

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI

UNITED STATES OF AMERICA)

Plaintiff,)

v.)

CIVIL ACTION NO. 4:05-CV-33 (TSL/AGN)

IKE BROWN, individually, and in his)
official capacities as Chairman of Noxubee)
County Democratic Executive Committee)
and Superintendent of Democratic Primary)
Elections; NOXUBEE COUNTY)
DEMOCRATIC EXECUTIVE)
COMMITTEE; CARL MICKENS,)
individually, and in his official capacities)
as the Circuit Clerk of Noxubee County,)
Superintendent of Elections, Administrator)
of absentee ballots and Registrar of voters;)
the NOXUBEE COUNTY ELECTION)
COMMISSION; NOXUBEE COUNTY,)
MISSISSIPPI; and those acting in concert,)

Defendants.)
_____)

**UNITED STATES' MEMORANDUM IN SUPPORT OF ITS MOTION FOR AN
INJUNCTION, *PENDENTE LITE*, PROHIBITING DEFENDANTS IKE BROWN AND
THE NOXUBEE COUNTY DEMOCRATIC EXECUTIVE COMMITTEE FROM
THREATENING, HARASSING, OR INTIMIDATING ITS WITNESSES**

I. INTRODUCTION

The United States filed its Complaint against the above named Defendants on February 17, 2005, alleging that various election practices and procedures in Noxubee County, Mississippi violate Sections 2 and 11(b) of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973, and

the guarantees of the Fourteenth and Fifteenth Amendments to the United States Constitution.

As alleged in the Complaint, Defendants Ike Brown, the Noxubee County Democratic Executive Committee, and others acting in concert with them, have violated the Voting Rights Act by engaging in race-related voting discrimination, which has had the purpose and the result of denying white voters, white candidates, and those who support them, an equal opportunity to participate in the election processes in Noxubee County. Pursuant to Fed. R. Civ. P. 26(a), the United States filed its initial disclosures on July 12, 2005. These disclosures contained a list of 110 names of persons in or around Noxubee County, who are potential witnesses in the present case. Some three days later, on July 15, Kendrick Lashawn Slaughter, a potential witness named in the United States' disclosures, was subjected to intimidation, threats and unjustified arrest by Noxubee County Deputy Sheriff Terry Grasserree, who, in the past and as recently as 2003, has been a member of the Defendant Noxubee County Democratic Executive Committee and is a political ally of Defendant Ike Brown. Mr. Slaughter believes that the hostile treatment to which he was subjected, was calculated to intimidate him into ceasing his cooperation with the Department of Justice's investigation and with the prosecution of this case. The United States believes that unless enjoined by this Court, Defendants will continue to threaten, harass, and intimidate persons who are potential witnesses in the on-going litigation and that such witness intimidation will irreparably harm the United States' case.

The United States submits this Memorandum of Points and Authorities in support of its Motion for an Injunction, *pendente lite*, prohibiting Defendants Ike Brown and the Noxubee County Democratic Executive Committee, and those acting on their behalf or in concert with them, including Terry Grasserree, from harassing, threatening, or intimidating persons who are potential witnesses for the United States in this case.

II. FACTUAL BACKGROUND

Kendrick Lashawn Slaughter is currently employed as a police officer with the Aberdeen, Mississippi Police Department. He was formerly a Noxubee County Deputy Sheriff. Declaration of Kendrick Lashawn Slaughter ¶ 11, attached to this Motion and identified as Exhibit A. During the May 2005 Democratic Primary election, Slaughter was a candidate for the Macon City Board of Aldermen. While Slaughter was employed as a Noxubee County Deputy Sheriff, Deputy Grasseree offered Slaughter \$3,000 to end his 2005 Aldermanic campaign because, as Grasseree explained, Slaughter's candidacy would split the black vote and make it more likely for a white candidate to win. Id. ¶ 10. Slaughter refused the offer and remained in the race. Id. His employment with the Noxubee County Sheriff's office was terminated as a result. Id. ¶ 11. During the course of his participation in various Noxubee County affairs, including his time as a Sheriff's deputy and as a candidate for public office, the United States believes that Slaughter has acquired information that is relevant to the litigation that is on-going before this Court in this case. As a result, Slaughter has been contacted by Department of Justice attorneys and investigators. Deputy Grasseree has expressly warned Slaughter that he should not speak to attorneys or investigators who are with the United States Department of Justice. Id. ¶ 13.

