounty.org
Judge Mary Murphy, Presiding Judge, First Administrative Judicial Region
shughes@firstadmin.com
Van Zandt District Attorney Chris Martin, 294th Judicial District
chrismartin@vanzandtcounty.org
Van Zandt District Clerk Karen Wilson, 294th Judicial District
districtclerk@vanzandtcounty.org
Van Zandt County Court at Law Judge Randal McDonald
countycourtatlaw@vanzandtcounty.org
Van Zandt County Judge Don Kirkpatrick
sandy@vanzandtcounty.org
Van Zandt County Sheriff M. L. Ray
vzsoadmin@vanzandtcounty.org

LOTS of MARKED
court documents
AFTER page 2

1. There is this outlandish PUNISHMENT of \$125,770 for “*relief which the court seeks”, “*filing lawsuits*”, “*to stop Birnbaum and others like him*”, “*from committing further etc*”, “*a delusional belief held only inside the mind of Birnbaum*”.*

Filing a lawsuit is of course a First Amendment Right. A public servant taking any adverse action for exercising a Right is official oppression per se. Civil process cannot unconditionally punish for a completed act – can only coerce into compliance – has to provide “keys to own release”, to be able to purge the contempt by compliance with an Order. US Supreme Court, various, no less.

2. Then this other PUNISHMENT of \$62,885 for “*relief which etc*” – same stuff – same outright UNLAWFUL. Judge Paul Banner – in a jury cause – himself weighing the evidence and upon his own weighing of the evidence – PUNISHING me for having made a claim in a court of law - a First Amendment Right:

“*In assessing the sanctions, the Court has taken into consideration that although Mr. Birrnbaum may be well-intentioned and may believe that he had some kind of real claim as far as RICO there was nothing presented to the court in any of the proceedings since I’ve been involved that suggest he had any basis in law or in fact to support his suits against the individuals, and I think – can find that such sanctions as I’ve determined are appropriate.*”

3. Then this \$85,000 Judgment – a jury case – where Judge Paul Banner had a jury sitting there – but completely bypassed the jury – by de facto **instructing** the jury that Mr. Birnbaum was guilty of “failing to abide” – and refusing to submit that element – and all the other elements of the case – to the jury.

Question 1: How much does Mr. Birnbaum owe “*for failure to abide*”? (my paraphrase). Outright intentional violation of constitutional Right to Due Process.

4. Then this excruciatingly detailed Review of File and Order of Voluntary Recusal – and passing the buck - into a black hole.

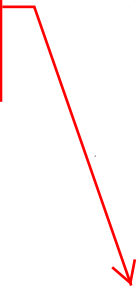
5. Then this outrageous assignment of Judge Paul Banner – by First Administrative Judicial Region Presiding Judge Mary Murphy - reassigning the very same fox to guarding the very same henhouse.

6. Then the fraud upon the court, right out of the chute, in bringing a suit on a “sworn account”. There NEVER even existed any account at all! Followed by fraud upon the Court – by the Court itself – in aiding and abetting the underlying fraud – and Judge Paul Banner turning Pro Se Defendant Mr. Udo Birnbaum into a scapegoat - to hide his very own sins.

So, here are the official court documents – in somewhat chronological order. Conclusion and detailed DEMAND at conclusion of this document exhibit.

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MARKED documents follow
this page 2. TEXT page 3 at
very END.



THIS is the document - and the ONLY document - upon which judgments of \$85,000, another for \$65,000, and yet another for \$125,000, all plus 10% interest since 2002 - all in the SAME case - were assessed against Mr. Birnbaum.
Total TODAY - \$700,000 or so.

ALL fraudulent legal fees - and fraudulent legal fees - for collecting on fraudulent legal fees. "Smoke OLD MOLD - the ONLY cigarette - that is ALL filter"

LAW OFFICES OF
G. DAVID WESTFALL, P.C.
A Professional Corporation
714 JACKSON STREET
700 RENAISSANCE PLACE
DALLAS, TEXAS 75202

www.OpenJustice.US

Telephone: (214) 741-4741
Fax: (214) 741-4746

May 5, 1999

Mr. Udo Birnbaum
Route 1 Box 295
Eustace, Texas 75124

This "agreement" is the ONLY agreement ever between the parties.

It was upon THIS agreement that G. David Westfall brought a SWORN suit claiming an additional \$18,000 due on an unpaid "OPEN ACCOUNT". (above the \$20,000 PREPAID non-refundable "retainer-fee".
FRAUD - right out of the chute.

RE: Birnbaum v. Ray, et al.

Dear Mr. Birnbaum:

This is clearly NOT an "open account" - but merely a prepaid "non-refundable retainer fee".

You have requested that I act as your attorney in the above referenced suit pending in the U.S. District Court for the Northern District of Texas. This letter sets forth the agreement concerning our representation of you. This agreement shall become effective upon our receipt of a counter-signed copy of this agreement and upon the payment of the retainer.

More next pages

You agree to pay our firm a **retainer fee** of \$20,000.00, which is **non-refundable**. This retainer is paid to us for the purpose of insuring our availability in your matter. The retainer will be credited against the overall **fee** in your matter.

We have agreed to handle this matter on an hourly basis at the rate of \$200.00 per hour for attorney time and \$60.00 per hour for paralegal time. In addition, we have agreed that you will reimburse us for expenses incurred on your behalf, such as, but not limited to, filing fees, deposition expenses, photocopy expenses, travel expenses, and employment and testimony of expert witnesses, if necessary. I will not obligate you for any large expense without your prior approval. I would ask and you have agreed to pay **expenses** as they are incurred.

After the \$20,000.00 has been expended in time we will then operate on a hybrid type of agreement wherein we will lower our hourly rate to \$100.00 for

Mr. Birnbaum
May 5, 1999
Page two

does NOT use the phrase "IS DUE" as is used for BILLING on an "Open Account" - or for that matter - ANY account!

This is the ONLY "right" retained for "non-payment". "expressio unius est exclusio alterius" (to name one is to exclude all others)

attorney's time and \$30.00 an hour for paralegal time, but then charge as an additional fee a 20% contingency of the gross recovery in this case.

You will be billed monthly for the time expended and expenses incurred. Payment of invoices is **expected** within 10 days of receipt unless arrangements are made in advance. We reserve the **right to terminate** our attorney-client relationship for any of the following reasons:

clearly NOT "open account"

1. Your **non-payment** of fees or costs;
2. Your failure to cooperate and comply fully with all reasonable requests of the firm in reference to your case; or
3. Your engaging in conduct which renders it unreasonably difficult for the firm to carry out the purposes of its employment.

Fees and costs, in most cases, may be awarded by the Judge against either party. Sometimes, the court makes no order for fees or costs. Because fees and costs awards are totally unpredictable, the court's orders must be considered merely "on account" and the client is primarily liable for payment of the total fee. Amounts received pursuant to any court order will be credited to your account.

You have represented to me that the purpose of this litigation is compensation for damages sustained and that you are not pursuing this matter for harassment or revenge. In this regard, if settlement can be reached in this case whereby you will be reimbursed for all actual damages and I will be paid for my services, you agree to accept the settlement. Notwithstanding this agreement, however, I will not settle this cause of action without your prior approval and any settlement documents must bear your signature.

Inasmuch as I am a solo practitioner, we have agreed that I at my sole discretion may hire such other attorneys to assist in the prosecution of this matter as may be reasonably necessary.

Mr. Birnbaum
May 5, 1999
Page three

Ever wonder what is wrong with our courts?
*
Just read this stuff - UNBELIEVABLE - but real.

FRAUD - right out of
the chute - and ever
after!

I will keep you informed as to the progress of your case by sending you copies of documents coming into and going out of our office. Every effort will be made to expedite your case promptly and efficiently. I make no representations, promises or guarantees as to the outcome of the case other than to provide reasonable and necessary legal services to the best of my ability. I will state parenthetically, from what you have told me, you have a very good case. Various county officials and others involved in this matter should never have done what they apparently did. I will explain in detail the ramifications and affect of Section 1983 and Civil Rico when we next meet.

Please retain a copy of this letter so that each of us will have a memorandum of our understanding concerning fees and expenses.

A "memorandum of our understanding" - regarding a "retainer agreement" for a lawyer - regarding "expectations" - does NOT constitute the opening of a commercial "OPEN ACCOUNT" for the purpose of dealing with systematic "SALE AND DELIVERY" of "GOODS OR SERVICES"!

Sincerely yours,

Accepted: Udo Birnbaum
Udo Birnbaum

Date: 5-5-99

Ever wonder what is wrong with our courts?

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No. 00-00619

THE LAW OFFICES OF
G. DAVID WESTFALL, P.C.

vs.

"The Law Offices"

UDO BIRNBAUM

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IN THE DISTRICT COURT

294th JUDICIAL DISTRICT

VAN ZANDT COUNTY, TEXAS

FILED FOR RECORD
00 SEP 21 PM 4:08
NANCY YOUNG
DIST. CLERK VAN ZANDT CO. TX
DEP

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, THE LAW OFFICES OF G. DAVID WESTFALL, P.C., Plaintiff,
complaining of UDO BIRNBAUM, hereinafter referred to as Defendant, and for cause of action
would respectfully show the court the following:

Birnbaum was retaining attorney G. David Westfall. That "Law Offices" mumbo-jumbo in the "retainer" - was already intent to harm Birnbaum by a fraudulent "open account" suit!

I.

Plaintiff is a professional corporation with its principle office and place of business in Dallas, Dallas County, Texas.

principal

Defendant is an individual whose residence is in Eustace, Van Zandt County, Texas and may be served with process at Route 1, Eustace, Texas.

"sale and delivery" of "goods or services"

ABSOLUTE FRAUD - retained G David Westfall. One CANNOT retain a "LAW OFFICE"!

II.

On or about May 5, 1999, Defendant retained Plaintiff to perform legal services in a civil matter in Cause No. 3:99-CV-0696-R in the United District Court for the Northern District of Texas in Dallas, Dallas County, Texas.

the attorney retainer agreement has NO SUCH WORDS- only "we reserve the right to terminate for non-payment"

watch the wording

III.

The legal and/or personal services were provided at the special instance and requested of Defendant and in the regular course of business. In consideration of such services, on which systematic records were maintained, Defendant promised and became bound and liable to pay Plaintiff the prices charged for such services and expenses in the amount of \$18,121.10, being a reasonable charge for such services. A true and accurate photostatic copy of the accounts for services rendered are attached hereto by reference for all purposes as Exhibit "A". Despite Plaintiff's demands upon Defendant for payment, Defendant has refused and failed to pay the

this is legal wording for "open account"

"prices charged" - sounds like a lumber yard - charging for the stuff sent to a builder - on "OPEN ACCOUNT. "you order - we send - and put it on your bill! "SALE AND DELIVERY OF GOODS"

again, no such right established by the lawyer "retainer agreement"

standard "open account" wording

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account to Plaintiff's damage in the total amount of \$18,121.10. All just and lawful offsets, payments and credits have been allowed.

IV.

Plaintiff is entitled to recover reasonable attorney's fees incurred in the filing of this suit. Demand for payment from Defendant has been made. Plaintiff requests reasonable attorney's fees as determined by the trier of fact.

WHEREFORE PREMISES CONSIDERED, Plaintiff prays that Defendant be cited to appear and answer and upon final hearing, Plaintiff have judgment against Defendant for \$18,121.10 plus prejudgment and postjudgment interest at the highest rate allowed by law, attorney's fees, costs of court and for such other and further relief, both at law and equity, to which Plaintiff may show himself to be justly entitled.

Cause clearly brought as an "open account".

The "elements" of an "open account":

- 1. That an open account indeed existed
- 2. That there was indeed "sale and delivery of goods or services"
- 3. That the goods or services had "worth".

*

NONE of this was submitted to the jury! Judge Paul Banner - over objection by Birnbaum - instead POISONED the jury:

*

QUESTION 1: "How much does Birnbaum owe by his FAILURE TO ABIDE by the agreement?" (my paraphrase - details in later documents)

Intentionally defrauded the jury. FRAUD UPON THE COURT - BY THE COURT

Respectfully submitted,

G. David Westfall
Law Offices
714 Jackson Street
Suite 217
Dallas, Texas 75202
(214) 741-4741
Facsimile (214) 741-4746

Ever wonder what is wrong with our courts? KEEP LOOKING

Note to the issue of Plaintiff "Law Offices" fraudulent pleading of an "open account":
1. Had Birnbaum NOT denied such pleading of "open account" - UNDER OATH per RCP Rule 85 - such would have irreversibly "deemed" the account as TRUE.
2. But since there were now TWO opposing SWORN pleadings - Judge Paul Banner was now REQUIRED to appoint an AUDITOR per Rule 172 "to make a finding of the state of the accounts" - to stop the fraud EARLY - but would NOT!

THE LAW OFFICES OF
G. DAVID WESTFALL, P.C.

Vs.

UDO BIRNBAUM

) (IN THE DISTRICT COURT
) () (294TH JUDICIAL DISTRICT
) () (VAN ZANDT COUNTY, TEXAS
) () (

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**MOTION FOR APPOINTMENT OF AUDITOR PURSUANT TO RULE 172 RCP
TO MAKE FINDING
OF STATE OF THE ACCOUNTS BETWEEN THE PARTIES**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Udo Birnbaum, Defendant and Counter and Cross Claimant, in the above-styled and numbered cause and makes and files this his Motion For Appointment of Auditor Pursuant to Rule 172 RCP to Make Finding of State of the Accounts Between Parties and would thereby show the Court the following:

complaining of FRAUD

I.

Birnbaum moves the Court to note the nature and state of the pleadings, including the issue of fraud in the "accounts for services rendered" as evidenced by Defendant's Answer, Counterclaim, and Cross-Complaint and exhibits attached thereto, and moves for appointment of an auditor to make a finding for the Court of the state of the accounts between the parties.

II.

Plaintiff "The Law Offices of G. David Westfall, P.C." even now has failed to provide a copy of the "accounts for services rendered" allegedly attached as Exhibit "A" to Plaintiff's Original Petition. Furthermore no copy is to be seen with the document Plaintiff filed with the Clerk.

III.

At issue in this Cause is whether the alleged "accounts for services rendered" (allegedly shown as Exhibit "A") is fraudulent or not. At issue in the process is whether the filing of Plaintiff's Original Petition without Exhibit "A", and still without Exhibit "A", is fraud in itself.

no hearing ever granted, despite additional requests. But just before the TRIAL - suddenly DENIED - without explanation!

WHEREFORE Birnbaum requests a hearing upon these matters as to show that such appointment of an auditor is necessary for the efficient and just adjudication of this Cause.

This "Motion to Appoint an Auditor" was an attempt by Defendant Birnbaum to procedurally put a STOP to the FRAUD - i.e. to show onto the Court that there was no "account" AT ALL!

Respectfully submitted

Aldo Birnbaum

UDO BIRNBAUM, Pro Se
540 VZ 2916
Eustace, Texas 75124
(903) 479-3929

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this document has been served via CMRR on this the 26 day of December, 2000 upon G. David Westfall, 5646 Milton, Suite 520, Dallas, Texas 75206 and Frank C. Fleming, Law Office of Frank C. Fleming, 6611 Hillcrest, Suite 305, Dallas, Texas 75205-1301.

