

Structural Constitutional defects have been caused by Chief Judge Rosenthal in my case. In order for me to waive The Structural Error Doctrine introduced in 1991 via AZ v. Fulminante, one must intentionally relinquish the right to raise it. Please read Missouri Law Review, vol. 85 Iss. 4 [2020], Art. 6. Rosenthal's new title "Senior District Judge", has been working in the appeals court most of her life and if you read The Houston Chronicle Article by Gabrielle Banks "Rosenthal Rules Federal Courts in Houston with firm hand", it reveals that she is a well liked & respected colleague. Sanctions due to a verified misconduct complaint on her would make the Appeals Court feel broken & lost without her.

The Judicial Improvement Act of 2002 did not intend for "The Home Team" (Analogy explained by Ho in a WSJ Article on 5-10-25) to use rules to protect the 5th circuits favorite co worker from an appellant with documented mental health issues (DE # 79 shows a colored pic of my cut open neck at the Ben Taub hospital so no need to even read about it as many clerks & Judges in courts don't read my motions), when clear, plain & obvious Structural Constitutional Defects have been sitting in the 5th appeals courts RECORDS since 1-26-21 DE #79. It is a conflict of interest for the 5th Appeals Court to "step in because a district court abused its powers," when Rosenthal works in the appeals court and is a part of "the home team" (Judge James C. Ho). DE #79 in the 5th Appeals Court shows these structural constitutional defects have been given to Rosenthal in a certified letter delivered on 6-24-19 (Exhibit C page 1), yet it was not docketed. DE #79 also got cc'd to the district court by the deputy clerk Shawn D. Henderson on 2-4-21 and no docket entry by the district court proves my structural constitutional defects got ignored on purpose.

The following structural constitutional defects that have been presented to the 5th Appeals Court have encountered dilatory tactics and delay engineered for my continued incarceration and to protect the court's favorite judge:

1. 5th Appeals Court DE #79 ignored page 1 of my letter with case #18-20823 and instead stamped page 3 of exhibit C "Received 1-26-21", then falsely claimed wrong case number.
2. 7-15-24 my JMC got ignored because the words "rough draft" existed within the complaint.
3. 11-7-24 same as above because of the words "almost final."
4. 2-3-25 JMC by my jail house lawyer is ignored because of Haynes Richmond and Costa are accused of being biased. I'd like to know why Richmond/Owen is no longer chief? Furthermore, why is Haynes no longer listed in the JMC Rules packet? And finally, according to Deputy Clerk Blair Robottom who wrote my jail house lawyer on 2-3-25 "Gregg J. Costa is no longer a federal judge"? May I have copies of complaints on these three judges who handled my direct appeal?

5. 1-21-25 I mailed my notice to appeal Rosenthal's denial of my compassionate release motion. Within the notice, which is only 12 lines, I mention a 6th amend. structural constitutional defect that Rosenthal hid by sealing DE#98 on 4-27-17.

Instead of noticing this, the appeals court said I only initialed the bottom & ignored that I fully signed and dated it 1/4th from the top. Then threatened to not act due to this technical rule.

6. 4-7-25 Appls CT. accepted the 11-7-24 "almost final" JMC (Judicial Misconduct Complaint). Ironically my W.D. of TX. complaint on Rosenthal under case # 2:25-CV-00021-EG got sent to the S.D. of Tx the same day.

7. 5-20-25 The Appeals court acknowledged receipt of my "supplemental statement of facts" which says in the cover "I may need your court to help get the Grand Jury transcripts". I also attached that motion which is now DE#305 from 5-16-25.

This got ignored over rule 6(d) b/c I forgot to sign the complaint form.

