

No 53 - October Term, 1935

IN THE
COURT OF APPEALS OF MARYLAND

October Term, 1935

No. 53

RAYMOND A. PEARSON, President,
W. M. HILLEGEIST, Registrar,
and GEORGE M. SHRIVER, et al,
constituting the BOARD OF REGENTS
of the UNIVERSITY OF MARYLAND

vs.

DONALD G. MURRAY, otherwise
DONALD GAINES MURRAY.

ANSWER TO PETITION TO ADVANCE

Mr. Clerk:

Please file, etc.

THURGOOD MARSHALL
ATTORNEY AT LAW
604 PHOENIX BUILDING
BALTIMORE, MD.

FILED

August 31-1935

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W. M. HILLEGOMST, Registrar,
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ANSWER TO PETITION TO ADVANCE

1 The answer of Donald G. Murray, otherwise Donald Gaines Murray, appellee
2 in the above entitled cause, to the petition to advance the hearing of the ap-
3 peal herein, respectfully shows:

4 1. That he admits the allegations of fact contained in paragraph one of
5 said petition.

6 2. That he has no knowledge of the allegations of fact contained in para-
7 graph two of said petition; but if said allegations are true, the fact that
8 other Negroes have applied for admission to the School of Law of the University
9 of Maryland is irrelevant and immaterial as regards his rights in the premises.

10 3. That he has no knowledge of the allegations of fact contained in para-
11 graph three of said petition; but if said allegations are true, the fact a
12 Negro has applied for admission to the Pharmacist School of the University of
13 Maryland is irrelevant and immaterial as regards his rights in the premises.

14 4. That he has no knowledge of the allegations of fact contained in para-
15 graph four of said petition; but if said allegations are true, the fact that
16 other Negroes have applied for admission to the College of the University of
17 Maryland at College Park is irrelevant and immaterial as regards his rights in
18 the premises.

19 5. That he has no knowledge of the allegations of fact contained in para-
20 graph five of said petition; but if said allegations are true, the fact that
21 appellants will be required to rule on certain independent applications by other
22 Negroes for admission to divers Schools and departments of the University of
23 Maryland is irrelevant and immaterial as regards his rights in the premises.

24 6. That he admits the question of the admission of Negro students to the
25 University of Maryland is a matter of public concern, but he denies that his

1 individual right to be admitted to the School of Law of the University of Mary-
2 land is conditioned or dependent upon the admission of other Negro students to
3 other branches of the University. Further he avers that there is no necessity
4 for advancing the hearing of the appeal herein and no public benefit will re-
5 sult therefrom for the reason that regardless of the decision of this Honorable
6 Court the losing party will seek review by the United States Supreme Court,
7 which will not convene until after the Fall Term, 1935, of the University of
8 Maryland has opened; and no definitive answer to the questions raised in
9 paragraph six of said petition can be given until the United States Supreme
10 Court has acted.

11 7. That he denies the allegations of paragraph seven of said petition ex-
12 cept as set forth below. He admits that the State of Maryland and/or its
13 political subdivisions provide separate education for whites and Negroes in the
14 elementary and secondary levels, but says that the education offered the Ne-
15 groes is greatly inferior both in quality and quantity to the education offered
16 the whites. He denies that the State of Maryland and/or any political sub-
17 division offers any educational facilities to Negroes on the collegiate, gradu-
18 ate or professional levels within the State of Maryland, whereas it offers ex-
19 tensive educational facilities to whites on said levels. He avers that the
20 only provisions whatsoever that the State of Maryland makes for the education of
21 Negroes on the collegiate, graduate or professional levels are certain inade-
22 quate grants-in-aid by way of scholarships to institutions beyond the borders of
23 the State. Said grants-in-aid are made pursuant to authority conferred under
24 Chapter 577 of the Acts of 1935 from a total budget of \$10,000.00; that the
25 Commission on Higher Education of Negroes, which has the appointing and awarding
26 power under said Act, has on file 284 applications for scholarships to be
27 awarded from said \$10,000.00; that there will not be enough scholarship money
28 available to pay the tuition fees of the applicants in said foreign schools, or
29 otherwise equalize the relative costs of education abroad as compared with the
30 education offered by the State to whites in Maryland as to quality or quantity;
31 that there is no provision or authority for adjusting cost of transportation to
32 or subsistence in said foreign schools, over and above the cost of transporta-
33 tion to or subsistence in the University of Maryland; that the refusal to ac-

1 cept and admit appellee into the School of Law of the University of Maryland
2 solely on the ground he is a Negro would constitute as to him a denial of the
3 equal protection of the laws as guaranteed him by the Fourteenth Amendment to
4 the Constitution of the United States. Further appellee avers that some years
5 ago Negroes were accepted and admitted into the School of Law of the University
6 of Maryland, and at least one Negro graduated therefrom with the degree of
7 Bachelor of Laws; that the question how many Negroes heretofore have sought
8 graduate or professional training in the State of Maryland is irrelevant, in-
9 competent and immaterial to the decision of his personal constitutional rights
10 in the premises. Appellee expressly denies that the alleged "traditional
11 policy of separation of the races is for the benefit of the colored as well as
12 the white citizens", and avers that the separation of the races is for the
13 purpose of imposing upon the colored citizens inferior and inadequate educa-
14 tion, and of denying to them the equal protection of the laws guaranteed them
15 by the Fourteenth Amendment of the Constitution of the United States, and under
16 the segregated system Negroes have always received, and now receive, inferior
17 and inadequate education both in quality and quantity when compared to the
18 education furnished by the State and/or its political subdivisions to the
19 whites of Maryland. Appellee denies that the policy of separation of the
20 races has been a leading cause of "the present amicable and cooperative rela-
21 tions" between the black and white races in Maryland, and avers that the
22 policy of separation has been imposed on the Negroes by the whites to make it
23 easier to exploit and dominate the Negroes, and has been the source of constant
24 suspicion, mistrust and resentment on the part of Negroes and on the part of
25 white citizens who genuinely believe in full adherence to the spirit and
26 principles of the Constitution of the United States and the Amendments thereto.
27 Further appellee avers that in the absence of any equal training in the law
28 offered him by the State of Maryland other than in the School of Law of the
29 University of Maryland he must decline to purchase said alleged amicable and
30 cooperative relations by the sacrifice of his constitutional rights.

