

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

---

JANE SMITH and STEVEN SMITH as parents of EMILY SMITH	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
VIRGINIA COMMONWEALTH UNIVERSITY, DOW JONES NEWSPAPER FUND, MEDIA GENERAL, INC., BONNIE DAVIS, ROBERT D. HOLSWORTH, JUNE NICHOLSON, RICHARD J. LEVINE, BARBARA MARTINEZ, THOMAS W. MCGUIRL, RICHARD S. HOLDEN, THOMAS A. SILVESTRI	)	COMPLAINT
	)	CLASS ACTION
Defendants.	)	Civ. No.
	)	
	)	

---

COMPLAINT

1. This is a class action brought for violations and threatened violations of the rights of the plaintiffs and the class they represent to equal protection of the laws under the Fourteenth Amendment to the United States Constitution, and for racial discrimination in violation of 42 U.S.C. §§ 1981, 1983 and 2000d et seq.

2. This is an action to enjoin, and seek damages for, an unlawful program of race discrimination. The defendants have all been involved with the Virginia Commonwealth University Urban Journalism Workshop (the "Workshop"), a summer educational program run by entities and individuals under color of state law.

3. This action arises under the United States Constitution and other federal statutes, and this Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343. Venue is proper in this Court over all defendants pursuant to 28 U.S.C. § 1391.

### Parties

#### A. Plaintiffs

4. Emily Smith is a 15-year old Caucasian girl who attends Monacan High School in Chesterfield County, Virginia. She has muscular dystrophy. As set forth below, she applied to and was accepted into the Workshop, but was later told she could not participate solely because of her race.

5. Jane Smith and Steven Smith are the parents of Emily Smith.

#### B. The Virginia Commonwealth University Defendants

6. Defendant Virginia Commonwealth University (“VCU”) is a corporation operated by the Board of Visitors of the Virginia Commonwealth University established under section 23-50.4 of the Virginia Code and funded by the Commonwealth of Virginia. It is a public university operated by the Commonwealth of Virginia, and its activities, as described herein, were effected under color of state law. VCU consists of several colleges, including the College of Humanities and Sciences. The College of Humanities and Sciences includes the School of Mass Communications. The School of

Mass Communications conducts the Workshop in conjunction with the Dow Jones Newspaper Fund and the Richmond Times-Dispatch.

7. Defendants Robert D. Holsworth, June Nicholson, and Bonnie Davis (collectively referred to as “individual VCU defendants”) are employees or agents of VCU and each of them acted, as described herein, under color of state law, and each are sued in both their official and individual capacities. VCU and the individual VCU defendants are referred to collectively as the “VCU defendants.” Defendant Robert D. Holsworth is Dean of the College of Humanities and Sciences at VCU. Defendant June Nicholson is an associate professor in the School of Mass Communications at VCU. Nicholson has directed the Workshop since 1985. Defendant Bonnie Davis is an associate professor in the School of Mass Communications at VCU. Davis is a Co-Director of the Workshop.

#### C. The Dow Jones Fund Defendants

8. The Dow Jones Newspaper Fund (“Dow Jones Fund”) was created in 1958 as a non-profit foundation.

9. Defendants Richard J. Levine, Barbara Martinez, Thomas W. McGuirl, and Richard S. Holden (hereinafter referred to as the “individual Dow Jones Fund defendants”) are officers of the Dow Jones Fund. Richard J. Levine is President, Barbara Martinez is Secretary, Thomas W. McGuirl is Treasurer, and Richard S. Holden is Executive Director of the Dow Jones Fund. As Officers of the Dow Jones Fund, Levine, Martinez, McGuirl, and Holden are the individuals ultimately responsible for its

policies. The Dow Jones Fund and the individual Dow Jones Fund defendants (collectively, the “Dow Jones Fund defendants”) conspired with VCU and the Richmond Times-Dispatch to establish the Workshop in a plainly unconstitutional racially-discriminatory manner.

10. The Dow Jones Fund provides financial support to the Workshop, and conditions its support of the Workshop on VCU’s willingness to engage in racial discrimination.

11. The Dow Jones Fund has conspired with many other universities and newspapers throughout the United States to create and maintain similar racially-discriminatory journalism programs, all in violation of federal law.

D. Media General and The Richmond Times Dispatch Defendants

12. Media General, Inc. (“Media General”) is a publicly traded communications corporation with its corporate headquarters in Richmond, Virginia. Media General owns and operates the Richmond Times Dispatch (“Dispatch”), a daily newspaper in Richmond. Thomas A. Silvestri is Senior President and Publisher of the Dispatch. As such, Silvestri is the individual ultimately responsible for its policies. The Dispatch provided money, publicity, professional personnel, and other support to VCU in order to facilitate the Workshop. The Dispatch conspired with VCU and the Dow Jones Fund to establish the Workshop despite its plainly unconstitutional racially discriminatory policies.

13. Media General, the Dispatch and Silvestri (together, the “Dispatch

defendants”) knew that the Workshop would discriminate on the basis of race and provided it with funds and/or other support.

