

## KKK Act suit against Trump evokes violent past, troubled present

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**Justice Matters**

Hassan Kanu

(Reuters) - It's a disturbing sign of the times that the Ku Klux Klan Act of 1871, which was enacted amid widespread post-Civil War racial violence, is increasingly en vogue.

The law was used to sue the group responsible for the deadly white supremacist rally in Charlottesville, Virginia in 2017.

After the election, the KKK Act was used in a lawsuit against former President Donald Trump and the Republican National Committee for "systematically trying to disenfranchise Black voters," according to a December announcement by the NAACP, which filed the case.

Most recently, Democratic Mississippi representative Bennie Thompson last week sued Trump, his former attorney Rudy Giuliani, and two far-right militia groups under the law, alleging they conspired to prevent lawmakers from certifying President Joe Biden's victory by inciting and participating in the Jan. 6 Capitol riot.

According to a Feb. 17 NBC News article, the law had been mostly dormant for nearly a century, until attorney Randolph McLaughlin used it in a federal lawsuit brought against the Justice Knights of the Ku Klux Klan by five Black women in 1980. The women had been seriously injured in April that year by Klansmen who randomly fired shotguns at them in their Chattanooga, Tennessee neighborhood.

They won a \$535,000 judgment in 1982, along with an injunction on behalf of all Black Chattanoogaans barring the Klan from "assaulting, threatening, harassing" or "intimidating" them from exercising their rights, according to the opinion in *Crumsey v. Justice Knights of the Ku Klux Klan*.

McLaughlin is now a professor at the Elisabeth Haub School of Law at Pace University and co-chair of the civil rights practice group at Newman Ferrara. I spoke with him about his groundbreaking case and its connections to the ongoing lawsuit against the former president.

The following answers have been edited for length and clarity.

REUTERS: So what's the backstory of the *Crumsey* case?

McLAUGHLIN: Well, I was an African-African history major, and I remembered reading about Klan violence and Reconstruction, so we looked back at those periods and found this law. We dusted it off and waited for the right opportunity, and sure enough we didn't have to wait too long: These Klansmen shot those women in Chattanooga.

We filed a suit as both a class action for all the Black residents of Chattanooga, and as a damages action for the five women.

At the trial, lawyers for the Klansmen, including the (public) legal services office in Chattanooga, took the position that no Black person should sit on this jury because they were Black — that's what they said in open court. Anyway, we were able to get a Black person on the jury, but that's how it started.

REUTERS: Tell me a bit about how the arguments you made then might align with what we'll see in the case against Trump? (Joseph Sellers of Cohen Milstein Sellers & Toll represents Rep. Thompson in the new suit. Lawyers for the defendants haven't yet made appearances; Jason Miller, a Trump adviser, rejected the allegations in a Feb. 16 statement to Reuters.)

MCLAUGHLIN: We argued that Klan violence violates the 13th amendment — any racially-motivated violence would. And in fact, I was reading yesterday about Black aides in Congress and the Capitol police and about how many times they were called "niggers," so I think that's one approach.

You could certainly argue that it was a conspiracy, like we did, given the statements made (by some of the accused) before, during and after the insurrection.

If we take Trump's statements, and any of the other speakers statements, it may have been foreseeable that they were going to engage in acts of violence. And they did.

REUTERS: How exactly did the injunction you won for your clients work?

MCLAUGHLIN: The injunction didn't prevent speech — they can still say whatever racist nonsense they want. It prevented them from engaging in future acts of violence, threats of violence, and active intimidation.

What we tried to do in the litigation was to avoid the First Amendment complex, because we didn't want to have the (American Civil Liberties Union) come in to defend the Klan against us. After all, we were the Center for Constitutional Rights, and we recognize the Klansmen have a constitutional right to speak just like I do. So we avoided that issue, and we focused on their violence. And interestingly, no ACLU lawyer advocate went against us in any of the cases.

REUTERS: Doesn't that sort of litigation seem like a long-shot nowadays? What do you think was going on at the time that may have made the judge favorable to those kinds of arguments?

MCLAUGHLIN: Well, the news media had been extensively covering Klan violence. There were Klan marches in Greensboro, North Carolina, and violence was all over the country at that time. So that was the climate when we tried the case.

I don't think (winning a case like that) is such a long shot anymore. Law tends to reflect society. Judges aren't like some guru living on top of a mountain somewhere, they're reading the same stories, they walk the same streets, they watch the same TV shows we watch. And I think with the Black Lives Matter efforts across the country after the death of George Floyd, and then top that off with the attempted coup, judges have to realize if we don't step in, then this can happen again.

Interestingly, they're seeking an injunction also, just like we sought an injunction in our complaint over 40 years ago. I don't think the case is going to get dismissed.

REUTERS: Are there parallels between what's happening around the country now and at the Capitol on Jan. 6, and Chattanooga in 1980?

MCLAUGHLIN: Well I think that these white supremacists, as opposed to the Klan, are even more deadly and dangerous. The Klan, at its height, never tried to overthrow the national government, or attack Congress. So I think these white supremacists are more dangerous than the Klan ever was, because they're also neo-fascists – they're not only targeting racial minorities, they're targeting Democracy itself.

(NOTE: A previous version of this column misidentified the Constitutional amendment that Randolph McLaughlin said was violated by Klan violence. It is the 13th.)

## References

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