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If You Need Me, Call Me:
A Narrative of Alvin Dwight Pettit's Life and Career with Particular Emphasis on *Pettit v. Board of Harford County* and *Pettit v. United States*

I. Introduction

As students were leaving Randallstown High School after a charity basketball game, there was a shooting in the parking lot.[1] One of the students present, Ronald Johnson, was arrested. After five weeks in jail, the charges were dropped. His attorney had successfully argued that there was no evidence linking Johnson to the gun or the incident. When he was released, Johnson was quoted as saying, "God is good and so is my lawyer."[2] His lawyer was A. Dwight Pettit, one of the most prominent attorneys in Baltimore, Maryland. Dwight's[3] forty-year legal career has been full of successful litigations. The walls of his Baltimore City law office are covered with headlines attesting to his judicial triumphs. But he also has framed articles of his losses. Recently, Dwight sued the local police department on behalf of Gerard Mungo, a seven-year-old boy who was allegedly violently pulled off of his dirt bike and handcuffed by Baltimore City Police officers.[4] Although the case was dismissed, a picture of Dwight and Mungo hangs as a reminder of why virtuous and diligent lawyers are needed. Dwight is well aware that social progress can be effectuated in courtrooms. He has frequently been involved in lawsuits representing struggles against racism and other social injustices. This

[1] Willis, Laurie. "Owings Mills man freed in Randallstown shooting: Police conclude Johnson played no role in violence outside high school." *Baltimore Sun*. 12 June 2004.
[2] Id.
[3] Throughout this paper, Mr. Alvin Dwight Pettit, Esq. will be referred to as Dwight. This is not indicative of disrespect. Rather, because his father George Pettit is also frequently mentioned, their given names will be used solely in order to avoid confusion.
[4] "Jury Rules With Police In Dirt Bike Arrest Lawsuit: Lawsuit For More Than $700,000 Denied." WBALTV available at http://www.wbaltv.com/news/22309664/detail.html#COMMENTTOP.

paper will detail two such cases. Although Dwight's early life, his education, and his political endeavors will be discussed succinctly, *Pettit v. Board of Education of Harford County*[5] and *Pettit v. United States*[6] will be described more comprehensively.

II. Procedural History of *Pettit v. Board of Education of Harford County*

One year after the Supreme Court of the United States decided in *Brown v. Board of Education of Topeka* that racial segregation of public schools was unconstitutional, the Court reconvened to issue the directives concerning the implementation of desegregation.[7] The Court considered the entrenched nature of segregation and the diverse methods it had been applied and issued declaratives as to by whom and by what means the principles espoused in *Brown* should be implemented.[8] Chief Justice Warren conferred this responsibility on local school authorities and the courts which originally heard school segregation cases.[9] Warren urged localities to act on the new principles promptly and to move toward full compliance with them "with all deliberate speed."[10]

Two years later, in 1957, the District Court of Maryland performed such a task when it decided *Moore v. Board of Education of Harford County*.[11] At the time, Harford County was a primarily rural county with the exception of two government reservations in the southern portion of the county, the Aberdeen Proving Ground at Aberdeen and the Army Chemical Center at Edgewood. There were approximately 14,000 students in the public schools of Harford County, consisting of about ten percent Black students.[12] The local Board of Education organized the

[5] 184 F.Supp. 452 (1960).
[6] 203 Ct.Cl. 207 (1973).
[7] *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).
[8] *Brown II*, 349 U.S. 294 (1955).
[9] *Id.* at 299.
[10] *Id.*
[11] 152 F.Supp. 114.
[12] 146 F.Supp. 91.

school system so that students would attend six years of elementary school, three years of junior high school, and three years of senior high school.[13] Before the *Brown* decision, the segregated white high schools of Bel Air, North Harford, Edgewood, and Aberdeen were combined junior and senior high schools while the formerly segregated Black schools of Hickory and Havre de Grace were "consolidated schools," which combined elementary, junior high, and senior high classes.[14]

On June 30, 1955, one month after the second *Brown v. Board of Education* opinion, the Board of Education of Harford County created the Citizens Consultant Committee, an advisory organization comprised of thirty-six individuals from around the county, five of whom were Black. The Committee's task was to analyze the optimal procedure to implement desegregation of the public schools in Harford County and to provide these findings to the Board of Education.[15] On November 29, 1955, twenty-one Black students brought suit in the District Court of Maryland against the Board of Education of Harford County, President of the school board David G. Harry, and Superintendent of Harford County Schools Charles W. Willis.[16] The plaintiffs alleged that the Board had "refused to desegregate the schools within its jurisdiction and has not devised a plan for such desegregation," and asked that "The Court advance this cause on the docket and order a speedy hearing of the application for preliminary injunction and the application for permanent injunction according to law."[17]

On February 27, 1956, the Citizens Consultant Committee held a meeting,[18] at which they unanimously agreed to adopt the following resolution:

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[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] "County Answers NAACP School Suit." The Afro-American Newspaper. 8 March 1960.
[17] Civil Action No. 8615.
[18] See attachment.

> To recommend to the Board of Education for Harford County that any child regardless of race may make individual application to the Board of Education to be admitted to a school other than the one attended by such child, and the admissions to be granted by the Board of Education in accordance with such rules and regulations as it may adopt and in accordance with the available facilities in such schools; effective for the school year beginning September, 1956.[19]

Shortly thereafter, the defendants filed a motion to dismiss the complaint. On March 9, 1956, a hearing on the matter of Civil Action No. 8615 was held before Chief Judge Thomsen.[20] Their attorneys, Edward C. Wilson, Jr. and Wilson K. Barnes, argued that the case was moot because the Board of Education of Harford County had approved the recommendation offered by the Citizens Consultant Committee. Wilson read the recommendation into the record and said, "Since that plan embraces the relief prayed for, I think that takes care of that, and I want to call that to Your Honor's attention."[21] Counsel for plaintiffs, including Tucker R. Dearing, Juanita Jackson Mitchell, Robert B. Watts, and Jack Greenberg, accepted that if the resolution were adopted by the Board of Education, the suit would not be necessary, but asked Judge Thomsen to enter into a consent decree embodying the terms of the resolution.[22] Wilson replied that he did not think that the District Court should enter a consent decree because the relief prayed for was the policy adopted by the Board. He concluded, "I think the complaint should be dismissed in open court because there is really nothing before the Court to effectuate."[23]

Chief Judge Thomsen then decided to allow counsel to discuss the matter off the record. When court reconvened, Jack Greenberg said, "[W]e have told counsel for the defendants that

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[19] Moore, 146 F.Supp. at 93.
[20] *Id.*
[21] *Id.* at 94.
[22] *Id.*
[23] *Id.*

we are sure they are proceeding in good faith and this plan is acceptable to us, and we will dismiss our suit..."[24]

Three months later, outside of court, on June 6, 1956, the Board of Education adopted the following "Transfer Policy":

> If a child desires to attend a school other than the one in which he is enrolled or registered, it will be necessary for his parents to request a transfer... All applications for transfer must state the reason for the request, and must be approved by the principal of the school which the pupil is now attending... Applications for transfer will be handled through the usual and normal channels now operating under the jurisdiction of the Board of Education and its executive officer, the Superintendent of Schools...While the Board has no intentions of compelling a pupil to attend a specific school or of denying him the privilege of transferring to another school, the Board reserves the right during the period of transition to delay or deny the admission of a pupil to any school, if it deems such action wise and necessary for any good and sufficient reason.[25]

On August 1, 1956, the Board of Education adopted a "Desegregation Policy." This document was primarily comprised of a recitation of the appointment of the Citizens Consultant Committee, the recommendation made by that Committee, the resolution adopted by the Board of Education on March 7, 1956, and the transfer policy adopted by the Board in June.[26] Under these policies, sixty Black students applied to transfer to the formerly-white neighborhood school.[27] Fifteen applicants were granted admission while the remaining forty-five were refused. These applicants did not appeal to the State Board of Education from the action of the County Superintendent denying their requests for transfer. On August 28, 1956, the parents of Stephen Moore, Jr., Dennis Spriggs, Roslyn Slade, and Patricia Garland, four students who were denied transfers, filed suit in the District Court of Maryland.[28] At that trial, Chief Justice Thomsen

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[24] *Id.*
[25] See attachment.
[26] *Moore*, 146 F.Supp. at 94.
[27] *Id.*
[28] See attachment.

refrained from ruling.[29] Instead, he postponed judgment until the plaintiffs had an opportunity to appeal to the State Board.

Following that decision, the four plaintiffs filed appeals with the State Board of Education from the refusal of the Superintendent of Schools of Harford County to grant their transfer requests. After a hearing, the State Board dismissed the appeals.[30] In addition, the Board reiterated their central desegregation strategy and then agreed to the following temporary modification for evaluating transfer requests to high schools:

> Beginning in September, 1957, transfers will be considered for admission to the high schools of Harford County. Any student wishing to transfer to a school nearer his home must make application to the Board of Education between July 1 and July 15. Such application will be evaluated by a committee consisting of the high school principals of the two schools concerned, the Director of Instruction, and the county supervisors working in these schools. These applications will be approved or disapproved on the basis of the probability of success and adjustment of each individual pupil, and the committee will utilize the best professional measures of both achievement and adjustment that can be obtained in each individual situation. This will include, but not be limited to, the results of both standardized intelligence and achievement tests, with due consideration being given to grade level achievements, both with respect to ability and with respect to the grade into which transfer is being requested.[31]

Justice Thomsen recognized that the plaintiffs were concerned that the plan would not be carried out in good faith and consequently entered a decree which affirmed the rights of individual children under the plan.[32]

As a result of the local desegregation plan, the elementary schools of Harford County were desegregated expeditiously. Eleven out of the eighteen elementary schools were completely desegregated in 1957, three more by 1958, and the remaining four in 1959.[33] The reason for the delay in desegregating the last seven schools was that the County Board and

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[29] *Moore*, 146 F. Supp. at 95.
[30] See attachment.
[31] *Moore v. Harford Board of Education*, 152 F.Supp. 114, 115 (1957).
[32] *Id.*
[33] *Id.*

Superintendent thought that the problems associated with desegregation could best be solved in schools that were not overcrowded and where the teachers were not further burdened by having overcrowded classrooms.[34] According to the District Court of Maryland, the student surplus factor would not justify unreasonable delay, but would justify a delay of one or two years.

High schools, however, were viewed with more suspicion and caution. Superintendent Willis testified that high school transfer students experience more problems than those who enter in the seventh grade, which is the lowest grade in the Harford County high schools.[35] Willis believed that after a year in the high schools, social groups, athletic groups, and subject-interest groups have already formed. Therefore, a stair step desegregation process was allowed to occur by which each year, one more advanced grade was desegregated. As a result of this plan, sixth grade graduates would be admitted to junior high schools for the first time in September 1958 and would subsequently proceed through high schools in the next higher grade each year. This would lead to the complete desegregation of all schools of Harford County by September of 1963.

III. Personal History of *Pettit v. Board of Education of Harford County*

As of October 1958, however, grades eight through twelve were not yet desegregated. While the schools were following the step desegregation plan, Alvin Dwight Pettit was in one grade above the desegregated class. Dwight was born on September 29, 1945 in Rutherfordton, North Carolina. At the time, his mother was working as a beautician and his father, George Pettit, was attending A&T State University studying to become an engineer. After graduation, the Pettit family relocated to Greensboro where George had accepted a position as a professor. In 1950, George has hired as an engineer at Fort Holabird and the family moved to Dundalk,

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[34] *Id.*
[35] *Id.*

Maryland. Two years later, the family relocated to Turner Station and in 1958, when George was transferred to Aberdeen Proving Ground, his family took up residence on the base.

Because of his family's frequent moves, Dwight attended various elementary and middle schools. In 1958, when the Pettit family lived in Baltimore County, Dwight attended Sparrows Point Elementary School through the fifth grade. This was a racially-segregated elementary school with a separate facility for African-American students. Dwight then completed the sixth and seventh grades in Sollers Point High School, "which serve[d] principally the Negro population in the Dundalk area of Baltimore County." It was during his eighth grade year at that school that Dwight's father, George Pettit, obtained employment at the Aberdeen Proving Grounds and the Pettit family moved to the Wherry Housing Project at Aberdeen in Harford County. George wanted Dwight to enter the eighth grade at the Aberdeen High School, but the principal of that school referred him to the Director of Instruction of the Harford County Schools, who told George that Dwight would have to attend the Havre de Grace Consolidated School during the 1958-59 academic year and make application for transfer to the Aberdeen High School in July 1959. George Pettit was dissatisfied with this advice, but with the guidance of a lawyer, he agreed to follow these instructions. On July 7, 1959, George submitted a written request to the Board of Education of Harford Court for the transfer of his son from Havre de Grace Consolidated High School to Aberdeen High School and gave as his reason "for the advantage of the pupil in his preparation for higher education."

On July 24, 1959, the Committee met and discussed Pettit's request along with four others. For two hours the committee reviewed the five applicants' intelligence and achievement tests and their grades. They also considered the personalities of each student, their general attitude in school, and their ability to adjust in school situations. This personal information was

provided by the principal of Havre de Grace Consolidated High School and committee member. While approving three of the applicants, the Committee denied the applications of Phyllis Alphonzia Grinage and Alvin Dwight Pettit.[36] A letter, dated August 10, 1959, from the Superintendent of Schools informed George Pettit of this decision.

One week later, on August 17, 1959, the Pettits' original attorneys, James B. McCloskey and O. Daniel Kadan, filed an appeal to the State Board of Education. The State Board granted a hearing, after which it filed an opinion and order, which concluded that a committee was required to meet under the *Moore* requirements and such a committee met to discuss Dwight's transfer.

Meanwhile, because of his disappointment with the ninth grade curriculum at Havre de Grace Consolidated School, George sent Dwight to William H. Lemmel Junior High School in Baltimore City.[37] Although that school was legally desegregated, due to its location, the student body was almost entirely Black. The Pettit family had to pay $255 for one year's tuition in addition to Dwight's board and lodging in Baltimore. Frustrated by these developments and the lack of cooperation from the Board of Education of Harford County, George, Vice President of the local NAACP chapter, contacted Juanita Mitchell of the NAACP Legal Defense Fund. After hearing an explanation of George's case, Mitchell sought approval to proceed from national headquarters, including Thurgood Marshall, who agreed to accept the case. Mitchell then filed a claim in the District Court of Maryland alleging racial discrimination prohibited by *Brown v. Board.*[38]

George's attorneys first claimed that "since the entry of the decree of the District Court in the *Moore* case approving a stair-step integration plan for the High Schools of Harford County

[36] See attachment.
[37] See attachment.
[38] See attachment.

circumstances have so changed that there are no longer any equitable considerations entitling defendants to postpone the constitutional rights of the complainant and others similarly situated."[39] The District Court, however, believed that this was a superficial claim. No support was offered in the complaint and no evidence was provided in court to support the assertion that "circumstances" had changed.