Aldo Birnbaum
UDO BIRNBAUM

Note to the issue of Plaintiff "Law Offices" fraudulent pleading of an "open account":
1. Had Birnbaum NOT denied such pleading of "open account" - UNDER OATH per RCP Rule 85 - such would have irreversably "deemed" the account as TRUE.
2. But since there were now TWO opposing SWORN pleadings - Judge Paul Banner was now REQUIRED to appoint an AUDITOR per Rule 172 "to make a finding of the state of the accounts" - to stop the fraud EARLY - but would NOT!

This "Motion to Appoint an Auditor" was an attempt by Defendant Birnbaum to procedurally put a STOP to the FRAUD - i.e. to show onto the Court that there was no "account" AT ALL!

www.OpenJustice.US

No. 00-00619

THE LAW OFFICES OF
G. DAVID WESTFALL, P.C.

Vs.

UDO BIRNBAUM

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)
)
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IN THE DISTRICT COURT
294TH JUDICIAL DISTRICT
VAN ZANDT COUNTY, TEXAS

**SUPPLEMENT TO MOTION FOR APPOINTMENT OF AUDITOR
UNDER RULE 172 RCP AND NOTICE OF CANCELLATION OF DEPOSITIONS D.T.
OF G. DAVID WESTFALL, CHRISTINA WESTFALL, AND STEFANI PODVIN**

TO THE HONORABLE JUDGE OF SAID COURT:

DEFENDANT Udo Birnbaum hereby notifies the Court and the parties of the cancellation of the above referenced notices of depositions as are currently the subject of numerous motions for protective order before this Court.

I.

Defendant moves this Court for appointment of an auditor under Rule 172 RCP to make a finding for the Court upon the claim of a pattern of fraudulent accounting practices by Plaintiff, The Law Offices of G. David Westfall, P.C.

II.

Defendant called cross-defendants' counsel Frank Fleming to find out if he opposes Defendant's motion for appointment of such auditor and was informed that he [Fleming] definitely did. Fleming stated that he did not see a need for such auditor because this cause was "just a matter of [Birnbaum] not having paid a bill".

III.

Defendant moves for a hearing to show that this cause is not "just a matter of not having paid a bill", but about the recent creation of fraudulent "account" statements by the Plaintiff "The Law Offices" and the cross-defendants for the purpose of extorting "legal fees".

Note to the issue of Plaintiff "Law Offices" fraudulent pleading of an "open account":
1. Had Birnbaum NOT denied such pleading of "open account" - UNDER OATH per RCP Rule 85 - such would have irreversibly "deemed" the account as TRUE.
2. But since there were now TWO opposing SWORN pleadings - Judge Paul Banner was now REQUIRED to appoint an AUDITOR per Rule 172 "to make a finding of the state of the accounts" - to stop the fraud EARLY - but would NOT!

Respectfully submitted

Udo Birnbaum
UDO BIRNBAUM, *Pro Se*
540 VZ 2916
Eustace, Texas 75124
(903) 479-3929

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this document has been served via CMRR on this the 8 day of January, 2001 upon G. David Westfall, 5646 Milton, Suite 520, Dallas, Texas 75206 and Frank C. Fleming, Law Office of Frank C. Fleming, 6611 Hillcrest, Suite 305, Dallas, Texas 75205-1301.

Udo Birnbaum
UDO BIRNBAUM

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There of course needed to be at least SOME kind of question - as to whether Defendant Birnbaum had FAILED to do ANYTHING

No. 00-00619

THE LAW OFFICES OF
G. DAVID WESTFALL, P.C.

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§
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§
§

IN THE DISTRICT COURT

v.

294th JUDICIAL DISTRICT

UDO BIRNBAUM

VAN ZANDT COUNTY, TEXAS

PLAINTIFF'S REQUESTED JURY QUESTIONS

QUESTION NO. 1:

Did the Defendant, Udo Birnbaum, fail to comply with the terms of the attorney-client agreement, between the Law Offices of G. David Westfall, P.C. and Udo Birnbaum?

Answer "Yes" or "No"

Answer _____

but look at the "COURT'S CHARGE" (later document) - Judge Paul Banner ENTIRELY deleted this "element" - and instead INSTRUCTED the jury - that Defendant had "FAILED TO COMPLY WITH THE AGREEMENT!"

If you have answered "Yes" to Question No. 1, then answer the following question.

Otherwise, do not answer the following question and proceed to answer Question No. 3.

QUESTION NO. 2:

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate the Law Offices of G. David Westfall, P.C., for its fees and expenses, if any, that resulted from Udo Birnbaum's failure to comply with the attorney-client agreement between the Law Offices of G. David Westfall, P.C., and Udo Birnbaum?

Answer in dollars and cents:

Answer: _____

no mention of "fees and expenses" either to the JURY!

no question to the JURY either about "failure to comply".
FRAUD BY THE JUDGE!

Judge Paul Banner very carefully tweaked the very wording - to avoid the phrase "attorney-client" - to "agreement between the Plaintiff and the Defendant" - to fool the jury. SHAME
FRAUD UPON THE COURT - BY THE COURT!

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there will be no "IF" at all to the JURY - just instruction of "FAILURE TO COMPLY with the agreement, etc".
Fraud by Judge Banner!

If you have answered "yes" to Question No. 1, then answer the following question.

Otherwise, do not answer the following question.

QUESTION NO. 3:

What is a reasonable fee for the necessary services of the Law Offices of G. David Westfall, P.C.'s attorneys in this case, stated in dollars and cents?

Answer in dollars and cents for each of the following.

- A. For preparation and trial in this matter. \$ _____
- B. For an appeal to the Court of Appeals, if necessary: \$ _____
- C. For making or responding to a petition for review to the Supreme Court of Texas \$ _____
- D. If petition for review is granted by the Supreme Court of Texas \$ _____

Respectfully submitted.
LAW OFFICE OF FRANK C. FLEMING

Frank C. Fleming

FRANK C. FLEMING
 State Bar No. 00784057
 PMB 305, 6611 Hillcrest Ave
 Dallas, Texas 75205-1301
 (214) 373-1234
 (fax) 373-3232

ATTORNEY FOR PLAINTIFF

214 373-3222

Self explanatory. It is fundamental that one is "excused" - if the OTHER side FIRST broke the agreement. (besides - there was no enforceable agreement at all! - just a "memorandum of our understanding" - see Attorney Retainer Agreement - first document in this series)

THE LAW OFFICES OF
G. DAVID WESTFALL, P.C.

Vs.

UDO BIRNBAUM

)
) 294TH JUDICIAL DISTRICT
)
) VAN ZANDT COUNTY, TEXAS
)
)

www.OpenJustice.US

**DEFENDANT BIRNBAUM'S OBJECTIONS TO
PLAINTIFF'S REQUESTED JURY QUESTIONS**
(Case Filed Sept. 20, 2000. Trial set for Apr. 8, 2002)

To this Honorable Court:

1. Defendant Udo Birnbaum provides the following question to be answered by the jury **immediately after Plaintiff's Question 1** ("failure to comply"). A finding of "Yes" of course precludes the jury from ever reaching Plaintiff's Question 2 ("damages") and Question 3 ("attorney fees"), and **excuses Udo Birnbaum from any and all off Plaintiff's claims.**

2. Defendant Birnbaum also objects to Plaintiff's Question 3 being submitted upon an Affirmative finding to **Question 1**. Plaintiff's Question 3 should be contingent to an answer of "Yes" to Plaintiff's **Question 2**.

3. Birnbaum's requested **Question** is as follows:

INSTRUCTION

If your answer to [Plaintiff's] Question 1 is "Yes", then answer the following question. Otherwise, do not answer the following question.

QUESTION

Was Udo Birnbaum's failure to comply excused?

a. Failure to comply by *Udo Birnbaum* is **excused** by *The Law Offices of G. David Westfall, P.C.*'s previous failure to comply with a material obligation of the same agreement.

but then - Judge Paul Banner never even asked the jury - if there even had been - "a failure to comply". (see Court's Charge - somewhere next)

b. Failure to comply by *Udo Birnbaum* is **excused** if all the following circumstances occurred:

1. *The Law Offices of G. David Westfall, P.C.*

- a. by words or conduct made a false representation or concealed material facts,
- b. with knowledge of the facts or with knowledge or information that would lead a reasonable person to discover the facts, and
- c. with the intention that *Udo Birnbaum* would rely on the false representation or concealment in acting or deciding not to act; and

2. *Udo Birnbaum*

- a. did not know and had no means of knowing the real facts and
- b. relied to *his* detriment on the false representation or concealment of material facts

c. Failure to comply by *Udo Birnbaum* is **excused** if the agreement was made as the result of undue influence by *The Law Offices of G. David Westfall, P.C.*

“Undue influence” means that there was such dominion and control exercised over the mind of the person executing the agreement, under the facts and circumstances then existing, as to overcome his free will. In effect, the will of the party exerting undue influence was substituted for that of the party entering the agreement, preventing him from exercising his own discretion and causing him to do what he would not have done but for such dominion and control.

Answer "Yes" or "No"

ANSWER: _____

Respectfully submitted

Udo Birnbaum

UDO BIRNBAUM, *Pro Se*

540 VZ 2916

Eustace, Texas 75124

(903) 479-3929

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this document has today been delivered to G. David Westfall and Frank C. Fleming, by facsimile transmission on this the 4th day of April, 2002.

Udo Birnbaum
UDO BIRNBAUM

Law Office

Birnbaum

Law Office of Westel
284th Oval Ct

Van Zee

this was a desperate last moment effort - just after I was presented with Judge Paul Banner's Court's Charge - just before 20 minute "closing argument" - to put what Banner had done - "on the record". (file stamp below)

RECORDED FOR RECORD
02 APR 11 AM 9:18
JST. CLERK VAN ZANDT CO. EX.
BY DEP.

Birnbaum's Objections to Today's Plaintiff's Court charge.

1. ~~The New~~ Elimination of Pl's Intrinsic question & with current phraseology does not allow for Defendant's Question as to whether he is excused by Plaintiff's prior failure to abide by a material issue in the same contract (FAILURE TO BILL MONTHLY), Not get HIS APPROVAL BEFORE LARGE EXPENSE)

by hand to Series today, 4-11-02
Fleming

Exhibit "D"

Suit was for an unpaid "open account" for legal services.
There was of course no open account.
Jury should have been asked if there WAS.
Also should have been instructed as to what "open account" WAS.
See below. ALL FRAUD by Judge Paul Banner.



I certify this to be a true and exact copy of the original on file in the District Clerk's Office, Van Zandt County, Texas.

Candi Scott

THE LAW OFFICES OF
G. DAVID WESTFALL, P.C.

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IN THE DISTRICT COURT

v.

294th JUDICIAL DISTRICT

UDO BIRNBAUM

VAN ZANDT COUNTY, TEXAS

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COURT'S CHARGE

See Question No. 1.
Few pages down below.
ALL FRAUD

LADIES AND GENTLEMEN OF THE JURY:

This case is submitted to you by asking questions about the facts, which you must decide from the evidence you have heard in this trial. You are the sole judges of the credibility of the witnesses and the weight to be given their testimony, but in matters of law, you must be governed by the instructions in this charge. In discharging your responsibility on this jury, you will observe all the instructions which have previously been given you. I shall now give you additional instructions which you should carefully and strictly follow during your deliberations.

1. Do not let bias, prejudice or sympathy play any part in your deliberations.
2. In arriving at your answers, consider only the evidence introduced here under oath and such exhibits, if any, as have been introduced for your consideration under the rulings of the court, that is, what you have seen and heard in this courtroom, together with the law as given you by the court. In your deliberations, you will not consider or discuss anything that is not represented by the evidence in this case.
3. Since every answer that is required by the charge is important, no juror should state or consider that any required answer is not important.
4. You must not decide who you think should win, and then try to answer the questions accordingly. Simply answer the questions, and do not discuss nor concern yourselves with the effect of your answers.

BY _____
DEP.
DIST. CLERK VAN ZANDT CO. TX.
02 APR 11 PM 5:57
CLERK AS COND.

5. You will not decide the answer to a question by lot or by drawing straws, or by any other method of chance. Do not return a quotient verdict. A quotient verdict means that the jurors agree to abide by the result to be reached by adding together each juror's figures and dividing by the number of jurors to get an average. Do not do any trading on your answers; that is, one juror should not agree to answer a certain question one way if others will agree to answer another question another way.

6. You may render your verdict upon the vote of ten or more members of the jury. The same ten or more of you must agree upon all of the answers made and to the entire verdict. You will not, therefore, enter into an agreement to be bound by a majority or any other vote of less than ten jurors. If the verdict and all of the answers therein are reached by unanimous agreement, the presiding juror shall sign the verdict for the entire jury. If any juror disagrees as to any answer made by the verdict, those jurors who agree to all findings shall each sign the verdict.

These instructions are given you because your conduct is subject to review the same as that of the witnesses, parties, attorneys and the judge. If it should be found that you have disregarded any of these instructions, it will be jury misconduct and it may require another trial by another jury; then all of our time will have been wasted.

The presiding juror or any other who observes a violation of the court's instructions shall immediately warn the one who is violating the same and caution the juror not to do so again.

When words are used in this charge in a sense that varies from the meaning commonly understood, you are given a proper legal definition, which you are bound to accept in place of any other meaning.

Answer "Yes" or "No" to all questions unless otherwise instructed. A "Yes" answer must be based on a preponderance of the evidence *unless otherwise instructed*. If you do not find that a preponderance of the evidence supports a "Yes" answer, then answer "No." The term "preponderance of the evidence" means the greater weight and degree of credible testimony or evidence introduced before you and admitted in this case. Whenever a question requires an answer other than "Yes" or "No," your answer must be based on a preponderance of the evidence *unless otherwise instructed*.

INSTRUCTION

A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

www.OpenJustice.US

This was a JURY trial. Judge should not have ruled that there even was a "failure to comply". ALL FRAUD!

QUESTION NO. 1

What sum of money, if paid now in cash, would fairly and reasonably compensate The Law Offices of G. David Westfall, P.C., for its damages, if any, that resulted from the Defendant, Udo Birnbaum's, failure to comply with the agreement between the Plaintiff and the Defendant?

INSTRUCTION:

Fraudulent instruction. Suit was for unpaid "open account."

You are instructed that after the attorney-client relationship is terminated, a client or an attorney can have post termination obligations to each other, such as, the client is still obligated financially for the lawyer's time in wrapping up the relationship and the lawyer is still obligated to perform tasks for the client to prevent harm to the client during the termination process.

ANSWER:

There was no "wrapping up" to do. I had fired him for deceiving me.

Answer in dollars and cents:

ANSWER: \$15,817.60

Suit claimed unpaid OPEN ACCOUNT.

*

Jury should have been instructed as to what OPEN ACCOUNT is, that it is SYSTEMATIC SALES AND DELIVERY of "goods or services", like between a lumber yard and a builder.

