

"after Mr. Westfall's wife and daughter were eliminated from the lawsuit".
This was TRIAL CLOSING ARGUMENT
They had actually been "eliminated" one year earlier - NO LONGER IN THE CASE.
See page 8 below.

CRS
CERTIFIED

Yet over TWO YEARS later - they put in a Motion for Sanctions - and are "awarded" JUDGMENT of \$125,770. CRAZY

REPORTER'S RECORD

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VOLUME 1 OF 1 VOLUMES

TRIAL COURT CAUSE NO. 00-619

THE LAW OFFICES OF * IN THE DISTRICT COURT
G. DAVID WESTFALL, P.C. *
*
VS. * OF VAN ZANDT COUNTY, TEXAS
*
UDO BIRNBAUM * 294TH JUDICIAL DISTRICT

ANALYSIS: They got themselves "out" - without asking for attorney fees. TWO YEARS LATER - they want \$125,770 SANCTIONS, and get it.

CLOSING ARGUMENTS FROM JURY TRIAL

APRIL 11, 2002

On the 11th day of April, 2002, the following proceedings came on to be heard in the above-styled and -numbered cause before the HONORABLE PAUL BANNER, Judge Presiding, held in Canton, Van Zandt County, Texas:

Proceedings reported by Computerized Machine Stenography, Reporter's Record produced by Computer-Assisted Transcription.

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A P P E A R A N C E S

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APPEARING PRO SE

REPORTER'S NOTE

Uh-huh = Yes - Affirmative response

Huh-uh = No - Negative response

Quotation marks are used for clarity and do not necessarily indicate a direct quote.

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1 P R O C E E D I N G S

2 (Beginning of Excerpt.)

3 (The Charge was read by the Court.)

4 THE COURT: As I've told you earlier,
5 all exhibits that have been received in the course of
6 the trial will be sent to the jury room right after
7 you go in to deliberate.

8 And now I invite to you listen to
9 argument of counsel.

10 Mr. Fleming.

11 MR. FLEMING: Thank you, Your Honor.
12 May it please the Court.

13 THE COURT: Yes, sir.

14 MR. FLEMING: Well, we're getting
15 close. We're getting close, and I appreciate -- I
16 appreciate very much your attitude and your demeanor
17 through this process. You've kept your smiles,
18 whether you wanted them there or not.

19 I know we'd all rather be somewhere
20 else on a beautiful day, but I do appreciate the
21 attention that you've appeared to show in this case,
22 and I want to say to you that although the Court is
23 going to allow me -- up to ten minutes of my two times
24 to talk to you, I'm going to try to give you some time
25 back.

1 I think you've followed this case.
2 I've watched you. I think you've listened to what
3 both sides have to say and where we are. And I'm not
4 going to waste a lot of time reminding you of what you
5 already know.

6 I do want to remind you, as we said in
7 the beginning and the Judge pointed out to you, the
8 evidence is over. What I'm going to tell you now is
9 not evidence; what Mr. Birnbaum is going to tell you
10 now is not evidence. I'm here to wrap it up,
11 summarize it, put my spin on it, and hopefully get the
12 conclusion we want for our side. And Mr. Birnbaum is
13 going to try to do the same thing. But this is not
14 the time for more testimony, more evidence. That's
15 not what we're doing here. This is argument.

16 And I'm going to argue to you that
17 Mr. Westfall has come to court seeking money that was
18 owed to him for work he performed, for a man who asked
19 him to perform it, for a rate at which he said he
20 would provide it, and for the rate the man said he
21 would pay for it. And it's a real simple case.

22 Mr. Birnbaum has got some ideas in his
23 mind about why he doesn't owe it, but they're not
24 valid reasons to not pay Mr. Westfall's bill.

25 Let's look at the Court's charge and

1 let's go through this a little bit.

2 If you'll go to Question Number 1.
3 We're the plaintiff. We get to go first, but it's our
4 burden to prove our case. And we feel like we have
5 proved our case with the evidence, with the testimony.