George next raised the issue of whether his son's denial was justified under the policy. The evidence the Committee reviewed included Dwight's grades at Sollers Point in 1956-57 and 1957-58 and at Havre de Grace in 1958-59. At the Havre de Grace, he received 'C' (Fair) in three subjects, 'B' (Good) in two, and an 'A' (Excellent) in one subject.[40] The Committee reviewed two test results of Dwight's during the meeting: a California Achievement test from February 1956, while Dwight was in the fifth grade, which showed a grade equivalent of 5.4, as against an average of 5.5, and an intelligence test from October 1957, which showed an IQ of 90. These were the most recent tests the Committee considered.[41] A standard intelligence test, which Dwight took in September 1959, showed an IQ of 103.[42] The median IQ in the ninth grade at the Aberdeen High School was 99. The Committee claimed that they did not consider the test scores to be precise measures of intelligence, but rather used them as indicators. The Chairman of the Committee testified that the Committee relied heavily upon the recommendation of the principal of the Havre de Grace Consolidated School, but that recommendation was not recorded.[43] The principal testified that he had advised the Committee to deny Dwight's transfer request. The Committee's report stated that the reason Dwight was denied was "lack of ability and low

[39] *Moore*, 152 F.Supp. at 115
[40] *Id.*, See attachment.
[41] *Id.*
[42] *Id.*
[43] *Id.*

achievement, as evidenced by standardized test scores and school progress reports."[44] In a recent interview, Dwight Pettit described the pressure he personally felt during this case. At thirteen, he did not fully understand the social ramifications of desegregation, but he was aware that there was national attention on his academic performance, including his grades as well as the additional tests he was being given.

Chief Justice Thomsen found that Dwight should have been admitted to the eighth grade of the Aberdeen High School in October 1958. Thomsen noted that because Dwight was not admitted, and because George Pettit was dissatisfied with the curriculum at the Consolidated School, Dwight had spent his three junior high years at three different schools; in the seventh grade at Sollers Point, the eighth at Havre de Grace Consolidated, and the ninth at the Lemmel Junior High in Baltimore. Moreover, because Dwight would have had to enter another school in September 1960, admission to Aberdeen was justified. Thomsen also observed that Dwight's recent IQ tests showed that he was adequately intelligent for the academic curriculum at "Aberdeen or anywhere else in Maryland."[45]

IV. After *Pettit v. Board of Education of Harford County*

This judgment occurred over the summer allowing Dwight to immediately begin practicing with the school's football team. Dwight has described two instances he remembers most significantly helped him become accepted into the school community. First, over the summer, while he was practicing with his team, a teammate began to harass him, referring to him in racially offensive terms. Dwight punched this teammate causing him to fall to the ground. This initiative moment prompted the other teammates to quickly accept Dwight and consider him worthy of respect.

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[44] *Id.*
[45] *Id.*

Secondly, Dwight also describes playing a football game against the all-white Wicomico High School on their home field. In the fourth quarter, he caught the winning touchdown, and although his team cheered, the audience was silent. His coach then began to yell that Dwight should get on the bus, and when he returned to Aberdeen, the student body completely embraced him.

V. Undergraduate and Law School

After graduation, Dwight began his undergraduate education at Howard University.[46] Despite the tumultuous events, such as Martin Luther King Jr.'s "I Have A Dream" speech and the assassination of John F. Kennedy in Dwight's freshman year, Dwight attention and focus were primarily on academics. His father, George, had instilled within him a desire to become a lawyer. Although George was a successful academic, he lectured Dwight about the ubiquitous discrimination in every aspect of society. He encouraged his son to become an attorney, not because of the prestige this profession possesses, but because he viewed the law as the only effective tool against institutionalized racism.

The cultural turmoil had not receded by the time Dwight entered Howard University Law School. During his time there, Dr. Martin Luther King, Jr. was assassinated causing nationwide hysteria. Rioting occurred in more than 100 cities, but some of the most substantial affects were felt in Baltimore and Washington, DC. The number of rioters in DC alone reached approximately 20,000, which left the 3,100 police officers essentially powerless. When President Lyndon B. Johnson dispatched 13,600 federal troops, including 1,750 federalized D.C. National Guard troops, the balance of power was restored and arrests were made by the thousands. Howard University Law School, by request of Governor Walter Tobriner, permitted selected students to impart legal advice to riot participants who were being arrested. Dwight,

[46] See attachment.

who was given a badge to show this authority, admits that there was not much practical advice that he could give rioters, but his willingness to try demonstrated his fierce determination to effectuate social change and assist those most in need.

Also during Dwight's time at Howard University Law School, 1,200 students entered the Administration building on March 20, 1968, in protest of various administrative decisions including the threatened expulsion of 38 classmates who had been accused of disrupting Charter Day. Similarly to the Martin Luther King riots, Dwight advised students on how to handle the situation. After four days of negotiations, marshals began to knock out the lights in the building. Dwight, in seeing this, advised the students to end the demonstration. According to reports, all of the student demands were met favorably except the removal of President James M. Nabrit, which, regardless, occurred two years later when Dr. James Cheek took office.

VI. After Graduation

In 1970, Dwight began working for the Small Business Administration under President Richard Nixon. Because he would not pass the bar exam for another three years, his duties at SBA were fairly limited, mostly confined to preparing briefs for the Department of Justice on fraud cases involving SBA loans.

In 1973, Dwight passed the Maryland bar exam and partnered with Michael Mitchell, Juanita Mitchell's son, to form Mitchell and Pettit. A year later, the firm, located on 800 North Charles Street, acquired two attorneys to become Mitchell, Pettit, Davis, and Gill. Andre Maurice Davis is now a judge on the U.S. Court of Appeals for the Fourth Circuit, recently having been re-nominated by President Barack Obama on April 2, 2009, and confirmed by the Senate on November 9, 2009. Roberta Gill is Assistant Attorney General and Administrative Prosecutor for the State of Maryland.

VII. Before *Pettit v. United States*

While attending Howard University Law School and working for the Small Business Administration, Dwight Pettit was well aware of his father's hostile work environment. George would tell his son about incidences that occurred at the Aberdeen Proving Grounds at Aberdeen, Maryland in the Human Engineering Laboratory (HEL) where he was employed as an engineer. George described his follow employees' numerous racist gestures, such as posting Confederate flags around his workspace and playing Dixie on their lighters when George would speak in meetings.

While Dwight was still attending Howard University in April of 1967, George Pettit, working as an Electronic Engineer, GS-11, filed a formal complaint alleging that he was denied promotion to GS-12 solely because of his race.[47] The complaint was investigated by Earl R. Haag, Deputy Equal Employment Opportunity Officer. Haag, in his Summary of Investigation, concluded that George Pettit's complaint was "baseless."[48]

George then requested and was granted a formal hearing. The Hearing Officer, William J. Bivens, noted that George Pettit had been denied equal employment opportunity in four respects; first, when his colleagues displayed Confederate flags in his work area, second, when he attempted to speak at a panel discussion and was interrupted by the sound of Dixie playing from a lighter as well as the subsequent laughter, third, when he was consistently referred to as "boy" in the office, and fourth, when he was denied equal access to telephones in the office for business purposes. Bivens also found instances in which other Black employees were denied equal employment opportunity, specifically with respect to promotions. The report, however,

[47] *Pettit v. U.S.*, 203 Ct.Cl. 207; See attachment.
[48] *Id.*

concluded that "Mr. Pettit's failure to be promoted from GS-11 to GS-12 was not the result of racial discrimination, but rather because Mr. Pettit did not merit a promotion."[49]

George's complaint was filed primarily as a response to the decision of a supervisor, Erickson, in January 1967, to recommend the promotion of three of George's co-workers, Kurtz, Emery, and Randall.[50] Kurtz and Emery were shortly thereafter promoted from GS-11 to GS-12 in competitive personnel actions. Randall was promoted from GS-9 to GS-11. Bivens' report essentially concluded that George's complaint was based on bitterness due to his observation that the promotion process leads to poor morale in those disregarded or ignored.

On October 31, 1969, Bivens retired from Government service and his position as Hearing Officer and was given to John H. Vogel, who re-assessed the conclusions made in George Pettit's case. Vogel's modified report included a personal evaluation of George:

> [T]here were three Negro employees at HEL who left the employment of the Labs due, in part, to evidence of the absence of further promotion opportunity at this activity... Mr. Pettit was an activist in working to integrate the schools in Harford County, he stayed and fought for equality and his constitutional rights rather than accept the status quo or move to an area where his rights would have been provided for him without conflict. Whether he should have stayed and pursued his efforts to break the patterns of exclusion is not relevant to this case, the results of his efforts are.[51]

The report went on to recommend that the quality of George's work be viewed in light of the racial antagonism he faced on a daily basis. According to the revised report, George was given eleven assigned projects; he performed above average or excellent in three; average in two, marginally satisfactory in four, and unsatisfactory in two. Although this record did not seem impressive, it should, argued Vogel, be evaluated against the discriminatory environment in which George worked.

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[49] *Id.*
[50] *Id.*; See attachment.
[51] *Id.*at 1029; See attachment.

The Army received Vogel's report and concluded that George Pettit had, in fact, been discriminated against. They further stated that he should have been given preferential consideration for promotion to the next GS-12 vacancy within HEL provided he continued to perform adequately. The Army further found that disciplinary action should have been taken against the supervisors who refused to recommend George for promotion.

George Pettit, acting with advice from Dwight Pettit, who had just recently graduated law school but not yet passed the bar examination, accepted the Modifications of the Findings of Fact, but appealed the recommended actions to the United States Army Materiel Command (AMC). In his appeal, George requested an immediate promotion to GS-12, an effective date of such promotion retroactive to 1960, an immediate opportunity to compete for a GS-13 position, and restitution for expenses of hearing to include attorneys' fees.[52] George was shortly thereafter promoted to a GS-12 position. A letter from Grievance Review Staff of AMC dated September 22, 1970 denied all of George Pettit's requests besides his request for immediate promotion which they considered satisfied, but also notified him of his right to appeal this decision to the Board of Appeals and Review (BAR), United States Civil Service Commission, "no later than 15 days from the date [he] receive[d] this decision."[53]

The fifteenth calendar day fell on Saturday, October 17, 1970 when the office was closed for the weekend. On Monday, October 19, 1973, George called to determine if it was too late to file an appeal. He was told to send a letter explaining his reasons for the tardiness. George explained his delayed response in a letter dated October 20, 1970. He wrote that his supervisors were giving him the impression that they were attempting to assist in the matter, but were not giving any details. He explained, "It is my judgment that the lateness of my receiving details of

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[52] *Id.*
[53] *Id.*

management's plans were part of their design and was an attempt, on their part, to lull me into inactivity, thereby causing me to forfeit my right of appeal."[54]

George's appeal was denied by BAR on January 20, 1971, on the grounds of its lack of timeliness and a Comptroller General decision denying the Commission authority to make retroactive promotions.

On October 15, 1971, the Court of Claims decided *Madrith Bennett Chambers v. United States*[55], and *Melvin Allison v. United States.*[56] These cases supported the proposition that the Court of Claims would grant back pay when the plaintiff is able to show he or she would have been promoted at a specific time if it were not for discrimination. Based on these decisions, Dwight, acting on behalf of his father, petitioned the Civil Service Commission, the General Accounting Office, Department of the Army, and Army Materiel Command for reconsideration requesting the award of back pay. Each of these agencies denied their authority to do provide this remedy until authorized by United States Government Accounting Office (GAO, now known as the Government Accountability Office) and therefore accepted the appeal while deferring to the decision-making authority of the GAO.

VIII. *Pettit v. United States*

On June 5, 1972, the GAO advised Dwight, that it would not follow the decisions of the Court of Claims, but would again deny the any authority to grant retroactive pay for a claim arising out of discrimination. In response, Dwight petitioned the Court of Claims for relief on June 19, 1972. Dwight explains that his decision to file in the Court of Claims was largely motivated by imitating earlier cases he considered relevant, specifically *Testan v. United States.* Both parties filed for summary judgments and a hearing was held. Dwight argued in court that

[54] *Id.*
[55] 451 F.2d 1045, 196 Ct.Cl. 186.
[56] 451 F.2d 1035, 196 Ct.Cl. 263 (1971).

the Court of Claims should have jurisdiction to render judgment upon any claim against the United States founded upon the United States Constitution, or any legislative act of Congress, or any Executive Order. Specifically, he argued that the following Executive Orders explicitly required all Government agencies to offer their employees equal opportunities in all respects without regard to race: Dwight D. Eisenhower's Executive Order No. 10722, 3 C.F.R. 1954-1958 Comp., p. 384 (1957), John F. Kennedy's Executive Order No. 10925, 3 C.F.R. 1959-1963 Comp., p. 448 (1961), Kennedy's Executive Order 11114, 3 C.F.R. 1959-1963 Comp., p. 774 (1963), Lyndon B. Johnson's Executive Order 11162, 3 C.F.R. 1964-1965 Comp., p. 215 (1964), Johnson's Executive Order 11246, 3 C.F.R. 1964-1965 Comp., p. 339 (1965), now Executive Order 11478, 3 C.F.R. 1966-1970 Comp., p. 803 (1969), and the Regulations of the Civil Service Commission, 5 C.F.R. §§ 4.2 and 713.202.[57] Judge Nichols first held that the Court of Claims did in fact have jurisdiction to adjudicate the claim under the "Civil Rights" Executive Orders. This proposition, however, led to three dissenting opinions. Chief Judge Bowen, Judge Skelton, and Judge Bennet argued that the Executive Orders relied upon did not create any judicial remedy or expand judicial jurisdiction. Bowen stated, "It is axiomatic that this court has no jurisdiction of a suit against the United States based upon a regulation of an executive department if the regulation is in conflict with a law enacted by Congress. That is the case here."[58] Bowen believed Section 701 of the Civil Rights Act of 1964, 78 Stat. 253, as amended, 42 U.S.C. § 2000e(b) (1970), expressly excluded the United States from the definition of an employer against whom a suit may be maintained to enjoin an employer from engaging in racially discriminatory employment practices or to recover back pay. And although these remedies were provided for in Section 706(g) of the Civil Rights Act of 1964, 42 U.S. C. §

[57] *Id.*
[58] *Id.*

2000e-5(g), these judicial remedies were not available to employees of the Government until the enactment of the Equal Opportunity Act of 1972, 86 Stat. 103, which, Bowen claimed without elaboration, "had no application to plaintiff's case."[59] The United States Supreme Court in 1976 agreed with these dissenters' analyses. In *Testan v. United States*, the Supreme Court explicitly overruled this reasoning:

> Respondents cite *Allison v. United States,* 451 F.2d 1035, 196 Ct.Cl. 263 (1971), and *Pettit v. United States*, as precedent... Those cases found the employees' "entitlement" to money damages in an Executive Order,...and to the extent that analysis is now rejected, the analysis of *Allison* and *Pettit* is necessarily rejected.

