

- More detailed information regarding the make up of each institution's Title VI advisory committee, recommendations from each institution's Title VI advisory committee, and the ultimate spending decisions approved by each institution's President (#s 3-5, 11 & 14);
- Names, positions, and tenure status of all black faculty and EEO-1s (# 6);
- Names of black faculty or administrators who have left the past year (# 7);
- Vacancies for faculty and EEO-1 positions and who filled them, names of African Americans considered, and identification of recommendations received for such vacancies from black faculty or staff association or Title VI advisory committees (# 8);
- Names/race of faculty granted/denied tenure (# 9-10); and
- Number of SREB scholars enrolled and any considered for faculty or administrative positions during the year.

2. The Knight Plaintiffs' discovery request cites no order from this Court in which discovery has been authorized and cites no pending motion before the Court which would even remotely require the need for this discovery at this time. The undersigned defendants are unaware of any such orders or pending motions. Thus far in the remedial phase of this case, this Court has not permitted any party wishing to conduct discovery to unilaterally initiate discovery whenever it decided it wanted information from another party. These defendants object to the discovery request on the basis that it was filed without obtaining permission from this Court to conduct such discovery and because there is no pending matter before the Court that would warrant such discovery.

3. This Court and the parties have recently received detailed Title VI Annual Reports from the State defendants and from each defendant institution from whom the Knight Plaintiffs seek additional discovery. Those reports contain a wealth of information on the institution's black faculty and EEO-1 recruitment and retention efforts,¹ on the progress made by each institution in those two areas since the decree was

¹ See information provided behind Tab C of each report.

implemented,² and on the composition of the Title VI advisory committees and the expenditure (or planned expenditure) of the funds.³ The undersigned defendant institutions and the State defendants have, as in each year since the Decree was implemented, expended considerable time and effort preparing these reports, none of which have ever been deemed deficient or non-responsive to the Court's Decree. These defendants object to the Knight Plaintiffs' discovery request on the basis that the recent submission of the annual reports by the PWI and State defendants contain the precise information this Court's 1991 Decree required.

4. Not only is there no pending motion before the Court justifying any discovery, but the proceedings leading up to the April 2002 Order eliminated any current need for discovery on the employment practices at the PWI institutions. The foundation for the April 2002 Order was laid when, in September of 1998, the Knight Plaintiffs filed a complaint about the alleged lack of progress at the PWIs in recruiting, hiring and retaining African-American faculty and EEO-1s, and requested a thorough investigation by the Court Monitor and Oversight Committee. The institutions responded to the Knight Plaintiffs' complaint. Thereafter, in February of 1999, this Court ordered the Court Monitor to review the pleadings and provide the Court a report and recommendation on the issues raised by the Knight Plaintiffs. After all the parties met with the Oversight Committee and reviewed that committee's draft proposals, the Knight Plaintiffs still complained that the Oversight Committee's proposal was not good enough, and that the PWIs had, for the most part, failed to comply with the Court's Remedial Decree. In response to these complaints, on July 9, 2001, this Court ordered the Knight Plaintiffs to

² See 2003 State Annual Report, Attachments 5-8.

³ See Tab C of institutional reports, including CoP-4 and CoP-5 Survey Forms, and 2003 State Annual Report, Attachments 1-4, 1-5, and 10-13.

review the annual Title VI reports of the PWIs and offer any comments they wished on any matters covered by the reports, or any other issues related to the status of the implementation of the Court's Remedial Decree. The Knight Plaintiffs responded seven months later, in February of 2002, in a voluminous pleading, and never once complained about the lack of pertinent information provided by the defendant PWI institutions in their annual reports. Even if they had complained, the first sentence of the April 3, 2002 Order explicitly states that the order is entered "in resolution of the pending motion by the Knight Plaintiffs concerning employment practices of the predominantly white defendant institutions." Thus, entry of the April 3, 2002 Order resolved all the issues the Knight Plaintiffs had raised concerning the recruitment and retention of black faculty and EEO-1s at the defendant PWIs.

5. Although the Knight Plaintiffs complained in their February 2002 pleading that the PWIs still did not have a "critical mass" of African Americans on their faculties and EEO-1 level staffs, the April 3, 2002 Order resolved that complaint. There is simply no reason, other than perhaps curiosity, or the desire of the Knight Plaintiffs to dictate what the PWIs' first amendment-protected educational judgment regarding diversity should be, or the desire to extend the Decree beyond 2005 and continue to cause the State and the individual institutions to incur exorbitant litigation-related expenses and/or attorneys' fees, for the Knight Plaintiffs to be propounding contention interrogatories based on the Michigan admissions case. This Court recently refused to allow individuals at ASU to complain about management issues at ASU, concluding that it was not appropriate for the Court to manage the affairs of any educational institution.⁴ The

⁴ See this Court's April 7, 2003 letters filed with Court Orders on April 9, 2003 (docket entries # 3177 and # 3178).