8. 6-9-25 Appls Ct. Acknowledged receipt of my completed complaint form which resolved Rule 6(d) above. I'm a victim of Rosenthal's War on the Constitution & just gave her boss's Dept. The Black & White PROOF via unsealed DE#98 & I get ignored due to Rule 8(a)? (A classic example shown on page 45 or 1009 of Henderson : A comprehensive consideration of the structural error doctrine published by University of Missouri School of Law Scholarship repository, 2020." Imagine that you are a criminal defendant with plenty of money in the bank- enough to hire whoever you want to defend you ... For some erroneous reason, The judge prevents him from representing you. ... You are obviously upset." [So was I, please read DE # 98, recently unsealed on 4-21-25, To see that I wanted to keep my 75 K paid for trial lawyer Dan Cogdell who has won federal cases at trial and proved his loyalty to me on 12-05-16 DE #89, when he spoke up to Rosenthal by saying " were still waiting on a response to our motions." Had Rosenthal forced him to stay on, He would have done a much better job than Neyland who has never been to trial in federal court.] " Your newly court appointed public defender... to your surprise, tells you... what the judge did was wrong... then explains that the court committed what is called a structural error, you can appeal & the reviewing court will be forced to reverse the case." Unlike this example I did not have a " excellent strategic reason not to object " and in fact did. Despite this classic example of a structural constitutional defect that requires automatic reversal of my case, The clerk said "A review of Pacer indicates overlapping issues in Gandy v. Rosenthal USDC No. 4:25-CV-1613 (S.D. TX)", & decided to take no action.

9. 8-6-25 Appeals court acknowledged receipt of my " mini - JMC " Yet warned me again I have exceeded the 5 - page limit, rule 6(d). They also reminded me again that on 6-9-25 I was told not to ask to " forward " documents to deputy clerk Amanda Duroncelet yet she still has not responded to my request to rule on my indigent status so I can proceed in case # 25-20032.

Thankfully Robottom forwarded my indigent request on 8-6-25 yet still no word from Duroncelet. Sadly Robottom ignored very important questions. So I am sending them again today 11-30-25:

A. Pacer login : michaelmlevin on 7-17-25 paid 2.90 for my 29 page docket report and gave me a copy. Nowhere in my pacer docket report does it show case # 4:25-CV-1613? May I pay for a copy of Robottom's pacer report that is different than what the public gets to see?

B. #2 of my letter on 7-31-25 said, " I have written chief judge Randy Crane about the above civil action against Rosenthal, So this is my official update to you that that action has been cancelled so that your court can move forward on my JMC."

C. I tell Robottom "Rule 8(a) conflicts with Rule 5 & 11 via complaint # 05-24-9002 on Judge Jones from 10-13-23", & "The prior Chief Priscilla Richman's decision to...hereby identify a complaint against David R. Jones ... because many of the allegations regarding Jones have been made public...& in the filing of a lawsuit..." See also the attachment I sent on 7-31-25 showing when Michael Van Deelen filed his dist. Ct. complaint, which was before Richman decided to take up his Judicial Misconduct Complaint.

D. I also sent a quote from Justice Black, J. that says Structural Constitutional Defects can be brought up at anytime. Instead of listening to this I get thrown 5th Cir. Proc. 6(f): "The chief cannot consider allegations made in attachments, motions, etc., i.e., all allegations must be set out in the statement of facts. This sounds like a Rosenthal rule to protect herself? What's the definition of investigation? Wouldn't an investigator look at attachments & motions?"

Please also look carefully at Judge Owen, Costa, & Haynes 11-4-19 denial of Kretzer's Appeal to see that rather than admitting, denying, or qualifying Seth Kretzer's assertion of facts, they submit their own alternate statements of facts & fail to practice what they preach which is to quote from the record & say where they found their facts.

Also note the definition of "per curiam" is a decision correctly made by a trial court, which can be used as precedent. Yet as anyone can see by reading my trial transcripts and other evidence in the record, the decision was actually per incuriam defined as: "because of a lack of care": A decision wrongly made by a court (which does not therefore set a precedent). No wonder at the end of per curiam is a * stating this opinion should not be published & is not precedent.

WITH THE ABOVE PARAG. IN MIND TAKE A LOOK AT QUOTES FROM THE DENIAL OF MY DIRECT APPEAL (by 3 biased Judges):

A. When you type Jason Daniel Gandy on the BOP Lexus Nexus system, Owen (Richman)'s response to Gandy's direct appeal under Document #00515186021 Case Number #18-20823 Filed 11-4-19, comes up. This easy to find public record has caused Gandy irreparable harm over the last 5 years due to BOP staff and inmates believing the painted inaccurate picture/narrative which is the opposite of the trial transcripts. The truth should require the Appeals Court to allow Gandy to actually file his direct appeal Pro se. Here is the breakdown of this document from the top:

1. At the top it says Gandy filed his direct appeal pro se. This is not true. Gandy paid \$50,000 for Seth Kretzer to assist him in his direct appeal, which was filed without allowing Gandy to read it and it was not what he instructed Kretzer to file.