In *Pettit v. United States*, the Government also argued that George Pettit's claim was barred by failure to exhaust administrative remedies, specifically because he did not appeal the Army Materiel Command decision to the Board of Appeals and Review within the allotted time period. Dwight Pettit, however, argued that George's phone call to inform his supervisors of his intent to appeal was itself an appeal. This argument was met favorably by all seven judges. Judge Nicols wrote, "Pettit's telephone call on Monday, October 19, possibly was sufficient to constitute a timely appeal since he was not told flatly that the notice of appeal would have to be in writing, and the call was followed up in writing shortly afterwards."[60]

The majority then considered whether back pay was an available and appropriate remedy if George Pettit could show that "but for specific instances of racial discrimination, favorable personnel action would have been taken."[61] In making this determination, the court analogized and distinguished *Chambers v. United States*. In *Chambers,* it was conceded by the Government that the African-American plaintiff would have been appointed to a clerk typist position if there had been an absence of racial discrimination. The court in George Pettit's case found that the

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[59] *Id.*
[60] *Id.*
[61] *Id.*

racism in his situation was comparable but less explicitly related to the failure to promote. In his case, various investigators came to varying conclusions. After noting that other Black professionals had left the same laboratory because of lack of equal advancement opportunity, the AMC found that "there can be no separation of the actions of HEL in failing to promote Negroes, who subsequently took other employment where their talents were recognized, and the instant case of the black employee who stayed and attempted to change the system."[62] The court concluded that although this language was extremely forceful, it could not be interpreted as fully meeting the "but for" test.

Because of the ambiguities presented by these circumstances, the Court of Claims remanded the case to the Civil Service Commission to hear evidence and make findings on the "missing elements," such as the grade and pay of the position George Pettit would have filled but for the discrimination and the date of the personnel action by which he would have filled it.

IX. After *Pettit v. United States*

After the case was remanded to the Army to determine damages, Dwight began calculating what his father would have made over the years had his salary not been impeded by racism. The Army performed a similar calculation and, after a brief negotiation between the parties, the figure of $100,000 was settled upon. George Pettit was also promoted to a GS-14 position, but after working for three or four years in a continuously hostile environment, decided to retire in 1980. He died of influenza in September of 1992 at the age of 70.[63]

X. Career as an Attorney

After failing the bar exam in Maryland, Dwight, along with twelve other African-Americans who had also failed to pass the Maryland bar examination brought a class civil rights

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[62] *Id.*

[63] The Baltimore Sun (September 5, 1992).

action in which they claimed that the intentional and inherently discriminatory practices of the examiners denied them equal protection guaranteed by the Fourteenth Amendment of the Constitution. The Maryland Bar examination was administered bi-annually. It was a two-day test given by the Board of Examiners, a committee of three practicing attorneys, one of whom was Black at the time, selected by the Maryland Court of Appeals. The Board was helped by three assistant graders who were also attorneys, one of whom was Black, in preparing and grading of the essay portion of the examination. This suit against Vincent Gingerich, Charles Dorsey, and Dorothy Thompson, the members of the Maryland State Board of Law Examiners, was filed in September of 1972 but there were extensive pretrial requests for information and documentation, so the trial was not held until February of 1977.[64] The hearing was held to determine whether to grant defendants' motion for summary judgment. Before addressing the merits of the plaintiffs' claims, however, the court dealt with various preliminary matters. The District Court Judge Blair began his opinion by noting that the qualifications for maintaining a class action suit had been met and that this suit may be resolved by a single judge.[65] Blair then turned to the issue of standing. Because Dwight had passed the bar examination in 1973, after the suit was filed but before the trial, the court held that he no longer had a personal interest in the outcome and was, therefore, dismissed as a plaintiff.[66] After Dwight passed the examination, he began to act as an attorney in this suit and continued to act as a plaintiff believing that his personal interest was in being denied admission into the profession before receiving a passing score. Blair, however, disagreed and concluded that "Pettit ... no longer ha[s] such a personal stake in the controversy."[67] Serving as an attorney, Dwight, along with Kenneth Johnson, first

[64] *Pettit, et al. v. Gingerich, et al.*, 427 F.Supp. 282 (1977).
[65] *Id.* at 284.
[66] *Id.*
[67] *Id.* at 286.

argued there was no a rational relationship between the Maryland Bar examination and competency to practice law. Specifically, they claimed that the Bar examination was not systematically created by experts and that it only tested the ability to memorize.

They further argued that the exam was culturally biased against Blacks as evidenced by the disproportionately high failure rate. They claimed the Board had the opportunity to ascertain the race of Bar applicants through the possible availability of the official lists to match test-takers' names with seat numbers, the possibility that the attorneys conducting the character interviews could communicate racial information about candidates to the Board, the availability of law school records, and the alleged ability of the Board to identify a "distinctive Black writing style."[68]

The District Court granted the summary judgment finding no discriminatory intent. Judge Blair during the trial asked the plaintiffs if they were given a pile of essays whether they would be able to discern which ones were written by Black authors and the plaintiffs were forced to admit that they probably could not. Blair went on to list the mechanisms used to ensure anonymity in grading and how no one grader could ultimately decide an applicant's fate. The Appellate Court affirmed this decision without writing an opinion.[69]

A further highlight of Dwight's legal career was *Mayor and City Council of Baltimore v. James Crockett*.[70] On July 19, 1974, the Mayor of Baltimore, William Donald Schaefer, approved Ordinance No. 701, an amendment to the City's Comprehensive Rezoning Ordinance which had been effectuated in 1971.[71] The immediate effect of the amendment was to prohibit sale or lease signs on individual residences in the parts of Baltimore which had been zoned

[68] *Id.* at 291.
[69] 582 F.2d 869 (4th Cir. Md. Sep 18, 1978).
[70] 45 Md.App. 682 (1980).
[71] *Id.* at 683.

"Residence and Office-Residence Districts."[72] This ordinance was originally enacted because of fears that these signs posted in neighborhoods undergoing racial transition would create panic selling. Ten years later, Black realtors realized the ban was not only preventing panic selling but all selling in Baltimore. James Crockett, a realtor, owned a residence at 1929 McCulloch Street, which was in a residential zone. He posted a "For Sale" sign on the property and when he refused to remove it after a violation notice was issued by the City, the Mayor and City Council of Baltimore filed a bill of complaint in the Circuit Court of Baltimore City seeking an injunction. Crockett hired Dwight to represent him in the matter and they filed an answer in which they admitted to all of the allegations in the bill but asserted that the zoning ordinance was an unconstitutional restriction of free speech. Dwight then filed a motion for summary judgment and the City answered claiming that there were disagreements about the material facts of the case.

The Circuit Court of Baltimore City Judge, Mary Arabian, granted Crockett's motion for summary judgment and Judge Thompson of the Court of Special Appeals held that ordinance unconstitutionally prohibited speech.[73]

Presently, Dwight is viewed as a champion of victims of police brutality.[74] His recent cases include *Emma Brown, et al. v. Rodney Price*, a wrongful death suit, in which Officer Price shot Tristin D. Little twenty-one times killing him. A jury awarded $105 million to the victim's family, the largest verdict ever awarded in the State of Maryland in an excessive force case by police.[75]

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[72] *Id.*
[73] *Id.* at 691.
[74] See attachment.
[75] The Washington Post (March 18, 2001) C.03.

In 2000, Dwight also tried *Dwight Allen, et al v. Officer Stuart Parker, et al.*, in which an off-duty police officer, while driving, enraged by an argument with another driver on the road, shot the plaintiff. Although the officer's criminal action was overturned, the civil action ultimately settled in 2003 for $204,900.[76]

Additionally, in 2002, Dwight, working with William H. Murphy, Jr. and Johnnie Cochran, was able to negotiate a $500,000 settlement in the case of *Deborah C. Carr, et al. v. Mayor and City of Baltimore*, in which a police officer shot an individual in the back of the head by while he was lying on the ground being handcuffed.[77]

XI. Political career

Dwight has been extremely involved in politics over the years. Firstly and most notably, Dwight was highly active with the Jimmy Carter's presidential campaign. In 1974, Dwight was enthusiastically seeking a way to engage in politics when he heard Carter, who was then Governor of Georgia, give a speech in Baltimore where he said he planned to run for President and the audience laughed. Dwight remembered seeing a picture of Carter in the newspaper hanging a picture of Martin Luther King, Jr. in the Georgia Capitol and that image resonated with Dwight so much so that after Carter finished speaking, Dwight introduced himself and told Carter that he believed he would be the next President. After Carter returned to Georgia, a staff person, Hamilton Jordan, called Dwight and asked him to run the Maryland campaign office. As Dwight describes it now, "I was the Carter campaign in Maryland" through the primaries and the general election.

After Carter won the presidency, Dwight returned to his law practice, where his clientele had changed significantly. Although many clients felt he could not be a politician and lawyer, he

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[76] Allison Klein, *Motorist gets $204,900 in road-rage settlement: Man wrongly convicted of assault on officer who shot him in '99 incident,* The Sun (Jun 27, 2003) 1.B.

[77] Del Quentin Wilber, *City divulges it settled suit for $500,000,* The Sun (Nov 14, 2002) 1.B.

was able to accept some elite clients because of his fame. The first of these corporational clients was Fallston Hospital. After meeting a Fallston staff member at a boxing match, officials from the hospital visited Dwight's office inquiring into what it would cost to keep him on retainer. During this meeting, Dwight called the White House on speaker phone, talked to Peter Bourne (special assistant to the President on health issues). The Fallston Hospital staff, upon witnessing this clout, told Dwight that he could name his price. Soon afterward, other hospitals called to retain Dwight and he accepted.

Despite various attempts, Dwight has never successfully run for public office. In 1978, he ran for Baltimore State's Attorney office against incumbent William A. Swisher, a white Democrat who was extremely unpopular with the Black community. The African-American vote, however, was divided in the primary between Dwight and Anton Keating, who urged voters not to support Dwight because he "doesn't have a chance."[78] Ultimately, although Dwight received about 5,000 more votes than Keating, Swisher won the seat by about 15,000 votes.[79] In 1984, Dwight ran for Maryland's Seventh District congressional seat against Parren Mitchell, one of the most respected Black politicians in Maryland. Dwight announced his intention to run amidst rumors that Mitchell would not be seeking re-election. Two days following Dwight's press conference, however, Mitchell announced he, too, would be running, and Dwight ended his campaign citing his respect for Mitchell and his desire to devote more time to Jesse Jackson's presidential campaign.[80] The seat went to Parren Mitchell that year. In 1996, Dwight again ran for Maryland's Seventh District congressional seat, but was defeated in the primary by Elijah Cummings.

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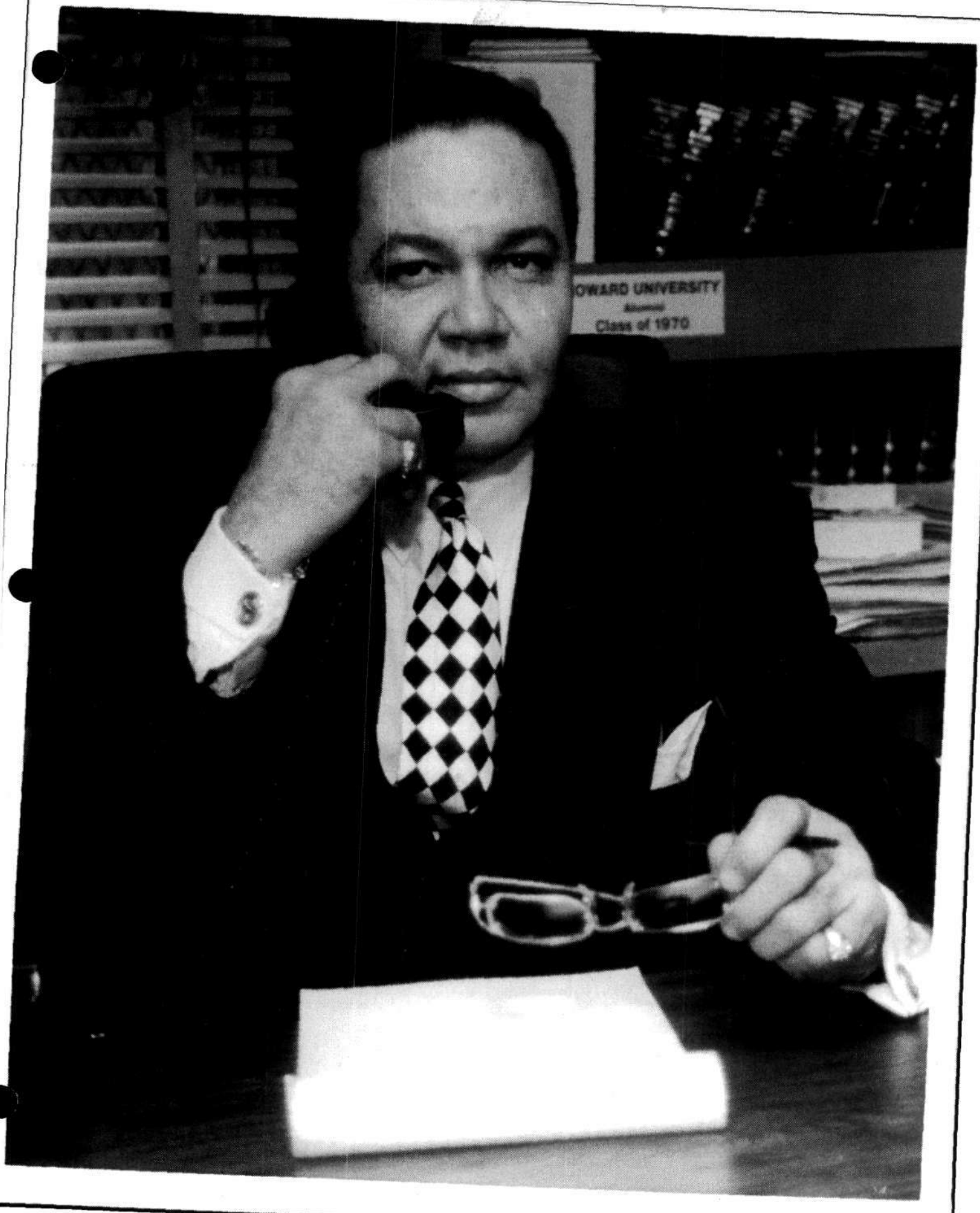
[78] See attachment.
[79] See attachment.
[80] See attachment.

XII. Conclusion

Dwight has described his father as a genius. Of course, his scientific skills were impressive, but George also had a profound understanding of societal issues. George taught Dwight that the legal system was a mechanism for social change and civil progress. This lesson resonated with Dwight and he has never lost sight of it. Although he rarely tries civil rights suits after the Reagan appointees made it difficult to win in federal courts, Dwight considers police brutality cases to be the forefront of the new civil rights movement. Anyone familiar with Dwight's commercials is aware of the oft-repeated phrase, "If you need me, call me." This is not simply a catchy slogan, but a sincere proposal to members of underrepresented, marginalized factions of society to contact A. Dwight Pettit for the zealous advocacy often needed but rarely available.


