

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

JOHN R. KNIGHT, JR., et al,)	
)	
Plaintiffs and Plaintiff-)	
Intervenors,)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. CV-83-M-1676-S
)	
THE STATE OF ALABAMA, et al.,)	
)	
Defendants.)	

**RESPONSE OF ATHENS STATE UNIVERSITY
TO "KNIGHT-SIMS PLAINTIFFS' DISCOVERY REQUEST
REGARDING COMPLIANCE WITH APRIL 3, 2002, ORDER"**

Comes now Athens State University (sometimes hereinafter referred to as "this Defendant"), and in response to the *Knight-Sims Plaintiffs' Discovery Request Regarding Compliance With April 3, 2002, Order*, states as follows:

Interrogatory 1. Objection. The Court has not required this Defendant to adopt, and this Defendant has not adopted, "critical mass" as a standard for measuring the elimination of vestiges of the prior system of *de jure* segregation with respect to faculty or administrative employment. Unlike the University of Michigan Law School, whose student admissions policy was generally described in *Grutter v. Bollinger*, 123 S. Ct. at 2325, 2333 (2003), this Defendant has not attempted to define the concept of "critical mass." Thus, to answer this question would require the use of a

definition that neither the Court nor this Defendant has developed with respect to faculty and administrative employment in the context of this *de jure* segregation case.

Objection is also made on the basis that the interrogatory uses the term "critical mass" with said term being defined as *simultaneously* having four different meanings, at least three of which are *not applicable* to the facts and law of this case, and therefore, no answer is required of this Defendant. In addition, the first three definitions do not, at least as presented in the context of the instant case, adequately take into account the variety of personal views, experiences, preferences, attitudes, and other factors, not traceable to prior *de jure* segregation, that nevertheless affect individual African-Americans' feelings, "learning," or susceptibility to encouragement. Said definitions, as presented and applied to this case, also appear to (a) erroneously assume the lack of other factors (related and unrelated to employment) influencing student choice, and (b) endeavor to improperly define compliance with the decrees in this case, and the eradication of vestiges of prior *de jure* segregation in terms of numbers and quotas rather than policies.

Subject to the above objections, this Defendant responds to the subparts of Interrogatory 1 as follows:

- a. Yes.
- b. N/A.
- c. Objection is made on the basis of attorney work product, materiality, and relevance.

Subject to said objection, the answer is "No" - the answer to this interrogatory has not been reviewed by the advisory committee.

- i. N/A.
- ii. Objection is made on the basis of attorney work product, materiality, and relevance. This

Defendant's decision as to who is and is not consulted by this Defendant's attorney(s) is a decision made by said attorney(s), within the confines of said attorney(s)'s judgment and discretion as to what is appropriate and in the client's best interest of the client in the context of this inherently adversarial litigation. Furthermore, the advisory committee was formed, and exists, in compliance with the Court's Order, and its limited purposes do not include becoming an advisor to attorneys (advocates) about how to respond to discovery requests.

Interrogatory 2. Objection is made on the same grounds as are stated hereinabove in response to Interrogatory 1. Subject to said objection, this Defendant responds to Interrogatory 2 and its sub-parts as follows:

Yes.

a. Additional objection is made on the basis that the interrogatory effectively seeks legal argument and a presentation of evidence on issues based upon inapplicable legal standards. This Defendant does not agree that said standards, related to perceived "critical mass," properly apply to this case. Therefore, this Defendant has formed no belief, based upon said inapplicable standards, as to whether or not "there is a critical mass of African-Americans in high ranking administrative positions on your campus." Subject to said objections, this Defendant responds, to the best of its limited ability, to the hypothetical interrogatory, that: Without endeavoring to present necessarily all of the "evidence" that does or may be supportive of an affirmative belief and response, this Defendant observes that: (1) the percentage of African-American high ranking administrators (deans) employed by this Defendant during the period from 1985 to date has been between 20% and 33%, well above the percentage of African-Americans and adult African-Americans in Limestone County; (2) the percentage of non-white (African-American and Asian) high ranking administrators

presently employed by this Defendant is 40%; (3) this Defendant's dean of student affairs is African-American, has a great impact upon students and their perceptions of the University, is highly respected, is oftentimes consulted, and has a large level of influence both on campus and in the community; (4) the day-to-day environment experienced among administration officials, faculty, and students (Black, White, and Asian) is not based upon race, but rather, is such that African-American students (including homecoming queens and other top male and female students) fully participate in campus life and learning experiences; (5) the number and percentage of African-American students has been, and is, increasing; and (6) this Defendant is not maintaining unlawfully segregative policies.

b. N/A.

c. See response to Interrogatory 1c.

i. N/A.

ii. See response to Interrogatory 1.c.ii.

Interrogatory 3. See attached sheet.

Interrogatory 4. The Minority and Retention Committee met on October 21, November 4, and December 4, 2002. Copies of the minutes, reports, and recommendations are attached. The minutes indicate the persons who were in attendance at the meetings.

Interrogatory 5. None.

Interrogatory 6. Said Black faculty members and high-ranking administrators (that is, dean level and above) are as follows:

LaDoris Baugh	Asst. Professor of Business Administration	Tenured
Von Burton	Asst. Professor of Business Administration	Tenured
Wanda Hutchison	Asst. Professor of Education	Tenured

Andryna Kuzmicic	Asst. Professor of Elementary Education	Tenured
Nate Mitchell	Asst. Professor of Physical Education	Tenured
Othel Washington	Dean of Student Affairs	Tenured

Interrogatory 7.

Ms. Margaret Oliver

Part-time Coordinator of Student Support Services / Minority Affairs Coordinator

Retired December 2002

Current address: P.O. Box 813
Athens, Alabama 35612

Phone number: (256) 233-4945

Interrogatory 8. See attached documents.

Interrogatory 9. No faculty members, black, white, or otherwise, are "granted" tenure by this Defendant. This Defendant operates under statutory provisions (*Code of Alabama, 1975, § 36-26-100 et seq.*) and State Board of Education policies (*Revised Hearing Procedure*) such that employees eligible to obtain non-probationary (tenured) status *automatically*, without peer review or other discretionary decision-making, obtain said status upon (a) being employed on a "full-time" basis for three years and (b) not receiving notice of employment discontinuance before the expiration of the third year of employment.

Interrogatory 10. No faculty members have been "denied" tenure. See the response hereinabove to Interrogatory 9.

Interrogatory 11. See attached documents.

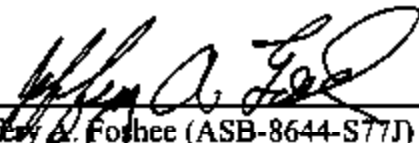
Interrogatory 12. To this Defendant's knowledge, there were no SREB black scholars enrolled during the year.

Interrogatory 13. None have been identified.

Interrogatory 14. See attached documents.

- a. See attached documents.
- b. See attached documents.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document have been served upon the following counsel of record by placing same in the United States Mail, properly addressed and First Class postage prepaid, on this the 15th day of October, 2003

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