

## Criminal Complaint and Affidavit of Official Oppression and Abuse of Official Capacity upon Udo Birnbaum.

### Synopsis

My name is UDO BIRNBAUM. I am 78 years old, reside in Van Zandt County, and am competent to make this Affidavit.

This Complaint is upon a JOE M. LEONARD, “visiting judge” – in a **non-adjudicative setting** in the Van Zandt County Court at Law (CV05297) on Oct. 8, 2015 - upon my having petitioned my government in the 294th District Court (No. 14-00266) - under my First Amendment Right – for relief from my government (the 294th) having unlawfully imposed criminal sanctions (no “keys to own release”) upon me by civil process – such JOE M. LEONARD – retaliating upon me under color of law – and making me vulnerable in public - or in a court of law - by such JOE M. LEONARD, wrongfully branding me as one of those awful “vexatious litigants” – and ordering my inclusion in such “black-list” as the State publishes on the web.

Such branding as such “vexatious” person as he is only allowed to do **if** there had indeed been a Motion for such – **which there was not**, by a defendant – **of which there was none** – upon notice of hearing and actual hearing upon notice – of which there course **was none** – in a “litigation” – which there **de facto was none** - upon a “litigant” – of which there de facto **was none either**. All there was - was me – as a **pro se**, petitioning my government (the court), under my First Amendment Right, before Judge Joe M. Leonard.

( It is elementary, that if there is only ONE “party” – there can be no **litigation**, or **adjudication** “between the parties”, i.e. purely magisterial)

Such **Prefiling Order** as such JOE M. LEONARD issued – of course required a Finding regarding someone –me - actually being adjudged as one of those “vexatious litigants” – which **there never was**, by any judge, **ever**.

Such matters, as **were** before such JOE M. LEONARD on such Oct. 8, 2015, were as follows, the titles clearly “suggesting” the issue:

- **First Amended Original Petition to Declare Three Judgments as inconsistent with due process, unlawful, criminal, and void.**
- **Notice of Concurrent Criminal Complaint upon this Matter**
- **Synopsis upon Transfer** – the absurd unlawful “transfer” of this cause
- **Plea to the Jurisdiction and Sanity** – *“if there is insanity around - - well, some of us gotta have it”*

Enough said, for now.

## First Amendment – re unfettered access to the courts:

Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof; or abridging the **freedom of speech**, or of the press; or of the right of the people peaceably to assemble and to **petition the government** for a redress of grievances. FIRST AMENDMENT.

"clearly established that **filing a lawsuit** was **constitutionally protected conduct**." *Rutan v. Republican Party of Illinois*, 497 U.S. 62, 73, 76 n.8 (1990), U.S. SUPREME COURT

## Texas Civil Practice and Remedies Code – re “vexatious litigant”:

Sec. 11.054. CRITERIA FOR FINDING PLAINTIFF A VEXATIOUS LITIGANT. **A court may** find a plaintiff a vexatious litigant **if the defendant shows** that there is not a reasonable probability that the plaintiff will prevail in the litigation against the defendant **and** that:  
1. the plaintiff, in the seven-year period etc.

(Note: in this “matter”– there is **no defendant** - and no **“if the defendant shows”**)

Sec. 11.101. PREFILING ORDER; CONTEMPT. (a) **A court may**, on its own motion or the motion of any party, enter **an order prohibiting a person from filing**, pro se, a new litigation in a court to which the order applies under this section without permission of the appropriate local administrative judge described by Section 11.102(a) to file the litigation **if the court finds, after notice and hearing** as provided by Subchapter B, **that the person is a vexatious litigant**.

(b) A person who disobeys an order under Subsection (a) is **subject to contempt** of court.

(Note: There was **NEVER a finding of “vexatious”**, upon Birnbaum - EVER.

## Texas Penal Code Title 8 – re constraints on public servants:

Sec. 39.03. OFFICIAL OPPRESSION. (a) A public servant acting **under color of his office or employment** commits an offense if he:

(1) intentionally subjects another to mistreatment or to arrest, detention, search, seizure, dispossession, assessment, or lien that he knows is unlawful;

(2) **intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing his conduct is unlawful;** or

(3) intentionally subjects another to sexual harassment.