The United States served initial disclosures on Defendants Ike Brown and the Noxubee County Democratic Executive Committee, through counsel, on July 12, 2005. In these disclosures, Slaughter was named as a person likely to have information relating to the case before this Court. United States Initial Disclosures Pursuant to Fed. R. Civ. P. 26(a) at 15. On July 15, 2005, Slaughter was arrested by Noxubee County Deputy Sheriff Terry Grasseree. Grasseree has, as recently as 2003, been a member of the Defendant Noxubee County

Democratic Executive Committee and is known to be a close political ally of Defendant Brown. Decl. ¶4.

On July 15, 2005, three days after counsel for Defendants Ike Brown and the Noxubee County Democratic Executive Committee were served with the United States' Fed. R. Civ. P. 26(a) disclosures, naming Slaughter as a potential witness for the United States, Grasseree assaulted and threatened to kill Slaughter, damaged his vehicle, and arrested him. Id. ¶¶ 2, 5-7, 14. During this incident on July 15, while driving a Noxubee County Sheriff's patrol car, Grasseree stopped Slaughter on a Macon city street and informed him that Noxubee County Sheriff Albert Walker wished to speak with him immediately. Id. ¶ 5. Slaughter informed Grasseree that he was busy but that he would speak with the Sheriff later that day. Id. Grasseree then struck Slaughter's vehicle and said, "m__ f __ [profanity], I'll put you out of this d__ [profanity] truck and kill you." Id. At this point, Slaughter was not placed under arrest, so he drove away. Id.

Moments later, Grasseree, who was now accompanied by Noxubee County Sheriff's Deputy John Clanton, drove his patrol car into the back of Slaughter's vehicle, causing significant damage to the rear of the vehicle. Id. ¶ 6. Slaughter then drove to the Noxubee County Courthouse and was there arrested by Grasseree and was charged with disorderly conduct, resisting arrest, failure to yield to a blue light, and dangerous driving.¹ Id. ¶ 7.

Slaughter believes that Grasseree arrested him because Slaughter was seen speaking with

¹ Slaughter later spoke with Sheriff Walker and was told that he merely wished to inform Slaughter that his paycheck for serving as part-time security at the county courthouse, was available. Id. ¶ 8. Walker also inquired about Slaughter's availability for additional part-time security work. Id. This information had customarily been conveyed to Slaughter through a telephone call from a clerk. Id.

attorneys from the Department of Justice. Id. ¶ 13. Moreover, he believes that Grasseree is inclined to cause him further harm because information he possesses will be disadvantageous to Grasseree and the Defendants in this case, including Defendant Ike Brown and members of the Noxubee County Democratic Executive Committee. Id. ¶ 15.

III. DISCUSSION

This Court has the inherent power to issue the injunctive relief requested by the United States in order to protect federal court litigants from violence, intimidation, and harassment that is designed to deter use of the federal courts. The late Judge A. Leon Higginbotham, Jr. of the U.S. District Court for the Eastern District of Pennsylvania, aptly described the origin and purpose of such inherent powers, when he issued an order enjoining defendants in a Title VII employment discrimination lawsuit from threatening, harassing, or intimidating plaintiffs in that case. See Commonwealth v. Local Union No. 542, Int'l Union of Operating Eng'rs, 347 F. Supp. 268, 285 (E.D. Pa. 1972). Judge Higginbotham explained at the outset that “the power of a federal court to issue an injunction to protect litigants from acts of violence cannot be realistically questioned.” Id. at 286. In doing so, he summoned the words of former Chief Justice of the U.S. Supreme Court John Marshall: “The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of the government is to afford him that protection.” Id. (quoting Marbury v. Madison, 1 Cranch 137, 163 (1803)). The injunction issued in Local Union was broad and precluded defendants from:

1. Threatening, intimidating, harassing, assaulting, injuring, or otherwise interfering in any manner with the named and class plaintiffs' federal statutory and Constitutional rights to be free from retaliation because of

- their instituting and processing the instant employment discrimination lawsuit; and
2. Doing any and all other acts which in any manner interfere with named and class plaintiffs' federal statutory and Constitutional rights to institute and process the instant employment discrimination lawsuit.

Local Union, 347 F. Supp. at 302-03.²

Many courts, including those in the Fifth Circuit, have recognized the necessity that government provide federal litigants with the protection of law and with a forum to hear grievances. Such recognition has led these courts to issue injunctions for the purpose of preserving the opportunity of federal litigants to defend their rights under the Constitution and laws of the United States. See e.g., Bell v. Hood, 327 U.S. 678, 684 (1946) (“where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief.”); and United States v. Farrar, 414 F.2d 936, 938 (5th Cir. 1969).