6 And the first question is, what sum of
7 money, if paid now in cash, would fairly and
8 reasonably compensate the Law Offices of G. David
9 Westfall for its damages, if any, that have resulted
10 from the Defendant, Udo Birnbaum's, failure to comply
11 with the agreement between the plaintiff and the
12 defendant, the agreement, Plaintiff's Exhibit
13 Number 1.

14 He comes in and he signs an agreement
15 and he says he'll pay for legal services, will pay for
16 it at the rate of \$200 an hour till the \$20,000 is
17 spent and then he'll pay for it for \$100 an hour.

18 You've heard the testimony over and
19 over. You're going to get Exhibit Number 3 brought to
20 you, and that's where we come up with the number,
21 \$18,121, Exhibit Number 3.

22 Now, Ladies and Gentlemen, you are the
23 sole determiner of what that number is to be. And if
24 you want to go in there and decide, well, maybe
25 Westfall and Ms. Hearn made a mistake, they didn't

1 calculate the paralegal damages at \$30 an hour at some
2 point when they were still billing \$60 an hour or
3 something like that, or if you-all want to decide that
4 Mr. Westfall should not be entitled to charge for a .1
5 hour telephone call the day before the contract is
6 signed and knock \$20 off the bill, you're allowed to
7 do that.

8 But our evidence and our testimony, we
9 feel like, is we are entitled -- that they got fair
10 and reasonable services, and probably a whole lot more
11 work was done than what is actually being billed for
12 here up through December 31st. And you heard
13 testimony that work was done after December 31st and
14 it wasn't billed for. We're asking you to award
15 Mr. Westfall \$18,121.10. That's Question 1. It comes
16 from exhibit -- Plaintiff's Exhibit Number 3.

17 Question Number 2, what's a reasonable
18 fee for the necessary services of Mr. Westfall's
19 attorney in this case, stated in dollars and cents.

20 Mr. Westfall represented himself as an
21 attorney, which he's allowed to do, and he's allowed
22 to collect attorney's fees for collecting his
23 attorney's fees, if it's necessary. He represented
24 himself up until October the 31st or thereabouts of
25 last year.

This is THEIR lawyer,
closing argument

ANALYSIS: They got themselves "out" - without
asking for attorney fees. TWO YEARS LATER -
they want \$125,770 SANCTIONS, and get it.

8

1 What is -- what we are asking for, for
2 Question A, we're asking for \$41,306.91. You will
3 find that number by looking at Plaintiff's Exhibit
4 Number 4, Mr. Westfall's charges at \$150 an hour for
5 his own time up to October the 31st, and then the oral
6 testimony you heard from me and Mr. Westfall that I've
7 estimated my time to be at least 44 hours that I have
8 expended in this lawsuit, at \$175 an hour, which is
9 \$7,700 since November the 1st, or thereabouts, after
10 Mr. Westfall's wife and daughter were eliminated from
11 this lawsuit and I came in to represent him.

12 \$41,306.91, that's a lot of money.
13 There's been a lot of work done. There's been a lot
14 of work that was made necessary by the actions of the
15 other side. This would not have normally been this
16 much effort to try to decide whether or not we're
17 entitled to \$18,000 or not.

18 But as I told you at the beginning.
19 And we don't have Mr. Anderson here and we don't have
20 Mr. Groom, who I called Mr. Hart by mistake, but
21 remember when we're mowing that yard and Mr. Westfall
22 said he'll mow the yard after Mr. Birnbaum comes over
23 and solicits him? He starts the transaction. He
24 comes over and he says, "Will you mow my yard?"

25 He says, "Yeah, I'll mow it and I'll

1 fertilize it."

2 "Well, is there any danger in
3 fertilizing it?"

4 "Well, no, not if you keep it watered."
5 You know, not if you do all of the things that you're
6 supposed to do to the yard.

7 Mr. Westfall shows up and he mows the
8 yard. The agreement was to pay him \$50. He got \$25
9 up front, sends him a bill for the remaining \$25,
10 doesn't get anything.