(Retaining a lawyer of course does NOT fall in this category)

*

Questions should have been:

1. Was there indeed an "open account"?
2. Was there indeed a "sale and delivery" of "goods or services"?
3. Did the "goods or services" indeed have any WORTH?

*

(Lawyer had talked me into suing a bunch of judges under the Anti-racketeering statute RICO. What do you suppose are the chances of prevailing on such is? ZERO. No worth!)

*

Oh how gullible I was for trusting attorney G. David Westfall, who had solicited me through one of his many lady clients who were working off "legal fees" at his "Westfall Family Farms".

*

Yes, we all know there crooked lawyers, but it is CROOKED JUDGES THAT MAKE IT ALL POSSIBLE.

*

And the Texas Attorney General makes it all possible by DEFENDING these MONSTERS, when he should be PROSECUTING them!

QUESTION NO. 2

What is a reasonable fee for the necessary services of the Plaintiff's attorneys in this case, stated in dollars and cents?

Answer in dollars and cents for each of the following:

A. For preparation and trial in this matter:

\$ \$41,306.91

B. For an appeal to the Court of Appeals, if necessary:

\$ 20,000.00

C. For making or responding to a petition for review to the Supreme Court of Texas

\$ 5,000.00

D. If petition for review is granted by the Supreme Court of Texas

\$ 10,000.00

QUESTION NO. 3
(Finding of DTPA Violation)

Did The Law Offices of G. David Westfall, P.C. engage in any false, misleading, or deceptive act or practice that Udo Birnbaum relied on to his detriment and that was a producing cause of damages to Udo Birnbaum?

"Producing cause" means an efficient, exciting, or contributing cause that, in a natural sequence, produced the damages, if any. There may be more than one producing cause.

"False, misleading, or deceptive act" means any of the following:

Failing to disclose information about services that was known at the time of the transaction with the intention to induce Udo Birnbaum into a transaction he otherwise would not have entered into if the information had been disclosed; or

Answer: NO

QUESTION NO. 4

(Finding of DTPA Violation)

Did The Law Offices of G. David Westfall, P.C. engage in any unconscionable action or course of action that was a producing cause of damages to Udo Birnbaum?

"Producing cause" means an efficient, exciting, or contributing cause that, in a natural sequence, produced the damages, if any. There may be more than one producing cause.

An unconscionable course of action is an act or practice that, to a consumer's detriment, takes advantage of the lack of knowledge, ability, experience, or capacity of the consumer to a grossly unfair degree.

Answer: No

If your answer to Question 3 or Question 4 is "Yes", then answer Question 5. Otherwise, do not answer Question 5.

QUESTION NO. 5
(Finding of "knowingly")

Did The Law Offices of G. David Westfall, P.C. engage in any such conduct knowingly?

"Knowingly" means actual awareness, at the time of the conduct, of the falsity, deception, or unfairness of the conduct in question or actual awareness of the conduct constituting a failure to comply with a warranty. Actual awareness may be inferred where objective manifestations indicate that a person acted with actual awareness.

In answering this question, consider only the conduct that you have found *was a producing cause of* damages to Udo Birnbaum.

Answer: _____

If your answer to Question 3 or Question 4 is "Yes", then answer Question 6. Otherwise, do not answer Question 6.

QUESTION NO. 6
(Finding of "intentionally")

Did The Law Offices of G. David Westfall, P.C. engage in any such conduct intentionally?

"Intentionally" means actual awareness of the falsity, deception, or unfairness of the conduct in question or actual awareness of the conduct constituting a failure to comply with a warranty, coupled with the specific intent that the consumer act in detrimental reliance on the falsity or deception. Specific intent may be inferred from facts showing that the person acted with such flagrant disregard of prudent and fair business practices that the person should be treated as having acted intentionally.

In answering this question, consider only the conduct that you have found *was a producing cause of damages* to Udo Birnbaum.

Answer: _____

If your answer to Question 3 or Question 4 is "Yes", then answer Question 7. Otherwise, do not answer the following question.

QUESTION NO. 7
("Compensatory" damages)

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate Udo Birnbaum for his damages, if any, that resulted from such conduct?

Consider the following elements of damages, if any, and none other.

Answer separately in dollars and cents, if any, for each of the following:

The difference, if any, in the value of the services as received and the price Udo Birnbaum paid for them. The difference, if any, shall be determined at the time and place the services were done.

Answer: _____

Expense costs to Udo Birnbaum, if any, produced by the conduct of The Law Offices of G. David Westfall, P.C.

Answer: _____

The reasonable value of Udo Birnbaum's lost time, if any, produced by the conduct of The Law Offices of G. David Westfall, P.C.

Answer: _____

In answering questions about damages, answer each question separately. Do not increase or reduce the amount in one answer because of your answer to any other question about damages. Do not speculate about what any party's ultimate recovery may or may not be. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment. Do not add any amount for interest on damages, if any.

If your answer to Question 5 is "Yes", then answer Question 8. Otherwise, do not answer Question 8.

QUESTION NO. 8
(Additional damages)

What sum of money, if any, in addition to actual damages, should be awarded to Udo Birnbaum against The Law Offices of G. David Westfall, P.C. because The Law Offices of G. David Westfall, P.C's conduct was committed knowingly?

Answer in dollars and cents, if any.

Answer: _____

If your answer to Question 6 is "Yes", then answer Question 9. Otherwise, do not answer Question 9.

QUESTION NO. 9
(Additional damages)

What sum of money, if any, in addition to actual damages, should be awarded to Udo Birnbaum against The Law Offices of G. David Westfall, P.C. because The Law Offices of G. David Westfall, P.C.'s conduct was committed intentionally?

Answer in dollars and cents, if any.

Answer: _____

MEMBERS OF THE JURY:

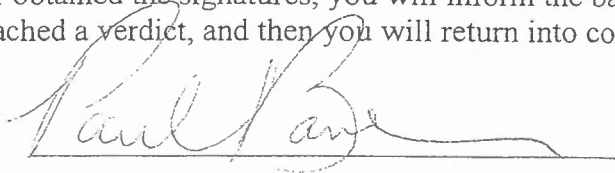
After you retire to the jury room, you will select your own presiding juror. The first thing the presiding juror will do is to have this complete charge read aloud and then you will deliberate upon your answers to the questions asked.

It is the duty of the presiding juror:

1. to preside during your deliberations,
2. to see that your deliberations are conducted in an orderly manner and in accordance with the instructions in this charge,
3. to write out and hand to the bailiff any communications concerning the case that you desire to have delivered to the judge,
4. to vote on the questions,
5. to write your answers to the questions in the spaces provided, and
6. to certify to your verdict in the space provided for the presiding juror's signature or to obtain the signatures of all the jurors who agree with the verdict if your verdict is less than unanimous.

You should not discuss the case with anyone, not even with other members of the jury, unless all of you are present and assembled in the jury room. Should anyone attempt to talk to you about the case before the verdict is returned, whether at the courthouse, at your home, or elsewhere, please inform the judge of this fact.

When you have answered all the questions you are required to answer under the instructions of the judge and your presiding juror has placed your answers in the spaces provided and signed the verdict as presiding juror or obtained the signatures, you will inform the bailiff at the door of the jury room that you have reached a verdict, and then you will return into court with your verdict.

A handwritten signature in cursive script, appearing to read "Paul Bane", written over a horizontal line.

JUDGE PRESIDING

Certificate

We, the jury, have answered the above and foregoing questions as herein indicated, and herewith return same into court as our verdict.

(To be signed by the presiding juror if unanimous.)

PRESIDING JUROR

(To be signed by those rendering the verdict if not unanimous.)

William M. Hart
Kathleen Taylor
Ken Curtis
Ann M. Phillips
Brenda Mitchell
Joseph L. Patchell

Wanda Butler
Sergeant
Lucy Thomas
Solita Joe Carter
Jammy Armstrong

THE LAW OFFICES OF
G. DAVID WESTFALL, P.C.

Plaintiff/Counter-Defendant

v.

UDO BIRNBAUM

Defendant/Counter-Plaintiff and
Third Party Plaintiff

v.

G. David Westfall, Christina Westfall, and
Stefani Podvin

Third Party Defendants

IN THE DISTRICT COURT AM 8:47

ROBERT YOUNG
DIST. CLERK VAN ZANDT CO. TX.

BY _____ DEP.

294th JUDICIAL DISTRICT

"legal services rendered" - upon a "letter memorandum of understanding" - re a PREPAID non-refundable \$20,000 "retainer agreement" - with the lawyer reserving the "right to terminate" for future "non-payment" - does NOT constitute the opening of ANY kind of commercial "account"!

VAN ZANDT COUNTY, TEXAS

MOTION FOR SANCTIONS

COMES NOW, Third Party Defendants, G. David Westfall, Christian Westfall, and Stefani Podvin, ("Movants"), third party defendants in the above-styled and numbered cause and files this Motion For Sanctions based upon Defendant/Third Party Plaintiff's violation of Rule 13, T. R. C. P., and violation of §§10.001 et seq. of the Texas Civil Practice and Remedies Code, and would thereby show the Court as follows:

I.
FACTS:

1. This lawsuit was brought by Plaintiff to collect on overdue legal fees for legal services rendered to the Defendant at Defendant's request.
2. Instead of a mounting a normal defense to a rather simple lawsuit such as this and raising the normal objections to a suit on a sworn account, the Defendant/Third Party Plaintiff chose

Let me let you in on a little secret:
1. A court cannot unconditionally PUNISH - as you request - in CIVIL process - for a COMPLETED act. Has to provide "keys to own release" - to be able to PURGE the contempt by complying with some ORDER. PERIOD.
US Supreme Court, no less, various.

instead to make this lawsuit into his own public forum to make a **mockery of all lawyers and the entire legal system.**

3. Defendant/Third Party Plaintiff tried unsuccessfully to intimidate and harass the Plaintiff into dropping this lawsuit by attempting to implicate the owner of the Plaintiff, G. David Westfall, as well as his **wife and daughter** in a totally frivolous claim of running an organized crime syndicate in the form of a law office.

Not the **WHOLE** truth - attorney daughter and wife were office staff - and active accomplices in this whole fraud - FROM THE VERY START.

4. The Defendant/Third Party Plaintiff has attempted to use the forum of this lawsuit to launch a full scale attack on the integrity and character of G. David Westfall, Christina Westfall, and Stephanie Podvin.

Ever heard of the First Amendment?

5. **If those attacks** were not enough, the Defendant/Third Party Plaintiff broadened his attack in his pleadings and so called "Open Letters" to include casting aspersions at this Court, the visiting Judge, the Hon. Paul Banner, the Coordinator of the Court, the **Court Reporter** for the Court, and the **Court of Appeals.**

where did you get this stuff from?

?

II.

Specifically, Movants file this request for sanctions against the Defendant/Third Party Plaintiff for the following actions of the Defendant/Third Party Plaintiff:

1. Filing a **frivolous** third party claim pleading without factual support or a **valid legal basis** in Defendant/Third Party Plaintiff's causes of action filed against either G. David Westfall, Christina Westfall, or Stefani Podvin. Movants contend that Defendant/Third Party Plaintiff filed these pleadings for the purpose of causing inconvenience and/or harassment for Stefani Podvin, Christina Westfall, G. David Westfall, P.C., and G. David Westfall, individually and not in support of any **valid, legally factual, and legally supportable claims.**

Court cannot unconditionally PUNISH upon the "legal merits of a case" - only upon the conduct of a party - in failure to comply with some ORDER - of which there was none.

2. Filing discovery requests and taking depositions for the purpose of harassment and inconvenience and not to support any valid claims or causes of actions against the Movants. well - you complained - and Judge Banner himself set the very date and location for "taking depositions"
3. Filing a frivolous motion to recuse the Hon. Paul Banner for the purpose of causing inconvenience and/or harassment for Movants.
4. Filing frivolous and untimely motions to appeal the granting of the Movants' Motions for Summary Judgment granted by the trial court.

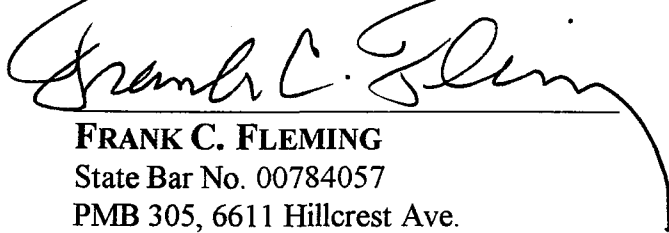
WHEREFORE, PREMISES CONSIDERED, Movants pray that a hearing be set on this motion, and following a hearing, the Court assess appropriate sanctions against the Defendant/Third Party Plaintiff for the violations of Rule 13 of the Texas Rules of Civil Procedure and/or the violations of §10.001 et seq. of the Tex. Rules of Civil Procedure. Specifically, Movants request damages be assessed against the Defendant/Third Party Plaintiff and awarded to the Movants for the following:

- a. Reimbursement of all Movants' reasonable and necessary attorney's fees expended by Movants in defense of the allegations made by the Defendant/Third Party Plaintiff in this lawsuit to the extent such attorney's fees have not yet been awarded in any prior rulings of this Court.
- b. Reimbursement of all Movants' reasonable and necessary attorney's fees expended by Movants in pursuit of this Motion for Sanctions.
- c. Monetary damages to reimburse Movants for the inconvenience and harassment suffered by the Movants as a direct result of the improper actions taken by the Defendant/Third Party Plaintiff against the Movants in connection with this lawsuit.

cannot do unconditional PUNITIVE sanctions by CIVIL process - only "coerce" to comply with some ORDER. Got to have "keys to own release" - to be able to purge the contempt.

- d. **Punitive** damages to be assessed against the Defendant/Third Party Plaintiff and awarded to the Movants in order to prevent the reoccurrence of such behavior again in the future by the Defendant/Third Party Plaintiff.
- e. Damages assessed against the Defendant/Third Party Plaintiff and awarded to the Court to reimburse the Court for its expenses and inconvenience suffered as a direct result of frivolous pleadings filed on behalf of the Defendant/Third Party Plaintiff.
- f. And for such other and further relief, both general and special, to which Movants may be justly entitled, both at law and equity.

Respectfully submitted,
LAW OFFICE OF FRANK C. FLEMING

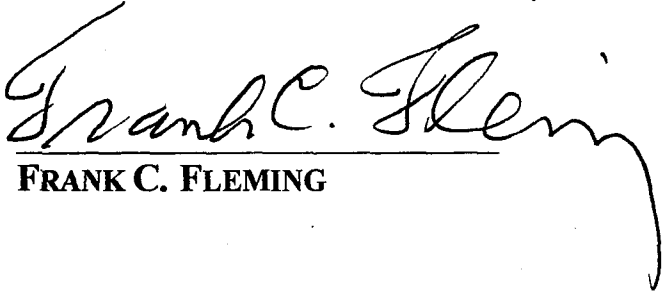


FRANK C. FLEMING
State Bar No. 00784057
PMB 305, 6611 Hillcrest Ave.
Dallas, Texas 75205-1301
(214) 373-1234
(fax) 373-3232

ATTORNEY FOR MOVANTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above document has this day been delivered to Udo Birnbaum, by facsimile transmission to 903/479-3929, on this 9th day of May 2002.