#### E. Class Action Allegations

14. Plaintiffs bring this class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of a class consisting of all students who are not African-American, Asian/Pacific Islander, Hispanic or American Indian/Alaskan Native and who would apply in the future for the Workshop or any of the programs in which the Dow Jones Fund is similarly involved and be eligible for inclusion in such programs but for the racial restrictions on such programs.

15. Plaintiff also seeks to maintain a Subclass, pursuant to Rule 23(c)(4)(B), of those students who are not African American, Asian/Pacific Islander, Hispanic or American Indian/Alaskan Native and who would apply for the Workshop in the future, and be eligible for inclusion in the Workshop, but for the racial restrictions on it.

16. Plaintiffs seek to maintain this Class and Subclass pursuant to Rules 23(b)(2) to determine whether defendants engaged in unlawful discrimination and whether defendants should be enjoined from continuing their discriminatory policies.

17. Members of the Class and Subclass are so numerous and the identification of potential future applicants so difficult that joinder of all its members is impracticable. The Workshop receives many applications each year, and many individuals who are not African-American, Asian/Pacific Islander, Hispanic or American Indian/Alaskan Native do not even apply because of the Workshop's and other programs' discriminatory admissions standards.

18. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are whether defendants violated the Fourteenth Amendment to the United States Constitution, and federal laws, 42 U.S.C. §§ 1981, 1983, and 2000d et seq., by discriminating and by conspiring to discriminate against certain applicants on the basis of race, and whether they will continue to do so.

19. Plaintiffs' claims are typical of the claims of the members of the Class and Subclass, and they are adequate representatives of the Class. Plaintiffs and members of the Class and Subclass will sustain injury because of defendants' unlawful activities unless they are enjoined from doing so. Plaintiffs have retained counsel competent and experienced in race discrimination litigation and intend to prosecute this action vigorously. Plaintiffs will fairly and adequately protect the interests of the Class and Subclass.

20. A class action is superior to other available means for the fair and efficient adjudication of the controversy.

#### Background

21. Since 1984, VCU's College of Mass Communications has conducted an annual summer journalism program on the VCU campus during which high school students study the basics of journalism and produce a short newspaper. Defendant Nicholson has led the Workshop since 1985. Students who participate in the Workshop meet for two weeks during the summer during which they reside in dorms on the VCU

campus and attend daily classes taught by Nicholson and Dispatch employees. At the conclusion of the Workshop, one of the participants is nominated for a national Dow Jones Fund college scholarship.

22. Each of the Dow Jones Fund defendants and the Dispatch defendants provided funds and/or other support to the Workshop knowing that it employed illegal discriminatory criteria to select its participants and violated clearly established constitutional rights. Each of them thus aided and abetted the VCU Defendants' discriminatory conduct.

23. The Dow Jones Fund defendants and the Dispatch defendants acted in concert with VCU to promote, support, and operate the racially exclusive Workshop, and, accordingly, acted under color of state authority.

24. Each of the VCU defendants, the Dow Jones Fund defendants, and the Dispatch defendants conspired to operate the Workshop in a racially-exclusive fashion. Specifically, they conspired, and each of them acted in furtherance of the conspiracy, to limit student participation to the following groups: African-American, Asian/Pacific Islander, Hispanic or American Indian/Alaskan Native.

25. Sometime in early 2006, during her sophomore year at Monocan High School, Emily Smith read an article in the Dispatch announcing the Workshop. The article contained an online address where an application was posted.

26. Emily Smith visited the website, downloaded the application, and filled it out. The application did not ask the applicant to identify his or her race, nor did it specify the preferred races to whom the Workshop was limited.

27. The application did not ask if the applicant had any interest in or plans to attend VCU.

28. In selecting individuals for its program, the Workshop does not consider a desire to attend VCU as a criteria.

29. Although the Workshop is designed primarily for students who have completed their junior year of high school, it does consider applications from others.

30. On or about March 20, 2006, Emily Smith mailed the application to the address stated. On April 17, 2006, she received an email from defendant Davis notifying her that she had been accepted to the Workshop. On or about April 21, 2006, defendant Davis phoned the Smith residence and spoke with Jane Smith to make sure that Emily had received notice that she had been accepted to the Workshop.

31. On or about April 25, 2006, defendant Davis again phoned the Smith residence and this time spoke with Emily. Davis asked Emily her race. Emily indicated that she was Caucasian, and Davis then told Emily that she could not participate in the Workshop because of her race.

32. Emily Smith had all the necessary qualifications, with the exception of her race, to be selected for the Workshop. In fact, she was selected for the Workshop. She would have been able to participate in the Workshop had defendants not excluded her based upon her race.

33. Emily Smith has a continuing desire to attend the Workshop and intends to apply next year if the Workshop's racially-discriminatory policies have ended.

34. Defendants do not have any compelling reason to exclude individuals from the Workshop on the basis of race.

35. Assuming *arguendo* that any of the defendants had a compelling reason to consider race in selecting individuals for the Workshop, the complete exclusion of applicants on the basis of race is not narrowly tailored to achieve that interest.