11 Two months later he sends him a
12 reminder bill, another six weeks go by, he sends him
13 another reminder bill. Another two months go by, he
14 sends him another reminder bill, and he finally sends
15 him a certified letter bill, saying, "Hey, I mowed the
16 yard; why aren't you paying me? If I don't hear
17 anything from you, I'm going to file a lawsuit to
18 collect the money for having mowed the yard."

19 And then lo and behold, after we file
20 the lawsuit for the first time, we hear, "You mowed
21 that yard, but you cut it too short and you fertilized
22 it too hard and the ground washed away and then the
23 house washed away after the rains came. And not only
24 do I not owe you that \$25, you owe me \$250,000 for
25 that house that's gone."

1 Well, how much time, trouble and effort
2 is it going to take to come to court to prove the
3 fertilizer was just fine and I warned him, "You'd
4 better keep it watered"?

5 "I warned him that judicial immunity is
6 a problem in this lawsuit. I warned him that there
7 might be some problems along the way, just like I
8 warned Mr. Collins."

9 And Mr. Collins got the message. He
10 changed what he did to his yard. He changed his
11 lawsuit.

12 Mr. Birnbaum said, "No, I don't believe
13 it. I'm going to do it my way. But would you still
14 help me do it my way?"

15 After the building washes away and the
16 yard is gone and everything, here we are having to
17 prove I am still entitled to my \$25 remaining for
18 having cut your yard, I am entitled to my remaining
19 \$18,000 for all the legal work I did for you, and
20 by-golly, I'm not giving up asking for my 18,000 even
21 if I have to expend \$41,000 defending myself against
22 your bogus claims that your lawsuit went down the
23 tubes for something I did or failed to warn you about
24 or failed to make you aware of.

25 It just didn't happen that way, Ladies

1 and Gentlemen. The evidence doesn't show it happened
2 that way, the credible evidence.

3 The remaining items on there, oral
4 testimony, you heard that an appeal to the -- to the
5 first level -- and we know this man will appeal. He's
6 appealed everything else he's gotten involved in.
7 We're asking for \$20,000 protection in case he does
8 appeal it and we have to spend a lot of time going to
9 the Court of Appeals.

10 If he loses on appeal, he'll appeal it
11 to the Texas Supreme Court. We're asking \$5,000 to
12 respond to his request to do that. And if they should
13 somehow grant his request to open it up for argument
14 down there, we ask for an additional \$10,000.

15 So Question 2, we're asking for
16 \$41,306, for preparation and through this trial,
17 \$20,000 for appeal, \$5,000 if a petition for review is
18 submitted to the Supreme Court of Texas, and \$10,000
19 if that petition is granted. Those last three would
20 be contingent, obviously, upon prevailing on appeal.

21 What's interesting for you to notice,
22 all of these numbers for attorney's fees, they've
23 never been contradicted by Mr. Birnbaum. He's never
24 had anybody come up here on the witness stand and say,
25 "Boy, to try to collect this 18,000, you spent

1 \$41,000? That's horrible. That's absurd. You're
2 just running up your bills and everything." Nobody
3 came in here and said that. He didn't even say that.

4 The way you would do that is you would
5 have another lawyer come in here and say, "I have
6 reviewed Mr. Westfall's files, and he's running up his
7 bills and this is ridiculous and it shouldn't be this
8 high." And if you don't have any testimony from
9 somebody, you have to take the testimony that you've
10 been offered.

11 Now, you're to decide the weight and
12 credibility of that. But you have -- Mr. Birnbaum is
13 not contesting that \$20,000 is the correct amount on
14 appeal. He's not contesting that \$5,000 to the
15 Supreme Court or \$10,000 -- there's no controverting
16 testimony that our amounts are fair and reasonable for
17 these items.

18 That's all our issues. That's the
19 plaintiff's case. That's -- you know, we tried to
20 make it as clear as we can. We've tried to answer any
21 questions we think that might have come up in your
22 mind as you've heard other witnesses throughout this.
23 And I'm sorry it's taken so long to get us here today.
24 But that's our case, two questions.

25 The rest of them are going to be

1 Mr. Birnbaum's questions, starting with Question
2 Number 3: Did the P.C., the law firm, engage in false
3 and misleading and deceptive acts or practices that
4 Mr. Birnbaum relied on to his detriment.

