

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

JOHN F. KNIGHT, JR., et al.,)

Plaintiffs,)

v.)

THE STATE OF ALABAMA, et al.,)

Defendants,)

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

THE STATE OF ALABAMA, et al.,)

Defendants.)

CIVIL ACTION NO.

83-M-1676-S

**RESPONSES BY THE TROY STATE
UNIVERSITY SYSTEM TO THE
PLAINTIFFS' "DISCOVERY REQUEST
REGARDING COMPLIANCE WITH APRIL 3, 2002 ORDER"**

Pursuant to FRCP 33 and 34 and in compliance with the Order entered
by the Court on September 15, 2003, the Troy State University System ("TSU")

responds to the plaintiffs' "Discovery Request Regarding Compliance with April 3, 2002 Order" as follows:

1. In response to Interrogatory No. 1 – "Do you believe there is a critical mass of African Americans on your faculty? – TSU says it is impossible to answer the question because:

- The phrase "critical mass" has no meaning. Compare Justice Scalia's characterization of it as "the mystical critical mass."

- The question similarly cannot be answered in the context of the definitions proposed in the plaintiffs' discovery requests. The definitions taken by the plaintiffs from Grutter do not reflect any adoption or approval by the Supreme Court. Instead, they were nothing more than the reasons asserted by the defendant in that case for race-based preferences. The definition taken by the plaintiffs from the 1991 chapter in this case similarly reflects only the views of a witness and not a definition adopted by the Court.

(a) and (b) Since Interrogatory No. 1 cannot be answered either Yes or No, sub-interrogatories (a) and (b) asking questions in terms of the answer being Yes or No are not applicable.

(c) In response to sub-interrogatory (c) – “Has your answer to this interrogatory been reviewed by your Campus’ Advisory Committee?” – the answer is Yes, it has been reviewed by the Advisory Committees at each of TSU’s campuses in Troy, Montgomery, and Dothan.

(i) None.

(ii) Not applicable.

2. In response to Interrogatory No. 2 – “Do you believe that there is a critical mass of African Americans in high ranking administrative positions on your campus?” – TSU adopts and incorporates by reference its responses to Interrogatory No. 1 and each sub-interrogatory thereof.

3. The information requested by Discovery Request No. 3 is provided by the lists attached as Exhibits 3-TSU (Troy), 3-TSUM (Montgomery), and 3-TSUD (Dothan).

4. The information requested by Discovery Request No. 4 is set forth in the minutes of the Advisory Committees which are attached as Exhibits 4-TSU (Troy), 4-TSUM (Montgomery), and 4-TSUD (Dothan).

5. By letter on July 16, 2002, counsel for the plaintiffs recommended 5 persons from the community to serve on the TSUD Advisory Committee. (Exhibit 5(a)). TSUD responded by adjusting its Advisory Committee

to include 2 of such 5 persons. While the plaintiffs' recommendation in July 2002 for 5 persons from the community was based on the premise that "there are no full time black faculty members at TSUD" (Exhibit 5(a)), there are 2 black full time faculty members at TSUD employed beginning in August 2002 and they are members of the TSUD Advisory Committee. (Exhibit 5(b)).

6. The information requested by Discovery Request No. 6 is provided by the lists attached as Exhibit 6-TSU (Troy), 6-TSUM (Montgomery), and 6-TSUD (Dothan). It should be noted that while Discovery Request No. 6 is phrased in terms of "high ranking administrators at your campus," the Discovery Requests do not provide any proposed definition of "high ranking," nor is it a term used by the TSU System. For lack of any better way to respond to Discovery Request No. 6, the lists attached as Exhibit 6 provide the requested information as to administrators beginning at the Director or equivalent level.

7. The information requested by Discovery Request No. 7 is provided by the list attached as Exhibit 7 for Troy. As to Montgomery and Dothan, the answer is none.

8. In response to Discovery Request No. 8, the following is provided:

- Troy: Exhibit 8-TSU-1 lists (a) the openings in faculty and “high ranking” administrative positions¹ at Troy and (b) the name and race of the person filling such opening.² Exhibit 8-TSU-2 lists the names of African American applicants.

- Montgomery: Exhibit 8-TSUM-1 lists (a) the openings in the faculty and “high ranking” administrative positions at Montgomery and (b) the names and race of the person filling such opening. Exhibit 8-TSUM-2 lists the African American applicants.

- Dothan: Exhibit 8-TSUD-1 lists (a) the openings in faculty and “high ranking” administrative positions at Dothan and (b) the name and race of the person filling such opening. Exhibit 8-TSUD-2 lists the African American applicants.

9. and 10. In response to Discovery Requests Nos. 9 and 10, information showing applications for tenure and their outcome is set forth in the lists attached as Exhibit 9/10-TSU (Troy), 9/10-TSUM (Montgomery), and 9/10-TSUD (Dothan).

¹ The phrase “high ranking” is given the same definition as that set forth in our response to Discovery Request No. 6 above.

² The Legends are A (Asian), B (black), and C (Caucasian).

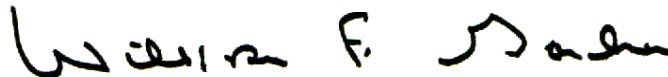
11. The information requested by Discovery Request No. 11 is provided by the attached Exhibits 11-TSU (Troy), 11-TSUM (Montgomery), and 11-TSUD (Dothan).

12. Discovery Request No. 12 is not applicable because the TSU System does not have any doctoral programs.

13. Discovery Request No. 13 is not applicable because the TSU System did not to the best of its knowledge receive any such applications.

14. On the assumption that Discovery Request No. 14 has reference to requests by administrators or faculty members other than members of the Advisory Committees, the answer is none.

This 15th day of October, 2003.



William F. Gardner, as to
the above and foregoing Responses to
Discovery Requests Nos. 1 and 2

Dan Tennimon
Dan Tennimon, as to Responses to
Discovery Requests Nos. 3-14

STATE OF ALABAMA)
)
MONTGOMERY COUNTY)

Before me, the undersigned authority in and for said County and State, personally appeared Dan Tennimon, who after first being duly sworn, deposes and says that the above and foregoing responses to Discovery Requests Nos. 3-14 are true and correct to the best of his knowledge, information, and belief.

Dan Tennimon
Dan Tennimon

Sworn to and subscribed before me
this 8th day of October 2003.

[Signature]
Notary Public

My commission expires: 7/30/07

[SEAL]