

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

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U.S. DISTRICT COURT
N.D. OF ALABAMA

JOHN F. KNIGHT, JR., ET AL.,

Plaintiffs and
Plaintiff Intervenors,

UNITED STATES OF AMERICA

Plaintiff,

v.

THE STATE OF ALABAMA, ET AL.,

Defendants.

ENTERED

WJP SEP 15 2003

CIVIL ACTION NUMBER:
CV-83-M-1676-S

ORDER

I.

This matter is before the Court on the "Joint Objections of the Defendant PWIs to the Knight Plaintiffs' Discovery Request Regarding Compliance with the April 3, 2002, Order."¹ The Knight Plaintiffs have filed an objection to the Defendants' Motion and have moved the Court to compel the Defendants to answer the Plaintiffs' discovery request. The Knight Plaintiffs have also filed a Motion to Modify or Amend the 1991 Remedial Decree. The Plaintiffs' Motion to Modify or Amend focuses on the faculty and administrative hiring practices of the predominately white institutions.

¹ Though not identified as such, the Defendants' motion is best viewed as a motion for a protective order against discovery.

II.

For the most part, the discovery sought by the Knight Plaintiffs relates to the Defendants' compliance with the April 3, 2002, Order (Docket No. 3024) in which the Court resolved an earlier motion by the Knight Plaintiffs concerning the employment practices of the predominately white defendant institutions. To some degree the current discovery request was occasioned by the Supreme Court's recent decision in *Grutter v. Bollinger*, 123 S.Ct. 2325 (2003). In that case, the Supreme Court noted that a compelling state interest in establishing a "critical mass" of other-race students justifies the limited use of race in college admission decisions. Extrapolating from the *Grutter* decision, for example, the Knight Plaintiffs request the Defendant institutions to state whether there is a critical mass of black faculty and high-ranking administrators on each campus. In addition to interrogatories dealing with questions of "critical mass," the Knight Plaintiffs also seek information regarding the Defendants' compliance with the April 3, 2002, Order and the institutions' very recent hiring and tenure decisions.

The Defendants object to answering discovery for several reasons. First, they contend that at the time the discovery request was filed, there were no pending motions related to the matters covered by the discovery, nor any Court order authorizing the Plaintiffs to engage in discovery. Second, to the extent the Knight Plaintiffs' discovery request is directed to the Defendants' compliance with the April 3, 2002, Order, the Defendants maintain that they are in full compliance with that Order, and moreover, that

much of the information sought can be found in the most recent Title VI Annual Report. Finally, the Defendants “object to answering discovery in the last two years of this decree on any issue that does not directly relate to a finding of liability against [a] particular institution.” (Defendants’ Joint Objection at p. 7).

The Knight Plaintiffs strongly contest the Defendants’ contention that the issues in this case are limited to areas where the Court found specific liability against a particular institution. According to the Knight Plaintiffs, good faith compliance with the Remedial Decree is but one of the standards that the Court is to use in assessing whether the Defendants have removed the vestiges of *de jure* segregation.

Whatever the merits of the parties’ positions, one thing is sure: a discovery dispute provides neither the time nor the place to resolve this important question. The issue will be upon us soon enough. The existence of that issue does not, however, make the discovery request of the Plaintiffs inappropriate. Moreover, with the Plaintiffs’ Motion to Modify or Amend the Remedial Decree as it relates to hiring practices, the Defendants’ concern about the absence of a pending motion is made moot.

The Court will permit the Knight Plaintiffs to propound the pending discovery to the Defendants. The Defendants will answer the discovery within thirty (30) days, provided that the Defendants may point to—that is designate—information already in the record that is responsive to the Plaintiffs’ discovery requests.

In permitting discovery, the Court does not intend to imply or suggest in any way that the Defendants are not in full compliance with the 1991 Remedial Decree or the April

3, 2002 Order, or that the Court has "given up" on its April Order. Nevertheless, the Plaintiffs have a duty to their class members and to the Court to make an independent assessment of the Defendants' compliance, not only with the Remedial Decrees but also with the ancillary orders of the Court. The discovery sought is not onerous or unreasonable—particularly in light of the Knight Plaintiffs' latest Motion. All would be wise to remember that the important issues at stake will not be joined in discovery disputes, but in the carefully reasoned and considered thoughts of counsel as this case moves inexorably toward its conclusion and the Court is called upon to determine whether the State of Alabama has removed the vestiges of segregation from its system of public higher education to the extent practicable.

III.

The Defendants should respond to the Plaintiffs' recent Motion to Amend or Modify within thirty (30) days of the date this Order is docketed. If the Defendants wish to do so, they should feel free to file a single unified response to the extent that they all share in the position to be taken. Such unified responses are easier for the Court to manage and at least in the Court's estimation do not invoke the appearance of "white solidarity" or exemplify "attitudes of white supremacy." (See Knight Plaintiffs' Motion to Compel at 3) ("By banding together in support of a single document, the defendant HWIs are at best oblivious but more likely are insensitive to the appearances of white

solidarity. By treating the Knight Plaintiffs' discovery request with dismissiveness, the HWIs are insensitive to their perpetuation of attitudes of white supremacy[.]").

While it appears that the intention of the Knight Plaintiffs in their Motion to Amend or Modify is to alter the requirements of the 1991 Remedial Decree, the Plaintiffs nevertheless include a request that the Court issue a show cause order directing the Defendants to show cause why they should not be held in civil contempt for their alleged failure to comply with the provisions of the Remedial Decree. The Court does not read the Plaintiffs' Motion as requiring the issuance of a show cause order. *See Reynolds v. Roberts*, 207 F.3d 1288 (11th Cir. 2000).

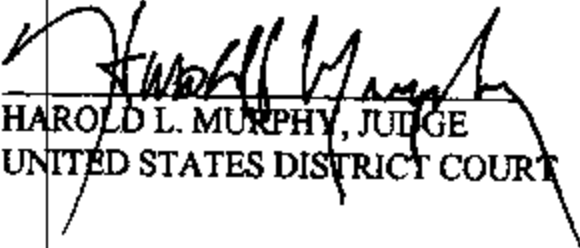
If the Knight Plaintiffs believe that in fact the Defendants are subject to a finding of civil contempt on the basis of the Motion now pending before the Court, they must so inform the Court in writing and cite the specific allegations that they contend warrant the issuance of a show cause order at this time. The issuance of a show cause order is a serious matter and one in which the Court will not lightly engage. Unless otherwise instructed by the Court, the Defendants should respond to the Knight Plaintiffs' pending Motion as a motion to amend and not as a motion to hold the Defendants in civil contempt.

ACCORDINGLY, the Joint Objections of the Defendant PWIs to the Knight Plaintiffs' Discovery Request Regarding Compliance with the April 3, 2002, Order [3208] is DENIED, the Knight Plaintiffs' Motion to Compel [3210] is GRANTED, and the

Defendants shall respond to the pending discovery within thirty (30) days from the date this Order is docketed.

The Defendants shall have thirty (30) days from the date this order is docketed to respond or otherwise object to the Knight Plaintiffs' Motion to Amend or Modify the Remedial Decree [3209]. If the Defendants so wish they may file a unified response or objection to the Plaintiffs' Motion.

IT IS SO ORDERED this the 10th day of September 2003.


HAROLD L. MURPHY, JUDGE
UNITED STATES DISTRICT COURT