

**OPEN LETTER**

January 25, 2002

**To: Twelfth Court of Appeals  
1517 West Front Street, Suite 354  
Tyler, Texas 75702**

**Certified Mail**

Hon. Leonard Davis, Chief Justice  
Hon. Jim Worthen, Justice  
Hon. Sam Griffin, Justice

**Copy:** Ms. Nancy Young, 294<sup>th</sup> District Clerk  
"plaintiff"  
"co-counsel"  
Justice Department

**RE:** Case Number 12-01-00281-CV  
Trial Court Case Number: 00-00619

**Style:** Udo Birnbaum  
v.  
The Law Offices of G. David Westfall, P.C,  
G. David Westfall, Christina Westfall and Stefani Podvin

**Note:** I believe the style is incorrect. I am the defendant in the district court. (*The Law Offices of G. David Westfall, P.C. vs. Udo Birnbaum*). One would think that the style of a case would not change as it went to appeal.

**Honorable Judges:**

1. My appeal (12-01-00281-CV) is precluded by **indefinite continuance** by the 294<sup>th</sup> District Court as shown below.
2. I was previously unable to move this Appeals Court for a writ of mandamus (12-01-00324-CV, Nov. 7, 2001, denied Nov. 9, 2001).

**Background necessary to understanding the stalling**

I was sued in Van Zandt County by a Dallas lawyer claiming I owe him a debt on an **open account** for legal fees. I claim **fraud**, and that the very filing of his suit in Van Zandt County was a scheme to rob me by procedure. Had I not denied **under oath** per Rule 185, this criminal would have succeeded, because his "bill" would have been **deemed** valid, i.e. legitimized by the mere filing of the suit. What abuse of the judicial system!

This lawyer claims to have provided me services **worth** \$38,121 in suing, among other judges, the District Judge of Van Zandt County, before whom he was representing criminal defendants at the same time, and whom he sued under the **racketeering statutes** 18 U.S.C. § 1964(c) ("civil RICO") at that.

This lawyer at the same time also sued, for another fellow, judges including the same Van Zandt District Judge, also under the **racketeering statutes**. He testified in depositions that he "spent more time" [than the \$38,121 **worth**] for that fellow, testified that he never sent a bill because he did not think the fellow could pay it, and testified that he knew from the beginning that the fellow was a **pauper**.

Add to this the utter abhorrence of **civil racketeering suits** ("civil RICO") by the courts in the first place. Something clearly stinks.

Outlined below is the continuing scheme to procedurally rob me of my right to examine this scoundrel before a jury on his fraudulent affidavit of an "unpaid open account".

3. At a hearing on Nov. 13, 2001, a hearing for which no official notice had issued, the District Court set trial for the next day, November 14, 2001.

4. The District Court on that Nov. 13, 2001 also granted a surprise motion in limine broadly forbidding me from even mentioning to the jury the testimony of any witnesses that I would not actually have present that next day. The judge on that day also allowed the sudden **oral** appearance of "co-counsel" to the Plaintiff. Suddenly, after over one year in the court, the presence of the very plaintiff for examination at the trial was no longer a given.

5. I was approached by the new "co-counsel". He was trying to get me to go with trial by judge instead of trial by jury. He told me that at a trial by judge I would be better able to present my evidence. Something about the judge would be a little more lenient regarding "hearsay" evidence, since I would have no witnesses.

6. **The whole thing smelled like a scheme to defraud me of my right not only to examine the Plaintiff before the jury upon his fraudulent affidavit of an "open account", but also to defraud me of all evidence I had obtained, including depositions, interrogatories, admissions, and production, even to defraud me of a trial by jury.**

7. Recognizing the scheme, I had the Clerk issue subpoenas and hurriedly drove the 60 miles to Dallas that afternoon and managed to serve the shocked Plaintiff and his new "co-counsel". I would have at least one witness to examine, namely the lawyer plaintiff.

8. The next morning, Nov. 14, 2001, we were selecting from the jury panel. The judge told me I would be picking a jury next from the panel, and that we would immediately thereafter go into trial on my case. The judge kept inquiring about my key witness, the lawyer's other client, the **pauper** (with the **racketeering case** on which the lawyer had claimed to have "spent more time" than on my case).

9. We were sitting at the front of the courtroom, where all the lawyers sit against the wall, keeping up with the jury examination. Around noon our "trial" was suddenly canceled. By this time I had told the judge that I had been able to get a hold of my witness, the lawyer's other **racketeering case** client. It had also become obvious that I had corralled the lawyer plaintiff and there would be witnesses, and specifically the lawyer plaintiff and his paralegal to examine on the false affidavit and the false "bill".

10. The trial of my case was still **not on the docket** for that day, November 14, 2001. The judge made **no entry** of any kind put on the docket sheet for November 13 or 14, 2001. The case is still **not on the trial docket** at this time. No date is set for any hearing or trial.

11. This is not my first case of **indefinite continuance** in this District Court. I was fraudulently sued in January of 1995. We even had a four (4) day trial on that in May of 1998 with me as a pro se. We even had a verdict. With each side claiming victory, we had at least six (6) hearings as to what the verdict "meant", with no more entries being made on the docket sheet. Then that judge ran off (orally recused himself) in August of 1999 at the last hearing for "entry of judgment". The case is still in limbo. No judge is currently assigned to the case as of January 2002.

### Summary

The District Court has so far departed from the norm of judicial proceedings as to call for the exercise of this Court's supervisory power.

An **honest, honorable, and open** re-consideration of my *Petition for Writ of Mandamus* (12-01-00324-CV, Nov. 7, 2001, denied Nov. 9, 2001, attached) is in order. My Petition clearly shows that the District Court is not abiding by the rules of procedure, statutory law, and the mandates of the Supreme Court of the United States. We are not in Angola or Afghanistan.

The Court gives every appearance of retaliating on me for speaking out, as a pro se and victim, on the knowledge I have gained of the corruption and rigging in the court.

By copy of this letter to the 294<sup>th</sup> District Clerk I cancel my request to send a transcript on appeal at this time.



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

Att: Docket sheet  
Petition for Writ