OWARD UNIVERSITY
Class of 1970

184 F.Supp. 452

United States District Court D. Maryland.

Alvin Dwight PETTIT, a minor, by his parent George D. Pettit

v.

BOARD OF EDUCATION OF HARFORD COUNTY, David G. Harry, Jr., President, Howard S. O'Neill, Mrs. Jason T. Pate, Samuel W. Galbreath, Mrs. Robert (Blanche S.) Fletcher, Charles W. Willis, Superintendent of Schools of Harford County.

Civ. No. 11955.

May 25, 1960.

School segregation case. The District Court, Thomsen, C.J., held that student who should have been admitted to eighth grade of high school and whose I.Q. was adequate for academic curriculum at that school was entitled to chance to make good in tenth grade at that school.

Decree accordingly.

West Headnotes

[1] KeyCite Citing References for this Headnote

345 Schools
345II Public Schools
345II(A) *Establishment, School Lands and Funds, and Regulation in General*
345k13 Separate Schools for Racial Groups
345k13(18) Actions
345k13(19) k. Evidence. Most Cited Cases
(Formerly 345k155)

Evidence established that stair step integration plan for high schools of Harford County, Maryland, was still equitable and that there had been no change of circumstances. Code Md.1957, art. 77, § 144.

[2] KeyCite Citing References for this Headnote

345 Schools
345II Public Schools
345II(L) Pupils
345k149 Eligibility
345k154 Assignment or Admission to Particular Schools
345k154(1) k. In General. Most Cited Cases
(Formerly 345k154)

Where student's father wished him to take academic curriculum to prepare him for higher education, inequality of curricula at school where there was no academic curriculum and school which offered academic curriculum entitled student to admission to latter school unless there was some overwhelming equitable consideration justifying denial of admission.

[3] KeyCite Citing References for this Headnote

345 Schools
345II Public Schools
345II(A) Establishment, School Lands and Funds, and Regulation in General
345k13 Separate Schools for Racial Groups
345k13(18) Actions
345k13(20) k. Judgment and Relief; Retained Jurisdiction. Most Cited Cases
(Formerly 345k154)

Committee established by desegregation plan approved and given effect by court was not an arm of court, and County Board's acceptance of committee's recommendation that transfer request be disallowed was subject to review by the State Board. Code Md.1957, art. 77, § 150.

[4] KeyCite Citing References for this Headnote

345 Schools
345II Public Schools
345II(L) Pupils
345k155 k. Proceedings to Compel Admission. Most Cited Cases
Student who should have been admitted to eighth grade of high school and whose I.Q. was adequate for academic curriculum at that school was entitled to chance to make good in tenth grade of academic curriculum at that school if he wished to take that chance, and school authorities would be required to admit him.

*453 Jack Greenberg, New York City, and Tucker R. Dearing and Juanita Jackson Mitchell, Baltimore, Md., for plaintiff.

Wilson K. Barnes, Baltimore, Md., for defendants.

THOMSEN, Chief Judge.

This case presents the questions: (1) whether the plan for the desegregation of the public schools of Harford County, adopted by defendant Board of Education and approved in Moore v. Board of Education of Harford County, D.C., 152 F.Supp. 114, affirmed Slade v. Board of Education, 4 Cir., 252 F.2d 291, certiorari denied 357 U.S. 906, 78 S.Ct. 1151, 2 L.Ed.2d 1157, is still equitable, or should now be disapproved: (2) whether, under the plan, the infant plaintiff was properly denied admission to the eighth grade of the Aberdeen High School in October 1958 and to the ninth grade of that school in September 1959; and (3) whether this Court should require defendants to admit the infant plaintiff to the tenth grade of the Aberdeen High School in September 1960.

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Discussion.

(1).

[1] Plaintiff's first contention is 'that since the entry of the decree of this court in the Moore case approving a stair step integration plan for the High Schools of Harford County circumstances have so changed that there are no longer any equitable considerations entitling defendants to postpone the constitutional rights of the complainant and others similarly situated'.

The evidence does not show any change of circumstances, and plaintiff did not seriously attempt to prove any such change. The modified plan is set out in detail in 152 F.Supp. at pages 116-117 and the reasons for the adoption of the plan are set out at pages 118-119. Those reasons still obtain. The plan has worked well. All Harford County schools are now desegregated through grade eight, they will be desegregated through grade nine in September 1960, and will be completely desegregated by September 1963. Some Negro children have elected to enter formerly white schools; some have been transferred to such schools under the plan; most have elected to attend the consolidated schools. The provisions 'for the transfer of qualified students in high school grades pending the final elimination of segregation in those grades', see 252 F.2d 291, apply only during the transition period. Thereafter, Negro children will be able to transfer to another high school on the same basis as white children, as they now have the right to enter a high school on the same basis.

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In Harford County, as in many other Maryland counties, there are now two sets of attendance areas, which were originally based on race. Each child, Negro or white, lives in what was formerly a white district served by a particular elementary school, and also in what was formerly a colored district served by a particular school. Before desegregation the white child was required to enter the white school serving his district, the Negro child the appropriate colored school. Now, however, the Negro child may enter either school- the formerly white school serving the district in which he lives or the formerly colored consolidated school serving a somewhat wider district. A white child has exactly the same option. No tests or other 'factors' are prescribed or considered in admitting either Negro or white children to the several schools. In the Moore case, this Court said: 'It was made clear that when an elementary school has been desegregated, all Negro children living in the area served by that school will have the same right to attend the school that a white child living in the same place would have, and the same option to attend that school or the appropriate consolidated school that a white child will have. The same rule will apply to the high schools, all of which operate at both junior high and senior high levels, as they become desegregated, grade by grade. Of course, the County Board will have the right to make reasonable regulations for the administration of its schools, so long as the regulations do not discriminate against anyone because of his race; the special provisions of the June 5, 1957 resolution will apply only during the transition period.' 152 F.Supp. at pages 117-118, affirmed 252 F.2d at pages 291-292. The County Board may make reasonable regulations governing the

transfer to another school of a child who has already entered one school, provided those regulations are made for proper administrative or educational reasons, and do not discriminate against anyone because of his race.

So applied, as it has been in Harford County and in many other Maryland counties with respect to all grades which have been desegregated, such a system does not violate the principles announced by the Supreme Court. Brown v. Board of Education, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873; 349 U.S. 294, 75 S.Ct. 753, 99 L.Ed. 1083; Cooper v. Aaron, 358 U.S. 1, 78 S.Ct. 1401, 3 L.Ed.2d 5; School Board of City of Charlottesville, Va. v. Allen, 4 Cir., 240 F.2d 59; Briggs v. Elliott, D.C., E.D.S.C., on remand, 132 F.Supp. 776. The experience in Maryland, including Baltimore City,[FN4] shows that different individuals, both Negro and white, desire different educational experiences. Some Negro parents have sent their children to predominantly white schools; a majority have sent their children to schools which are entirely or predominantly colored. Many white parents have enrolled their children in schools where a few or many Negroes have enrolled, although they could have sent them elsewhere. The evidence in this case shows that there are at least two white children in the Lemmel Junior High School in Baltimore, where all the other pupils are colored. The ratios vary from county to county, as would be expected in a state so diverse as Maryland. The people of Maryland believe in such freedom of choice. It has produced constantly increasing desegregation of both public and private facilities. ***458** See Slack v. Atlantic White Tower System, D.C., 181 F.Supp. 124.[FN5]

In School Board of City of Charlottesville, Va. v. Allen, supra, the Fourth Circuit quoted with approval the apt language of Judge Bryan in one of the cases then under consideration: 'It must be remembered that the decisions of the Supreme Court of the United States in Brown v. Board of Education, 1954 and 1955, 347 U.S. 483 (74 S.Ct. 686, 98 L.Ed. 873) and 349 U.S. 294 (75 S.Ct. 753, 99 L.Ed. 1083) do not compel the mixing of the different races in the public schools. No general reshuffling of the pupils in any school system has been commanded. The order of the Court is simply that no child shall be denied admission to a school on the basis of race or color. Indeed, just so a child is not through any form of compulsion or pressure required to stay in a certain school, or denied transfer to another school, because of his race or color, the school heads may allow the pupil, whether white or Negro, to go to the same school as he would have attended in the absence of the ruling of the Supreme Court. Consequently, compliance with that ruling may well not necessitate such extensive changes in the school system as some anticipate.' 240 F.2d at page 62.

The passage quoted from Jones v. School Board of Alexandria, supra, must be read in the light of the criteria considered by the Alexandria Board in the assignment of pupils and of the other factors referred to in that opinion. It should not be read as condemning the system now prevailing in the elementary grades in Harford County and which will prevail in all grades at the end of the transition period, provided that system is so administered that there will be in fact no discrimination of any kind between Negro children and white children in their admission to any school in the county or in their transfer from one school to another.

Plaintiff has not shown that the plan for the desegregation of the schools of Harford County, which was approved by this Court and by the Fourth Circuit, should not be disapproved.

(2).

Should the infant plaintiff have been admitted to the eighth grade o the Aberdeen High School in October 1958 and to the ninth grade of that school in September 1959?

[2] The Pettit family moved to Harford County in October 1958. The infant plaintiff was then attending the eighth grade in a high school in Baltimore County, and sought admission to the eighth grade in the Aberdeen High School, which served the district in which he lived. If he had been one year younger, he would have been admitted as of right to enter the seventh grade at that school, but the Director of Instruction ruled that the infant plaintiff was required to attend the Havre de Grace Consolidated School. At that time the Aberdeen High School offered an academic curriculum, a commercial curriculum and a general curriculum. There was no academic curriculum. at the Havre de Grace Consolidated School. Such a curriculum was started there in grade ten in 1959-60; it begins in grade nine at Aberdeen. Since the infant plaintiff's father wished him to take the academic curriculum, to prepare him for higher education, it is obvious that the curriculum at the Consolidated School was not equal to the curriculum at the Aberdeen High School. Under the law as it stood before Brown v. Board of Education the Infant plaintiff would have been entitled to relief under the separate but equal doctrine; under the law as it stands since Brown, the inequality of the curricula entitled him to admission to the Aberdeen High School unless there were overwhelming equitable considerations to justify the denial of such relief. Groves v. Board of Education of St. Mary's County, Md., D.C., 164 F.Supp. 621, 625, affirmed 4 Cir., 261 F.2d 527, 530. No such overwhelming equitable considerations exist in this ***459** case. The infant plaintiff should have been admitted to the eighth grade of the Aberdeen High School in October 1958.

This decision makes it unnecessary for this Court to review the action of the Committee, the Board and the Superintendent on the application for transfer filed in July 1959. However, I wish to make it clear that I do not agree with plaintiff's witness, brought down from New York, that the Committee acted without any reasonable basis in refusing the transfer. His reasons for that opinion

were not convincing. He later testified that the infant plaintiff was 'not out of the range of consideration' for the academic curriculum at Aberdeen. I agree with the latter statement. The application presented the Committee with a border-line case, which could reasonably have been decided either way. The conclusion of the Committee might have been different if the Committee had given intelligence and achievement tests to the infant plaintiff and if the results had been the same as in the tests given at the Lemmel School in Baltimore the next month. In future border-line cases, up-to-date test results should be obtained.[FN6]

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(3).

The question remains what relief should be granted- whether this Court should require defendants to admit the infant plaintiff to the tenth grade of the Aberdeen High School in September 1960.

I have found that the infant plaintiff should have been admitted to the eighth grade of the Aberdeen High School in October 1958. Because he was not so admitted, and because of his father's dissatisfaction with the curriculum at the Consolidated School, the boy has spent his three junior high years at three different schools, in the seventh grade at Sollers Point, the eighth at Havre de Grace Consolidated, and the ninth at the Lemmel Junior High in Baltimore. He ***460** will have to enter another school in September 1960, since the junior high schools in Baltimore do not go beyond the ninth grade. His IQ is adequate for the academic curriculum at Aberdeen or anywhere else in Maryland. His achievement has not been anything like so good, for a great variety of reasons, some of which would militate against his success in the academic curriculum at Aberdeen and some of which would not. It is hard to tell how much he has matured, and how well he would do in the tenth grade of the academic course, in the tenth grade of the general course, or in any other grade or curriculum at Aberdeen or elsewhere.

The second opinion of the Supreme Court in Brown requires district courts to weigh the equities and to adjust and reconcile public and private needs. Groves v. Board of Education of St. Mary's County, Md., 164 F.Supp. at page 625. On appeal in the Groves case the Fourth Circuit said: 'Undoubtedly the District Judge should not take the formulation of a plan for the integration of the schools out of the hands of the school authorities but, on the other hand, he may not disregard his own responsibility to determine not only whether a plan is offered in good faith but whether it is reasonable in all its aspects; and this includes the duty to determine whether an exception to the plan in a given case should be made.' 261 F.2d at page 530.

Under all the circumstances, the infant plaintiff is entitled to the chance to make good in the tenth grade of the academic curriculum at the Aberdeen High School if he wishes to take that chance. Of course, the principal and the faculty of that school should advise him whether he should enter the academic or the general course, and if he chooses the academic course, whether it would be wiser for him to enter the ninth grade or the tenth grade. If he decides to enter the tenth grade of the academic course, or to enter some other grade or course, the question whether his work justifies his continuation in that class or requires his transfer to some other class is for the school authorities, to be decided by them without regard to the race of the infant plaintiff. Once against I express my confidence in the good faith and ability of the Superintendent and the staff of the Harford County school system.

I will sign a decree appropriately worded to require defendants to admit the infant plaintiff to the Aberdeen High School at the beginning of the 1960-61 school year, to the same grade and course as white children similarly situated, and according to the same procedure that white children are admitted to that school. The principal of the Aberdeen High School or other appropriate personnel may counsel the infant plaintiff to pursue such course of studies as, in the regular operation of the school, they would counsel white children similarly situated to pursue. He will be required to conform to such advice to the same extent that white children similarly situated are required to conform. At no time shall he be assigned to a course of study, graded, promoted or demoted, except in accordance with the regular policy of the school to assign, grade, promote, or demote white children similarly situated.

FN1. The Baltimore County Schools are now desegregated.

FN2. It is noteworthy that the infant plaintiff took an intelligence test in September 1959 in Baltimore, which showed an IQ of 103, a shade above the median IQ of students in the Aberdeen High School.

FN3. 'The committee's action was, to be sure, approved by the County Board of Education. However, as such review was not provided for in the decree, we believe that the Board's action may properly be disregarded for purposes of this decision.

FN4. Where the schools were completely desegregated immediately after the first opinion of the Supreme Court in Brown.

FN5. Since the Slack case the restaurants in the leading department stores in Baltimore have been desegregated, with a minimum of difficulty and no arrests.

