

Chet Lee West
32 Fairbanks St.
Hillside, NJ 07205

FILED
US DISTRICT COURT
DISTRICT OF NEBRASKA

AUG 26 2013

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United States District Court
District of Nebraska

United States of America)	8:13CR273
)	
plaintiff,)	
vs.)	Motion to dismiss
Chet Lee West)	
defendant)	
)	
)	
)	

Now Comes Chet Lee West, alleged defendant, not submitting to the court's purported jurisdiction, who moves this court to dismiss the indictment filed by Donald J. Kleine for a lack of jurisdiction. Grounds are set forth below.

1. No case presented. The court's jurisdiction is limited to lawful cases: "The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States..." article III § 2, United States constitution.

A case is not synonymous with indictment or allegation. A case consists of two basic elements: *injuria et damnum*. This is spelled out in not only in numerous constitution and court opinions for hundreds of years, but also in the Declaration of Independence regarding the purpose of government: "That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed..." And from the US supreme court:

"the duty of this court, as of every judicial tribunal, is limited to determining rights of persons or of property, which are actually controverted in the particular case before it."
Tyler v. Judges of the Court of Registration, 179 US 405.

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There are no allegations and supporting facts I violated any of the rights of the alleged plaintiff.

There is no case pled. Without a case, there is no jurisdiction.

2. No corpus delicti. The indictment fails to set forth a corpus delicti:

“Component parts of every crime are the occurrence of a specific kind of injury or loss, somebody’s criminality as source of the loss, and the accused’s identity as the doer of the crime; the first two elements are what constitutes the concept of “corpus delicti.” U.S. v. Shunk, 881 F.2d 917, 919 C.A. 10 (Utah).

“The corpus delicti of a crime consists of two elements: (1) the fact of the injury or loss or harm, and (2) the existence of a criminal agency as its cause [citations omitted] there must be sufficient proof of both elements of the corpus delicti beyond a reasonable doubt.” 29A American Jurisprudence Second Ed., Evidence § 1476.

Without a corpus delicti there is no crime.

3. The indictment is “unfit for adjudication”. Because American courts are adversary systems, the complaint is “unfit for adjudication”:

“The [Supreme] Court has found unfit for adjudication any cause that "is not in any real sense adversary," that "does not assume the 'honest and actual antagonistic assertion of rights' to be adjudicated..." Poe v. Ullman, 367 U.S. 497, 505 (1961).

This is not an adversary proceeding as there are no allegations and supporting facts I violated any rights of the alleged plaintiff.

4. No evidence of presence within United States and laws applicable. There are no facts pled proving my presence within the United States and alleged districts. There are also no facts presented the laws of the United States are applicable to me. Such evidence is essential to prove jurisdiction.

It’s not up for dispute the plaintiff is supposed to be the United States. As such, the United States cannot appear as a *plaintiff* through Donald J. Kleine, if a geographic area [is the prosecutor claiming to represent the ground?]. Mere geographic location is not evidence of presence within the alleged plaintiff, the United States, which unlike the ground, did not exist before July 4, 1776. The alleged judicial districts, political fictions also, did not exist prior to 1789, in the case of Nebraska, did not exist prior to 1867.

It's impossible to prove my presence within the plaintiff beyond a reasonable doubt or a preponderance of evidence because there are no facts; it's a political opinion, a fiction. The prosecution offers no facts and will certainly only present red herrings and *ad hominem* attacks if this issue is addressed at all [no doubt the word frivolous will be used ad nauseum]. The alleged plaintiff, United States, while obviously not geographic, is at best a political pseudonym for lawyers, judges and others acting as a government; this includes the assigned judge.

The assigned judge is obligated to presume not only my innocence to the charges, but also that jurisdiction does not exist unless proven by competent evidence, Thomson v. Gaskill, 315 U.S. 442, 446. That includes the applicability of the laws I'm accused of violating. The applicability of the laws, as with jurisdiction, is an essential element of the alleged crimes and the judge is obligated to presume the laws do not apply.

If the judge assumes the laws apply, then he is assuming an element of the crime without any facts being presented and challenged. A fair trial is not possible if essential elements of the alleged crimes are assumed without any facts being presented.

All the prosecution has are allegations and arguments the code was violated and will certainly cite the code itself as if that is evidence the code applies. But that is circular and should be rejected by the court.

the code is applicable because

The prosecution is required to have facts in evidence to support all their arguments, including the argument there is jurisdiction over me:

“By going outside the evidence, the prosecutor “violated a fundamental rule, known to every lawyer, that argument is limited to the facts in evidence.” United States ex rel. Shaw v. De Robertis, 755 F.2d 1279, 1281 (7th Cir.1985).

The indictment is not evidence:

“We risk stating the **obvious** here: **a complaint is merely an accusation of conduct and not, of course, proof that the conduct alleged occurred.** The prosecution did not introduce evidence that Bailey misused the SEC rules — rather, **the prosecution offered only the complaint, which is far from evidence of anything.** Admitting the complaint may have permitted the jurors to succumb to the simplistic reasoning that if the defendant was accused of the conduct, it probably or actually occurred. **Such inferences are impermissible.**

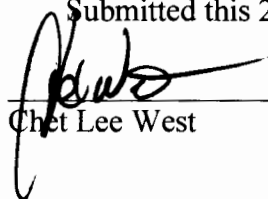
The government barely addresses this issue but instead leans heavily on the purpose for which the evidence was offered, i.e., “to prove that defendant acted intentionally, knowing that his actions were wrong.” There is some logic to the argument that evidence that Bailey had previously been accused of violating Rule S-8 shows that he was on notice of the type of prohibited conduct. **But this is not enough.** The prosecution was still required to prove that the evidence was sufficient to support a finding that Bailey committed the act charged in the complaint. **This a mere complaint cannot do.”** U.S. v. Bailey, 696 F.3d 794, 801 (2012) (emphasis mine).

There is nothing in the indictment about evidence the constitution and code apply. Even if the indictment could be considered evidence it’s still insufficient to prove jurisdiction.

Conclusion and request for relief

Because the indictment does not present a case, there is no jurisdiction. The presumption of innocence and basic principals of fairness do not permit the assumption of essential elements of the alleged crimes (jurisdiction, applicability of laws) in complete absence of any facts. I move the Court to dismiss the indictment filed against me.

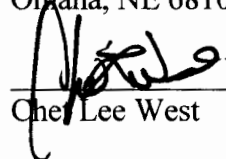
Submitted this 23rd day of August 2013.


Chet Lee West

Certificate of service

This is to certify that a true and correct copy of the foregoing has been mailed this 23rd day of August 2013, to the plaintiff at the following address:

Donald J. Kleine
Suite 1400
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Omaha, NE 68102


Cheryl Lee West



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