In Farrar, the Fifth Circuit Court of Appeals ruled that the district court below had erred when it failed to grant the injunctive relief requested by African-American parents who offered substantial evidence that they had been harassed and intimidated by whites in retaliation for attempting to send their children to integrated public schools. See Farrar, 414 F.2d at 942. The court concluded that “[i]njunctive relief against all appellees (defendants) . . . should have been granted by the District Court to counteract the harassment and retaliation against Negro citizens

² After Judge Higginbotham's death, the Local Union decision was looked upon favorably by his colleagues and stood out as one of the Judge's most exemplary legal opinions. United States Supreme Court Justice William Brennan observed in a tribute to Judge Higginbotham, that the Local Union decision highlights some of Judge Higginbotham's best attributes, “a mastery of doctrine, . . . subtleties, . . . law's capacity to solve problems, and a desire to place legal results in context.” See, Richard W. Rose, A Tribute to Judge A. Leon Higginbotham, Jr.: Farewell to a Giant, 4 Roger Williams U. L. Rev. 387, 392 (1999).

for exercising rights guaranteed to them as free Americans.” Id. Similarly, in the present case, the requested injunctive relief is appropriate to prevent the harassment and intimidation of the United States' witnesses, which is unlikely to cease without this Court's intervention.

In the context of federal criminal cases, Congress expressly recognized the need to create a statutory cause of action for injunctive relief to prevent the harassment of victims and witnesses. It did so notwithstanding the fact that the All Writs Act, 28 U.S.C. §1651(a), already conferred on all Federal courts, the general power to issue injunctions. See, 36 C.J.S. Federal Courts § 24. The Victim and Witness Protection Act, 18 U.S.C. § 1514, sets forth a specific process by which prosecutors may seek a civil injunction to protect victims and witnesses in a criminal case. It is perhaps not surprising that Congress did not at that time see the need to create a similar cause of action to protect witnesses in federal civil cases. Most likely this is because civil litigation less frequently involves party defendants who are prone to violent acts and who are likely to resort to harassing, threatening, or intimidating other litigants. However, history has shown that there are certain kinds of civil cases, which have sparked violence, even as some litigants have attempted to have such violence averted by choosing the peaceful forum of federal litigation. Again, Judge Higginbotham aptly suggested in 1972 that civil rights cases were the sort of cases where violence was more likely to be stirred. See Local Union, 347 F. Supp. 268, 284 (E.D. Pa. 1972). In recognizing the power to enjoin violence between the litigants in the civil case before him, he warned:

In a nation which has been so often rocked with violence, our challenge is to develop alternatives to violence. The most appropriate alternative is evolving rules of law where disputants seek to resolve their differences in court rather than to riot on the streets. Fortunately and appropriately, the black plaintiffs have chosen the non-violent method by pursuing their disputes in federal court.

However, if defendants' violence is not precluded by federal law, certainly, some blacks who are named or class plaintiffs might feel uncertain about their future physical security if the federal courts are remediless to thwart that violence which is directed against federal litigants.

Id. It is similarly important in the present case that this Court exercise its inherent power to protect witnesses of the United States and to preserve the peaceful forum which the Plaintiff has now chosen to have it be fairly and appropriately decided whether the federally protected voting rights of Noxubee County citizens have been violated by Defendants.

IV. CONCLUSION

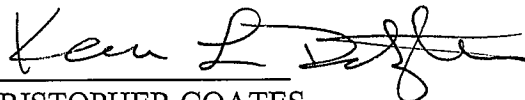
On the basis of the above showing, and the attached Declaration of Kendrick Lashawn Slaughter, the United States submits that its Motion for An Injunction, *Pendente Lite*, prohibiting Defendants Ike Brown and Noxubee County Democratic Executive Committee, and all those acting on their behalf or in concert with them, including Terry Grasserree, from harassing, threatening, or intimidating any person who were identified by the United States in its initial disclosures pursuant to Fed. R. Civ. P. 26(a), or any other person who is believed to have information in any way related to the matters at issue in this case, should be GRANTED.

Respectfully submitted,

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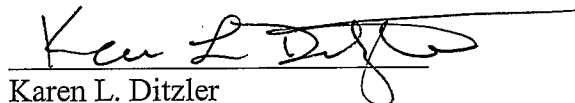


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CERTIFICATE OF SERVICE

I hereby certify that on September 22, 2005, I filed the foregoing using the ECF system, which sent notification of such filing to Wilbur O. Colom, Esq. of the Colom Law Firm, LLC 200 6th Street North, Suite 102, Columbus, Mississippi 39701; Ellis Turnage, Esq. P.O. Box 216, 108 North Pearman, Cleveland, Mississippi 38732; and Christopher D. Hemphill, Esq., Webb, Dunn, and Hemphill, P.A., 214 5th Street South, Columbus, Mississippi 39701.



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