Knight Plaintiffs' interrogatories, particularly the first two contention interrogatories regarding "critical mass" as defined by *Grutter*, likewise would unnecessarily inject this Court and the Knight plaintiffs into the educational management of the PWI institutions. This case is not about whether the goal of educational diversity is a compelling state interest: it is limited to whether vestiges of segregation have been eliminated. Thus, the first two contention interrogatories are totally irrelevant as to whether vestiges of segregation have been eliminated and therefore are unduly burdensome and impermissible under Rule 26 of the Federal Rules of Civil Procedure.

6. From the title of the Knight Plaintiffs' discovery request, it appears that the Plaintiffs believe the discovery is somehow either authorized by this Court's April 3, 2002 Order or warranted because the defendants somehow did not follow the Court's Order. To the extent lack of compliance with the Decree or the April 3, 2002 Order is the basis for the Knight Plaintiffs' discovery request, such justification is wholly unfounded and should not serve as the basis for permitting discovery, particularly due to the following reasons:

- a) As the initial paragraphs of the April 3, 2002 Order indicate, this Court has not concluded that any of the undersigned defendant institutions have failed to comply with the Court's orders, the Constitution, or Title VI of the 1964 Civil Rights Act. Therefore, discovery is not permissible on the basis that any PWI has failed to comply with the Court's 1991 Decree.
- b) Based on the information provided in Attachments 5-8 of the State's 2003 Annual Report, which is summarized in the chart attached as Exhibit 1, it is clear that the PWIs collectively and individually are making substantial progress in increasing African-American representation in their faculties and EEO-1 administrative staffs. For example, between 1991 and 2002, the PWIs added a total of 412 EEO-1 and faculty positions, a 5.8% growth in the size of the total faculty and staff at PWIs. In comparison, the number of black faculty and EEO-1's employed at the PWIs increased by 72.4% or 165 black hires, from 228 in 1991 to 393 in 2002.⁵ Although

⁵ See Exhibit 1.

the undersigned defendant institutions may not have added as many African Americans to their faculties and EEO-1 level staffs as they or the Knight Plaintiffs personally may desire, there is no question but that they have achieved the level and degree of progress that this Court's 1991 Remedial Decree required, particularly in light of this Court's repeated recognition of the national shortage of qualified black citizens obtaining doctorates.⁶ The fact that the Knight Plaintiffs personally feel the institutions have not achieved enough progress (and never will feel that way), cannot serve as the basis for conducting yet another round of discovery in the remedial phase. The defendant institutions would prefer to focus these last two years of the decree on achieving even more progress, instead of expending limited time and resources on answering burdensome and irrelevant discovery requests.

- c) Per the April 3, 2002 Order, ACHE was to include in its Title VI Annual Report information on instate participation in the SREB program and the names, areas of study, enrolled institution, and anticipated graduation date of every student enrolled in the SREB Doctoral Scholars program in Alabama. In addition, ACHE was, to the extent possible, to report on the first job obtained by such SREB students and their first year salaries.⁷ Attachment 9 of the State's 2003 Annual Report complies with that portion of the Court's order. The undersigned defendant institutions were not required to report any additional information regarding SREB doctoral scholars. Had they been required to do so, a new form would have been required and approved by ACHE and the Court Monitor prior to the release of Annual Report instructions in February of 2003.
- d) Per the April 3, 2002 Order, the institutions were to establish Title VI advisory committees that would advise their respective administrations on best methods for increasing and retaining black representation on their respective faculties and administrative staffs and that would make recommendations on how to spend the funds ordered by the Court.⁸ *The only reporting requirement imposed by the Court regarding the Title VI advisory committee is found in paragraph 6D, which states "Each institution shall annually report how the Court funds are being allocated."* The undersigned defendant institutions not only reported the amount of funds spent or definitively allocated thus far,⁹ but also

⁶ See National Research Council doctoral data from 1989 to 2001 on page UAS-7 of 2003 UAS Annual Title VI Report. Between 1989 and 2001, only 3.1% of the total doctorates awarded were earned by African-American citizens. Since only a little over one-half of black doctorates express an interest in careers in academe, the number of black doctorates available for faculty and EEO-1 positions has remained abysmally low. Despite this significant obstacle to aggressive minority recruitment and retention efforts, Alabama's PWIs have made significant progress.