5 To find a false, misleading or
6 deceptive act, you're going to have to find the
7 failure to disclose the information about his
8 services, about his legal services, at the time of the
9 transaction.

10 Look at Plaintiff's Exhibit Number 1.
11 We offered it. It says in there, there is no
12 guarantee about the outcome of your litigation, no
13 guarantee.

14 The only encouragement he was given is,
15 "If what you say is true, if what you say is true, you
16 have a good case."

17 Well, I'll have more to say about that
18 in a moment. It didn't turn out to be true, as least
19 as far as what the federal magistrate and the federal
20 judge thought. It was an allegation. It was some
21 information about maybe some impropriety going on down
22 here in Van Zandt County, but it never did prove to be
23 true. It was thrown out.

24 I don't think you can find that
25 Mr. Westfall or his P.C. engaged in any misleading,

1 false -- false, misleading or deceptive act or
2 practice which caused Mr. Birnbaum to rely upon to his
3 detriment. He relied upon his own suppositions, his
4 own allegations, his own mental impressions about what
5 was true and what was not true. He didn't rely upon
6 what Mr. Westfall told him was true and not true.

7 Question Number 4: Did the law offices
8 engage in any unconscionable action or course of
9 action?

10 Well, this would take into account
11 whether or not Mr. Birnbaum came into Mr. Westfall's
12 office a babe in the woods, never having dealt with
13 lawyers or the legal system whatsoever in the past and
14 had such a low level of knowledge and understanding
15 that Mr. Westfall fleeced him. That's what he's
16 trying to say.

17 THE COURT: You've used 13.

18 MR. FLEMING: 13, thank you.

19 The truth of the matter is, he had been
20 involved in several lawsuits pro se. He had his
21 relationship with Michael Collins, his friend, who
22 knows all about these lawsuits and all about these
23 lawyers and everything. They came to him with plenty
24 of ability, plenty of knowledge, plenty of
25 understanding. They just wanted things put in the

1 right form to make sure we didn't miss dotting any I's
2 or crossing any T's. They weren't taken advantage of.
3 They had plenty of knowledge and understanding.

4 Question 5 says did Mr. Westfall engage
5 in these practices knowingly. Well, one, I argue he
6 did not engage in those practices. And, two, it would
7 have to say that he knowingly tried to deceive
8 Mr. Birnbaum by failure to disclose something about
9 judicial immunity or something.

10 "I did it on purpose. Not only did I
11 not tell him about judicial immunity and all of the
12 in's and out's, but I did it on purpose. I just
13 wanted that money."

14 You're not going to find anything from
15 the examination of the testimony to support that
16 allegation.

17 The same thing, the next one is simply
18 intentionally, instead of knowingly. It's just two
19 ways to look at the same question.

20 The next question, Number 7,
21 compensation on damages where Mr. Birnbaum is asking
22 you for damages. And I would just simply point out to
23 you, this is not where you would adjust the bill. If
24 you want to say his \$18,000 is too much to ask, he
25 forgot to lower his paralegal rate, you don't make it

1 up over here; you do it in Question Number 1.

2 Questions Number 8 and 9 are simply, as
3 they say, additional damages. That's a key word for
4 punishment damages. Mr. Birnbaum wants you to punish
5 the law firm for what he alleges was done.

6 Thank you very much.

7 THE COURT: Thank you, Counsel.

8 Mr. Birnbaum.

9 MR. BIRNBAUM: I have a prepared
10 closing, very short, that I want to go into later.
11 I'm just going to respond very carefully just quickly
12 to some of the points he put on.

13 He says he'd put his spin on it. I
14 don't have to put a spin on it.

15 He commented, attorney's fees -- suits
16 upon attorney's fees. Suits upon attorney's fees must
17 be the least socially productive activities I can
18 think of.

19 He's testified that there was something
20 that judicial immunity was a problem. No, it's an
21 obstacle, impossible to overcome.