FN6. If the infant plaintiff had been admitted to the Aberdeen High School in 1958 or 1959, the principal of that school and others in authority would have had the undoubted right to assign him, like any other child, to the proper grade and the proper curriculum under rules or decisions made and applied for educational or administrative reasons and not because of the child's race.

D.C.Md. 1960.
Pettit v. Board of Education of Harford County,
184 F.Supp. 452

END OF DOCUMENT

Moore v. Harford County Board of Ed

LAW OFFICES
DEARING & TOADVINE
740 N. GAY STREET
BALTIMORE 2, MD.
PEABODY 2-6651

TUCKER R. DEARING
WILLIAM M. TOADVINE

December 6, 1956

State Board of Education
2 West Redwood Street
Baltimore 2, Maryland
c/o Dr. Thomas G. Pullen

Dear Sir:

This is to advise that we represent the following named parents and their infant children in an appeal to this Board from the decision of the Harford County Superintendent denying their applications for transfers:

New policy

1. Dennis Bernard Spriggs, age (12) a 7th grader now attending Central Consolidated School in Harford County. He made application to transfer to the Edgewood School nearer his home. His parent is James A. Spriggs, Sr. It is necessary for Dennis to go about thirty five miles when the nearest school to his home is one and one-half miles.

Edgewood — No

2. Stephen Presbury Moore, III, age (10) a 5th grader in the Central Consolidated School, which is six miles round trip from his home. His parents are Stephen Moore and Thelma Moore. Stephen Presbury Moore duly filed his application for transfer to the Bel Air School within four blocks of his home.

Bel Air — No

3. Earlene Scott age (7) a second grade pupil in the Central Consolidated School, which is eight miles round trip from her home, duly filed herapplication for a transfer to Bel Air Elementary School which is within one and one-half blocks of her home. Her parent is the Rev. T. B. Scott.

Bel Air — No

4. Mona Leisia Scott, age (6) a 1st grade pupil in the Central Consolidated School, which is eight miles round trip from her home, duly filed her application for transfer to Bel Air Elementary School which is within one and one-half blocks of her home. Her parent is Rev. T. B. Scott.

Bel Air — No

Appellants' Witnesses:
(1) Moore
(2) Spriggs
(3) Scott

Defendants
(1) Willis
(2) Henry

REC'D

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TUCKER P. DEARING
WILLIAM M. TOADVINE

5. Robert McDaniel age (10) is now attending the 4th grade in the Central Consolidated School which is a thirty-five mile round trip from his home, whereas he duly applied for transfer to the Edgewood Elementary School, which is about one-block from his house. His sister was admitted to the Edgewood School. His parents are Mr. & Mrs. Clarence McDaniel. Edgewood Yes

6. David Roland Bell, age(6) now attending the 1st grade in the Central Consolidated School, duly made application for transfer to the Youth Benefit School. Central Consolidated is twenty miles from his home, whereas the Youth Benefit Shool is only one and one-half miles from his home. Yes

7. James J. Bell Jr., age (8) now attending the 3rd grade in the Central Consolidated School, duly made application for a transfer to Youth Benefit School. Central Consolidated School is twenty miles round trip from his home, whereas he lives within one and one-half miles of the Youth Benefit School. His parent is James Bell. Yes

8. Bernard Samuel Blackstone, age (11), now attending Central Consolidated School is in the 5th grade, said school being ten miles round trip from his home, duly made his applicatia to transfer to the Bel Air Elementary School one and one-fourth miles from his home. Bel Air No

9. Larry Wilson Blackstone, age (15), now attending the 10th grade in the central Consolidated School, which is ten miles round trip from his home, whereas he lives within one and one fourth miles of the Bel Air School. His parents is Louvinia H. Batson. Bel Air No

10. Ellen Elizabeth Blackstone, age (9) a fifth grader in the Central Consolidated School, which is ten miles round trip from her home, whereas she lives within one and one-fourth miles of Bel Air School. Her parent is Louvinia H. Batson. Bel Air No

11. Aurelia H. Boose, age (9) a 4th grade pupil in the Central Consolidated School, which is thirty-five miles round trip from her home, whereas she lives within a block of the Edgewood School. Her Parent is Jerry W. Boose. overseas Edgewood X(Yes)

12. Maurice L. Horsey LII, age (7) now attending the Central Consolidated School, which is twenty miles round trip from his home, whereas the Jarrettsville Elementary School is only three miles from his home. His parent is Maurice L. Horsey, Jr. Jarrettsville No

LAW OFFICES

DEARING & TOADVINE

740 N. GAY STREET

BALTIMORE 2, MD.

PLAZA 2-6651

TUCKER R. DEARING
WILLIAM M. TOADVINE

December 6, 1956

page # 3--Dr. Pullen

Please file this letter as an appeal to the State Board of Education from Mr. Charles W. Willis' ruling. Please set this Case for a hearing, before The State Board, at the earliest possible time on the following issues and facts:

1. Whether integration in the first three grades in two schools in Harford County, while maintaining segretion in all other grades of the two schools and in every grade of the other schools is educationally sound?

2. Whether compelling the appellants in this appeal to travel greater distances, solely because of their race, while denying them admission to the schools nearest their homes is unreasonable, arbitrary and capricious discrimination against Negro children?

3. Whether compelling the Negro children in this appeal to travel greater distances to school than the nearest school where their respective applications were made is not a violation of Maryland and Federal laws ?

WHEREFORE, we respectfully pray this Honorable Board to admit the appellants in this appeal to the schools nearest their respective homes where their several applications were filed.

Very truly yours,

Tucker R. Dearing

Juanita Jackson Mitchell

Robert B. Watts

Attorneys for the Appellants

BOARD OF EDUCATION OF HARFORD COUNTY

BEL AIR, MARYLAND

TRANSFER POLICY

If a child desires to attend a school other than the one in which he is enrolled or registered, it will be necessary for his parents to request a transfer. Applications for transfer are available on request. These requests should be addressed to the Board of Education, c/o Superintendent of Schools, Bel Air, Maryland. Applications will be received by the Board of Education between June 15 and July 15, 1956. All applications for transfer must state the reason for the request, and must be approved by the principal of the school which the pupil is now attending.

Applications for transfer will be handled through the usual and normal channels now operating under the jurisdiction of the Board of Education and its executive officer, the Superintendent of Schools.

While the Board has no intentions of compelling a pupil to attend a specific school or of denying him the privilege of transferring to another school, the Board reserves the right during the period of transition to delay or deny the admission of a pupil to any school, if it deems such action wise and necessary for any good and sufficient reason.

All applications for transfer, with recommendations of the Superintendent of Schools, will be submitted to the Board of Education for final consideration at the regular meeting of the Board on Wednesday, August 1, 1956. When requests for transfer are approved, parents must enroll their child at the school on the regular summer registration date, Friday, August 24, 1956.

Facts respecting the eleven appellants:

Name	Grade in Fall of 1956	School Attended in Fall of 1956	School to Which the County Superintendent Disapproved Transfer
Dennis Bernard Spriggs	7	Central Consolidated	Edgewood High
Stephen Presbury Moore, III	5	Central Consolidated	Bel Air Elementary
Earlene Scott	2	Central Consolidated	Bel Air Elementary
Mona Leisia Scott	1	Central Consolidated	Bel Air Elementary
Robert McDaniel	4	Central Consolidated	Edgewood Elementary
David Roland Bell	1	Central Consolidated	Youth's Benefit Elementary
James J. Bell, Jr.	3	Central Consolidated	Youth's Benefit Elementary
Bernard Samuel Blackstone	6	Central Consolidated	Bel Air Elementary
Larry Wilson Blackstone	10	Central Consolidated	Bel Air High
Ellen Elizabeth Blackstone	5	Central Consolidated	Bel Air Elementary
Maurice L. Horsey, III	2	Central Consolidated	Jarrettsville Elementary

The Harford County Board of Education adopted the following Desegregation Policy on August 1, 1956:

"The Board of Education of Harford County appointed a Citizens' Consultant Committee of thirty-five members in July, 1955, to study the problems involved in the desegregation of Harford County schools. This committee met in August, 1955 and appointed subcommittees to make intensive studies of several phases of this problem. The full committee held its final meeting on February 27, 1956, heard subcommittee reports, discussed many aspects of the problem, and unanimously resolved:

> To recommend to the Board of Education for Harford County that any child regardless of race may make individual application to the Board of Education to be admitted to a school other than the one attended by such child, and the admissions to be granted by the Board of Education in accordance with such

rules and regulations as it may adopt and in accordance with the available facilities in such schools; effective for the school year beginning September, 1956.

This resolution was adopted by the Board of Education at its regular March meeting.

"At the regular June meeting of the Board of Education, a transfer policy was adopted, and procedures for requesting transfers were established.

"The Supreme Court decision, which required desegregation of public schools, provided for an orderly, gradual transition based on the solution of varied local school problems. The resolution of the Harford County Citizens' Consultant Committee is in accord with this principle. The report of this committee leaves the establishment of policies based on the assessing of local conditions of housing, transportation, personnel, educational standards, and social relationships to the discretion of the Board of Education.

"The first concern of the Board of Education must always be that of providing the best possible school system for all of the children of Harford County. Several studies made in areas where complete desegregation has been practiced have indicated a lowering of school standards that is detrimental to all children. Experience in other areas has also shown that bitter local opposition to desegregation in a school system not only prevents an orderly transition, but also adversely affects the whole educational program.

"With these factors in mind, the Harford County Board of Education has adopted a policy for a gradual, but orderly, program for desegregation of the schools of Harford County. The Board has approved applications for the transfer of Negro pupils from colored to white schools in the first three grades in the Edgewood Elementary School and the Halls Cross Roads Elementary School. Children living in these areas are already living in integrated housing, and the adjustments will not be so great as in the rural areas of the county where such relationships do not exist. With the exception of two small schools, these are the

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EXCERPT FROM THE MINUTES OF THE REGULAR JUNE MEETING OF THE BOARD OF EDUCATION OF HARFORD COUNTY

JUNE 5, 1957

The Board reaffirmed its basic plan for the desegregation of Harford County schools, but agreeed to the following modification for consideration of transfers to the high schools during the interim period while the plan is becoming fully effective.

Beginning in September, 1957, transfers will be considered for admission to the high schools of Harford County. Any student wishing to transfer to a school nearer his home must make application to the Board of Education between July 1 and July 15. Such application will be evaluated by a committee consisting of the high school principals of the two schools concerned, the Director of Instruction, and the county supervisors working in these schools.

These applications will be approved or disapproved on the basis of the probability of success and adjustment of each individual pupil, and the committee will utilize the best professional measures of both achievement and adjustment that can be obtained in each individual situation. This will include, but not be limited to, the results of both standardized intelligence and achievement tests, with due consideration being given to grade level achievements, both with respect to ability and with respect to the grade into which transfer is being requested.

The Board of Education and its professional staff will keep this problem under constant and continuous observation and study.

Harford County Board of Education
October 8, 1959

Desegregation Case - Alvin Dwight Pettit

Mr. George D. Pettit made formal application to the Board of Education of Harford County between July 1 and 15, 1959, that his son, Alvin Dwight Pettit, be allowed to transfer from the eighth grade of the Havre de Grace Consolidated School, where he had completed the 1958-59 school year, to the ninth grade of the Aberdeen High School for the 1959-60 school year.

This application for transfer, along with five others, was reviewed by a professional committee, established for this purpose, on July 24, 1959. This committee consisted of the principals of the two high schools concerned in the transfer, the Director of Instruction of the Harford County Board of Education, and the Supervisor of the Aberdeen High School. The Supervisor of the Havre de Grace Consolidated School, who was also a member of this committee, was ill with a heart attack at the time of this meeting and was unable to attend.

After a careful study of school records and a discussion of each individual case, the committee recommended the approval of four of the applications for transfers and the disapproval of the other two.

One of the two cases recommended for disapproval was that of Alvin Dwight Pettit. The committee felt that lack of ability and low achievement in school work would prevent this applicant from making the necessary adjustments that would insure his success in the new situation.

The Board of Education, at its regular meeting on August 5, 1959, approved the recommendations of its professional committee.

On August 10, 1959, the Superintendent of Schools of Harford County wrote Mr. George D. Pettit informing him that the transfer request for his son, Alvin Dwight, had been disallowed.

Documents supporting the procedures followed above are attached.

1. Excerpt from the Minutes of the Regular June Meeting of the Board of Education of Harford County - June 5, 1957.

2. Excerpt from the Minutes of the Regular August Meeting of the Board of Education of Harford County - August 5, 1959.

3. Copy of the Superintendent's Letter to Mr. George D. Pettit Refusing Transfer Request.

C
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P
Y

LAW OFFICES

DEARING & TOADVINE

627 Aisquith Street

Baltimore 2, Md.

September 14, 1959

State Board of Education
2 West Redwood Street
Baltimore 1, Maryland
Attn: Dr. Thomas Pullen, Jr.
State Superintendent

RE: Appeal of Pettit to the State Board of Education

Dear Dr. Pullen:

This is to advise that we represent A. Dewight Pettit through his parents Mr. and Mrs. George Pettit.

Alvin Dwight Pettit age 13 is a pupil in the ninth grade of the public schools of Harford County. In accordance with the regulations of the Harford County School Board requiring Negroes who wish to transfer to a formerly all white school, to make application for transfer, he made his application for a transfer from the Harve de Grace Consolidated School to the Aberdeen High School.

On or about August 10, 1959 he received a written notification from Mr. Charles W. Willis, the Superintendent of the schools of Harford County advising him that his request for a transfer had been rejected.

The Harve de Grace Consolidated School is greatly inferior to the Aberdeen High School. The Harve de Grace school is racially segregated. Young Pettit's parents refuse and will refuse to send their child to a racially segregated school.

The only reason Alvin Dwight Pettit's request for said transfer was refused by the School Board and Superintendent of Harford County Schools was and is the fact that he is a descendant of the African race. We allege that Pettit met all of the other requirements entitling him to admission to the Aberdeen High School. This appeal is an

amendment to the appeal that was filed by Mr. James B. McCloskey and Mr. O. Daniel Kadan, the then attorneys for the Pettits. That appeal was filed on or about August 18, 1959. Both the appeal and the amendment is filed in accordance with Article 77 of the Annotated Code of Maryland, Section 14h and is also in accordance with the rule of decision in the Federal Courts requiring the exhaustion of State Administrative remedies, before seeking Declaratory Judgments and Injunctive Relief in the Federal Courts.

The rights of young Pettit are personal, present and immediate and destruciable. They are peculiarly enjoyable during the school term, which is at best short. Young Pettit is not in school. Every day wasted can never be regained. He has no other remedy at present except the intervention of this Board.

Please expedite this appeal and set it for a hearing before the State Board of Education on the following facts and issues:

1. Whether Alvin Dwight Pettit should be granted a transfer to the Aberdeen High School under the facts and circumstances of this case?