36. The Dow Jones Fund conspires with other colleges and universities, many of them state-run, to operate many other racially-discriminatory programs like the Workshop and, if not enjoined, will continue to do so in the future. Accordingly, without injunctive relief, the Dow Jones Fund will continue to discriminate against Emily Smith and members of the Class in future applications to the racially-discriminatory programs operated by the Dow Jones Fund.

37. Defendants continue to offer the Workshop, continue to exclude, and if not enjoined, will continue to exclude, members of the Subclass from the Workshop based solely on their race.

38. As a result of VCU's discriminatory refusal to admit Emily Smith to the Workshop, she has suffered damages, including lost time, diminished educational opportunities and attainment, and emotional distress.

39. Defendants acted in gross disregard of Emily Smith's rights, and, accordingly, an award of punitive damages is appropriate.

40. The Dow Jones Fund defendants have engaged in an extended pattern of racial discrimination in gross disregard of the rights of many potential applicants to the

programs it helps to operate. Accordingly, an award of punitive damages against them is appropriate.

First Claim (Violation of the Fourteenth Amendment and 42 U.S.C. § 1983)

41. Plaintiffs repeat and reallege each of the allegations in paragraphs 1-40 as if fully set forth herein.

44. Defendants' actions in promoting and effecting race discrimination violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

45. The Dow Jones Fund and the Dispatch should be enjoined from (1) conspiring with state colleges and universities or other state actors to operate programs that discriminate on the basis of race; and (2) supporting or promoting racially-discriminatory programs by state entities.

46. The VCU defendants should be enjoined from operating programs under color of state authority which illegally discriminate against individuals on the basis of their race.

47. Emily Smith has suffered damages, including lost time, diminished educational opportunities and attainment, and emotional distress as a consequence of defendants' unlawful actions.

48. Accordingly, Plaintiffs are entitled to an award of damages in an amount to be determined at trial, and an order requiring VCU and the individual VCU defendants to offer Emily Smith a place in the 2007 Workshop.

Second Claim (Violation of 42 U.S.C. § 1981)

49. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1-48 as if fully set forth herein.

50. In exchange for an accepted applicant's agreement to enter the Workshop (or any similar programs operated by Dow Jones) and participate in it, defendants (and others associated with Dow Jones' other programs) agree to provide, and do provide, valuable instruction and guidance. The Defendants' actions in promoting and effecting race discrimination in the formation of a contractual relationship violate 42 U.S.C. § 1981.

51. When VCU rescinded Emily Smith's acceptance, the VCU defendants denied Emily Smith the enjoyment of all the benefits, privileges, terms, and conditions of the Workshop in violation of 42 U.S.C. § 1981.

52. The Dow Jones Fund and the Dispatch should be enjoined from (1) conspiring to operate educational programs that discriminate on the basis of race; and (2) supporting or promoting racially-discriminatory educational programs.

53. Emily Smith has suffered damages, including lost time, diminished educational opportunities and attainment, and emotional distress as a consequence of defendants' unlawful actions.

54. Accordingly, Plaintiffs are entitled to an award of damages in an amount to be determined at trial, and an order requiring VCU and the individual VCU defendants to cease operating programs that discriminate on the basis of race and to offer Emily

Smith a place in the 2007 Workshop.

Third Claim (Violation of Title VI and 42 U.S.C. § 1983)

55. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1-54 as if fully set forth herein.

56. VCU is a recipient of federal funds.

57. The racially exclusionary policy of the Workshop violated (and continues to violate) Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.).

58. The individual VCU defendants, the Dow Jones Fund defendants and the Dispatch defendants acted under color of state authority in effecting VCU's violation of Title VI and, accordingly, violated 42 U.S.C. § 1983.

59. Accordingly, plaintiffs are entitled to an award of damages in an amount to be determined at trial.

60. The Dow Jones Fund and the Dispatch should be enjoined from (1) conspiring with state colleges and universities that receive federal funds to operate programs that discriminate on the basis of race; and (2) supporting or promoting racially-discriminatory programs by state entities that receive federal funds.

61. The VCU defendants should be enjoined from operating programs that discriminate on the basis of race and should be ordered to offer Emily Smith a place in the 2007 Workshop.

WHEREFORE, plaintiffs demand the following relief:

A. An injunction precluding VCU, the Dow Jones Fund, and the Dispatch from illegally operating, supporting or promoting educational programs, including the Workshop, which treat applicants differently on the basis of race;

B. An order requiring the VCU defendants to admit Emily Smith into the 2007 Workshop;

C. Compensatory and punitive damages in an amount to be determined at trial;

D. Attorneys' fees, costs, and expenses pursuant to 42 U.S.C. §§ 1988 and any other applicable authority;

E. Such other relief as is just and appropriate.

Respectfully submitted,

---

Elliot Bender  
6 West Broad Street  
Richmond, Virginia 23220  
(804) 648-8000

Michael E. Rosman  
Michelle A. Scott  
(pro hac vice motions forthcoming)  
CENTER FOR INDIVIDUAL RIGHTS  
1233 20th Street, NW, Ste. 300  
Washington, D.C. 20036  
(202) 833-8400