22 He said there was arguments of Mr. --
23 me suing everybody. That was not the case. I have
24 sued one person, and Mr. Westfall was my lawyer. I've
25 been sued two times. One was relating to the

1 underlying suit, I was sued, and I'm sued on this one.
2 You've heard testimony that I was sued.

3 Mr. Fleming said that the law office
4 made no guarantee that I have something -- that the
5 something I said did not turn out to the true.

6 You heard the testimony. I asked
7 Mr. Westfall again and again what it was that I said
8 wasn't true. He couldn't give you an answer.

9 The lawyer said there was testimony or
10 something that I relied on my own impressions. No, I
11 gave you testimony that I relied on Mr. Westfall at
12 the time that the suit -- as you see me here today, I
13 didn't -- I did not have the knowledge that I have. I
14 was not the person at that time that you see in front
15 of you now. I was lost. I had been sued. I had been
16 run through the mill, in the bottom. I was running
17 for help. I was not the person that you see today. I
18 did not have the knowledge of it.

19 All the knowledge that I have came
20 after these -- these years after he became my lawyer.
21 I had been run over before that. And as I researched
22 some of these things as I went along and picked up on
23 these things, I learned. I may be old, but I can
24 still learn. But I didn't know all of these things.
25 I have a background in engineering, integrated

1 circuits. I had no knowledge of law at that time, and
2 I relied totally on Mr. Westfall when he said I had a
3 good case. And he lied to me. Judges are absolutely
4 immune from suit, and he knew it and I didn't. If he
5 would have told me that, I surely wouldn't have gone
6 on.

7 Again, something about several
8 lawsuits, not true.

9 He mentioned punitive damages. I'll
10 come back to that.

11 Now, let me get into my portion of what
12 I'm talking about today. That was a very short
13 response to that.

14 I sincerely thank each of you for
15 dedicating your time away from your work and family to
16 resolve this matter. I genuinely appreciate your
17 patience with my lack of courtroom skills.

18 Judge Banner has given you some
19 questions. You have heard the other side admit that
20 they told me I had a very good case when they knew I
21 did not.

22 You have heard my testimony that at
23 that time that Mr. Westfall got me to sign that
24 contract and pay him the \$20,000 up front, I did not
25 know that judges were absolutely immune. You have

1 heard why judges are absolutely immune. I fully
2 concur that judges should be absolutely immune.

3 The way to remove judges -- any
4 problems can be resolved by the appeals to judicial
5 conduct, the State Bar, you name it. Don't elect the
6 guy if you don't like him, okay? They have to be
7 absolutely immune. I have come to appreciate that.
8 It is ridiculous to sue judges when they're acting in
9 their judicial capacity. I didn't know that at that
10 time. I clearly know that now, okay? But I did not
11 have that knowledge at that time. I learned that in
12 the course of -- since -- since the -- after that, as
13 I sort of picked up on it. But I did not know that,
14 and Mr. Westfall knew that.

15 They failed to tell me -- you have
16 heard testimony that they told me they would bill me
17 monthly when they knew they did not even have a
18 legitimate accounting system.

19 You have heard testimony that they told
20 me they would not obligate me for any large expense
21 without my approval, but they did.

22 What you witnessed this week is the
23 evil inner workings of how these lawyers created
24 fraudulent documents and were able to not let those
25 acts be revealed to you.

1 As jurors, you can believe everything
2 you heard, part of what you heard, or none of what you
3 heard. But I plead with you to take this opportunity
4 that may never -- that you may never have again to
5 send a message to these Dallas lawyers that Van Zandt
6 County citizens will not tolerate such unconscionable
7 conduct by lawyers.

8 I will quickly go over the Court's
9 charge. And if you would care to follow me, I would
10 appreciate it.

11 Go to Question 1. It says what money,
12 if paid now -- I'll let you figure that out -- that's
13 the money he wants for the damages that resulted from
14 my failure to comply.

15 You have heard testimony that they got
16 paid 20,000 up front by deceiving me. You have heard
17 testimony that they fraudulently came up with a
18 gigantic \$18,000 bill.