2. Page 2 of Owen's response to Kretzer's appeal says: "He would watch child porn in front of the boys" Victim #1's only statements were on day 2 of trial (Document #190 page 46 [ROA 882] to page 140 [ROA 976]).

Victim #2's only statements were also on day 2 (Page 165 [ROA 1001] to page 206 [ROA 1042]).

Victim #3's only statements were also on day 2 (Page 143 [ROA 979] to page 164 [ROA 1000]).

Victim #4's only statements were also on day 2 (Page 209 [ROA 1045] to page 247 [ROA 1083]).

None of the victims said Gandy watched Child porn with them.

3. Another false statement by Chief Judge Owen (Richman) is on page 2 where it says: "Gandy eventually invited Victim#1 to travel to the U.K." This is also the opposite of what the trial transcript says on page 95 [ROA 931] Line 5: Kevin says "I asked him if I could go with him." Line 7: Kevin says "I started asking If I could go with him."

4. An additional misleading statement by Owen on page 2 says: "A week before the trip, Gandy created an advertisement on Craigslist using minor victim #1's photo." This leaves out the fact that Kevin says in the trial transcripts on page 101 [ROA 137] Line 23: "I did." After Zack asks on line 22: "Who wrote that?" It also leaves out that the "AD" was for Kevin to meet a woman. This is shown on page 29 [ROA 965] Line 11: "Very cute American skater looking for any woman." Line 22 says: "There is nothing in this text at all about massages."

5. Another flat out lie by Owen on page 3 is: "Minor Victim #1 testified that Gandy used his laptop to manage his website and to watch child porn." This is never said by Minor Victim#1. Gandy has read pages 46-140 numerous times and the words child porn never come out of his mouth.

6. Another false statement by Owen on page 5: "Before the two left for the U.K., Gandy had already created the Craigslist ad with Minor Victim#1's photos to generate business." As mentioned above, the "AD" was for women only. Kevin confirms this on page 129 [ROA 965] Line 24: Kevin says "There isn't." After Buckley says on line 22: "There is nothing in this text at all about massages." Buckley also says on line 25: "Have you at any time in the U.S with Mr. Gandy advertised or participated in advertising massage services for women?" Page 130 [ROA966] Line 3 Kevin says: "No."

The Appeal Court's "De Novo Review" is more than embellishing and misleading... It is full of false "facts" which are proven by simply reading the trial transcripts!

7. Judge Owens on page 5 and 6 says: "Testimony about two other pictures in which MV#1 was completely nude - one a full frontal depiction...." Since this coerced false testimony was their only evidence, and obtained illegally, Gandy is not guilty of count 2! It is customary that on direct appeal that the court is supposed to consider the trial records as facts, however a De Novo review is critical in this case to do some much needed fact checking.

The tainted evidence for count 2 in Gandy's case came in the form of his 7-20-12 illegally obtained statements which led to the discovery of a headless nude picture, also illegally taken from an electronic device in his home. This picture was then illegally talked about and shown to MV#1 on the following dates: 7-20-12, 7-26-12, 8-2-12, and the Wednesday after 9-10-12. MV#1 told investigator Bert Diaz that the police forced him to make the incriminating statements. The appeals court needs to look at all of the interrogation videos to see how Homeland Security Johnson coerced MV#1 to change his honest truth when he said he knew nothing about the nude pictures or the blue sheets that the government alleged was at Gandy's residence. MV#1 even invited them to search Gandy's property to see he doesn't own any blue sheets. The use of illegally obtained evidence and coercion to make MV#1 lie is provable by simply watching the government recorded videos. Forensic evidence will show that no "flash" was used nor the image in question contain a massage table, nor was it at Gandy's residence. There are additional meetings that MV#1 had with government agents which led to the "flash" false testimony at trial. A De Novo review should have required the Appeals court to at least review the above interrogation of MV#1.

