

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI**

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.) Case No. 05-00344-02-CR-W-ODS
)
 STEVEN SANDSTROM,)
)
 Defendant.)

**OBJECTIONS TO REPORT AND RECOMMENDATION TO DENY
DEFENDANTS' MOTION TO DISMISS COUNTS ONE, THREE, AND FIVE**

COMES NOW Steven Sandstrom (hereinafter "defendant"), by and through appointed counsel and pursuant to 28 U.S.C. §636(b)(1), to respectfully file the following objections to the Report and Recommendation to Deny Defendants' Motion to Dismiss Counts One, Three, and Five (Document 121), in support of which is offered the following:

I. The magistrate erred in not conducting a hearing regarding defendants' motion.

By order dated October 14, 2005, the magistrate is "designated to hear and process all pretrial motions" requesting dismissal of the indictment. Contrary to the order, the magistrate did not conduct a hearing regarding defendants' motion. Because he did not conduct a hearing related to defendants' motion, the magistrate did not have sufficient information available to him to make proper findings and recommendations.

II. The magistrate erred in finding that 18 U.S.C. §245(b)(2)(B) is a proper exercise of congressional authority under the Commerce Clause.

The indictment alleges a single private and intrastate criminal act against an African-American victim. The Commerce Clause is designed to protect the free flow of interstate commerce. Congress overreaches its authority where, as here, it attempts to exercise police

power to criminalize alleged behavior that can have no possible effect on interstate commerce and that, in fact, cannot be shown to have dissuaded anyone, including African-Americans, from using the public streets of Kansas City.

III. The magistrate erred in finding that the Thirteenth Amendment empowered Congress to enact 18 U.S.C. §245(b) to federally criminalize the behavior of a single person.

The Thirteenth Amendment was created to abolish the institutions of slavery and involuntary servitude. It has been construed by the courts to permit Congress to enact laws to remove barriers that act to discriminate against races. However, in modern society and especially as applied to the alleged behavior described in the indictment, it is an unconstitutional exercise of congressional authority to criminalize the behavior of an individual when it cannot be demonstrated that the behavior either was designed to oppress a race of people or was known to the victim to be based in racial animus.

WHEREFORE, defendant Steven Sandstrom respectfully prays that this Honorable Court not accept the Report and Recommendation and enter an order granting defendants' motion to dismiss the defective counts of the indictment.

Respectfully Submitted,

/s/ John G. Gromowsky
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