

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,
	\$	TEXAS
G. DAVID WESTFALL,	\$	
CHRISTINA WESTFALL	\$	
STEFANI PODVIN	\$	
	\$	
Counter-Defendants	\$	

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
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 ____ day of _____, 2014.

Udo Birnbaum

SUBSCRIBED AND SWORN TO BEFORE ME on this the ____ day of _____ 2014.

Notary Public, State of Texas