8. On page 6, Owens denies count 3 without doing a "De Novo" review to find out whether the images on the computer constituted child porn. The Appeals court dodges this question just like Rosenthal did by saying: "The computer was password protected and MV#1 did not have the password." They also say that MV#1 said "Gandy used the computer to manage his massage business and watch child porn." Day 2 of trial page 91 [ROA 928] MV#1 says he saw a video of Gandy having sex with "MEN". The appeals court also says "A forensic analysis corroborated with MV#1 testimony uncovering child porn in the internet cache." Once again, Gandy has a right to know where the Appeals court got this false information when the trial transcript says the following on 7-23-18 day 3 of trial page 22 [ROA1163] by Jeffrey Chappell (forensic analyst) says "All the views that I viewed were male and female nudes showing their genitalia in what I BELIEVED to be a lewd and lascivious manner engaged in various activities with or without nude adults." The appeals court should not base their denial of Kretzer's direct appeal to count 3 on a government agent's "BELIEF." Especially since Kretzer said in the direct appeal "The transported images involved nude photographs of adults and children portrayed as members of a nudist community." The fact that Chappell did not know where they came from shows they are hiding something such as the source being a legitimate website.

This is shown on day 3 of trial on 7-23-18 page 21 [ROA 1162] line 24 Chappell says "They actually went on the internet and went to a web address."

Line 25 Zack says "Was that web address captured in your analysis?"

Page 22 Line 1 Chappell replies "Only partially ma'am."

Gandy wants to know where it came from, because he suspects Kevin knows which nudist colony.org type of website he went to, and which actual date the pictures were put on the laptop. Gandy has always naively allowed his roommates to use his computers. MV#1 hinted to this in his 7-20-12 interrogation by admitting to masturbating in Gandy's RV to inappropriate things on the internet. He also admits to being curious about teen porn and said he looked at it on the internet long before meeting Gandy.

On day 3 of trial page 57 [ROA 1198] Attorney Buckley cross examines Chappell by asking "One more thing sir, I don't want to mischaracterize, but I will describe the exhibits, the photographs that you testified about, that you discovered on this ACER laptop that could be described as photographs from a nudist colony of some kind... Correct, sir?"

Chappell responds "That is correct."

Since no argument was made by Chappell or Prosecutor Zack as to the pictures being classified as nudist community photographs, why did the Appeals court ignore Kretzer's request to have them apply the Dost factors to the images in order to determine if they were actually "child pornography." The 4 Corners rules should also be applied to this case. Since the appeals court misinterpreted the trial transcripts as to MV#1 statements and as to Chappell's conflicting "Belief," the following conclusive statement is wrong:

Owen says "Given these circumstances, a rational trier of fact COULD HAVE FOUND that Gandy knowingly transported a computer with images HE KNEW constituted child pornography."

The jury had to be instructed by Judge Rosenthal as to how Dost factors could be applied to nudist photographs.

This combined with the prosecutor saying on day 3 of trial, page 129 [ROA 1270] "You know what? Mr. Buckley was absolutely correct in saying this is upsetting and repulsive because all of the things the defendant did to manipulate these children is upsetting and is repulsive, and you will have the opportunity to find him guilty of all those crimes."

This statement clearly led the jury to be manipulated into finding Gandy guilty based on feelings rather than facts. The jury should have been told about the 4 corners rules because the nudist photographs did not meet the definition of child porn. As discussed in US V Brown in the Appeals court of the 6th circuit and in the Steen case, listed in Kretzer's appeal.

The fact that these are nudist pics and not child porn is confirmed by Judge Rosenthal herself when she says "I don't find that nudist photographs that could have been worse than they are, sufficient to take from the jury. So I'm going to override the motion." This statement at Gandy's trial by Rosenthal "Nudist photos that could have been worse" without further argument as to any particular nudist pic says a lot!" Criminal Legal News Feb 2012 Sex Panic: The war of sex offenders as public enemy #1 says "Judges, prosecutors, attorneys, and even juries refuse to look at the particulars of a sex offense.