19 Just because they did not succeed in
20 their fraud is not evidence that they were damaged by
21 their failure to perpetuate the fraud.

22 You have heard testimony that they
23 indeed damaged Mr. Birnbaum. So the answer to
24 Question Number 1 is zero. They were not damaged.

25 Question Number 2, what is a reasonable

1 fee for the necessary services regarding for
2 preparation and trial in this matter? Zero. There's
3 no reasonable -- there's no reasonable fee for
4 bringing an unreasonable suit. The answer is zero.

5 There's no reasonable appeal on an
6 unreasonable suit. Answer, zero.

7 There's no reasonable fee for putting
8 up all of the things -- these folks want to run up
9 legal services. You have heard testimony that the
10 bills kept on going on, attorney's fees on attorney's
11 fees and so forth. For the C, answer, zero.

12 And I don't know what even to say for
13 D. Put in a zero, or put whatever it is. They're not
14 entitled to attorney's fees.

15 Question Number 3. Did the law office
16 engage in any false, misleading or deceptive act or
17 practices that I relied on to my detriment and that
18 was the cause of damages.

19 Yes, they told me I had a good case
20 when I didn't. They told me that they would bill me
21 monthly and didn't even have an accounting system. I
22 relied on their statement. And they told me they
23 would not obligate me to a large expense, and they
24 did.

25 So did the law office engage in false,

1 misleading and deceptive acts and false, misleading --
2 failing to the -- failing to disclose information
3 about services. They failed to disclose that I really
4 didn't have a good case. They failed to disclose they
5 didn't have any legitimate accounting system. They
6 failed to disclose -- you've heard testimony they had
7 no intention of billing or -- or getting my approval
8 before obligating me to a large expense. Answer to
9 Question 3 is yes.

10 Answer to Number 4, did they engage in
11 any unconscionable action or course of action that was
12 a producing cause of the damages? Unconscionable, you
13 can read the definition. What these guys did was
14 unconscionable. You've heard testimony from me that
15 bringing this suit, and if this suit is fraudulent,
16 it's unconscionable. So on Question Number 4, did
17 they engage in these things, the answer is yes.

18 Answer to Number 5, and ignoring the
19 details in the instruction, everybody knows what
20 "knowingly" means. Did they do this stuff knowingly?
21 You've heard the testimony. Of course they did.
22 You've seen everything. You've seen -- you can decide
23 for yourself whether you believe they did this
24 knowingly or they didn't know anything about this
25 stuff. They did this knowingly. Answer, yes.

1 Number 6, did they engage in such
2 conduct intentionally? They brought the lawsuit,
3 they're inclined to get 18,000 out of me. You've seen
4 the stuff. Did they engage in it intentionally? Of
5 course they did.

6 Number 7, damages. What sum of money,
7 if any, if paid in cash now, would fairly and
8 reasonably compensate Udo Birnbaum for his damages, if
9 any, that resulted from such conduct? It says,
10 consider the following elements. Consider answers
11 separately. The difference, if any, in the value of
12 the services received and the price paid and so forth.
13 I paid him \$20,000. All I got out of it was a bunch
14 of headaches. That's why we're here today.

15 So for the difference in the value, I
16 paid 20,000. I didn't get any value of it. The
17 services had no worth. There was a lot of flopping of
18 documents and -- who knew something where. No worth
19 came out of it. Answer for that, 20,000, which is the
20 initial retainer that I paid him. I got nothing out
21 of it.

22 The expense cost to Udo Birnbaum, if
23 any, produced by this. I testified earlier that I had
24 expenses of about \$3,000 considering all of the
25 transcripts and the running back and forth and making

1 copies of mailings and who knows what all. So for
2 expenses, about 3,000.

3 I testified to the reasonable value of
4 my lost time, which is sort of like my earning
5 capacity, and I said 40,000 a year. And since the
6 time that I signed the contract, it's almost -- you
7 know, in a month or so, it will be three years. Three
8 years times 40,000 is 120,000. So answer, 120,000.
9 That's what I testified. Of course, you can put any
10 numbers down you want, but that's what I believe is a
11 fair value of my time, 40,000. It totally used up --
12 you heard the testimony, totally used up my time.