FRANK C. FLEMING

FIAT

Please take note that this motion is set for hearing at ____ : ____ AM/PM on the
____ day of _____, 2000.

District Judge Presiding

The Westfalls' "sanctionable facts" issue 2:

"Instead of mounting a normal defense to a rather simple lawsuit such as this and raising the normal objections to a suit on a sworn account, the Defendant/Third Party Plaintiff chose instead to make this lawsuit into his own public forum to make a mockery of all lawyers and the entire legal system".

FALSE: Birnbaum raised the normal defense of denying the account under oath per Rule 185, RCP, and calling for appointment of an auditor per Rule 172. (see attachment)

Neither the "Law Office", G. David Westfall, Stefani Podvin, Christina Westfall, or Frank C. Fleming ever responded to any of Birnbaum's motions for appointment of such Auditor under Rule 172!

Birnbaum has a First Amendment Right to speak out on the corruption G. David Westfall, Christina Westfall, and Stefani Podvin are bringing upon him in this Court in the name of their "Law Office".

The Westfalls' "sanctionable facts" issue 3:

"Defendant/Third Party Plaintiff tried unsuccessfully to intimidate and harass the Plaintiff into dropping this lawsuit by attempting to implicate the owner of the Plaintiff, G. David Westfall, as well as his wife and daughter in a totally frivolous claim of running an organized crime syndicate in the form of a law office".

FALSE AND CONCLUSORY: Birnbaum used more precise statutory language. But the issue is clear: Only the U. S. Justice Department can determine whether the above were indeed running a racketeering enterprise in violation of 18 U.S.C. § 1961, *et seq.* out of the "law office" as Birnbaum complains. This Court has no investigative capability.

Birnbaum has a First Amendment Right to speak out against public corruption as he has seen it, without fear of retaliation masquerading as "sanctions".

"Implicate the owner" is ludicrous under the circumstances: "Plaintiff" is the alter ego of Westfall, his wife, and his daughter. Another issue for the U. S. Justice Department.

The Westfalls' "sanctionable facts" issue 4:

"The Defendant/Third Party Plaintiff has attempted to use the forum of this lawsuit to launch a full scale attack on the integrity and character of G. David Westfall, Christina Westfall, and Stephanie Podvin".

FALSE: Birnbaum was seeking the intervention of the Court from the beginning upon the issue of fraud in bringing this suit. Another issue for the **U. S. Justice Department**.

The Westfalls' "sanctionable facts" issue 5:

"If those attacks were not enough, the Defendant/Third Party Plaintiff broadened his attack in his pleadings and so called "Open Letters" to include casting aspersions at this Court, the visiting Judge, the Hon. Paul Banner, the Coordinator of the Court, the Court Reporter for the Court, and the Court of Appeals".

FALSE: Birnbaum was seeking the intervention of the addressees to bring this entire matter to the attention of the **U. S. Justice Department**.

IN RESPONSE TO MOVANTS' "ACTIONS" (OF BIRNBAUM) ISSUES
(Movants starting page 2 paragraph II)

Further Westfalls' "sanctionable facts" issues:

"Specifically, Movants file this request for sanctions against the Defendant/Third Party Plaintiff for the following actions of the Defendant/Third Party Plaintiff:"

Issue II-1

"Filing a frivolous third party claim pleading without factual support or a valid legal basis in Defendant/Third Party Plaintiffs causes of action filed against either G. David Westfall, Christina Westfall, or Stefani Podvin. Movants contend that Defendant/Third Party Plaintiff filed these pleadings for the purpose of causing inconvenience and/or harassment for Stefani Podvin, Christina Westfall, G. David Westfall, P.C., and G. David Westfall, individually and not in support of any valid, legally factual, and legally supportable claims."

FALSE: Birnbaum has a **First Amendment Right** to speak out against public corruption as he has seen it, **without fear of retaliation** masquerading as "sanctions". Another issue for the U. S. **Justice Department**.

Issue II-2

"Filing discovery requests and taking depositions for the purpose of harassment and inconvenience and not to support any valid claims or causes of actions against the Movants."

FALSE: Birnbaum has a First Amendment Right to speak out against public corruption as he has seen it, **without fear of retaliation** masquerading as "sanctions". Another issue for the U. S. **Justice Department**.

Issue II-3

"Filing a frivolous motion to recuse the Hon. Paul Banner for the purpose of causing inconvenience and/or harassment for Movants."

FALSE: As pointed out at the trial by Hon. Paul Banner himself, Birnbaum has a procedural right to ask for recusal.

Birnbaum has a **First Amendment Right** to speak out against public corruption as he has seen it, **without fear of retaliation** masquerading as "sanctions". Another issue for the U. S. **Justice Department**.

Issue II-4

"Filing frivolous and untimely motions to appeal the granting of the Movants' Motions for Summary Judgment granted by the trial court."

Birnbaum has a **First Amendment Right** to speak out against public corruption as he has seen it, **without fear of retaliation** masquerading as "sanctions". Another issue for the U. S. **Justice Department**.

In response to [The Westfall] Movants "Wherefore, Premises Considered" paragraph, seeking the following:

- a. *Reimbursement of all Movants' reasonable and necessary attorney's fees expended by Movants in defense of the allegations made by the Defendant/Third Party*

- Plaintiff in this lawsuit to the extent such attorney's fees have not yet been awarded in any prior rulings of this Court.*
- b. Reimbursement of all Movants' reasonable and necessary attorney's fees expended by Movants in pursuit of this Motion for Sanctions.*
 - c. Monetary damages to reimburse Movants for the inconvenience and harassment suffered by the Movants as a direct result of the improper actions taken by the Defendant/Third Party Plaintiff against the Movants in connection with this lawsuit.*
 - d. Punitive damages to be assessed against the Defendant/Third Party Plaintiff and awarded to the Movants in order to prevent the reoccurrence of such behavior again in the future by the Defendant/Third Party Plaintiff*
 - e. Damages assessed against the Defendant/Third Party Plaintiff and awarded to the Court to reimburse the Court for its expenses and inconvenience suffered as a direct result of frivolous pleadings filed on behalf of the Defendant/Third Party Plaintiff.*
 - f. And for such other and further relief, both general and special, to which Movants may be justly entitled, both at law and equity.*

Birnbaum has a **First Amendment Right** to speak out against public corruption as he has seen it, **without fear of retaliation** masquerading as "sanctions". Another issue for the **U. S. Justice Department**.

WHEREFORE, PREMISES CONSIDERED, Birnbaum prays that a hearing be set on the "fact" and "actions" issues raised in the *[Westfalls'] Motion for Sanctions*, so that he may more fully show that the interest of justice requires that this matter be turned over to the **U. S. Justice Department**. (See attached *Petition to U. S. Bankruptcy Judge* for details). The Westfalls are a menace to society.

Respectfully submitted

Udo Birnbaum

UDO BIRNBAUM, Pro Se

540 VZ CR 2916

Eustace, TX 75124

(903) 479-3929

att:

- *Motion for Appointment of Auditor Pursuant to Rule 172*
- *Petition to U. S. Bankruptcy Judge Harold C. Abramson Nov. 26, 2001 (incl. 68 page Appendix)*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above document has this 10 day of May, 2002 been delivered as follows:

REGULAR U.S. FIRST CLASS MAIL:

- FRANK C. FLEMING, 6611 Hillcrest, PMB 305, Dallas, Texas 75205-1301
- THE HON. PAUL BANNER, c/o Sandy Hughes, First Administrative Judicial Region, 133 N. Industrial LB 50, Dallas, TX 75207 (no attachments)
- Judge Paul Banner, 24599 CR 3107, Gladewater, TX 75647 (no attachments)

CERTIFIED MAIL, RESTRICTED DELIVERY

NO. 7000 0520 0022 8182 1532:

- HON. HAROLD C. ABRAMSON, United States Bankruptcy Court, Northern District of Texas, 1100 Commerce Street, Rm. 12A24, Dallas, TX 75242-1496 (including attachments)

HAND DELIVERY:

- THE HON. PAUL BANNER, c/o Betty Davis, Court Administrator 294th District Court, 121 E. Dallas Street Room 301, 75103 (including attachments)
- DISTRICT CLERK, 294th District Court, Courthouse, Canton, TX 75103 (including attachments)


Udo Birnbaum

It was a JURY case - and ONLY the jury can award "damages". There was NO JURY making this AWARD!

It is therefore, **ORDERED, ADJUDGED and DECREED** that the Counter-Defendants, Christina Westfall and Stefani Podvin are **awarded damages** as a sanction against and to be paid by defendant, Udo Birnbaum, to Christina Westfall and Stefani Podvin as follows:

- A. Christina Westfall and Stefani Podvin are awarded jointly and severally the amount of **\$50,085.00** as reimbursement for their joint attorney's fees.
- B. Christina Westfall is awarded actual damages for her personal inconvenience in the amount of **\$1,000.00**, and she is further awarded punitive damages for the harassment caused to her in the amount of **\$5,000.00**.
- C. Stefani Podvin is awarded actual damages for her personal inconvenience in the amount of **\$1,800.00**, and she is further awarded punitive damages for the harassment caused to her in the amount of **\$5,000.00**.
- D. The Court denies the request for a finding of any sanctions to be awarded in favor of G. David Westfall, individually.
- E. The Court denies the request for a finding of any sanctions to be awarded in favor of Udo Birnbaum.

IT IS FURTHER ORDERED THAT the judgment here rendered shall bear interest at the rate of **ten percent (10%)** from July 30, 2002, until paid.

All other relief regarding any motions for sanctions on file in this matter not expressly granted in this order is hereby denied.

THIS JUDGMENT RENDERED ON JULY 30, 2002, AND SIGNED THIS 9 day of August, 2002.

Paul W. ...

 JUDGE PRESIDING

02/08/21 11:09:59
 FILED 08/01/02

156/835

FRANK C. FLEMING
ATTORNEY AND COUNSELOR

6611 Hillcrest Ave. #305
Dallas, TX 75205-1301
lawyerof@aol.com

Voice: 214/373-1234
Fax: 214/373-3232
or Fax: 214/265-1979

October 6, 2003

FILED FOR RECORD
03 OCT -8 PM 12:14
KAREN WILSON
DIST. CLERK
VAN ZANDT CO. TX
BY _____ DEP
Via Registered Mail

Court Clerk
294th District Court
Van Zandt County
121 E. Dallas Street
Canton, Texas 75103

Re: Cause No. : 00-00619
294th District Court
Law Offices of G. David Westfall, P.C.
v. Udo Birnbaum

Dear Clerk of the Court:

This matter **is on appeal**. However, Judge Banner still has authority to **File Findings** of Facts and Conclusions of Law in this matter.

*But not ~~controversy~~
un supported by the trial record.*

Enclosed please find and file Judge Banner's cover letter and the original signed Findings of Fact and Conclusions of Law, signed by Judge Banner on September 30, 2003 along with one copy of the Findings. I have enclosed a returned envelope. Please mail me a copy of the file marked Findings.

No "cover letter" filed

If you have any questions, please call.

Final Judgment signed July 30, 2002, at the Sanction Hearing", at which Judge Banner found Mr. Birnbaum "well-intentioned" - only that he did not "think" that Mr. Birnbaum's counter-claim had any legal merit. So WHY in Sept 2003, the sudden need to make Findings?

Very truly yours,

Frank C. Fleming

FRANK C. FLEMING

cc: Udo Birnbaum Via Fax No. : 903/479-3929

In a JURY trial the JURY determines the FACTS. In a "bench trial" - the judge determines the FACTS - but he HAS to make "Findings of Fact". There was NO JURY at this second "bench trial". There should of course be NO BENCH TRIAL - in a JURY CASE - and NO SECOND TRIAL at ALL! Judge Banner had a REAL PROBLEM!

APP 34

57

in response to a request from the Defendant/Counter-Plaintiff, the Court makes its findings of fact and conclusions of law as follows:

Findings of Fact

1. The Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy claims against Christina Westfall and Stefani Podvin (the wife and daughter of the Defendant/Counter-Plaintiff's former attorney, David Westfall) were **groundless and totally unsupported** by any credible evidence whatsoever.

Always remember - the court reporter found him saying - that Mr. Birnbaum was "well intentioned". Suddenly all this stuff.

2. The Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy claims against Christina Westfall and Stefani Podvin were without merit and brought for the purpose of harassment, delay, and to seek advantage in a collateral matter by attempting to cause the original **Plaintiff**, David Westfall to drop his claim for un-reimbursed legal services provided to the Defendant.

3. The Defendant/Counter-Plaintiff was afforded numerous opportunities to marshal his evidence and present any facts to support his allegations concerning RICO civil conspiracy claims against the wife and daughter of the Defendant/Counter-Plaintiff's attorney, David Westfall. The Defendant/Counter-Plaintiff wholly failed to provide any such credible evidence at either the summary judgment phase of the lawsuit or at the hearing on the motion for sanctions.

4. The attempt to provide testimony by the Defendant/Counter-Plaintiff concerning RICO civil conspiracy claims were his own opinions and **totally uncorroborated** by any other evidence.

5. The Defendant/Counter-Plaintiff never established that he had suffered any economic damages as a result of an alleged conspiracy. The Defendant/Counter-Plaintiff was sued by his former counsel to collect money for **legal work** which had been performed for the Defendant/Counter-Plaintiff for which the Defendant/Counter-Plaintiff had not paid his attorney in

Judge Paul Banner did NOT submit ANY of this to the jury! He INSTRUCTED THEM that Mr. Birnbaum had "FAILED TO ABIDE"!

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full. The jury found that the work had been performed by the attorney, the amount charged to the client was reasonable, and that there was an amount owed by the Defendant/Counter-Plaintiff to the Plaintiff. The Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy claims had no bearing on whether or not the Defendant/Counter-Plaintiff received the legal services and owed the balance of the outstanding attorney's fees.

6. The filing of the Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy was a blatant and obvious attempt to influence the outcome of the Plaintiff's legitimate lawsuit against the Defendant/Counter-Plaintiff and to cause harassment to the Plaintiff and his family members.

7. The behavior of the Defendant/Counter-Plaintiff in filing claims concerning RICO civil conspiracy in this lawsuit have been totally without substantiation on any cause of action pled.

8. The conduct of the Defendant/Counter-Plaintiff giving rise to the award of punitive damages was engaged in willfully and maliciously by the Defendant/Counter-Plaintiff with the intent to harm the Plaintiff and the Counter-Defendants.

How about "well intentioned"? Remember?

9. The amount of actual damages, attorney's fees, suffered by the Counter-Defendant was proven to be reasonable and necessary by a preponderance of the evidence and not challenged by the Defendant/Counter-Plaintiff at the hearing on sanctions. The amount of actual damages awarded was in an amount that was proven at the hearing.

Was a JURY case. No jury at this hearing.

10. The amount of damages for inconvenience awarded by the court was proven at the hearing by a preponderance of the evidence and not challenged by the Defendant/Counter-Plaintiff at the hearing on sanctions. The court awarded damages for inconvenience in an amount the Court found to be reasonable and necessary, supported by evidence, and appropriate considering the circumstances.

