

## Hearing Scheduled in *Knight v. Alabama* Desegregation Lawsuit

For the past ten years, Alabama's institutions of higher education have been operating under the terms of a judicial decree entered in the highly publicized *Knight v. Alabama* lawsuit. This decree followed the third trial of a case that was initially filed in federal district court in 1983 by the United States Department of Justice against the State of Alabama, the Governor, all public universities in Alabama, and other related defendants. The United States was later joined, on the Plaintiff side of the suit, by a class of litigants known as the "Knight-Sims" class encompassing black citizens in Alabama. The Plaintiffs asserted that remnants or vestiges of an earlier segregated system of higher education in Alabama remained, continuing to affect students in determining their institution of choice. As a remedy, the Plaintiffs sought a court order requiring implementation of a wide variety of measures intended to remove all such vestiges. Judicial decrees issued after two trials of the case, in 1985 and 1991, were overturned (the latter in part) on appeal, and the case was tried again in 1995. The presiding judge in 1995, as in 1991, was Judge Harold Murphy, a Georgia federal district judge who was assigned to the case.

The 1995 decree, premised on a finding that unlawful vestiges continued to exist, ordered the state and its public universities to implement a number of remedial actions. To enhance the missions of the state's two historically black universities (HBUs), Alabama A&M University (AAMU) and Alabama State University (ASU), the state was ordered to place and provide funding for a number of new academic programs at each institution. AAMU, for example, was authorized to begin new undergraduate programs in electrical and mechanical engineering, while programs in allied health as well as two Ph.D. programs were approved for ASU. The Court further ordered that a Trust Fund for Educational Excellence be established for each HBU. For 15 years the state was to appropriate \$1 million annually to each fund and, further, to match contributions to this Fund generated through fund-raising efforts by AAMU and ASU, up to an additional \$1 million each year. Finally, the state was directed to make available up to \$1 million for "other race" diversity scholarships for each of the two HBUs, to the extent that such scholarships were actually awarded to white students. These measures were intended to remove the vestige of the HBUs' "limited mission" resulting from the state's failure to provide these institutions with adequate programs and resources so that they could compete for students of all races.

The Court ordered the integration of land grant functions at Auburn University and AAMU, the intended result being a single, unified, statewide Alabama Cooperative Extension Service and a single, unified, statewide Alabama Agricultural Experiment Station. The Court also incorporated and continued those non-reversed portions of its 1991 decree that were not inconsistent with the 1995 decree. The effect of this provision was to require the state to appropriate a designated amount of funds to the HBUs for capital projects and to require a number of historically white universities (HWUs) to increase the number of their black faculty and upper-level administrative employees. UAH was among those universities that were directed to show "material improvement" in their employment of black administrators. Each defendant institution was ordered to file an annual report with the court, describing its African-American faculty, staff, and student recruitment efforts and progress.

The Court's 1995 order concluded with a provision retaining jurisdiction for 10 years, that is, through July 30, 2005. At that time, the decree was to terminate automatically unless a party objected and requested an extension of the term of the Court's jurisdiction.

UAH experienced notable success in increasing, since 1991, not only the number of upper-level black administrators on its campus, as mandated by the Court, but also the number of black faculty and black students in its student body. In 1991, UAH employed 1 high ranking black administrator, which represented 1.5% of all employees in that category. By 2005, that number had increased to 7, representing 12.3% of all such employees. The trend was similar, though less dramatic, with regard to black faculty. In 1991, UAH employed 7 black faculty (2.6%). That number dropped during the mid-1990's, when several black faculty were lost due to the transfer of the School of Primary Medical Care from UAH to the University of Alabama at Birmingham. By 2005, 14 black faculty were employed at UAH, representing 4.7% of its total faculty. Black students numbered 469 at UAH in 1991, which was 5.4% of the total student enrollment. That number and percentage displayed a general upward trend over the next 15 years, reaching 919 in 2005, or 13% of the student body.

As previously reported (*LegalWatch*, Vol. 5-05, p. 7-8), in the months leading up to the ten year anniversary date, the parties to the lawsuit worked on a settlement proposal that would result in termination of the decree but also an agreement obligating the defendant institutions and the state to undertake some further duties for a period of five years. When these efforts were unsuccessful, objections to termination of the decree were filed by the Knight-Sims plaintiffs and the United States. After a period of discovery during which the parties were allowed to submit interrogatories and document production requests to each other, the Court summoned attorneys for all parties to Rome, Georgia on June 22, 2006, for a hearing on the matters before the Court.

At the hearing, the Knight-Sims class stated their intention to assert that vestiges remained in Alabama's system of higher education in at least three areas. First, they supported AAMU's contention that an additional \$16.6 million is needed for capital projects in connection with its new engineering programs to completely "eliminate the unlawful vestiges of discrimination." This contention has been raised, despite the state's payment of over \$11.4 million under the 1991 decree (which, according to the Court, was viewed as eliminating entirely any vestige due to capital underfunding at AAMU) and another \$2.845 million under a 1999 agreement with AAMU. The latter agreement followed AAMU's argument to the Court that the funding in the Court's earlier decree was inadequate and that additional money was needed to help pay for a new engineering facility. To date, the state has provided AAMU nearly \$20 million in capital funds (including interest) and an additional \$70 million in funds for other remedial obligations in connection with the lawsuit.

A second vestige, claimed to exist by the Knight-Sims class, is said to be found in the insufficiently low numbers of black faculty and administrators at the TWIs. Additional efforts by these institutions must, according to these Plaintiffs, be devoted to raising the percentages to a level closer to the state's percentage of black citizens. Finally, the Knight-Sims Plaintiffs are claiming that the access of African-American students to public higher education in Alabama has been adversely affected by the lack of need-based financial aid furnished by the state and that this

is a vestige of discrimination. This argument parallels the motion made last year by these Plaintiffs asking the Court to declare that the state's system of *ad valorem* taxation is unconstitutional. The motion, premised on the allegation that the roots of the *ad valorem* system may be traced to racially discriminatory purposes, emphasizes that the state's tax system operates to deny public universities adequate funding, forcing them to raise tuition to levels that restrict the ability of poorer Alabama students, the majority of whom are black, to pay for a college education. The Court denied the motion, and the Knight-Sims Plaintiffs have appealed this ruling to the Eleventh Circuit Court of Appeals, where it is currently pending.

A hearing on the objections of the Knight-Sims Plaintiffs and other issues will be scheduled for sometime this Fall. The University of Alabama System (UAS) intends to put forward evidence that its three institutions have fully complied in good faith with all of the Court-ordered obligations applicable to them and that the decree should terminate or, at least, all claims against the UAS institutions should be dismissed. The Court did express the hope that settlement discussions would be continued and, if productive, would obviate the necessity of a hearing. If not, this case, now in its 24th year, will proceed to yet another trial.