⁷ See Paragraphs 4 and 8 of Court's April 3, 2002 Order.

⁸ See Paragraphs 5 and 6C of Court's April 3, 2002 Order.

⁹ See CoP-5 in Tab C of each institutional defendant's Title VI report, and Attachment 11 of State's 2003 Annual Report. It was not until November 26, 2002 that the State released to the PWIs less than 1/2 of the

provided information that was requested on this year's new CoP-4 form, which requires the PWIs to identify the date the Title VI advisory committees were formed; each time the committee met; and the names, races, and titles of committee members. A summary of the information reported by the individual institutions has been provided by the State in Attachment 10 of its 2003 Annual Report. Clearly, the Court's April 3, 2002 Order, which counsel for the Knight Plaintiffs helped draft, did not REQUIRE the institutions to report on anything but the expenditures of court-ordered funds. The additional information Knight plaintiffs are requesting in their interrogatories is simply not required or necessary to ensure compliance with the April 3, 2002 Order.

- e) The Plaintiffs' request for specific employment promotion information (see interrogatories 8-10 seeking information on vacancies and tenure awards and denials) is likewise not authorized by this Court and totally irrelevant to the remaining issues in this case. The April 3, 2002 Order explicitly states in Paragraph 5B that "employment and retention decisions for individual faculty or staff positions are not within the purview of the committee." Moreover, the parties fully and fairly litigated the defendant PWI faculty promotional policies regarding academic rank (i.e. tenure), and this Court clearly concluded that the Knight Plaintiffs had failed to establish a vestige of segregation that needed a remedy.¹⁰ While the Court's 1991 Remedial Decree requires the institutions to report on changes in their tenure policies and procedures, it does not require the PWI institutions to provide information on individual tenure decisions. There is no reason for the Court to modify its 1991 Remedial Decree on that point today.

7. To the extent this Court were to permit any discovery, the PWI defendant institutions individually 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 that particular

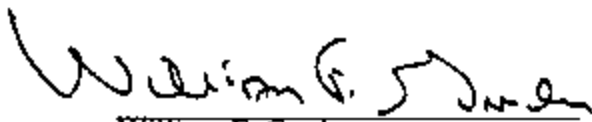
required three million dollars for this first year of the program. (See Page 1 of Attachment 12 to State's 2003 Annual Report). It was not until mid-July that the institutions learned that the Executive Budget Office planned on "processing at least half of the balance due within the next week or so."

¹⁰ See *Knight v. Alabama*, 787 F. Supp. 1030, 1192 ¶¶ 963-966. ("It is incumbent on the Plaintiffs in this action to establish that the promotional policies of the Defendant universities are a direct effort to perpetuate the prior dual system of higher education in Alabama. The Plaintiffs have failed in this regard. ... While interesting, the Knight Plaintiffs' statistical evidence is not probative of the academic promotion issue before the Court. The only legitimate inference that can be drawn from the evidence is that overall, the number of black faculty on predominately white university campuses is disproportionately low. Any attempted comparison between the white faculty promoted as a percentage of all those advanced and the black faculty promoted against the same statistical pool will inevitably lead to widely divergent results, the significance of which only reinforces the reality of black and white representation on university faculties.")

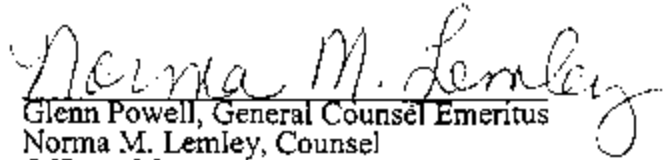
institution. For example, UAB was not found liable in any area (students, faculty or EEO-1). While it hopes to continue the progress it has achieved, there is no legal basis upon which the plaintiffs can contend that UAB has violated the terms of the 1991 Remedial Decree or the April 2002 Order. The Knight Plaintiffs did not appeal that portion of the 1991 liability findings or decree that found no liability. The PWI defendants contend that the Knight Plaintiffs are not entitled to either discover information on issues that were not appealed or to introduce evidence in the record to challenge earlier court findings that were not appealed.

Wherefore, based upon the foregoing, the undersigned defendants respectfully request this Court to enter an Order declaring the Knight Plaintiffs' interrogatories unauthorized and unwarranted at this phase of the remedy.