B.S.

60

11. The amount of **punitive** damages awarded by the Court were found to be supported by the evidence and necessary under the circumstances to attempt to **prevent similar future action** on the part of the Defendant/Counter-Plaintiff.

Can't do this in a CIVIL proceeding. Takes FULL CRIMINAL PROCESS.

12. The sanctions award is directly related to the harm done.

13. The sanctions award is not excessive in relation to the harm done and the **net worth of the Defendant/Counter-Plaintiff**.

No evidence to any of this B.S. ever!

14. The sanctions award is an appropriate amount in order to gain the **relief which the Court seeks**, which is to stop the Defendant/Counter-Plaintiff and **others similarly situated** from filing **frivolous lawsuits**.

"relief which the Court seeks" - to keep from filing lawsuits - a First Amendment Right. OFFICIAL OPPRESSION PER SE.

15. The amount of the **punitive** damage award is an amount narrowly tailored to the amount of harm caused by the offensive conduct to be **punished**.

16. The Counter-Defendants suffered both economic and emotional damages as a result of the Defendant/Counter-Plaintiff's lawsuit and specifically the frivolous nature of the lawsuit caused damages which included expenses (in addition to taxable court costs), attorney's fees, harassment, inconvenience, intimidation, and **threats**.

No evidence to all this B.S. Remember "well intentioned"?

17. The Counter-Defendants established a prima facie case that this lawsuit was filed by the Defendant/Counter-Plaintiff without merit and for the purpose of **harassment**. The prima facie case was made by the testimony and documents introduced as evidence by the Counter-Defendants at the summary judgment proceedings as well as at the hearing on sanctions on July 30, 2002.

18. After the Counter-Defendants established their prima facie case, the Defendant/Counter-Plaintiff failed wholly to provide any credible evidence to support the legal theories of the Defendant/Counter-Plaintiff.

Conclusions of Law

1. The Defendant/Counter-Plaintiff wholly failed to provide any credible evidence to substantiate any of his claims concerning a RICO civil conspiracy claim.
2. An essential element of each of Defendant/Counter-Plaintiff's claim was damages.
3. The Defendant/Counter-Plaintiff failed to prove any damage as a direct result of any action or inaction caused by the Plaintiff or the Counter-Defendants.
4. All of Defendant/Counter-Plaintiff's claims were as a matter of law unproved and untenable on the evidence presented to the Court. How about "evidence to the JURY"?
5. Based upon the facts presented to support Defendant/Counter-Plaintiff's claim concerning RICO civil conspiracy charges, the Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy were completely untenable.
6. The Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy charges were not based upon the law, were not a good faith extension of existing law, and were brought and continued to be urged for the purpose of harassment. was "civil RICO" - not the mumbo-jumbo above
7. The court concludes as a matter of law that Defendant/Counter-Plaintiff's claims concerning RICO civil conspiracy were brought for the purpose of harassment.
8. The Defendant/Counter-Plaintiff's behavior in bringing and prosecuting this frivolous lawsuit was a violation of one or more of the following: §9.000 et seq. Civ. Prac. & Rem. Code, §10.000 et seq. Civ. Prac. & Rem. Code, and/or Rule 13, T.R.C.P. what about "well intentioned"?
9. The Court has the power to award both actual and punitive damages against the Defendant/Counter-Plaintiff for the filing and prosecution of a frivolous lawsuit. This authority stems from one or more of the following: §9.000 et seq. Civ. Prac. & Rem. Code, §10.000 et seq. Civ. Prac. & Rem. Code, Rule 13, T.R.C.P., and/or the common law of Texas.

Findings of Fact and Conclusions of Law
PAGE 5 of 7

Official Oppression per se

10. The behavior and attitude of the Defendant/Counter-Plaintiff in filing and prosecuting this claim against the Counter-Defendants calls out for the award of both actual and punitive damages to be assessed against the Defendant/Counter-Plaintiff.

11. The Counter-Defendants were successful in presenting a prima facie case to the Court on the issue of sanctions. After the prima facie case was made, the burden of proof shifted to the Defendant/Counter-Plaintiff and the Defendant/Counter-Plaintiff failed in its effort to prove good faith in the filing of the RICO civil conspiracy claims.

12. The appropriate award for actual damages as a result of the filing and full prosecution of this frivolous lawsuit is an award of \$50,085.00 in attorney's fees. The Court makes this award under power granted to the Court by §9.000 et seq. Civ. Prac. & Rem. Code, §10.000 et seq. Civ. Prac. & Rem. Code, Rule 13, T.R.C.P., and/or the common law of Texas.

13. The appropriate sanction for the inconvenience suffered by the Counter-Defendants for the filing and full prosecution of this frivolous lawsuit is an award of \$1,000.00 to Christina Westfall and \$1,800.00 to Stefani Podvin, to be paid by the Defendant/Counter-Plaintiff to the Counter-Defendants.

14. The appropriate punitive sanction for the filing and full prosecution of this frivolous lawsuit is an award of \$5,000.00 to Christina Westfall and an award of \$5,000.00 to Stefani Podvin, to be paid by the Defendant/Counter-Plaintiff to the Counter-Defendants.

15. The award of punitive damages is directly related to the harm done.

16. The award of punitive damages is not excessive.

17. The award of punitive damages is an appropriate amount to seek to gain the relief sought which is to stop this Defendant/Counter-Plaintiff, and others like him, from filing similar frivolous lawsuits.

OFFICIAL OPPRESSION per se. Can't do "punitive" in a CIVIL proceeding. Only "coercive". Requires "keys to own release"!

Findings of Fact and Conclusions of Law

PAGE 6 of 7

westfall\udo\judgment\findings of facts2

63

- 18. The amount of the **punitive** damage award is narrowly tailored to the harm done.
- 19. Authority for the **punitive** damage award is derived from §10.000 et seq. Civ. Prac. & Rem. Code, Rule 13, T.R.C.P., and/or the common law of Texas.

Any finding of fact herein which is later determined to be a conclusion of law, is to be deemed a conclusion of law regardless of its designation in this document as a finding of fact. Any conclusion of law herein which is later determined to be a finding of fact, is to be deemed a finding of fact regardless of its designation in this document as a conclusion of law.

SIGNED THIS 30 day of September, 2003.



JUDGE PRESIDING

Careful study of this document shows that all this B.S. is to C.Y.A. for having "awarded damages" WITHOUT A JURY - in a jury cause - and trying to CONCEAL that this is exactly what Judge Paul Banner had done.

--

It also is a window on his mindset during the JURY TRIAL of April 8-11, 2002, his hatred of Pro Se parties.

--

JUST READ ALL THIS VENOM IN THIS DOCUMENT. Remember, "although Mr. Birnbaum may be well intentioned --- etc. I (Mr. Banner) did not see the evidence as showing etc " - or something like that.

--

Was of course a JURY TRIAL - so why was Mr. Banner "weighing" the evidence?

percent (10%) was awarded by the Judgment as well. A true and correct copy of the Judgment is attached hereto as Exhibit "1" to the Westfall Affidavit and attached hereto as Exhibit "1" to the Podvin Affidavit.

3. Based upon the date of the signing of the Judgment, the Judgment became dormant on August 8, 2012. This Application seeks to revive the Judgment as to the judgment debtor Udo Birnbaum ("Judgment Debtor") pursuant to TEX. CIV. PRAC. & REM. CODE § 31.006.

4. As of June 1, 2014, there remains due and owing on the Judgment by the Judgment Debtor, damages in the amount of \$62,885.00. Post-judgment interest has and continues to accrue from the original date of judgment at the rate of ten percent (10%) and remains unpaid as well.

5. All payments made, credits, and offsets have been credited to the Judgment.

6. The Judgment has not been paid or otherwise settled or compromised.

7. Christina Westfall and Stefani Podvin bring this proceeding to revive the Judgment and to extend the enforcement of same.

8. Christina Westfall and Stefani Podvin ask the Court to take Judicial Notice of the Judgment.

WHEREFORE, PREMISES CONSIDERED, Christina Westfall and Stefani Podvin request from this Court the following:

1. A Scire facias writ be issued as to defendant, Udo Birnbaum, in the manner and form prescribed by law, requiring defendant, Udo Birnbaum, to appear and show cause why the Judgment should not be revived;
2. The Judgment be revived in all respects and extended for the full period provided by law;
3. The Court direct the issuance of execution on the Judgment;
4. The Court award Christina Westfall and Stefani Podvin all costs; and

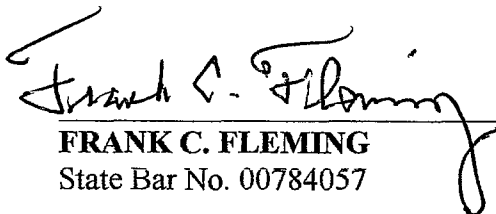
5. The Court grant Christina Westfall and Stefani Podvin such other and further relief to which they may show themselves to be justly entitled.

Respectfully submitted,

Reading the tea leaves:

*

Watch for the FRAUD
being planned for!



FRANK C. FLEMING
State Bar No. 00784057

Law Office of Frank C. Fleming
3326 Rosedale Ave,
Dallas, Texas 75205-1462
(214) 373-1234
(fax) 1-469-327-2930

**ATTORNEY FOR CHRISTINA
WESTFALL and STEFANI PODVIN**

sum of \$62,885.00. Post-judgment interest at the rate of ten percent (10%) was also awarded by the Judgment. A true and correct copy of the Judgment is attached hereto as **Exhibit "1"** to this affidavit and incorporated by reference herein for all purposes.

Order

3. "There is no outstanding and unreturned execution on the Judgment.

4. "All payments made, credits, and offsets have been credited to the Judgment.

5. "The Judgment has not been paid or otherwise settled or compromised.

6. "There are no counterclaims or set-offs in favor of Judgment Debtor.

7. "As of June 1, 2014, there remains due and owing on the Judgment by the Judgment Debtor, damages in the amount of \$62,885.00. Post-judgment interest at the rate of ten percent (10%) was also awarded by the Judgment and remains due and owing.

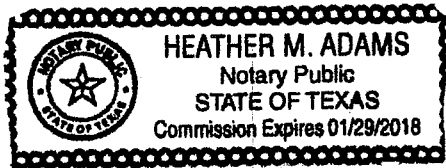
8. "This Affidavit is made and filed for the purpose of reviving the Judgment in the manner and for the period prescribed by law."

FURTHER AFFIANT SAYEHT NOT.

SIGNED this 20th day of June, 2014.

Christina Westfall
CHRISTINA WESTFALL

SUBSCRIBED AND SWORN TO BEFORE ME on this 20th day of June, 2014.



Heather M. Adams
Notary Public, State of Texas

total sum of \$62,885.00. Post-judgment interest at the rate of ten percent (10%) was also awarded by the Judgment. A true and correct copy of the Judgment is attached hereto as Exhibit "1" to this affidavit and incorporated by reference herein for all purposes.

- 3. "There is no outstanding and unreturned execution on the Judgment.
- 4. "All payments made, credits, and offsets have been credited to the Judgment.
- 5. "The Judgment has not been paid or otherwise settled or compromised.
- 6. "There are no counterclaims or set-offs in favor of Judgment Debtor.
- 7. "As of June 1, 2014, there remains due and owing on the Judgment by the Judgment

Debtor, damages in the amount of \$62,885.00. Post-judgment interest at the rate of ten percent (10%) was also awarded by the Judgment and remains due and owing.

8. "This Affidavit is made and filed for the purpose of reviving the Judgment in the manner and for the period prescribed by law."

FURTHER AFFIANT SAYEHT NOT.

SIGNED this 20th day of June, 2014.

Stefani Podvin
STEFANI PODVIN

SUBSCRIBED AND SWORN TO BEFORE ME on this 20th day of June, 2014.



Heather M. Adams
Notary Public, State of Texas

can't do unconditional (punitive) sanction by CIVIL process - only "coercive" - where contemnor has "keys to own release" to purge the contempt - by complying with some Order or decry.

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It is therefore, **ORDERED, ADJUDGED and DECREED** that the Counter-Defendants, Christina Westfall and Stefani Podvin are awarded damages as a **sanction** against and to be paid by defendant, Udo Birnbaum, to Christina Westfall and Stefani Podvin as follows:

- A. Christina Westfall and Stefani Podvin are awarded jointly and severally the amount of \$50,085.00 as reimbursement for their joint attorney's fees.
- B. Christina Westfall is awarded actual damages for her personal inconvenience in the amount of \$1,000.00, and she is further awarded punitive damages for the harassment caused to her in the amount of \$5,000.00.
- C. Stefani Podvin is awarded actual damages for her personal inconvenience in the amount of \$1,800.00, and she is further awarded punitive damages for the harassment caused to her in the amount of \$5,000.00.
- D. The Court denies the request for a finding of any sanctions to be awarded in favor of G. David Westfall, individually.
- E. The Court denies the request for a finding of any sanctions to be awarded in favor of Udo Birnbaum.

IT IS FURTHER ORDERED THAT the judgment here rendered shall bear interest at the rate of ten percent (10%) from July 30, 2002, until paid.

All other relief regarding any motions for sanctions on file in this matter not expressly granted in this order is hereby denied.

THIS JUDGMENT RENDERED ON JULY 30, 2002, AND SIGNED THIS 9 day of August, 2002.

Paul H. ...
JUDGE PRESIDING

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02 AUG 21 AM 9:59
WESTFALL/UDO/PLEADINGS/ORDER ON SANCTIONS

156/835

Westfall and Stefani Podvin. On your failure to do so, an order and judgment will enter for the relief demanded in the application.


The nature of Christina Westfall's and Stefani Podvin's demand is shown by a true and correct copy of their application accompanying this citation, the original of which is on file in this cause.

If this citation is not served within 60 days after the date of its issuance, it shall be returned unserved.

The officer executing this writ shall promptly serve the same according to the requirements of law, and the mandates of this order, and make due return as the law directs.

ISSUED and given under my hand and seal of the court on this 18th day of July, 2014.