9. On page 7, The Appeals Court denies count 6 by saying "Gandy concedes (Kretzer came up with this case that is not at all similar to Gandy's) this argument is foreclosed by US V Garcia-Gonzalez 714 F. 3d 306 (5th Circuit 2013), which held that a conviction under 1591 does not require a completed sex act." The BIG difference in the Garcia case and Gandy's case is:

- i.) Garcia paid \$4500 to have his victims illegally transported into the U.S.A.
- ii.) Before 14 year old victim #4 DL came along, he had already sex trafficked her sisters 17 year old CM and 15 year old BY along with 15 year old RJ.
- iii.) He also paid them \$20 per night and \$3 per beer and said they could earn extra money if they had sex with customers.
- iv.) The girls were not allowed to leave his house without permission.
- v.) His employees constantly monitored the girls.
- vi.) Garcia threatened to harm their families if they escaped and pointed a gun at DL.

In my case:

- i.) Minor Victim #3 (count 6) is chronologically the first victim. Prior act evidence doesn't apply, making Garcia-Gonzalez inapplicable in my case.
- ii.) MV3 admitted at trial he was never given any money nor ever did anything inappropriate.
- iii.) In 2005, when MV#3 entered Gandy's life, his mom had not been diagnosed with cancer. MV#1, 2, and 4 who Judge Rosenthal is using to try and predict Gandy's intentions hadn't come into his life yet.
- iv.) Gandy in 2005, had no wrong intentions. Excusing MV#3 from the massage when he says that Gandy could tell he was uncomfortable, then never asking again proves there was no intent.
- v.) MV#3 is of a different race and a wealthy family.
- vi.) MV#1,2, and 4 all share a desire to use Gandy for money. MV#3 loved Gandy and never received money nor even asked for any. Comparing MV#3 to the 3 others is like comparing apples to oranges.
- vii.) This unique situation makes Count 6 a "joinder" issue.
- viii.) On top of all this, count 6, MV#3 on 8-8-15 met with licensed investigator Catherine Vesey Edwards and admitted that he never did a massage with Gandy. He also admits to dating MV#2 who told him that he was 18 when he was with Gandy. MV#2 also told MV#3 that he used to prostitute himself for drugs before he met Gandy. This makes Gandy also not guilty of count 5 (MV#2). Every victim in this case told government agents what they wanted to hear to create a narrative that fits in with the current politically popular ME TOO movement/ Hate on sex offenders movement reminiscent of the old "witch hunts." An example of this happened when Anderson Cooper went to a school looking for "bullies." A lot of students falsely came forward saying they were bullies to gain attention and fame. This seems to have happened in Gandy's case with MV#2, 3, and 4. Yet when you watch MV#1 7-20-12 interrogation, you can tell he is tired, hungry, and wants to go home and does not want the attention of Homeland Security causing problems with his mom who was born in El Salvador.

B. Chief District Judge Rosenthal's denial of count 3 uses false "facts", just like Chief Appellate Judge Owen (now Richman) does.

DE#178 on 10-5-18 is Rosenthal's denial of Buckley's motion for Judgement of acquittal made while Gandy was in suicide watch (9-21-18 to 1-4-19). Buckley in count 3 says Gandy did not know the images (he had never seen) were child porn. Instead of explaining how any one of the 52 nudist pictures meet

the definition of child porn, Rosenthal dodges the question and talks about how the pictures got on the computer and where they were stored. Judge Rosenthal's reasoning to deny count 3 is false and proves her prejudice when she says "...trips to Southeast Asia where Gandy posed for photos with minors, engaged in sexual relationships with them, and sexually exploited them, both for his own sexual satisfaction, and for financial gain from gratifying others." Gandy feels he has a right to know where Rosenthal got this false information. Gandy only paid females to massage him in Asia, and never did, or had anyone do massages for, or with him. On top of this, what kind of profit would he make when massages cost less than five dollars there (50,000 Rupiah). He also never dated any minors in Southeast Asia. Was it legal for Rosenthal in 2018 to use false information in order to deny count 3? The Acquitted Conduct Act of 2024 implies that it's not. Nowhere in Gandy's trial transcripts is any mention of what Rosenthal said about him in SE Asia. This false opinion by Rosenthal pops up on our law library when Gandy's name is typed into the computer. It has contributed to the frequent abuse Gandy received from staff and inmates who have read it.

C. Chief District Judge Rosenthal works with Chief appellate Judge Richman in the appeals court.

D. Chief District Judge Rosenthal is in charge of making strict rules in the appeals court, some of which in Gandy's case defeat the purpose of the Judicial Improvements Act of 2002.

Transfer of venue needed due to prejudice shown above.

Respectfully,

Jason Gandy