13 Number 8 what sum of money -- and
14 this -- the Question Number 8 is predicated -- that
15 means it's based on -- if they did it knowingly.

16 The instructions on the top will lead
17 you, that if you found that they did it knowingly, in
18 other words, what additional penalties -- that's
19 called exemplary damages. What sum of money, in
20 addition to actual, what other damages should be added
21 in addition to these Question Number 7 expenses. What
22 should be added to them because their conduct was
23 committed knowingly.

24 You are the guide. Send a message to
25 these guys that such conduct will not be tolerated in

1 Van Zandt County. Answer a million dollars or
2 whatever you feel is necessary to stop this kind of
3 conduct by Dallas lawyers in Van Zandt County, by
4 these lawyers to stop them from ever doing this again
5 on anybody else. Answer is a million dollars or
6 whatever you want.

7 Number 9. What sum of money, in
8 addition to the actual damages, should be awarded
9 because the conduct was committed intentionally,
10 whatever you want to add there. If you find that they
11 did this stuff intentionally, that they intentionally
12 perpetrated a fraud on me, sock it to'em.

13 I'm not going to go over all of the
14 exhibits. You saw the little sticky tags they found
15 that wasn't right and this entry wasn't right. You
16 saw the accounting page that went from 20,000 to
17 negative 18,000 in one giant step. You-all saw all of
18 the stuff on this. We couldn't even find when the
19 account went through zero.

20 Nobody could remember who the owner of
21 what is. I can't even remember all the things.

22 You saw it all. You saw the accounting
23 sheet where I tried to give you some sort of
24 reference, and I told you, I swear, testified that,
25 quote, bill -- billing statement was dated

1 December 31. No, that was mailed to me, that green
2 card date of July 31. Six months earlier, those
3 things -- all of those notices, all of that stuff did
4 not happen. That stuff was sent on July 31.

5 And even if it had been sent on
6 December 31 like it said, you know, you've heard
7 testimony that was the first inkling that I ever got
8 that I owed him \$18,000. It came out of thin air.
9 First document I ever saw. This is unconscionable.
10 Send a message to these clowns.

11 And let me close. What you witnessed
12 this week is the evil inner workings of how these
13 lawyers created fraudulent documents and were able to
14 not let those acts be revealed to you.

15 I plead with you to take this
16 opportunity that you may never have again to send a
17 message to these Dallas lawyers that Van Zandt County
18 citizens will not tolerate such unconscionable conduct
19 by lawyers. Let your conscience be your guide. And
20 thank you.

21 THE COURT: Mr. Fleming, you have five
22 more minutes.

23 MR. FLEMING: May it please the Court.

24 I'm a Dallas lawyer. He's a Dallas
25 lawyer. I've lived in Dallas for 50 of my 50 years,

1 and Mr. Westfall has lived there his entire 39-year
2 professional career. We were in Dallas when
3 Mr. Birnbaum came to meet Mr. Westfall. And if
4 anybody down here in Van Zandt County decides to come
5 over and talk to us about a case, we'll be glad to
6 talk to them, too.

7 I would like for you to think about one
8 thing. When you're analyzing what the truth is, just
9 like those judges in that 12(b)(6) motion had to
10 analyze what the truth is, I hope you will take not
11 only what you've been told, but what actions you see.

12 Now, Mr. Birnbaum, I guess, would argue
13 now that he's got religion. He now knows about
14 judicial immunity, and if he'd known when he walked
15 into the office about it, he wouldn't have gone
16 forward. Take Plaintiff's Exhibit Number 5 in there
17 if you want to and look at it, and examine and see
18 what he did when he found out in September of 1999,
19 when he knew about judicial immunity -- what did he
20 say about it?

21 He said, "Oh, all the reasons, I can
22 get around that. That's not going to stop me. No,
23 sir, here are all the reasons I can get around
24 judicial immunity. I've gone to the law library.
25 I've done my own research. I've read all of these

1 cases."