2. Whether the action of the Board of Education and Superintendent of Schools of Harford County is unreasonable, arbitrary and capricious?

3. Whether the plan of the integration can bar the individual constitutional rights of your petitioners?

Wherefore, we respectfully request this Honorable Board after a hearing to pass an order directing the Superintendent and Board of Education of Harford County to admit Pettit to the Aberdeen High School.

Very truly yours,

(Signed) Tucker R. Dearing

Tucker R. Dearing

(Signed) Juanita Jackson Mitchell

Juanita Jackson Mitchell

TRD/wt

file
re Pettit v Harford Co.
integration appeal.

STATE OF MARYLAND
DEPARTMENT OF EDUCATION
BALTIMORE, MARYLAND

October 22, 1959

To the Members of the State Board of Education:

I am enclosing copies of the five test record cards which Dr. Willis was asked to submit as additional evidence in connection with the Pettit hearing.

Sincerely yours,

T. G. Pullen, Jr.

State Superintendent of Schools

TGP:DC

Copy to Mr. James O'C. Gentry

STATE OF MARYLAND
DEPARTMENT OF EDUCATION
BALTIMORE, MARYLAND

September 28, 1959

To the Members of the State Board of Education:

As you know, it has been necessary to to change the date for the hearing on the appeal from the decision of the Superintendent of Schools of Harford County in the case of Alvin Dwight Pettit, in order to make it possible for Mr. James O'C. Gentry, Assistant Attorney General, to be present. After contacting all the members of the State Board, we have scheduled the hearing on Friday, October 16, at 10:00 a.m.

Kindest personal regards!

Sincerely yours,

T. G. Pullen, Jr.

TGP:DC

State Superintendent of Schools

Copy to Mr. James O'C. Gentry
Dr. David W. Zimmerman
Mr. William S. Sartorius

6000 file

C O P Y

Alvin Dwight Pettit,
a minor, by his parent,
George D. Pettit

Vs.

Board of Education of
Harford County, Maryland

Appeal

to the State Board of Education from the action of Harford County Board of Education denying permission for Alvin Dwight Pettit to transfer from the Havre de Grace Consolidated High School to the Aberdeen High School

OPINION AND ORDER BY THE MARYLAND STATE BOARD OF EDUCATION, NOVEMBER 25, 1959

This appeal was filed by Alvin Dwight Pettit through his father to the State Board of Education on August 17, 1959, from the refusal of the Harford County Board of Education to grant the application for transfer of the son from the Havre de Grace Consolidated High School to the Aberdeen High School.

An open hearing was held on this appeal on October 16, 1959, by the State Board of Education with all seven members present. The Appellant was represented by Attorneys Tucker R. Dearing and Juanita Jackson Mitchell. The Harford County Board of Education was not represented by an Attorney. James O'C.Gentry, Assistant Attorney General, appeared as legal adviser to the State Board. Testimony was taken and recorded and arguments were heard.

On July 7, 1959, George D. Pettit submitted a written request to the Board of Education of Harford County for the transfer of his son, Alvin Dwight Pettit, grade 9, from Havre de Grace Consolidated High School to Aberdeen High School and gave as his reason "for the advantage of the pupil in his preparation for higher education." Two years prior to the date of this application, the United States District Court for the District of Maryland in the case of Stephen Moore, Jr., et al., vs. Board of Education of Harford County, et al., Civil No. 9105, entered a decree undertaking to set up a plan for the desegregation of schools under the jurisdiction of the Board of Education of Harford County, Maryland. By reference to

paragraph 4 of said decree, it will appear that the Court fixed the year 1960 for consideration and granting of a Negro child's application for admission or transfer to ninth grade classes. The decree then provided by paragraph 5 that applications for Negro children not qualified for admission or transfer under paragraph 4 to high schools under defendant's control will be considered and granted if the applicants fulfill special qualifications pertaining to the probability of success of each individual pupil. The Court in its decree then undertook to state how these special qualifications of the individual pupil should be measured, viz., by intelligence and achievement tests, grade level achievements, and other similar matters which were to be adjudged by a committee set up by the Court and which was to consist of the principals of the schools from which the pupil is transferring and the school to which he desires to transfer, the Director of Instruction, and the County Supervisors working in these schools. The Court's decree further provided that, apart from the fact that these conditions may be applied only to Negro students not qualified for admission under paragraph 4, no racial distinction is to be made in the administration of these tests and evaluations. The decree then provided that applications should be made between July 1 and July 15, 1957, and years following in which these tests may be given. The final paragraph of the decree of the Court provides that the Court retains jurisdiction for the purpose of granting any other relief that may become necessary.

Following receipt of the Pettit application for transfer, the professional committee set up by the Court met and considered the application of Pettit along with four other applications for transfer from the Havre de Grace Consolidated High School to the Aberdeen High School. Three of these applications were approved by the committee, and two applications, of which this was one, were disapproved. The professional committee's reason for disapproval of Pettit's application, as stated in its report, was lack of ability and low achievement, as evidenced by standard test scores and school progress reports.

It appears that the committee met on July 24, 1959, and discussed all five applications for transfer for a period of more than two hours, at which time the committee had before it all available records of the five applicants, including the intelligence and achievement tests of each applicant and their respective school grades. In addition to this, the professional committee considered the personalities of the students who were involved, their general attitude in school, and their ability to adjust

in school situations. This information was received from one of the members of the committee who was the principal of the Havre de Grace Consolidated High School, which all applicants had attended. The record shows that this committee considered the ability of each student, as indicated by the intelligence tests or mental maturity tests and the achievement records, as evidenced by the school grades which appeared on the permanent record cards before the committee. After giving consideration to these different factors, the committee decided that young Pettit did not possess the special qualifications requisite to the probability of success, as prescribed by the Court's decree and, accordingly, disapproved his application. Its report was then transmitted to the Board of Education of Harford County, which at its regular meeting on August 5, 1959, approved the three transfer requests recommended by the professional committee and disapproved the transfer requests of Alvin Dwight Pettit and Phyllis Alphonzia Grinage.

On August 10, 1959, the Superintendent of Schools by letter notified the father of the action taken on the application. One week later, on August 17, 1959, the then Attorneys for Mr. Pettit, Mr. James B. McCloskey and Mr. O. Daniel Kadan, entered an appeal to the State Board of Education from the refusal of the Harford County Board of Education to transfer young Pettit to the Aberdeen High School. Thereafter, on September 14, 1959, the present Attorneys for Mr. Pettit, Tucker R. Dearing and Juanita Jackson Mitchell, addressed a letter to the State Superintendent of Schools requesting that their letter be treated as an amendment to the original appeal and stating that both the appeal and the amendment were filed in accordance with Section 144 of Article 77 of the Annotated Code of Maryland.

Section 5 of the Moore decree provides that applicants in young Pettit's class must fulfill special qualifications "to be adjudged by a committee consisting of the principals of the schools from which the pupil is transferring and the school to which he desires to transfer, the Director of Instruction and the county supervisors working in these schools." Such a committee met to consider the Pettit application and denied it.

Upon close examination, we conclude that as the decree is now framed, it has constituted the foregoing committee as an arm of the Court. No power over the assignment of pupils applying under the decree is vested in the County Superintendent. Were he to countermand the committee's decision, his action would be invalid and would have to be set aside as violative of the decree, without any examination of the merits of the controversy.

The jurisdiction of this Board under Article 77 of the Annotated Code of Maryland, Section 150, extends to appeals from decisions of the County Superintendent. In the instant case, there was no decision of the County Superintendent, nor could there have been one. There was merely a decision of a professional committee acting as an arm of the Court.[1/]

1/ The committee's action was, to be sure, approved by the County Board of Education. However, as such review was not provided for in the decree, we believe that the Board's action may properly be disregarded for purposes of this decision.

As the jurisdiction of this Board is limited to appeals from decisions of the County Superintendents, it follows that it lacked the power to review the decisions of the professionalcommittee created by the Court.

For the aforegoing reason, this appeal is hereby dismissed without prejudice to Appellant's reapplication for transfer at a subsequent time between dates set forth in the Court's decree.

(signed) Jerome Framptom, Jr.
Jerome Framptom, Jr., President

(signed) William A. Gunter
William A. Gunter, Vice President

(signed) Elizabeth R. Cole
Elizabeth R. Cole

(signed) Mary S. F. Cronin
Mary Cronin

(signed) D. O. W. Holmes
Dwight O. W. Holmes

(signed) Geo. C. Rhoderick, Jr.
George C. Rhoderick, Jr.

(signed) Richard Schifter
Richard Schifter

COLLEGE OF LIBERAL ARTS

Alexander Owusu

Patricia G. Page

Harriet M. Parker

Patricia Parker

Thomas E. Parker

Ralston Parkinson

Kibbie F. Payne

Gail H. Peavy

Marilyn M. Pegg

Patricia Peterson

Timothy N. Peterson

Alvin D. Pettit

Errol R. Philp

Willetta Phipps

Alexander Owusu: Economics, Economics Club; **Patricia G. Page:** Economics, Business Club, Economics Club; **Harriet M. Parker:** Sociology, Gamma Sigma Sigma, Red Cross College Volunteer; **Patricia Parker:** History, First Vice President and Historian Gamma Sigma Sigma, History Club; **Thomas E. Parker:** Government, Political Science Society, Economics Club, International Club, World Affairs Club, Sociology and Anthropology Clubs, L.A.S.C. Grapevine Staff, Cramton Ushers, Co-Chairman Homecoming Queen's Float Committee, Homecoming Variety Show Committee, Sprung Madness Staff; **Raltson Parkinson:** Economics, International Club, Caribbean Association, West Indian Association, Executive Board Wesley Foundation; **Kibbie F. Payne:** Psychology, L.A.S.C. Student Exchange Committee; **Gail H. Peavy:** Elementary Education, President Howard University Law Students' Wives; **Marilyn M. Pegg:** English, Aerodettes, Homecoming Steering Committee, Sik-O-Lympics Committee, International Club, Chapel Usher; **Patricia Peterson:** Zoology, Delta Sigma Theta; **Timothy N. Peterson:** Business Administration, Accounting, Homecoming Judging and Awards Committee, Business Club, Spanish Club, Baseball, Basketball; **Alvin D. Pettit:** Government, Co-Captain Football Team, Varsity H-Club; **Errol R. Philp:** Business Administration, International Club, Caribbean Association, Business Club, Marketing Club, Economics Club; **Willetta Phipps:** Sociology, Sociology Club, Speech Society, Cramton Ushers, Homecoming Committee.

1964 Howard University Football Team

1964 Football Team

First Row, L-R: T. R. Sesay, Coach; Carey Robinson; S. McGruder; F. Thompson; S. Hall; S. Jackson; R. Wills; S. Allen; M. Richardson; Z. Dow; H. Dobbins; R. Mance.
Second Row, L-R: J. Taylor; C. Massie; A. Henery; J. Martin; W. Davis; D. Pettit; J. Shelton; J. Butler; R. Oliver; M. Jenkins; P. Wills; L. Benjamin, Asst. Coach.
Third Row, L-R: R. Holmes; W. Hill; A. Horton; K. Jasper; T. Morrison; E. Fox; and W. Proctor; R. Daniel; J. Rutledge; K. Jones; L. Shaw; H. Gr...
Fourth Row, L-R: P. Robinson; L. Fischer; L. Johnson; F. Cherry; M. Gaskins; A. Carter; R. Henderson; E. Whisonant; L. Ward; B. W...; J. Bentley; W. Wade.

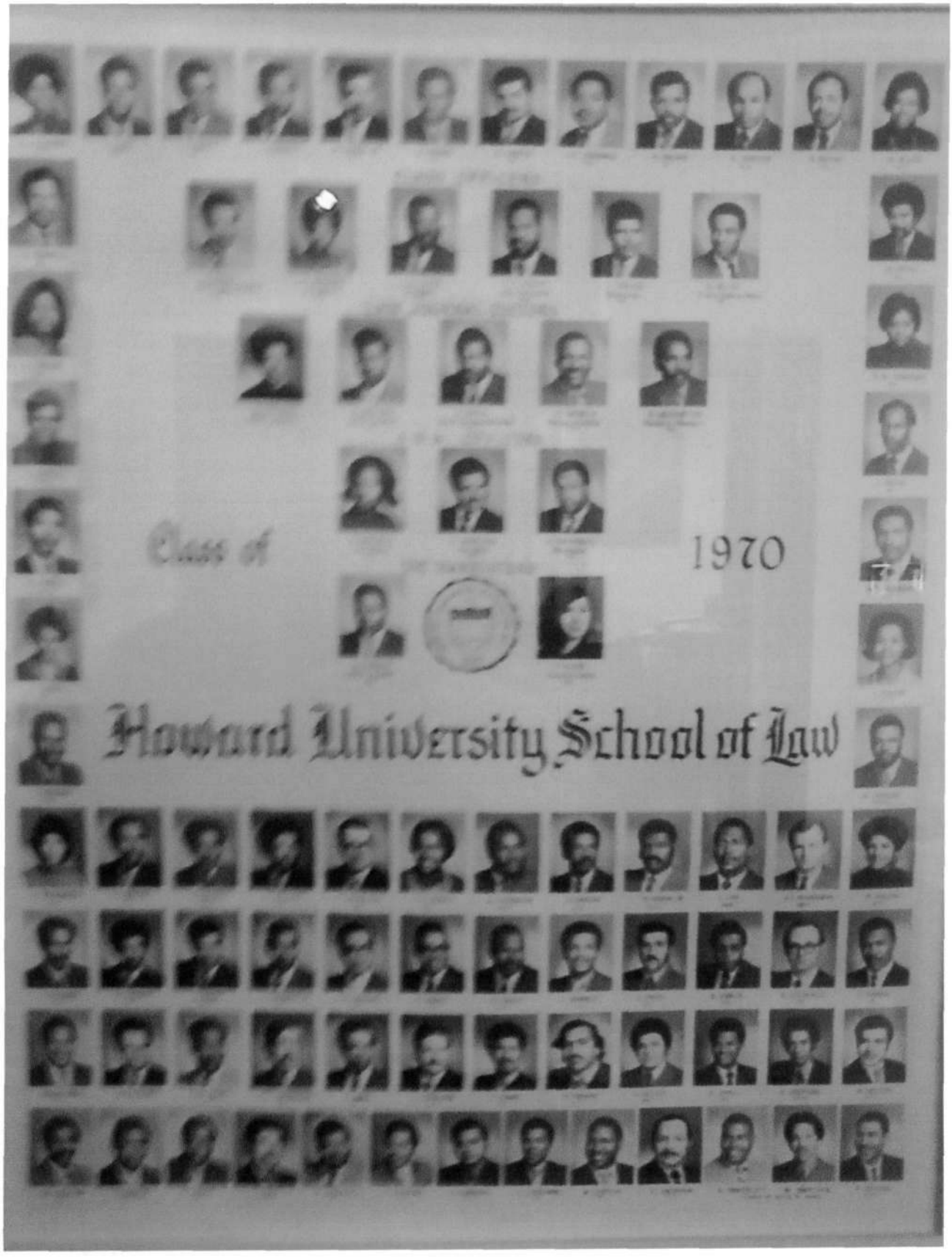
Varsity Scoreboard 1964

Howard University	6	St. Paul	0
Howard University	13	Chaney	0
Howard University	18	Drexel	14
Howard University	32	Delaware	16
Howard University	8	Morgan	15
Howard University	20	Fisk	8
Howard University	14	Hampton	6
Howard University	50	Gallaudet	6
Howard University	44	Morehouse	6
Howard University	36	Livingstone	0

The 1964 Bison football team set a standard for Howard athletics. This team, which lost only one game among its C.I.A.A. conference contests, consisted of non-scholarship athletes. The team was invited to compete in the Orange Blossom Classic, then the most prestigious post season game for the historically black colleges.