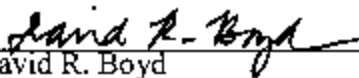
Respectfully submitted,



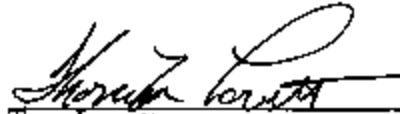
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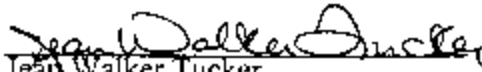
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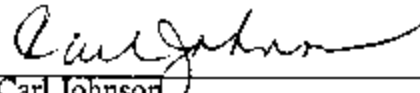
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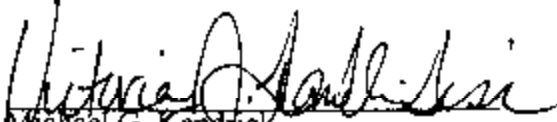
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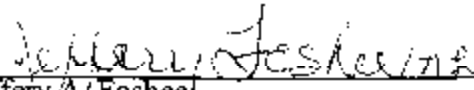
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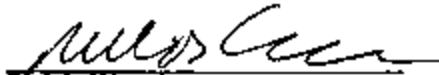
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CERTIFICATE OF SERVICE

I hereby certify that one true and correct copy of this pleading has been served by me on all parties in this action by depositing such copy of the same in the United States mail, postage prepaid, addressed to the following counsel of record for the respective parties indicated, all on this the 18th day of August, 2003.

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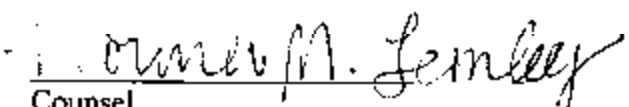
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DESEGREGATION PROGRESS IN ALABAMA BETWEEN 1991 AND 2002

TOTAL FULL-TIME FACULTY AND EXECUTIVE, ADMINISTRATIVE AND MANAGERIAL BY RACE, BY INSTITUTION

Change Between 1991-2002

Institution	FALL 1991			FALL 2002			11-YEAR CHANGE				
	Total EEO-1 & EEO-2	Black EEO-1 & EEO-2	% Black EEO-1 & EEO-2	Total EEO-1 & EEO-2	Black EEO-1 & EEO-2	% Black EEO-1 & EEO-2	Change in # Total EEO-1 & EEO-2	Change in # Black EEO-1 & EEO-2	% Increase/Decrease in Total EEO-1 & EEO-2	% Increase/Decrease in Black EEO-1 & EEO-2	Difference in % Black EEO-1 & EEO-2
ASC	72	4	5.6%	79	7	8.9%	7	3	9.7%	75.0%	3.3
AU	1,477	28	1.9%	1,421	58	4.1%	-56	30	-3.8%	107.1%	2.2
AINM	254	12	4.7%	236	10	4.2%	-18	-2	-7.1%	-16.7%	-4.3
JSU	320	10	3.1%	336	18	5.4%	16	8	5.0%	80.0%	2.2
TSD	191	8	4.2%	266	23	8.6%	75	15	39.3%	187.5%	4.5
TSDUD	50	0	0.0%	71	3	4.2%	21	3	42.0%	N/A	4.2
TSDM	52	2	3.8%	58	11	19.0%	6	9	11.5%	450.0%	15.1
UA	1,042	27	2.6%	994	49	4.9%	-48	22	-4.6%	81.5%	2.3
UAB	1,741	60	3.4%	2,100	106	5.0%	359	46	20.6%	76.7%	1.6
UAH	338	8	2.4%	344	15	4.4%	6	7	1.8%	87.5%	2.0
UM	164	3	1.8%	155	5	3.2%	-9	2	-5.5%	66.7%	1.4
UNA	214	9	4.2%	241	12	5.0%	27	3	12.6%	33.3%	0.8
USA	916	32	3.5%	928	41	4.4%	12	9	1.3%	28.1%	0.9
UWA	115	6	5.2%	125	5	4.0%	10	-1	8.7%	-16.7%	-1.2
USCC	153	19	12.4%	157	30	19.1%	4	11	2.6%	57.9%	6.7
Total PWAs	7,099	228	3.2%	7,511	393	5.2%	412	165	5.8%	72.4%	2.0
AA&M	330	193	58.5%	330	180	54.5%	0	-13	0.0%	-6.7%	-3.9
ASU	222	147	66.2%	276	174	63.0%	54	27	24.3%	18.4%	-3.2
Total HBCUs	552	340	61.6%	606	354	58.4%	54	14	-9.8%	4.1%	-3.2

Source: 2003 State Annual Report, Attachments 5-8