CLERK OF THE 294TH DISTRICT COURT
VAN ZANDT COUNTY, TEXAS


KAREN WILSON

No. 00-00619

THE LAW OFFICES OF \$
 G. DAVID WESTFALL, P.C. \$
 \$
 Plaintiff \$
 v. \$
 \$
 UDO BIRNBAUM \$
 \$
 Defendant / Counter-Plaintiff \$
 \$
 G. DAVID WESTFALL, \$
 CHRISTINA WESTFALL \$
 STEFANI PODVIN \$
 \$
 Counter-Defendants \$

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 14 SEP 19 PM 1:24
 DIST. CLERK
 IN THE DISTRICT COURT
 BY _____ CLERK
 294th JUDICIAL DISTRICT
 VAN ZANDT COUNTY,
 TEXAS

Just to be SURE that it is clear - what one means - with all these various "judgments", "scire facias", and "executions", and "dormants" floating around

Answer to Application For Writ of Scire Facias to Revive Judgment

COMES NOW, Udo Birnbaum, Defendant/Counter-Plaintiff in this cause – answering the SECOND Writ (July 18, 2014) re the SECOND Judgment:

Definitions

1. **“First Judgment”** – the one for \$ 85,000 or so plus interest – Judge Paul Banner - *“This judgment rendered April 11, 2002, signed July 30, 2002”*
2. **“Second Judgment”** – the one for “\$67,000 or so plus interest – Judge Paul Banner – *“This judgment rendered July 30, 2002, signed August 9, 2002”*
3. **“Third Judgment”** – the one for \$125,000 or so plus interest – Judge Ron Chapman – *“This judgment rendered April 1, 2004, signed October 6, 2006”*

4. **“First Attempted Execution”** – done upon the First Judgment – sometime March 2014. No record because “handed back” across the Clerk’s counter – cause was dormant.
5. **“First Execution”** – the one done upon the Third Judgment
6. **“First Dormant Judgment”** – First Judgment – while dormant
7. **“Second Dormant Judgment”** – Second Judgment – dormant
8. **“First Application to Revive”** – upon the First Judgment – First Judgment now “alive” - was revived on June 13, 2014
9. **“Second Application to Revive”** – upon the Second Judgment
10. **“First Writ of Scire Facias”** – April 2, 2014 re First Judgment
11. **“Second Writ of Scire Facias”** – July 18, 2014 re Second Judgment
12. **“Order Reviving Judgment”** – does not say which Judgment
13. **“The Judgments”** – “The Three Judgments”, “items 1 + 2 + 3”
14. **“The Westfalls”** – the various judgment claimants, no matter how grouped, represented, or representing each other, irrespective whether by self, attorney, affidavit, claim, request, denial, etc – i.e. 1.) The Law Offices of G. David Westfall, P.C, 2.) G. David Westfall, 3.) Christina Westfall and 4.) daughter Stefani Podvin, 5.) attorney Frank C. Fleming, and 6.) any other manifestations or agents of same.

Answer

Udo Birnbaum enters a general denial to the Matters by “The Westfalls” in their Second Application to Revive re the Second Judgment in this cause – and to preclude confusion – only the First Revival of the Second Judgment.

Birnbaum demands a hearing to show exactly why this Second Judgment should NOT be “revived” – but that it be permanently “put to sleep” - -

- - as part of putting to sleep ALL “The Judgments” (ALL THREE JUDGMENTS), in this cause as per pending before this Court petition titled “Petition to Set Aside Judgments” - -

- - by reason of “inconsistent with due process” as detailed in said “Petition to Set Aside Judgments”.

Birnbaum demands that such hearing be in a magisterial setting not “inconsistent with due process” – i.e. by the only lawful magistrate of this Court, the Hon. 294th District Judge – the Hon. Teresa Drum – in her magisterial capacity.

The recent Order Reviving Judgment was by a “visiting judge” - Judge Paul Banner, unlawfully and bizarrely sitting as a “visiting magistrate”.

There is no such thing as an externally assigned “visiting magistrate”!

This the 19th day of September, 2014,



Udo Birnbaum
540 VZ County Road 2916
Eustace, TX 75124
903 479-3929
brnbn@aol.com

No. 00-00619

THE LAW OFFICES OF	\$	IN THE DISTRICT COURT
G. DAVID WESTFALL, P.C.	\$	
Plaintiff	\$	
v.	\$	294 th JUDICIAL DISTRICT
	\$	
UDO BIRNBAUM	\$	
Defendant / Counter-Plaintiff	\$	VAN ZANDT COUNTY,
	\$	
G. DAVID WESTFALL,	\$	
CHRISTINA WESTFALL	\$	TEXAS
STEFANI PODVIN	\$	
Counter-Defendants	\$	

in short - the "revival" of the First Judgment is void - because Judge Banner's "assignment" was void.

PETITION TO SET ASIDE
ORDER REVIVING JUDGMENT

Hearing June 13, 2014 was in violation of Order of Assignment
 Assignment specifically precluded sitting as a "visiting magistrate"

To : Hon. Teresa Drum, District Judge 294th – in her magisterial capacity

At said hearing on June 13, 2014 for M / REVIVE JUDGMENT AND SCIRE FACIAS, "visiting judge" Paul Banner signed Order Reviving Judgment - of a judgment as he himself had rendered and signed long ago.

The Order of Assignment by the Presiding Judge, by Hon. Mary Murphy, however specifically reads "from this date until plenary power has expired". It is elementary that a judgment requiring 10 years to go dormant, that clearly indicates that said hearing was long after plenary power had expired – i.e. the "assignment" of Banner is patently and absurdly void.

And as I learned from the very wording of Judge Mary Murphy's little piece of paper "assigning" him, by googling on "plenary power", a "scire facias hearing to revive" – is necessarily a purely MAGISTERIAL function. There is nothing left to adjudicate. The judgment is final.

(revival by an action on debt, however, would be an entirely different beast)

SUMMARY

"inconsistent with due process"

I filed Motion to Recuse Judge Banner, to keep Banner off this matter:

Banner stripped ALL of my text – also my 79 page 7,963KB CD Appendix

Left only my title – in his new blank he scribbled "I decline to recuse etc"

Immediately faxed his "pasting" to FAJR at 10:05 a.m. – per time stamp

"overruled" - reply from FAJR 10:32 a.m. Total time: 27 minutes.

Indicated: FAJR Judge Mary Murphy NEVER saw my Motion.

All "clerk job". Underlying Banner "assignment": VOID per se

Underlying Order of Referral to warrant any "assignment" – NONE

PRAAYER

*"Oh, what tangled webs we weave
when first we practice to deceive"*

Judge Drum, the First Administrative Judicial Region has no authority to dump "visiting magistrates" upon me, in the name of your good court – and certainly NOT Judge Banner.


Judge Drum, in your magisterial capacity as 294th District Judge, you have the authority to simply set aside the Order Reviving Judgment as "inconsistent with due process" – i.e. no jurisdiction whatsoever.

And, in your magisterial capacity as a public servant, it is also your duty to set aside such wrongs.

Judgments entered where court lacked either subject matter or personal jurisdiction, or that were otherwise entered **in violation of due process of law**, must be **set aside**, Jaffe and Asher v. Van Brunt, S.D.N.Y.1994, 158 F.R.D. 278.

This the 10 day of July, 2014

Respectfully,


UDO BIRNBAUM
540 VZ County Road 2916
Eustace, TX 75124
903 479-3929
brnbm@aol.com

Attachments:

Order Reviving Judgment – by Judge Banner - 6-13-2014

Order of Assignment etc – by Presiding Judge Murphy - 5-21-2014

Order Setting Hearing – by Judge Banner – 5-29-2014

Notice of Setting for 6-13-2014 – set on 5-29-2014

Motion for Recusal of Judge Banner – with CD Appendix - 6-12-2014

“I decline to recuse myself etc” - by Judge Banner 6-13-2014 **10:05** a.m.

Order Denying Motion to Recuse – by Judge Murphy 6-13-2014 **10:32** a.m.

Application for Writ of Scire Facias – **THIS CAUSE** - 3-27-**2014**

ABSTRACT OF JUDGMENT – **THIS CAUSE** – 3-26-**2014**

WRIT OF EXECUTION – **THIS CAUSE** – 3-24-**2014**

SHERIFFS RETURN – **THIS CAUSE** – 3-28-**2014**

“Deputy unable to locate Judgment Debtor to make demand. Unable to locate Assets sufficient to satisfy the judgment”.

No. 00-00619

**THE LAW OFFICES OF
G. DAVID WESTFALL, P.C.**

Plaintiff

v.

UDO BIRNBAUM

Defendant/Counter-Plaintiff

**G. David Westfall, Christina Westfall, and
Stefani Podvin,**

Counter-Defendants

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IN THE DISTRICT COURT

294th JUDICIAL DISTRICT

VAN ZANDT COUNTY, TEXAS

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14 JUN 13 AM 10:50
DIST. CLERK KAREN WILSON
VAN ZANDT CO. TX
DEP

Does NOT say WHICH judgment

ORDER REVIVING JUDGMENT

On this day, June 13, 2014, came on to be considered the *Application for Writ of Scire Facias to Revive Judgment* (the "Application") of Christina Westfall ("Movant) successor in interest to the Law Office of G. David Westfall, P.C., the judgment-creditor in the above-entitled and numbered case. The Court, having reviewed the pleadings and papers filed in this case finds that defendant Udo Birnbaum was commanded to appear in this court to show cause why the judgment rendered by this court in the above-entitled and numbered cause should not be revived on the Application of the Movant.

On this day personally appeared Christina Westfall ("Plaintiff/Judgment Creditor") and Udo Birnbaum ("Defendant/Judgment Debtor"). After considering all the pleadings, evidence, and the testimony of witnesses, the Court finds that the Application should be granted and the Judgment revived for the period of time proscribed by law.

had NO STANDING - no death certificate (of Plaintiff Law Office) or designation as successor in interest or legal representative by ANY court - on file in this court - as required.

further - not even a HINT to such in her Affidavit - only that she is over 21, of good moral character, and knows something about something

which one?

IT IS HEREBY, ORDERED, ADJUDGED, AND DECREED, that the final judgment rendered in the above-entitled and numbered cause is hereby revived in all respects as to Udo Birnbaum;

IT IS FURTHERED ORDERED that execution on the revived judgment may immediately issue; and

IT IS FURTHER ORDERED that all costs are taxed against the Defendant, Udo Birnbaum.

All relief requested, not granted herein, is expressly denied.

SIGNED this 13 day of June, 2014



JUDGE PRESIDING

by assignment # 24611

Assignment of Judge Paul Banner was for: "from this date until plenary power has expired" - which it DID - some time way back in 2002. ABSURDLY VOID!

but watch out for the new fraud coming up on this "judgment"!

THE STATE OF TEXAS
FIRST ADMINISTRATIVE JUDICIAL REGION
ORDER OF ASSIGNMENT BY THE PRESIDING JUDGE

Pursuant to Section 74.056, Texas Government Code, I assign the:

Honorable Paul Banner

Senior Judge of The 196th District Court

to the

294th District Court of Van Zandt County, Texas

This assignment is for the cause(s) and style(s) as stated in the conditions of assignment from this date until plenary power has expired or the undersigned Presiding Judge has terminated this assignment in writing, whichever occurs first.

CONDITION(S) OF ASSIGNMENT

Cause No. 00-000619: Law Office of David Westfall vs. UDO Birnbaum.

In addition, whenever the assigned Judge is present in the county of assignment for a hearing in the above cause(s), the Judge is also assigned and empowered to hear, at that time, any other matters presented for hearing.

It is ordered that the Clerk of the court to which this assignment is made, if it is reasonable and practicable and if time permits, give notice of this assignment to each attorney representing a party to a case that is to be heard in whole or in part by the assigned Judge.

It is further ordered that the Clerk, upon receipt hereof, shall post a copy of this order in a public area of the Clerk's office or courthouse in order that attorneys and parties may be advised of this assignment.

SIGNED: _____, 20 14

Mary Murphy

Mary Murphy
Presiding Judge
First Administrative Judicial Region of Texas

Cause No. 00-00619

The Law Offices of
G. David Westfall, P.C.
Plaintiff

VS.

Udo Birnbaum
Defendant/Counter Plaintiff

G. David Westfall, Christina
Westfall and Stefani Podvin
Counter Defendants

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In the 294th District Court

294th Judicial District

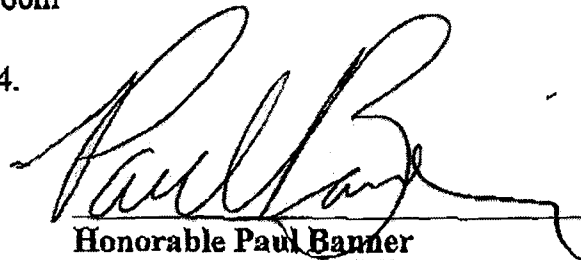
Van Zandt County Texas

ORDER SETTING HEARING

It is ordered that the above-referenced cause number is set for the following:

Writ of Scire Facias/Objection to Reviving Judgment
June 13, 2014 at 10:00 am.
294th District Courtroom

Signed this 29th day of May, 2014.



Honorable Paul Banner

TERESA A. DRUM
294th Judicial District Judge
121 East Dallas Street, Room 301
Canton, Texas 75103
Tel: (903) 567-4422 Fax: (903) 567-5652

www.OpenJustice.US

May 29, 2014

NOTICE OF COURT SETTING

CAUSE # 00-00619

LAW OFFICE OF G.DAVID WESTFALL

VS


UDO BIRNBAUM

The above referenced cause has been set for hearing on
June 13th 2014 AT 10:00 AM.

ACTION: M/REVIVE JUDGMENT AND SCIRE FACIAS-JUDGE BANNER

By copy of this notice, I am notifying all the parties listed
below.

Sincerely,


Pamela Pearman
Court Administrator

CC: FRANK C. FLEMING
6611 HILLCREST AVE., #305

DALLAS, TEXAS 75205
214-373-3232

BIRNBAUM, UDO
540 VZCR 2916

EUSTACE, TX 75124

No. 00-00619

FILED FOR RECORD

14 AUG 20 PM 3: 11

THE LAW OFFICES OF
G. DAVID WESTFALL, P.C.

Plaintiff

v.

UDO BIRNBAUM

Defendant / Counter-Plaintiff

G. DAVID WESTFALL,
CHRISTINA WESTFALL
STEFANI PODVIN

Counter-Defendants

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IN THE DISTRICT COURT
DIST CLERK VAN ZANDT CO. TX

BY _____ DEP

294th JUDICIAL DISTRICT

VAN ZANDT COUNTY,
TEXAS

Petition to set aside Judgments

Yes, plural – **THREE** of them, all in the same cause!
Communally – and individually – **“inconsistent with due process”**

COMES NOW, Udo Birnbaum, Defendant/Counter-Plaintiff in this cause, petitioning the Hon. Teresa Drum, 294th District Judge, in her magisterial capacity, to take notice:

1. **the duck test**

If it looks like a duck, and quacks like a duck,
we have at least to consider the possibility that it is a duck.
(for details, see “Happy April Fools Day” – on the attached CD)

There are **THREE** judgments, in the **SAME** cause, **TWO** by Judge Paul Banner, then yet **ANOTHER**, by Judge Ron Chapman – **FOUR** years later!

1. \$ 85,000 or so plus interest – Judge Paul Banner - *“This judgment rendered April 11, 2002, signed July 30, 2002”*
 2. “\$67,000 or so plus interest – Judge Paul Banner – *“This judgment rendered July 30, 2002, signed August 9, 2002”*”
 3. \$125,000 or so plus interest – Judge Ron Chapman – *“This judgment rendered April 1, 2004, signed October 6, 2006 “*
- *“If there is insanity around – well, some of us gotta have it”*

2. case law

Re res judicata, collateral attack, Rooker-Feldman doctrine,
plenary power, statute of limitations, one bite at the apple, etc

Randomly off the web – but the concept is pretty clear:

Void judgment may be defined as one in which rendering court lacked subject matter jurisdiction, lacked personal jurisdiction, or acted in manner **inconsistent with due process of law** Eckel v. MacNeal, 628 N.E.2d 741 (Ill. App. Dist. 1993).

