

UNITED STATES COURTS
EASTERN DISTRICT OF WISCONSIN IN THE 7TH DISTRICT

Plaintiff,
BERNARD TOCHOLKE
Vs.
Defendant,
THOMAS W. ANDERSON, JR.

MOTION FOR RECONSIDERATION
(appeal de novo ??)

Case Number # 12-C-0111
Judge assigned; U.S. Magistrate Judge Nancy Joseph

COMES NOW, Plaintiff, Bernard Tocholke, requesting this court to take another look at this case and reconsider if there has not been a mistake made in how the judge made her decision, and if there has been an oversight, for it would be best to continue with this case in this court instead of proceeding to the Court of Appeals in Chicago.

1. The Decision and Order will be referenced to throughout this Motion, and therefore included at the end of this document.
2. The United States Department of Justice was contacted by the Plaintiff several months ago. That Department eventually sent a response back to him along with a document concerning the TITLE 18, U.S.C. § 242 which is included at the back of this Motion.
 - a. Question: If this Federal Agency sent out this document, would it not be a reliable source and statute for a private citizen to use?
 - b. The Plaintiff would be inclined to believe that the U.S. Department of Justice did NOT give him a table spoon and tell him to go slay the huge Alaskan Kodiak Bear! They would NOT send someone into battle with a useless piece of equipment that is insufficient for the task at hand.
 - c. It is also presumed that they did NOT tease him by giving him a spoon to dig up earthworms if he was NOT allowed to even use the tool or prohibited from having it. He was NOT restricted from using that “spoon”.
 - d. They might have thought he was using it for worms instead of bear, BUT the weapon was provided to him without the claim that he is barred from using it.
3. However, the judge made the statement on page 2, second paragraph; *“To begin, Tocholke has alleged a claim under 18 U.S.C. § 242. (Docket # 1 at 3.) This is a criminal statute for deprivation of rights under color of law. A private citizen cannot bring a cause of action under this statute.”*
4. Tocholke believes that this statement is in error and needs to be reconsidered.
5. The judge derailed this Complaint onto a different track; 42 U.S.C. § 1983, which is as follows; *“**Every person who**, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, **subjects, or causes to be***

subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, SHALL BE LIABLE TO THE PARTY INJURED IN AN ACTION AT LAW, suit in equity, or...

6. The judge stated that, “*Tocholke’s complaint is deficient in that he fails to allege Anderson acted under color of state law.*” She continued though, “***Acted under color of state law***” is a term of art under § 1983. ”...”**A private citizen may not be liable under § 1983 unless the citizen becomes a public officer pro tem or CONSPIRES with a public employee to deprive a person of his constitutional rights.**” This quote is taken from her Decision, near the bottom of page 2.
7. Taking the words directly from the judge, she did admit that Anderson, who is “a private citizen” (private even though a lawyer in the judicial arena) could be held liable **IF HE CONSPIRED** with a public employee to deprive a person of his constitutional rights.
 - a. **Facts:** A lawyer does NOT provide the calculations without a judge having any influence in the matter. Normally, a judge does the calibrating with the attorneys influencing (conspires/conspiring) the outcome of the equation.
 - b. Anderson did fabricate together with the Commissioner Plous the original calculation. From that day forward, it was Anderson that vindictively pushed the issue until the current time through several judges.
 - c. To claim that he did not conspire with a public employee is incorrect. In the back of the Complaint there are exhibits. Note the one that has the IRS 1040 form, which is Exhibit **B**.
 - c.i. It is very obvious how the judge and Anderson connived together to make the error stick.
 - c.ii. Both Anderson and the judge should have known that the proper number that should have been used was on line 33, NOT on line 12 which they together “**conspired**” to use.
 - c.iii. Both the judge and Anderson “**conspired**” to inflate the number after that, one just slightly more, BUT Anderson stating a lie that it was OVER \$40,000!
 - c.iv. Even though that hearing has expired, the origin of this “**conspiring with a public employee**”, IT DID HAPPEN, and therefore according to the statement that Judge Nancy Joseph made, **Anderson is LIABLE.**
 - c.v. Anderson has never ceased to permeate the courtroom with his deliberate lies including the January 20th hearing this year. Therefore, the statute of

limitation does NOT apply.