Football

FIRST ROW — Coach Tillman Sease, Wayne Davis, Harold Dobbins, Robert Mance, Stephen MacGruder, Zellie Dow, Edward Pinkard, *Julian Shelton, Clyde Mason, Richard Oliver.* ***SECOND ROW*** — Assitant Coach Lawrence Benjamin, Dwight Pettit, Harold Orr, Elliott Whisonant, Preston Blackwell, Joel Mungo, Terry Brandon, Allen Henry, Leon Johnson, Henry Edwards. **THIRD ROW** — Assistant Coach Cleo Hatcher, *Randolph Jenkins, James Dean, Talford Lyons,* George Fortune, Walter White, Ralph Daniels, Bill Hughey, Robert McFadden. **FOURTH ROW** — Jesse Bobo, Larry Garmon, Godfrey *Revis, Horace Kenner, Oliver Shaw, Earl Phillips, Arthur Thompson,* Curtis Simmons, Jim Portlock, Keith Bacon. **FIFTH ROW** — Claude Stone, Harold Ford, Harold King, Ronald Williams, Joseph Brown, Roy Mitchell, Eddie Sims, John Mercer, and James Rogers.


Class of
1970
Howard University School of Law

THE TRUSTEES OF HOWARD UNIVERSITY IN THE DISTRICT OF COLUMBIA

TO ALL PERSONS TO WHOM THESE PRESENTS MAY COME GREETINGS

BE IT KNOWN THAT

ALVIN DWIGHT PETTIT

HAVING FULFILLED THE REQUIREMENTS

AND HAVING BEEN RECOMMENDED BY THE FACULTY

FOR THE DEGREE OF

BACHELOR OF ARTS

HAS BEEN ADMITTED TO THAT DEGREE

WITH ALL THE RIGHTS PRIVILEGES AND HONORS PERTAINING THERETO

IN WITNESS WHEREOF THE UNDERSIGNED HAVE SUBSCRIBED THEIR NAMES

AND AFFIXED THE SEAL OF THE UNIVERSITY

THIS NINTH DAY OF JUNE, A.D. 1967

G. Frederick Stanton
SECRETARY

PRESIDENT

Frank M. Snowden
DEAN

Supreme Court of the United States of America

Alvin Dwight Pettit, Esquire

of Baltimore, State of Maryland

was on motion first made to the Court in this behalf by Mr. Clarence Maurice Mitchell, Jr. —

_____ *duly admitted and qualified as an*

Attorney and Counsellor of the Supreme Court of the United States on the fifteenth day of April, in the year of our Lord one thousand nine hundred and seventy-four, and of the Independence of the United States of America the one hundred and ninety-eighth. _____

In testimony whereof I, *Michael Rodak, Jr.* Clerk of said Court, have hereunto set my hand and affixed the Seal of said Court, at the City of Washington, this *15th* day of *April*, in the year of our Lord one thousand nine hundred and *seventy-four*

Michael Rodak, Jr.

Clerk of the Supreme Court of the United States

MEMO FOR RECORD

28 April 1967

SUBJECT: Phone Conversation with Dr. Leon T. Katchmar, Human Engineering Laboratories, Aberdeen Proving Ground, Extension 4401, in regard to the George D. Pettit complaint.

Discussion was held this date with Dr. Katchmar explaining that in an earlier telephone call, Mr. Gentry had alleged that a discussion he had held with Dr. Katchmar had a bearing on the George D. Pettit case. The portion of the DBBOO record of discussion with Mr. Gentry involving Dr. Katchmar was read. Dr. Katchmar, after hearing Mr. Gentry's remarks, stated that they were out of context and misleading. He stated that when Mr. Gentry approached him about attending a Philadelphia Society meeting, he did discuss with Mr. Gentry the advisability of Mr. Gentry making the requested presentation. Because of the manner in which the invitation had been extended, he also told Mr. Gentry he felt the HEL Laboratory should not underwrite the TDY costs for his trip to Phila. However, he had explained he was agreeable and would grant administrative leave for the time required to attend.

This lead to a professional level discourse on the social and economical development of the Society, its objectives and so forth. In this academic discussion about possible materials for Mr. Gentry to present at the Society meeting, he did discuss with Mr. Gentry a generally known condition involving the lack of incentive, motivation, ambition, etc., in many members of the Negro race and that it might be possible for Mr. Gentry to speak on this subject at the meeting. Increasing efforts in the area of developing more motivation and ambition in Negro children at nursery school level was suggested as one approach. The comment quoting him as saying if he were dictator of the United States, this is what he would do, is entirely inaccurate and is not worthy of a rebuttle.

EARL R. HAAG
Deputy Equal Employment
Opportunity Officer

MEMO FOR RECORD

28 April 1967

SUBJECT: Phone Conversation with Mr. George Gentry, Bureau of Standards, Gaithersville, Md., TEL: 1-301-921-3558, in regard to George D. Pettit Complaint

At approximately 0830 hours, this date, the undersigned spoke to Mr. George Gentry, former employee at HEL, to determine the exact reasons why Mr. Gentry terminated his employment at APG.

It was explained that in his complaint, Mr. Pettit alleged that Mr. Gentry left HEL because of not being selected for promotion. Mr. Gentry said this was true. When he first came to HEL, he was promised a promotion in a short period of time. After two years he never got it. This is one of the reasons why he decided to leave. When asked what his position was at HEL, Mr. Gentry replied that he had been a research psychologist at the GS-11 level. He also stated that he left because he could get an immediate promotion that he could not get at HEL. He left the laboratories in August 1966.

Mr. Haag asked Mr. Gentry if he was promised the promotion by any one individual. Mr. Gentry said that first of all, it was mentioned by Mr. Sam Hicks. Since Mr. Gentry had worked at HEL earlier as a graduate student summer employee, Mr. Hicks, in informal comments, had indicated that he could get a GS-12 position by starting as a GS-11. After being selected for the job, Mr. Moler and Mr. Cain of HEL both had reassured him that the promise of such a promotion was true. That is, upon satisfactory performance. He stated that his work at HEL was more than satisfactory, performance appraisals show it. Mr. Gentry also stated that Mr. Moler recommended him for promotion many times but unfortunately, it never seemed enough to get it done. As far as Mr. Gentry is concerned, Mr. Moler tried.

Mr. Haag asked Mr. Gentry if he had been told or knew why he was not promoted. Mr. Gentry answered that it was quite difficult to explain. He was sure that on the basis of his performance appraisal, he was qualified but other than the performance appraisal itself, he could not swear that any other paper work had been put in for his promotion. He stated that he did know that Mr. Moler had tried to get a quality increase for hi but it was turned down.

Mr. Haag then read that portion of Mr. Pettit's complaint where Mr. Pettit stated that the men (Negro) did not leave because they wanted to do so. They had left because they had decided that they didn't care to "fight the system". When asked his comments regarding the above statements, Mr. Gentry said that the allegations were not entirely true. He agreed with Mr. Pettit's initial reference to himself and

stated reason for leaving. Lack of being promoted was not the sole reason. There were others. He was interested in different kinds of work, more varied work, and of course, there was no question about a higher promotion at the Bureau of Standards. Some of his reasons were personal. For example, Mr. Gentry stated while at HEL that he had run into some car problems and had to take off on leave for a period of time. Mr. Erickson, his supervisor at the time, did not think his reasons for being absent from work were justified.

When asked about his association with Mr. Pettit, Mr. Gentry replied that he thought Mr. Pettit was very talented, although his work was sort of up and down because of his (Mr. Pettit's) personal problems. Some of his feelings were real, such as his attitude towards not getting promoted, etc. Some of his feelings might have been compounded by a general feeling of despair about ever getting a promotion. Mr. Gentry then stated he didn't care to comment further on this.

Mr. Gentry repeated that it was a delight to work with Mr. Pettit because of his ability and knowledge. He went on to say that it is difficult to pinpoint discrimination. He shares the view that many personnel at HEL were mystified by the fact that Mr. Sam Hicks had not been promoted. Mr. Hicks was known to have a very excellent record. Mr. Gentry went on to say that it would be a good idea for the HEL persons involved to take another look at their selection policies.

Mr. Gentry commented that he had a discussion with Dr. Katchmar about his attendance at a technical meeting in Philadelphia. Mr. Gentry had been asked to speak on Human Engineering. He visited Dr. Katchmar, HEL, to get permission to attend. Dr. Katchmar told him that he could grant administrative leave but that Mr. Gentry would have to finance the trip. Mr. Gentry explained a little of the history of the Society to Dr. Katchmar, mentioning that it had been founded by Negroes in the 20's but now was integrated and fully accepted. Dr. Katchmar made the comment that Negroes in general lack motivation and ambition, in spite of the fact that Mr. Gentry, a Negro himself, was sitting in his office. Dr. Katchmar went on to say that if he (Dr. Katchmar) was dictator of the United States, he would put all Negro children in a nursery school and teach them motivation and ambition. Dr. Katchmar's statement reflected in Mr. Gentry's opinion, a kind of attitude which is difficult to overcome.

After this discussion, Mr. Gentry commented that prior to transferring he spoke to his present supervisor and informed her that he was considering going to the Technical Society meeting in Philadelphia almost upon transferring. He indicated his present PhD supervisor said it was fine and that his expenses would be paid by the Bureau. Mr. Gentry mentioned this to demonstrate the difference in attitude between the two organizations.

Mr. Gentry stated that he had discussed his visit with Dr. Katchmar and the comments made with other HEL people. These other people just couldn't believe that Dr. Katchmar had made such comments.

Mr. Gentry said that he did not want to get more involved in Mr. Pettit's complaint than Mr. Pettit himself, but perhaps his thoughts may help those who share these same views and experiences. He stated that by his cooperation he may be able to help those people still involved. Mr. Gentry explained that he is sure Dr. Katchmar didn't give a second thought to the comments he had made, but Mr. Gentry did.

Mr. Gentry asked Mr. Haag if Mr. Pettit was given any reason by his supervisors as to why he had not been promoted. Mr. Haag responded saying that Mr. Pettit apparently had not satisfactorily demonstrated his capability and potential to carry the full load of a project engineer. This includes full responsibility from initial planning to the final report of the project. Mr. Gentry then commented that there really isn't any requirement for such capability. Others are GS-12 at HEL and don't . But here again, Mr. Pettit has demonstrated some real drawbacks that could explain his not getting promoted. It seems everything has been reduced to the racial problem. Mr. Gentry stated that he is not sure the racial issue is the only problem.

Mr. Haag then asked if Mr. Gentry left his GS-11 position for a GS-12 position. Mr. Gentry replied that he went directly to a GS-12, an immediate promotion. This was a most important factor to his leaving HEL. Mr. Gentry explained that he had considered taking a lateral GS-11 transfer in earlier Bureau negotiations but decided he better not do so.

Mr. Gentry then said he wanted to comment on one more thing. There are other people at HEL who are not being promoted. For example, Mr. Olderman. Mr. Olderman is unusually talented. He has been a GS-11 for some time. But the problem is not tied down to Mr. Olderman alone.

Mr. Gentry expressed interest in continuing his cooperation and assistance in the case if needed. He was advised that his help was appreciated but at this point no determination could be made as to the need for further contacts.

EARL R. HAAG
Deputy Equal Employment
Opportunity Officer

MEMO FOR RECORD

27 April 1967

SUBJECT: Phone Conversation with Mr. Sam Hicks, Operations Research, Social Security Administration, Baltimore, Md., TEL 944-5000, Extension 4869, in regard to the George D. Pettit complaint. (Former negro employee of HEL and associated co-worker with Mr. Pettit).

At approximately 1600 hours, this date, the undersigned called Mr. Sam Hicks, a former employee of HEL. This was to determine whether the allegation made by Mr. George Pettit in his discrimination complaint about the reason for Mr. Hicks' termination of employment at HEL was valid.

Mr. Hicks stated that the primary reason for his leaving HEL was the lack of promotional opportunities. He feels very strongly that the recruitment effort on the part of HEL in regard to the Negro market is not as good as it should be and that it is very limited in scope. He commented on one instance in which a student from Maryland University, working on his PhD, was not selected for employment at HEL. The student was not selected for employment, but during the same period, other personnel were hired with much less training and fewer qualifications.

Mr. Haag asked Mr. Hicks if in his opinion, his new position offered greater opportunity for advancement. Mr. Hicks stated that by transferring to Social Security, he was promoted to a GS-13. Mr. Haag asked if Mr. Hicks thought a GS-13 would not have been available for him at HEL. Mr. Hicks replied he didn't know for sure, but he had not been able to get further than a GS-12 at HEL, because of stated lack of formal graduate training. On the other hand, a lot of people with similar levels of training were at the GS-13 level.

Mr. Haag asked whether or not Mr. Hicks had ever been among eligible candidates for a GS-13 position in HEL. He stated that there are three notices in his official 201 file that he had been among the best qualified eligible. At no time was Mr. Hicks selected for a 13 position. He left HEL mainly because of the promotion a transfer offered.

Mr. Haag asked Mr. Hicks if he felt that not being selected for a GS-13 position stemmed in any way from discrimination. Mr. Hicks replied that it was hard to answer, but it is not outside the realm of possibility. However, he went on to say that it would not be completely true to say he was discriminated against.

Mr. Hicks commented that he frankly thinks Mr. Pettit has merit in his complaint. He (Mr. Pettit) has had people reacting to him rather than to the promotion issue. There is no excuse for keeping him at an 11 level for so long, particularly with his technical competence even-though he sometimes gets so involved in his complaints, he loses sight of the outside world. Mr. Pettit has been pushed around from organization to organization. He has had to move and work under adverse circumstances.