Void judgment under federal law is one in which rendering court lacked subject matter jurisdiction over dispute or jurisdiction over parties or acted in manner **inconsistent with due process of law** or otherwise acted **unconstitutionally** in entering judgment, U.S.C.A. Const. Amend. 5, Hays v. Louisiana Dock Co., 452 N.E.2d 1383 (Ill App. 5 Dist. 1983).

A **void judgment** is one which has a **mere semblance**, but is lacking in some of the essential elements which would authorize the court to proceed to judgment, Henderson v. Henderson, 59 S.E.2d 227, (N.C. 1950).

Judgments entered where court lacked either subject matter or personal jurisdiction, or that were otherwise entered **in violation of due process of law**, must be **set aside**, Jaffe and Asher v. Van Brunt, S.D.N.Y. 1994, 158 F.R.D. 278.

Black's Law Dictionary, Sixth Edition, p. 1574:

Void judgment. One which has **no legal force or effect**, invalidity of which may be asserted **by any person** whose rights are affected at **any time** and at **any place directly or collaterally**. Reynolds v. Volunteer State Life Ins. Co., Tex. Civ. App., 80 S.W.2d 1087, 1092. One which

from its inception is and forever continues to be absolutely null, without legal efficacy, ineffectual to bind parties or support a right, of no legal force and effect whatever, and incapable of confirmation, ratification, or enforcement in any manner or to any degree. **Judgment is a "void judgment"** if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner **inconsistent with due process**. Klugh v. U.S., D.C.S.C., 610 F.Supp. 892, 901. See also Voidable judgment.

[Black's Law Dictionary, Sixth Edition, p. 1574]

3. **"inconsistent with due process"**

Yes, there was a jury sitting there – at least at ONE of them,
but the judge **used the jury as a weapon**.

Expected due process:

"These instructions are given you because your conduct is subject to review the same as that of the witnesses, parties, attorneys **and the judge**. If it should be found that you have disregarded any of these instructions, it will be jury misconduct and it may require another trial by another jury; then all of our time will have been wasted." (Std. Jury instructions)

What really went on:

Full details are in my Motion for Recusal of Judge Banner, provided herewith as 79 page PDF electronic document with its exhibits. (on hereto attached CD)

As but a single example of the modus operandi of "inconsistent with due process", this excerpt showing only page 7 of Motion for Recusal of Judge Banner, exactly as formatted there:

***** START of excerpt page 7 of Motion for Recusal *****

QUESTION: Wasn't this a jury cause? So why does Banner try "before the Court"?

ANSWER: Unconscionable lawlessness as a modus operandi.

Judge Banner's first judgment

Retaliation using the JURY AS A WEAPON

Yes, Judge Banner had a jury sitting there, but did not use it. I do not at this time want to belabor this matter, except for the following:

Plaintiff's submitted First question was : "Did Defendant, Udo Birnbaum fail to comply with the terms of the attorney client agreement?"

Thereupon I submitted my issue, "Was Udo Birnbaum's failure to comply excused – by Plaintiff's failure to comply with a material obligation of the same agreement?"

Whereupon Judge Banner completely bypassed the jury on this essential element, by presenting only the following question, de facto instructing the jury that I had failed to abide.

QUESTION NO.1

"What sum of money, if paid now in cash, would fairly and reasonably compensate the Law Offices of G. David Westfall, P.C., for its damages, if any, that resulted from Defendant Udo Birnbaum's, failure to comply with the agreement between the Plaintiff and the Defendant?"

Never mind the fact that the cause was brought as "sworn open account", having the elements of sale and delivery of goods and services.

Same modus operandi by Judge Banner, fraud upon the Court, by the Court, and thru the prism of the other TWO judgments. nothing less than RETALIATION using the JURY AS A WEAPON.

***** END of Excerpt page 7 of Motion for Recusal *****

4.

but, back to the matter at hand – to set aside

It is past time to put an end to these chains around my neck!
You have ALL taken a solemn oath to “preserve, protect, defend, etc”

The following excerpt directly from my Complaint of Official Oppression to the Van Zandt District Attorney – also provided herewith as a single PDF electronic document on the same CD – together with the “video deposition” referred to therein – about the FBI telling me to “just shoot them”.

***** START of excerpt of complaint to Van Zandt DA *****

ESSENCE OF THIS COMPLAINT OF OFFICIAL OPPRESSION
And notification of such

This stuff has been going on upon me ever since I was sued under Section 11.06 of the Texas Water Code in 1995 for a dam built by beavers on a creek on my farm. Suit said I was the one who built “The Dam” dam. ALL the jury heard was about BEAVERS – 166 mentions in the transcript of the FOUR (4) day trial. Then fraudulent issues to the jury of whether I “allowed dams”. But enough of that for now.

Been complaining to just about every law enforcement body I know of. No protection, of ANY kind. Tried hiring a lawyer against the “beaver dam scheme” matter, wound up with Westfall, and now this mess.

So, I call particular attention to the events of my recent trip to the Tyler FBI. Took a friend along, about ten years older than I. The agent recognized me from back in 1995.

The FBI arranged for our visit to the U.S. Attorneys Office in downtown Tyler. What the Justice Department told me to do, as strange as it may seem, was to “just SHOOT them”.

I have a sort of video deposition I made thereafter with the friend I took along, contemporaneously documenting our immediate recollections.

And in making this recording, she somehow came to bring out a murder trial she or a friend sat on, where “that black woman” had killed her husband – by just sewing him up in a bed sheet when he was drunk, and killing him with a frozen pork roast. “We did not have any beef at the time”, was her explanation. She had come to Van Zandt county as a war bride way back in the early 50’s.

Anyhow, “that black woman” went home free. “She had bruises on her”, was my friend’s add-on. “That black woman” must have, at least in the eyes of that jury, acquired the right to end matters as she did..

On my mind ever so often:

- 1) At what stage of her husband’s conduct did she acquire the right of self-defense to kill her husband?
- 2) And at what stage of conduct in this matter, if ever, do I acquire a right to “just shoot them”?
- 3) And at the age of 77 – at what stage, if ever, of my remaining life and strength, do I acquire an actual duty to “just shoot them”?

This complaint honestly presented in order to not have to make such decisions.

April 29, 2014

Sincerely,

Udo Birnbaum
540 VZ County Road 2916
Eustace, TX 75124
903 479-3929

***** END of excerpt of complaint to Van Zandt DA *****

5.
in violation of the law

It is past time to put an end to these chains around my neck!
You have ALL taken a solemn oath to “preserve, protect, defend, etc”

"I, _____, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of _____ of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God."

The Law – and DUTY – upon the above oath and this Petition and evidence:

Judgments entered where court lacked either subject matter or personal jurisdiction, or that were otherwise entered **in violation of due process of law**, must be **set aside**, Jaffe and Asher v. Van Brunt, S.D.N.Y.1994, 158 F.R.D. 278.

6.
this whole “case” in a nutshell

Real goal ALL ALONG was caught by the court reporter – Judge Banner upset by my civil racketeering (“civil RICO”) **counter-claim** – i.e. filing a lawsuit, a **First Amendment Right**:

*“In assessing the **sanctions**, the Court has taken into consideration that although Mr. Birnbaum may be **well-intentioned** and may believe that he **had** some kind of real claim as far as RICO there **was** nothing presented to the court in any of the proceedings since I’ve been involved **that suggest** he **had** any basis in law or **in fact** to support his **suits** against the individuals, **and I think** – can find that such **sanctions** as I’ve determined are appropriate”. (Sanction hearing July 30, 2002)*

\$67,000 plus interest PUNISHMENT for being “*well-intentioned*” in exercising a constitutional Right is **official oppression per se**. Also was a jury case – so why is the judge weighing the evidence? (“**and I think**”).

Judge’s reason: - “*to stop this Defendant, **and others like him**” (Banner **Findings**) - from going Pro Se – and using RACKETEERING counter-claims – against **fraudulent suits** – (especially for LEGAL FEES!)*

prayer

Blatantly "inconsistent with due process".
FBI suggests "just shoot them".

A cancer on the Court - wolves in sheep clothing – hiding in open sight – in an institution we normally associate with doing good. These guys need to go to the pen. Twenty years of this stuff upon me is absurd. Enough is enough.

Respectfully submitted,

Udo Birnbaum

Udo Birnbaum
540 VZ County Road 2916
Eustace, TX 75124
903 479-3929

Attachments - all as PDF on a CD

1. Petition to Set Aside Judgments – this document
2. Petition to Set Aside Order Reviving Judgment – w Appendix
3. Motion for Recusal of Judge Banner – w Appendix
4. Petition for Writ of Certiorari – to Supreme Court USA – case law
5. Complaint of Official Oppression – to Van Zandt DA – w Appendix
6. Securing Execution of Documents by Deception – to Van Zandt DA
7. "Happy April Fools Day" – fast overview of this 20 year mess
8. Video Deposition – FBI tells me – "just shoot them"

All above upon personal knowledge and personal inquiry, including the attached and referenced documents.

THIS the 15 day of Aug, 2014.

Udo Birnbaum

Udo Birnbaum

SUBSCRIBED AND SWORN TO BEFORE ME on this the 15th day of Aug, 2014.



Brenda Harmison

Notary Public, State of Texas



www.OpenJustice.US

TERESA A. DRUM
DISTRICT JUDGE
294th Judicial District Court

121 East Dallas Street
Room 301

Canton, Texas 75103-1465

Tel: (903) 567-4422 Fax: (903) 567-5652

Pamela Pearman
Court Administrator

To: Judge Banner Via Facsimile 903-845-5982
Hon. Frank Fleming Via Facsimile 469-327-2930
Mr. Udo Birnbaum Via Email
From: Pam Pearman
Date: September 29, 2014
Subject: Cause No.00-00619, The Law Office of G. David Westfall
Vs. Udo Birnbaum

Please find Review of File and Order of Voluntary Recusal on the above Referenced cause number.

Thank You

A handwritten signature in cursive script, appearing to read "Pam Pearman".

First Administrative Judicial Region Judge Mary Murphy - what about all the horrible
unlawful Judge Drums meticulously detailed to YOU as part of this "voluntary recusal"?
"Motion for Sanctions for \$62,885.00" and "PUNITIVE Sanction of \$124,770.00"
You KNOW that a court cannot UNCONDITIONALLY PUNISH by civil process!
And so you RE-ASSIGN the very judge - who committed all these crimes! SHAME

Cause No: 00-00619

THE LAW OFFICE OF	§	IN THE DISTRICT COURT
G. DAVID WESTFALL, P.C.	§	
Plaintiff	§	
vs.	§	294th DISTRICT COURT
	§	
UDO BIRNBAUM	§	
Defendant	§	VAN ZANDT COUNTY, TX

REVIEW OF FILE AND ORDER OF VOLUNTARY RECUSAL

In reviewing this **rather voluminous file**, I find in a nutshell that on September 21, 2000, Plaintiff, THE LAW OFFICE OF G. DAVID WESTFALL, P.C. (hereinafter referred to as "WESTFALL"), filed suit complaining of Defendant, UDO BIRNBAUM (hereinafter referred to as "BIRNBAUM"). On October 3, 2000, Defendant, BIRNBAUM, filed Defendant's Answer, Counterclaim and Cross-Complaint. Defendant, BIRNBAUM filed counterclaims and cross-claims against G. DAVID WESTFALL, CHRISTINA WESTFALL, (hereinafter referred to as "CHRISTINA") and STEFANI PODVIN (hereinafter referred to as "PODVIN").

On January 26, 2001, John Ovard, Presiding Judge, First Administrative Judicial Region appointed the Honorable Paul Banner, pursuant to Art. 74.056 of the Texas Government Code.

On August 20, 2001, Third-Party Defendants, CHRISTINA and PODVIN filed motions for summary judgment. On September 7, 2001, a hearing was had on Third-Party Defendants' motions for summary judgment.

On or about September 10, 2001, it appears that Defendant, BIRNBAUM filed a Motion for Recusal of Hon. Paul Banner. On September 21, 2001, Judge Ovard appointed the Honorable Ron Chapman, pursuant to Rule 18a, to hear the aforementioned Motion for Recusal of Hon. Paul Banner. On October 1, 2001, a hearing was had on Defendant's Motion for Recusal of Hon. Paul Banner.

In addition on September 10, 2001, the Defendant, BIRNBAUM, filed a Notice of Appeal of the granting of CHRISTINA and PODVIN's motion for summary judgment and a Writ of Mandamus with the Twelfth Court of Appeals. On November 7, 2001, the Twelfth Court of Appeals denied Defendant BIRNBAUM's Writ of Mandamus. On March 11, 2002, the Twelfth Court of Appeals dismissed Defendant BIRNBAUM'S appeal for want of prosecution.

It is PLUM UNLAWFUL - for CIVIL process to unconditionally PUNISH. Can only "coerce" - has to provide "keys to your own release" to purge the contempt - by complying with some Order or mandate. U.S. Supreme Court, no less

On November 13, 2001, Presiding Judge Paul Banner signed Order Sustaining Motions for Summary Judgment, sustaining the motions for summary judgment of CHRISTINA and STEFANI.

On or about April 8, 2002 a jury trial began and on April 11, 2002, the jury returned with a verdict for Plaintiff WESTFALL against Defendant BIRNBAUM for \$59,280.66.

On May 9, 2002, Third Party Defendants WESTFALL, CHRISTINA and PODVIN filed a Motion for Sanctions.

On July 30, 2002, Final Judgment was signed.

In addition on July 30, 2002, Judge Banner heard and granted Third Party Defendants WESTFALL, CHRISTINA and PODVIN's Motion for Sanctions for \$62,885.00.

On August 28, 2002, Defendant BIRNBAUM filed a Motion for New Trial.

On September 3, 2002, Defendant BIRNBAUM filed a Notice of Appeal of both the Final Jury Verdict as well as the Order for Sanctions.

On September 30, 2003, Defendant, BIRNBAUM filed a Motion for Recusal of Judge Banner.

On October 23, 2003, the Fifth Court of Appeals affirmed the trial court. No writ was filed with the Texas Supreme Court.

On April 1, 2004, a hearing was heard on Defendant BIRNBAUM's Motion for Recusal of Judge Banner. Judge Chapman was assigned to hear the Recusal. Judge Chapman also heard the Motion for Sanctions filed by WESTFALL, CHRISTINA and STEFANI.

On October 24, 2006, Judge Chapman signed Order on Motions for Sanctions denying Defendant's Motion for Recusal of Judge Banner and granted Third-Party Defendant's Motion for Sanctions for \$1,000 in Attorney's Fees and exemplary and/or punitive sanction of \$124,770.00.

On December 2, 2006, in the 294th District Court, cause No:06-00857, BIRNBAUM filed suit against Judge Paul Banner and Judge Ron Chapman. Judge John McCraw was assigned to hear. A plea to the jurisdiction was granted on August 25, 2009.

On March 27, 2014, CHRISTINA WESTFALL, as successor in interest of a final judgment filed an Application for Writ of Scire Facias to Revive the Judgment.