Sec. 39.02. ABUSE OF OFFICIAL CAPACITY. (a) A public servant commits an offense if, with intent to obtain a benefit or **with intent to harm or defraud another, he intentionally or knowingly:**

(1) **violates a law relating to the public servant's office or employment;** or

(2) misuses government property, services, personnel, or any other thing of value belonging to the government that has come into the public servant's custody or possession by virtue of the public servant's office or employment.

## **The Ongoing Pattern – “Shoot the Messenger”**

This was the FIRST and ONLY interaction between JOE M. LEONARD, a Texas “visiting judge”, and UDO BIRNBAUM, a pro se , petitioning his government (the court) - under the First Amendment – for wrongs done upon him – by his government – by “judgments”, “sanctions”, “orders on motions for sanction”, “sanction judgment”, etc. (\$85,000 + \$62,885 + \$125,770) – all “inconsistent with due process”.

Such “assignment” – of Judge JOE M. LEONARD - arising upon the **voluntary** recusal of 294th District Judge Teresa Drum, the curious “transfer” of the matter by First Administrative Judicial Region Presiding Judge Mary Murphy - into the **inferior** Van Zandt County Court at Law (to rule on the lawfulness of what its superior sister the 294th had done?), such transfer clearly without the consent of the District Judge – who had recused herself – without the required “agreement” thereto by the “transferee court” – for there was nothing to agree to - followed by the immediate **voluntary** recusal of Van Zandt Court at Law Judge Randall McDonald – all while still keeping the old 294th cause number in the Court at Law? , etc – and said “visiting” JOE M. LEONARD assigned.

This “cause”, No. 14-00266 in the 294th, now CV05297 in this Court at Law, titled **First Amended Original Petition to Declare Three Judgments as inconsistent with due process, unlawful, criminal, and void** – was not “litigation” at all – there was NO opposing Defendant – only a Petition by a Pro Se under his First Amendment Right.

Hence, the matter before JOE M. Leonard on said October 8, 2015, was purely of a **magisterial nature** – said judge sitting in a purely “magisterial capacity” – upon pleadings of “inconsistent”, “unlawful”, “criminal”, and “void” - so what does he do?

Instead of addressing the matter of the unlawful “judgments” - documented in excruciating detail in the documents before him – and him “sitting as a magistrate” – and instead of referring the matter to the criminal authorities – without any request by any “moving defendant” – for there was NO DEFENDANT – lights in upon Udo Birnbau, Pro Se –

- and without any evidence presented to him – without even asking Birnbaum thereto – proceeds to de facto declare Birnbaum a “vexatious litigant” via his **Prefiling Order** – all without “notice of hearing” and

“hearing upon notice” upon the issue of “vexatious” – **as required upon him by law.**

Talk about “shooting the messenger”!

“intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing his conduct is unlawful”. Official Oppression

“violates a law relating to the public servant's office or employment”. Abuse of Official Capacity

**The evidence - as detailed in the file in the court:**

- First Amended Original Petition to Declare Three Judgments as inconsistent with due process, unlawful, criminal, and void.
- Notice of Concurrent Criminal Complaint upon this Matter
- Synopsis upon Transfer
- Plea to the Jurisdiction and Sanity
- Prefiling Order – by Judge Joe M. Leonard – Oct. 8, 2015
- Also, such documents as referenced to by the above

All statements upon personal knowledge, all attached documents true copies of the originals, except for obvious markups all by me, all also upon personal knowledge.

**Attach:**      **Prefiling Order** – Judge Joe M. Leonard 10-8-2015  
(Rest of the court file – by reference)

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UDO BIRNBAUM  
540 Van Zandt CR 2916  
Eustace, TX 75124  
(903) 479-3929  
brnbn@aol.com

SIGNED this \_\_\_\_ day of \_\_\_\_\_, 2015

\_\_\_\_\_  
UDO BIRNBAUM

SUBSCRIBED AND SWORN TO BEFORE ME on this \_\_\_\_ day of \_\_\_\_\_, 2015

\_\_\_\_\_  
Notary Public, State of Texas