- c.vi. It is deliberate, because Anderson has had the Exhibits A & B, (which are at the back of the Complaint), for several years, and he has never corrected the mistake, and held vindictively to his deception and fraud.
8. What is this “spoon” that the United States Department of Justice presented to the plaintiff? ***“Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States,...shall be fined under this title...”***
 9. There are basically two ways to look at this statute, or actually any law including the United States Constitution. The two ways are either **the pragmatic way** or the less common **the gibberish or piffle way.**
 - a. **THE PRAGMATIC VIEW POINT.** Pragmatic relates to the practical approach of looking at things.
 - a.i. **Practical** means that a person uses the English language which the U.S. Department of Justice uses, and also most of the United States Citizens of America use. The politicians that wrote and designed the laws used the English language.
 - a.ii. When the politicians used the word “***Whoever***”, we can assume that they did not have prejudice at who the person was or what they looked like, ... this Statute included them (if they were a human being and a citizen of this country).
 - a.iii. This Statute was NOT barred from anyone NOR exempted anyone if they wore yellow suspenders, had only one arm, was over seven feet tall, or if they were a private attorney. “Whoever” would include them ALL.
 - a.iv. Now if this person would “***willfully subjects any PERSON...the deprivation of any rights...secured or protected by the Constitution..***”, they “***shall be fined under this title***”...
 - a.v. Now if this seven foot tall man that has only one arm, wears yellow suspenders, and while in the courtroom practices law as an attorney, IF HE DEPRIVES ANYBODY the rights of the Constitution, “***he shall be fined***”.
 - a.vi. Once again the ANYBODY refers to any human being who is a citizen of the United States. Notice that United States was not actually stated, but the list of available options could be “**pragmatically**” interpreted as the United States.

a.vii. From the pragmatic viewpoint, using the English language which the Department of Justice uses, AND the politicians and citizens of the United States, **THIS LAW IS VERY APPLICABLE TO THIS CASE!!**

b. **THE GIBBERISH OR PIFFLE VIEW POINT.** The definition of these words means “a confused speech or language” (which might make sense only to a few people, but to the rest of society is) “trivial nonsense”.

b.i. From this view point, the statute is actually talking about several things, primarily about the effect that nitrogen has on the jungle ants in the Amazon River basin.

b.ii. This statute also informs the reader that the Cat who played the fiddle actually had a litter of kittens hidden in the milk pail which was used to milk the cow that jumped over the moon. The cow also was of the Holstein breed!

NOW BACK TO REALITY--

b.iii. No, this statute does not mention anything about jungle ants, cats, or cows, BUT NEITHER does it say anything about the other restrictions that were mentioned in the Decision and Dismissal letter.

b.iii.1. Where does the statute say that, ONLY “*the United States Attorney holds the authority*” to use this statute?

b.iii.2. Where does this statute say that “*a private citizen cannot bring a cause of action under this statute*”?

b.iii.3. The plaintiff cannot see any of this any better than he can see the animals mentioned above, and NEITHER does the common citizen see it either. Will the politicians that wrote this law see where it is found?

b.iii.4. Why would the United States Department of Justice give the plaintiff this “spoon” if it is LOADED with EXTRA fictitious gibberish talk that is NOT written with words of the common English language?

b.iii.5. It makes NO sense to the common person, and if these issues are not dealt with in a fair judicial manner, the plaintiff is eager to present it to the United States Court of Appeals.

b.iii.6. The plaintiff has some mysterious questions, which can easily lead to speculations. Under normal procedures, the plaintiff

files his complaint, which is followed by an answer, which after that is finally followed with an input from the judge. Why did the judge give a decision before Anderson gave his Answer?

b.iii.7. Is this the process of a judicial cover-up? The plaintiff does not want to jump to conclusions or is willing to offend anyone, but he has suffered a lot of both financial and psychological loss and grief. It is because of that, that he must “push” hard to get justice, even if it means creating a large scene to get public attention. He just hopes that he will not be pushed into the despicable act of burning a flag before he can get justice. But, he will not take or accept rejection quietly. Anderson has wronged him, and he DEMANDS justice, ...JUST THE WAY THE LAWS APPLY.

THEREFORE, the plaintiff requests that this court under the jurisdiction of the same judge or by a different judge, will reconsider this case, and have the process of Anderson’s Answer be the next requirement in this case.

Signed this 13th day of February, 2012 _____

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