2 The truth of the matter is, if he had
3 taken Mr. Westfall's advice and dismissed all of the
4 judges in that case, the case still went on. You
5 didn't hear any testimony that says if he dropped the
6 judges in that lawsuit, that that dropped out
7 everybody he was suing. He still had other defendants
8 in that lawsuit. He still was going to need a lawyer.
9 He still was going to have to overcome 12(b)(6)
10 motions about whether or not it was a frivolous claim
11 and whether or not he could prove it. He was still
12 going to have those legal fees even if he dropped the
13 judges out of the case. He wouldn't do it. He just
14 wouldn't do it.

15 I have to admit I haven't seen it yet,
16 but I feel like I have, there's been so much talk
17 about it, a great movie out, "A Beautiful Mind." I
18 imagine some of y'all have seen it.

19 You know, some people have a beautiful
20 mind to do certain things. Mr. Birnbaum has a
21 beautiful mind. And, boy, when you go into integrated
22 circuits and you start talking about electronics, he
23 has a beautiful mind. And he came to Mr. Westfall and
24 convinced Mr. Westfall he had a beautiful mind, and "I
25 know all about this corruption down here in Van Zandt

1 County, and I know how to do a lot of my legal
2 research. And with my beautiful mind and your legal
3 abilities, we're going to get this case going and
4 we're going to make a million dollars," Mr. Collins
5 thought, "using my beautiful mind."

6 Well, you know sometimes that beautiful
7 mind doesn't work as good in other areas as it does in
8 some areas.

9 You know, they also say that a mind is
10 a terrible thing to waste. And I would argue with you
11 that Mr. Birnbaum has spent a whole lot of time
12 wasting his beautiful mind in courtrooms in Van Zandt
13 County, in Tyler, in Dallas County, federal court, and
14 a lot of other places.

15 I think if we're going to send a
16 message, we need to send a message that,
17 "Mr. Birnbaum, you need to take your beautiful mind
18 and you need to quit wasting it and you need to do
19 what you do best, and you need to let lawyers do what
20 they do best. And you're right, make sure you have a
21 lawyer with honesty and integrity. That's important,
22 too. But you've gotten yourself into your own
23 problem."

24 I think it's just like Mr. Westfall
25 said. If Mr. Birnbaum thinks something, if he

1 conceives of it in his head, he's already jumped to
2 the conclusion that it's true.

3 There's one other movie, Mel Gibson
4 starred in it, called "Conspiracy Theory." And
5 everywhere Mel turned around, he knew there was a
6 conspiracy. And he lived his life in fear. But the
7 only difference in that movie is finally it turned out
8 there was one conspiracy in that movie.

9 But Mr. Birnbaum has alleged a lot of
10 conspiracies all throughout his 15 years of living
11 down here in Van Zandt County. Not one of them has
12 proved true yet. I think you need to send a message
13 to Mr. Birnbaum, "Take your beautiful mind and quit
14 putting it to waste in the courtroom. Pay your legal
15 fees, and go on about your life."

16 Thank you very much.

17 THE COURT: Thank you.

18 (End of Excerpt.)

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1 STATE OF TEXAS *

2 COUNTY OF SMITH *

3 I, D. KEITH JOHNSON, CSR, RDR, CRR, Official
 4 Court Reporter for the 294th Judicial District Court
 5 in and for Van Zandt County, Texas, do hereby certify
 6 that the above and foregoing contains a true and
 7 correct transcription of all of the portions of
 8 evidence and other proceedings requested in writing by
 9 counsel for the parties to be included in this volume
 10 of the Reporter's Record, in the above-styled and
 11 numbered cause, all of which occurred in open court or
 12 in chambers and were reported by me.

13 I further certify that the total cost for
 14 the preparation of this Reporter's Record is \$1600
 15 and was paid) will be paid by Udo Birnbaum.

16 WITNESS MY OFFICIAL HAND this the 26th day of
 17 Nov., 2002.

18 
 19 D. KEITH JOHNSON, RDR, CRR, TX CSR #3781
 20 Certification Expires: 12-31-03
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 22 294th Judicial District Court
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 24 (903) 596-7800
 25