On June 12, 2014, Defendant BIRNBAUM filed a Motion for Recusal of Judge Paul Banner.

Cannot do PUNITIVE by CIVIL process. Period. U.S. Supreme Court, various

assigned ONLY to do recusal. No jurisdiction to hear Motion for Sanctions

Also, access to the courts is a First Amendment Right - and a public official PUNISHING thereon - is official oppression per se

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NO. Not because his authority had "lapsed" - but because he NEVER had it. Was assigned specifically to do a recusal hearing - and the assignment specifically stated his assignment terminated upon him having ruled on that.

On June 13, 2014, Defendant BIRNBAUM's Motion for Recusal of Judge Paul Banner was denied and the Order Reviving the Judgment was signed.

On August 20, 2014, Defendant BIRNBAUM filed a Petition to set aside Judgments alleging among other things that when Judge Chapman signed the Order on Motions for Sanctions on October 24, 2006, the Court was without jurisdiction as his authority to hear the Motion for Sanctions had lapsed. In addition, BIRNBAUM alleges the Court having granted third-Party Defendants, CHRISTINA and PODVIN motions for summary judgment on November 13, 2001, third-party Defendants CHRISTINA and STEFANI lacked standing to bring a Motion for Sanctions on July 20, 2002 and April 1, 2004.

On January 1, 2003, I, Teresa A. Drum, was sworn in as Judge of 294th District Court. Defendant, UDO BIRNBAUM, was and still is a personal friend of mine. He was instrumental in my campaign for the 294th District Court. In addition, for several years Mr. Birnbaum attended a Sunday School class which I taught at Lakeside Baptist Church. Upon taking the bench, I voluntarily recused myself from all matters regarding Mr. Udo Birnbaum because my impartiality might reasonably be questioned.

Accordingly, I, Judge Teresa A. Drum, voluntarily recuses herself from any and all rulings in this cause.

SIGNED this 29th day of September, 2014.



Hon. Teresa A. Drum

Judge Mary Murphy:

Did you INTENTIONALLY not notice all the horrible unlawfuls as documented in Judge Drums meticulous details referred to YOU as part of this voluntary recusal?

Did not even the phrases therein of "Motion for Sanctions for \$62,885.00" and "PUNITIVE Sanction of \$124,770.00" - move YOU to do something about this?

Both YOU, Judge Drum, Judge Banner, and Judge Chapman KNOW that a court cannot UNCONDITIONALLY PUNISH by CIVIL process - can ONLY "coerce".

This matter must, however, have rung your bell - why else would you have jumped through hoops to come up with your specifically tailored "assignment" for this mere case - to include the phrase "regardless of whether the proceedings involve matters that arise after the original judgment or final order"?

And all that fancy formatting - instead of the ordinary "fill in the blanks" as in your previous assignment "till plenary power expires" - which it had - some time in 2002. You were very careful NOT to do that again.

But NOW - stop this outrage - CEASE AND DESIST - IMMEDIATELY

No. 00-00619

THE LAW OFFICES OF
G. DAVID WESTFALL, P.C.

Plaintiff

v.

UDO BIRNBAUM

Defendant/Counter-Plaintiff

G. David Westfall, Christina Westfall, and
Stefani Podvin,

Counter-Defendants

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IN THE DISTRICT COURT

NOTE: The CURRENT "Application to Revive" - is upon the First SANCTION Order - by Judge Banner - but -

294th JUDICIAL DISTRICT

The language of this document - and the novel language of the NEW ASSIGNMENT of Judge Banner (coming up next) - is ominous.

* Which of the THREE "judgments" does THIS document - and the ASSIGNMENT - point to?

VAN ZANDT COUNTY, TEXAS

REQUEST FOR HEARING

Here comes the fraud - read this document VERY, VERY carefully. (hints throughout)

FOR WRIT OF SCIRE FACIAS TO REVIVE JUDGMENT

NOW COMES, Christina Westfall, as successor in interest of a final judgment rendered in favor of The Law Office of David G. Westfall, P.C., plaintiff in the above-entitled and numbered cause ("Plaintiff"), Christina Westfall, individually, and Stefani Podvin, (Plaintiff, Christina Westfall, and Stefani Westfall collectively referred to herein as the "Westfalls") and they file this their Request for Hearing on Application for Writ of Scire Facias to Revive Judgment (hereinafter, the "Application") and in support thereof would show unto the Court as follows:

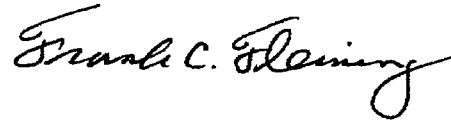
- 1. The Westfalls have filed an Application for Writ of Scire Facias to Revive Judgment.
- 2. The defendant, Udo Birnbaum, has filed an answer to the Application for Writ of Scire Facias to Revive Judgment.

3. Therefore, the Westfalls request a hearing date before the court on their *Application for Writ of Scire Facias to Revive Judgment*.

WHEREFORE, PREMISES CONSIDERED, the Westfalls request from this Court the following:

A trial/motion setting on the *Application for Writ of Scire Facias to Revive Judgment* filed by the Westfalls.

Respectfully submitted,



FRANK C. FLEMING
State Bar No. 00784057

Law Office of Frank C. Fleming
3326 Rosedale Ave,
Dallas, Texas 75205-1462
(214) 373-1234
(fax) 1-469-327-2930
lawyerfcf@gmail.com

ATTORNEY FOR THE WESTFALLS

www.OpenJustice.US

These guys KNOW they did something wrong - but instead of doing right - are trying another WRONG! see below
Also VERY SPECIAL NOTICE to JUDGE MARY MURPHY. see below



NO. 00-00619

LAW OFFICE OF DAVID WESTFALL

v.

UDO BIRNBAUM

§
§
§
§
§

IN THE DISTRICT COURT

VAN ZANDT COUNTY, TEXAS

294TH JUDICIAL DISTRICT

ORDER OF ASSIGNMENT BY PRESIDING JUDGE

Pursuant to Section 74.056, Texas Government Code, I assign the Honorable Paul Banner, Senior Judge of the 196th District Court, to preside in the above-numbered and entitled cause regardless of whether the proceedings involve matters that arise after the original judgment or final order.

This assignment continues until such time as the Presiding Judge of the First Administrative Judicial Region terminates this assignment.

IT IS ORDERED that the Clerk of the Court to which this assignment is made, if it is reasonable and practicable, and if time permits, give notice of this assignment to each attorney representing a party, and to each party representing himself or herself pro se, to a case that is to be heard in whole or in part by the assigned judge.

Signed this 30 day of October, 2014.

Mary Murphy
MARY MURPHY, Presiding Judge
First Administrative Judicial Region

Judge Mary Murphy:

Did you INTENTIONALLY not notice all the horrible unlawfs as documented in Judge Drums meticulous details referred to YOU as part of this voluntary recusal?

Did not even the phrases therein of "Motion for Sanctions for \$62,885.00" and "PUNITIVE Sanction of \$124,770.00" - move YOU to do something about this?

Both YOU, Judge Drum, Judge Banner, and Judge Chapman KNOW that a court cannot UNCONDITIONALLY PUNISH by CIVIL process - can ONLY "coerce".

This matter must, however, have rung your bell - why else would you have jumped through hoops to come up with your specifically tailored "assignment" for this mere case - to include the phrase "regardless of whether the proceedings involve matters that arise after the original judgment or final order"?

And all that fancy formatting - instead of the ordinary "fill in the blanks" as in your previous assignment "till plenary power expires" - which it had - some time in 2002. You were very careful NOT to do that again.

But NOW - stop this outrage - CEASE AND DESIST - IMMEDIATELY

TERESA A. DRUM
294th Judicial District Judge
121 East Dallas Street, Room 301
Canton, Texas 75103
Tel: (903) 567-4422 Fax: (903) 567-5652

November 4, 2014

NOTICE OF COURT SETTING

CAUSE # 00-00619

LAW OFFICE OF G.DAVID WESTFALL

VS

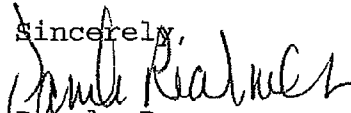
UDO BIRNBAUM

The above referenced cause has been set for hearing on
November 14th 2014 AT 10:00 AM.

ACTION: APPLICATION WRIT SCIRE FACIAS TO REVIVE JUDGMENT

By copy of this notice, I am notifying all the parties listed
below.

Sincerely,



Pamela Pearman
Court Administrator

CC: FRANK C. FLEMING
3326 ROSEDALE AVE.

DALLAS, TX 75205
469-327-2930

BIRNBAUM, UDO
540 VZCR 2916

EUSTACE, TX 75124

THIS is the document - and the ONLY document - upon which judgments of \$85,000, another for \$65,000, and yet another for \$125,000, all plus 10% interest since 2002 - all in the SAME case - were assessed against Mr. Birnbaum.
Total TODAY - \$700,000 or so.

ALL fraudulent legal fees - and fraudulent legal fees - for collecting on fraudulent legal fees. "Smoke OLD MOLD - the ONLY cigarette - that is ALL filter"

LAW OFFICES OF
G. DAVID WESTFALL, P.C.
A Professional Corporation
714 JACKSON STREET
700 RENAISSANCE PLACE
DALLAS, TEXAS 75202

www.OpenJustice.US

Telephone: (214) 741-4741
Fax: (214) 741-4746

May 5, 1999

Mr. Udo Birnbaum
Route 1 Box 295
Eustace, Texas 75124

This "agreement" is the ONLY agreement ever between the parties.

It was upon THIS agreement that G. David Westfall brought a SWORN suit claiming an additional \$18,000 due on an unpaid "OPEN ACCOUNT". (above the \$20,000 PREPAID non-refundable "retainer-fee".
FRAUD - right out of the chute.

RE: Birnbaum v. Ray, et al.

Dear Mr. Birnbaum:

This is clearly NOT an "open account" - but merely a prepaid "non-refundable retainer fee".

You have requested that I act as your attorney in the above referenced suit pending in the U.S. District Court for the Northern District of Texas. This letter sets forth the agreement concerning our representation of you. This agreement shall become effective upon our receipt of a counter-signed copy of this agreement and upon the payment of the retainer.

More next pages

You agree to pay our firm a **retainer fee** of \$20,000.00, which is **non-refundable**. This retainer is paid to us for the purpose of insuring our availability in your matter. The retainer will be credited against the overall **fee** in your matter.

We have agreed to handle this matter on an hourly basis at the rate of \$200.00 per hour for attorney time and \$60.00 per hour for paralegal time. In addition, we have agreed that you will reimburse us for expenses incurred on your behalf, such as, but not limited to, filing fees, deposition expenses, photocopy expenses, travel expenses, and employment and testimony of expert witnesses, if necessary. I will not obligate you for any large expense without your prior approval. I would ask and you have agreed to pay **expenses** as they are incurred.

After the \$20,000.00 has been expended in time we will then operate on a hybrid type of agreement wherein we will lower our hourly rate to \$100.00 for

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Oh What Tangled Webs We Weave

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When First We Practice to Deceive!

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does NOT use the phrase
"IS DUE" as is used for
BILLING on an "Open
Account" - or for that matter
- ANY account!

This is the ONLY "right"
retained for "non-payment".
"expressio unius est exclusio
alterius" (to name etc)

attorney's time and \$30.00 an hour for paralegal time, but then charge as an additional fee a 20% contingency of the gross recovery in this case.

You will be billed monthly for the time expended and expenses incurred. Payment of invoices is **expected** within 10 days of receipt unless arrangements are made in advance. We reserve the **right to terminate** our attorney-client relationship for any of the following reasons:

1. Your non-payment of fees or costs;
2. Your failure to cooperate and comply fully with all reasonable requests of the firm in reference to your case; or
3. Your engaging in conduct which renders it unreasonably difficult for the firm to carry out the purposes of its employment.

Fees and costs, in most cases, may be awarded by the Judge against either party. Sometimes, the court makes no order for fees or costs. Because fees and costs awards are totally unpredictable, the court's orders must be considered merely "on account" and the client is primarily liable for payment of the total fee. Amounts received pursuant to any court order will be credited to your account.

You have represented to me that the purpose of this litigation is compensation for damages sustained and that you are not pursuing this matter for harassment or revenge. In this regard, if settlement can be reached in this case whereby you will be reimbursed for all actual damages and I will be paid for my services, you agree to accept the settlement. Notwithstanding this agreement, however, I will not settle this cause of action without your prior approval and any settlement documents must bear your signature.

Inasmuch as I am a solo practitioner, we have agreed that I at my sole discretion may hire such other attorneys to assist in the prosecution of this matter as may be reasonably necessary.

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Ever wonder what is wrong with our courts?

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Just read this stuff - UNBELIEVABLE - but real.

I will keep you informed as to the progress of your case by sending you copies of documents coming into and going out of our office. Every effort will be made to expedite your case promptly and efficiently. I make no representations, promises or guarantees as to the outcome of the case other than to provide reasonable and necessary legal services to the best of my ability. I will state parenthetically, from what you have told me, you have a very good case. Various county officials and others involved in this matter should never have done what they apparently did. I will explain in detail the ramifications and affect of Section 1983 and Civil Rico when we next meet.

Please retain a copy of this letter so that each of us will have a memorandum of our understanding concerning fees and expenses.

A "memorandum of our understanding" - regarding a "retainer agreement" for a lawyer - does NOT constitute the opening of a commercial "OPEN ACCOUNT" for the purpose of dealing with systematic "SALE AND DELIVERY" of "GOODS OR SERVICES"!

Sincerely yours,

Accepted: Udo Birnbaum
Udo Birnbaum

Date: 5-5-99

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Oh What Tangled Webs We Weave

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When First We Practice to Deceive!

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Cease and Desist

Folks – this is a court of law – this is ridiculous!
Retaliation, Official Oppression, plus Abuse of Official Capacity

In the interest of brevity – not much left to say – except to say that this document, and lots more stuff – is freely accessible on my web site www.OpenJustice.US . (CourthouseAwarenessNews.com)

I am now 78 years old, but in good health. My mother made it to 96, my father to 93. This matter will not stand.

This stuff has been ongoing upon me in the 294th ever since 1994, when I was sued for violating Section 11.086 of the Texas Water Code over a dam built by BEAVERS on a natural creek – without my permission, of course. Same stuff – fraud from start to finish. Same issue of fraudulent submission, fraudulent instruction to the jury, etc.

Anyhow, at my most recent trip to the Tyler FBI – regarding the matters in THIS cause – it seems like I go there every couple of years – one of the agents recognized me from my complaints in the BEAVER matters in 1995. Arranged our visit to the downtown Tyler office of the Justice Department.

Their comment was that the \$125,000 sanction seemed a little high. He never heard of anything that high. But that there wasn't really anything I could do about it. Then, unbelievably, he suggested to “just shoot them”.

As a side note – the “legal fees” sued for in this cause – were for G. David Westfall - to help me in fighting that BEAVER dam mess!

So, as for my demand at this time:

GET THESE DAMN COURTHOUSE CRIMINALS OFF MY BACK!

Udo Birnbaum

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