31 8. That he is advised by counsel that the allegations of fact contained
32 in paragraph eight of said petition are irrelevant, incompetent and immaterial
33 to the questions presented by this appeal, except that he avers that the al-

1 leged threat of large withdrawals of students in case he is admitted to the
2 School of Law of the University of Maryland is largely hysteria on the part of
3 the University officials. Further appellee avers that the State of Maryland
4 cannot deny one citizen the equal protection of its laws because other citizens
5 object, and points out further that the objecting party, George M. Quirk,
6 mentioned in said paragraph eight of said petition, is a nonresident of the
7 State of Maryland, enjoying the benefits of taxes paid by appellee and his
8 family, which benefits this nonresident would deny to appellee solely on account
9 of appellee's race or color. Appellee further avers that the sex issue had
10 never been introduced into this case until dragged in by the appellant officials
11 of the University of Maryland in said paragraph eight of said petition, and
12 alleges that this introduction of the sex issue is designed to befog the clear
13 issue of constitutionality and cover up a deliberate attempt on the part of the
14 University to deprive him of his constitutional rights solely on account of his
15 color.

16 9. That he is advised by counsel that the allegations of fact contained
17 in paragraph nine of said petition are irrelevant, incompetent and immaterial
18 to the questions presented by this appeal. Appellee avers that H.C. Byrd,
19 Acting President of the University of Maryland, was appointed and accepted his
20 present position of Acting President after the order of the Baltimore City
21 Court had been entered to admit appellee to the School of Law, and with full
22 knowledge of said order; that said H.C. Byrd as Acting President is responsi-
23 ble for discipline in the University, and has taken his solemn oath to uphold
24 the Constitution of the United States and the Amendments thereto; that he
25 will be held strictly accountable for any disorders occurring at the Univer-
26 sity, and any failure to exhaust every means at his command or disposal to
27 prevent the same; that he will be held strictly accountable for his letter
28 quoted in paragraph nine of said petition in so far as the same incites and
29 invites disrespect and disobedience of the said order of the Baltimore City
30 Court.

31 10. That he is advised by counsel that the allegations of fact contained in
32 paragraph ten of said petition are irrelevant, incompetent and immaterial to
33 questions of his personal constitutional rights in the premises.

1 11. That he is advised by counsel that the allegations contained in para-
2 graph eleven of said petition are not allegations of fact but conclusions of
3 law, and require no answer by this appellee. Appellee avers that the action
4 of the appellants in refusing to receive and consider his application, and to
5 admit him into the School of Law of the University of Maryland solely on ac-
6 count of his race or color, did violate the Fourteenth Amendment of the Consti-
7 tution of the United States and did deny to him the equal protection of the
8 law guaranteed thereby.

9 12. That he is advised by counsel that the allegations of fact contained
10 in paragraph twelve of said petition are irrelevant, incompetent and immaterial
11 to the questions presented by this appeal as to appellee's personal constitution-
12 al rights in the premises. Appellee avers that this cause cannot be ultimate-
13 ly decided prior to the opening of the School of Law of the University of Mary-
14 land on September 25, 1935, for that as above indicated whichever party may lose
15 the appeal before this Honorable Court will seek review by the United States
16 Supreme Court which will not even convene until October 7, 1935. Appellee
17 avers that for this Court to grant a stay of execution of the judgment of the
18 Baltimore City Court pending final decision of the appeal in this cause would
19 cause him irreparable injury for it would postpone his admission into the School
20 of Law at least for one year of his life, which he could never regain; that
21 after registration at the School of Law closes in September, 1935, there will be
22 no further registration until September, 1936, for beginning students; that
23 his personal constitutional rights cannot be made to depend upon the question
24 whether other students may withdraw from the University of Maryland.

25 13. Further answering appellee avers that there never has been any policy
26 of separating the races in graduate and professional schools maintained in
27 whole or in part by the State of Maryland, for that there never have been any
28 graduate or professional schools for Negroes; nor do the laws of Maryland re-
29 quire the separation of the races in graduate or professional schools.

30 AND NOW HAVING FULLY ANSWERED the said petition to advance the hearing of
31 the appeal in this cause, or in the alternative to grant a stay of execution,
32 appellee prays that said petition be denied.

1 And as in duty bound, etc.

2 Donald G. Murray

3 Donald G. Murray,

4 Appellee

5 Charles H. Houston

6 Thurgood Marshall

7 William I. Gornell

8 Attorneys for appellee.

9 STATE OF MARYLAND :

10 :

11 City of Baltimore :

12 I hereby certify that on this 31st day of August, 1935,

13 before me, the subscriber, a Notary Public in and for the City of Baltimore,

14 personally appeared the above named Donald G. Murray and made oath in due form

15 of law that the matter and facts in the foregoing answer are true to the

16 best of his knowledge and belief.

17 Sarah J. Ambler

18 Notary Public