When questioned as to how long he had worked at HEL, Mr. Hicks stated that he had worked there 10 years, starting as a GS-5 and ending as a GS-12, which he considers normal advancement for personnel at the Laboratories. He was just not selected for a GS-13 position and he left HEL because he felt he could not be promoted. The dates for the merit promotion listings in his 201 file are 2 April 1965, 1 February 1965, and the last one sometime in late 65 or early 66. Under the AMC talent bank, Mr. Hicks was referred to Frankford Arsenal to a supervisory position but the incumbent decided not to leave. He is definitely eligible for a 13 position. Out of the three merit promotion cases mentioned above, one individual was selected by HEL from the outside, not through merit promotion. This individual had no prior civil service work to his credit before being hired. In the second case, Mr. Hicks stated he was not sure if the individual selected was from the outside or not.

EARL R. HAAG
Deputy Equal Employment
Opportunity Officer

4. During his extended absence Mr. Kurtz and an enlisted man had continued the work on NIKE-X and Mr. Kurtz was of the opinion that they could meet our commitments. Since I had a requirement to conduct an evaluation of a new-style rear view mirror for use on Army trucks on 21 April, I assigned Mr. Pettit to conduct this study with Mr. Kalen under the guidance of Mr. Sova. I informed both Mr. Sova and Mr. Pettit that I expected the study to be completed in approximately three weeks.

5. On 27 April Mr. Pettit asked permission to assist Mr. Gentry in designing a seat mount for Mr. Gentry's study. Mr. Pettit felt that it would only take one day and would not create a problem for the mirror study. I stated that I had no objection provided he obtained Mr. Sova's concurrence. Mr. Pettit objected to this requirement and felt that I should write out what his responsibilities and duties are. I informed him that I did not believe this was necessary since he had a copy of his job description and performance requirements.

6. On 9 May I received his proposal for the method of performing the mirror study. After reviewing his proposal I wrote out several items that should be clarified before the proposal would be acceptable. I discussed each item with him and gave him a copy of the items. Mr. Pettit objected to my criticism of his proposal; he claimed that I was changing the rules on him; to do what I wanted would require eighteen months to establish the criteria needed for the study; all the items I wanted covered were not his responsibility. On 9 May he came back to argue against the items I requested him to clarify and in the ensuing discussion stated that it was obvious that I had it in for him and was trying to give him a hard time. I told him that if he would settle down and do what I told him to do rather than look for excuses for not doing it he might accomplish something.

7. The actual collection of data took place on 28 July, while I was on TDY, and I was informed later that other personnel in the branch had to handle the data collection since Mr. Pettit was too ill to work that day. The letter report was transmitted to ATAC on 20 Oct 66. A HEL TM is currently in the process of final typing. It should be noted that although it took Mr. Pettit 5 1/2 months to conduct the study and publish the results he did end up with a nice report.

8. On 2 Nov 66 I submitted Mr. Pettit's Performance Appraisal (attached).

9. About the time Mr. Pettit was completing his report on the mirrors, a telephone request was received from ERDL concerning our interest in evaluating STANAG road signs. Mr. Pettit was asked if he would be interested in this evaluation. Since he agreed

he was asked to start collecting literature on legibility of road signs as well as other human factors considerations. Another member of the branch was scheduled to visit ERDL at this time and he was asked to obtain preliminary data from ERDL (ref: Trip Report dated 24 Oct 66, re Visit of Mr. Jack Waugh to ERDL on 13 Oct 66). ERDL followed up with an official request on 1 Dec 66 (ref: SMEFB-SD letter to HEL dated 1 Dec 66, subject: Military Route Signs -- STANAG 2012, FSC 9905).

10. Upon receipt of the official request from ERDL, I asked Mr. Pettit to prepare a test plan. He felt that he needed additional information and requested permission to visit ERDL which he did on 7 Dec (ref: Trip Report, re Visit of Mr. George Pettit to ERDL on 7 Dec 66).

11. Upon his return from ERDL, Mr. Pettit reminded me that he would be in the branch a year in January and wanted to know if I intended to promote him. I told him that I would be away from the lab for approximately two months and if the study on the road signs progressed satisfactorily during that period of time I would initiate promotion action. However, it was his responsibility to prepare a test plan, determine the cost of conducting the study, obtain approval of the test plan in the lab and obtain concurrence in the plan from ERDL plus the funds, if it was going to be costly. Since ERDL was interested in the results as soon as possible the study should be completed (at least the data collection) by the time I returned. I also told Mr. Pettit that the other members of the branch would help him if he needed assistance, which I also mentioned to the other personnel.

12. On 31 Jan 67 CPT Phelps and Mr. Emery visited Redstone Arsenal and while in Huntsville met with me that evening. CPT Phelps gave me Mr. Pettit's write-up on the test plan and asked me to review it. The following Sunday I read the plan over and sent him my comments as well as returning the test plan (ref: my letter to Mr. Pettit dated 6 February 1967).

13. Upon my return to the lab (20 Feb 67), Mr. Pettit brought me the revised marked-up test plan. I asked him if he had gone over the test plan with the people I had requested he contact and he stated that he had asked Miss Davis if there should be a problem with subjects memorizing the symbols and she said she did not believe this would be a problem. I then reviewed the plan and found that he had pretty well covered my first three comments. However, the plan still left a question in my mind concerning the large number of variables.

14. I therefore asked Miss Davis if she had read the plan and she said no -- Mr. Pettit had just asked her about the problem of memorizing the symbols. So I gave her the plan and told her I was worried about the large number of variables. I asked her to read it, talk to Mr. Pettit about it if she had any questions and then see me.

15. After reading the plan several times and talking to Mr. Pettit, Miss Davis wasn't too clear as to exactly what he was attempting to do although she was quite sure that his design was not amenable to statistical analyses because he did not carry any one sign configuration through all test conditions.

16. After two days of discussion, Mr. Pettit finally agreed to change his design. I then asked Mr. Pettit how he intended to measure the distance at which the subject responded to the target. He stated that he intended to have the subject ride in a vehicle with a driver and a recorder and that when the subject saw the sign he would tell the driver who would then stop the vehicle. The recorder would then read the accumulated distance traveled on a fifth wheel. I asked him how much error his study could tolerate by this method of collecting data and I was told that I was picking on him and that he had this figured out. When I told him that there may be 4-8% error in distance traveled due to reaction time, he said that it didn't make any difference and that all I was doing was finding fault.

17. On 8 Mar Mr. Pettit attended an IPR at ERDL at which I instructed him that he was to attend as an observer. Upon his return I asked for a verbal trip report as well as a written report. In the course of the verbal report I told him that from his description the system sounded sufficiently similar to the ML-1 that he should review the TM's that we had published on the ML-1 to get an understanding of what might be done on this system.

18. In his handwritten trip report he stated that since the design had not been approved it was felt that any human factors considerations would be premature at this time. I informed him that a statement of this nature indicated that he did not understand the nature of our work. He also had referenced reviewing drawings on the mono mooring system for human factors considerations (which was going to have an IPR on 14 Mar). I asked him what he saw on the drawings as far as human factors was concerned and he said that they were too complicated and he had told the man who was showing him the drawings that he was not getting anything useful out of the drawings. The reference to the drawings was subsequently removed from the trip report. The last paragraph was also changed by the addition of the next to last sentence.

AMXHE-SYS
SUBJECT: George Pettit - Consideration for Promotion 20 Mar 67

19. On 16 Mar Mr. Pettit again asked if I intended to promote him as I had promised. I informed him that I had promised to promote him if he had demonstrated the capability of conducting the test on the signs while I was on TDY, but since we couldn't even agree on a test plan I had no reason for promoting him.

20. In the discussion that followed I stated that in considering his performance in relation to other members of the branch I could not see where he deserved a promotion at this time. However, since I was tired of his constant badgering me for a promotion I would send through whatever evidence he felt justified a promotion. He felt that the following should be submitted -- Letter Report on NIKE-X; Letter Report on Mirrors; TM on Mirrors; Draft Proposal on Signs; 3 Trip Reports and a statement that he had suggested an instrumentation approach for the Tactical Mine Planter study. I then asked him what category he thought he was qualified for at the GS-12 level; i.e., Electronic Engineer (Instrumentation), Engineer (Human Factors) or Psychologist. He said it probably doesn't make any difference but it would probably be easier for me to get him a GS-12 as an Engineer (Human Factors).

21. I was subsequently informed that he had an appointment with the IG on 28 Mar and would attempt to make an appointment with COL Raaen prior to 28 Mar.

JOHN R. ERICKSON

GEORGE D. PETTIT COMPLAINT

Interview with Mr. James B. Moreland, physicist, Accoustical Research Branch, Engineering Research Laboratory, Human Engineering Laboratories, Aberdeen Proving Ground, Maryland.

On 21 April 1967, an interview was held with Mr. Moreland, physicist, HEL. It was explained to Mr. Moreland that the reason for discussing the complaint with him was because Mr. Pettit had alleged that he was leaving the Laboratories because he could not get a promotion. Mr. Moreland responded that this is not quite true as he was leaving the Laboratory because he had been offered a better position. He had indeed discussed Mr. Pettit's complaint with him and he personally told Mr. Pettit that he could not agree with the allegation. He commented further that he had no feeling of having been discriminated against by anyone at the first echelon level which is the limit of his experience. Mr. Fair, his supervisor, had consistently treated him with utmost fairness.

In connection with the introduction of the comments about Mr. Hicks and Mr. Gentry in Mr. Pettit's complaint, he acknowledged he was somewhat familiar with their feelings as they rode in the same car to work. He prefers not to make any comment in connection therewith as his statement of feeling regarding it may not be true. However, on a personal basis he expressed an opinion he would have no doubts about making a GS-12 if he had stayed at HEL. His decision among other things was mainly based upon believing his new position offered a better potential for GS-13 level than he would have at HEL. He acknowledged that he has been happy at the HEL and is leaving after a difficult decision with mixed emotions, no elation.

Mr. Moreland expressed an opinion that based on his discussions with Mr. Pettit, that after 11 years of satisfactory service at a GS-11 level, he feels it would be normal to be advanced to the laboratory journeyman level, GS-12.

Signed 27 Apr 67
JAMES B. MORELAND
Physicist
Accoustical Research Branch
Engineering Research Lab
Human Engineering Laboratories

GEORGE D. PETTIT COMPLAINT

Interview with Mr. Sylvester E. Kalen, Engineering Technician, General Support Branch, Systems Research Laboratory, Human Engineering Laboratories, Aberdeen Proving Ground, Maryland.

On 21 April 1967, an interview was held with Mr. Kalen (Caucasian co-worker of Mr. Pettit) and the undersigned to discuss those projects in which Mr. Kalen had worked with Mr. Pettit. Mr. Kalen, after preliminary remarks, provided information that he had worked with Mr. Pettit within the last year on a mirror study project. The preliminary response to the ATAC proposal had been answered by Mr. Kalen. The project was assigned to Mr. Pettit and Mr. Kalen assisted him as Mr. Pettit, during the preliminary setup, was ill. On the test date, when Mr. Seashore, the developer of the mirror was here, Mr. Pettit was not available due to illness and the test was started without him. Mr. Pettit did come in while the test data collection operation was underway. Mr. Pettit wrote the report and was the individual in charge of the project. On one occasion, when a suggestion was offered in connection with this test, Mr. Pettit took the position that he was running the test and would appreciate no interference.

Kalen's Suggestion

Signed 26 Apr 67

SYLVESTER E. KALEN
Engineering Technician
General Support Branch
Systems Research Laboratory
Human Engineering Laboratories

Not interested

GEORGE D. PETTIT COMPLAINT

Interview with MSG Frederick T. Stafford, Jr., (E-8), Engineering Research Laboratory, Human Engineering Laboratories, Aberdeen Proving Ground, Maryland.

On 21 April 1967, an interview was held with MSG Stafford (Negro co-worker of Mr. Pettit) about his working relationship with Mr. Pettit. He commented that approximately 9 months ago he had assisted Mr. Pettit on a mirror project. He assisted Mr. Pettit in the project work and practical applications such as helping in the mirror test setup with design mounts. Mr. Pettit was the Project Manager during the period and was ill at times. The day the data collection was done, Mr. Seashore, the designer of the mirror was in, Mr. Pettit directed the collecting of data at the test site. During the mirror project he worked with the Landolt Ring during the test while Mr. Pettit, Mr. Kalen, Mr. Gentry and Mr. Seashore were observing and recording data.

In addition to this mirror project, he also worked with Mr. Pettit on the Nike-X project which was the first work he had done with Mr. Pettit. His relationship occured during the mock up on the research project. He acknowledges he doesn't know what happened between Mr. Erickson and Mr. Pettit but at one meeting Mr. Kurtz and Mr. Pettit argued, concerning a concept on whether a change was needed in the project plan. He didn't personally get involved in the problem. He commented that he believed that Mr. Erickson, after this incident, secured responsibilities in the project so that the two didn't work together. In any event, Mr. Kurtz and SGT Stafford finished the project. He is aware that Mr. Pettit had done considerable work on the drawings and layout related thereto.

SGT Stafford commented that he also had worked with Mr. Pettit on the mine planter project. Mr. Gentry was the Project Manager and this also involved the effort of Mr. Randall and Mr. Emery in addition to Mr. Pettit. He is aware that Mr. Pettit produced a drawing of the chair attachment to the jig used in the test. Mr. Pettit also monitored project work after the setup was completed to see how the chair mount was holding up.

Signed 21 Apr 67

FREDERICK T. STAFFORD, JR.
MSG, E-8
Engineering Research Laboratory

28 April 67

GEORGE D. PETTIT COMPLAINT

Interview with Mr. John R. Erickson, Chief of the Missile Communication/ General Support Branch Systems Research Laboratory, Human Engineering Laboratories, Aberdeen Proving Ground, Maryland.

On 17 April 1967, an interview was arranged telephonically with Mr. Erickson (Caucasian supervisor of Mr. Pettit) and the undersigned to discuss the complaint filed by Mr. Pettit. Mr. Erickson was furnished a copy of the complaint as filed by Mr. Pettit to review prior to any discussion. Following this review a paragraph by paragraph discussion was held on material. In summary, these follow:

Recommendations for promotion had been processed by Mr. Erickson for Mr. Kurtz, Mr. Emery and Mr. Randall, co-workers of Mr. Pettit as stated in the opening paragraph. Refusal to recommend Mr. Pettit as alleged was based on Mr. Erickson's opinion as a supervisor that there was insufficient documentation of accomplishments to support such a recommendation. In the discussion that follows, a more detailed explanation is given.

Reference Paragraph 1. This is an opinion of Mr. Pettit's that he has performed equal duties and is to a limited extent substantiated by the record. This will be discussed in more detail below.

Reference Paragraph 2. Accreditation for duties performed have consistently been given to the employee responsible for reports and/or performance of technical work.

In response to Example 1 presented in Mr. Pettit's complaint, Mr. Erickson pointed out that Mr. Kurtz had been on the Nike-X program several years dating back to 1960 (Nike-Zeus of 1960). At the time Mr. Pettit was assigned to the project headed by Mr. Kurtz as an overall HEL systems evaluation study, a contractor's preliminary proposal had been received and Mr. Pettit's first assignment was to look at this contractor's proposal. In the ensuing weeks several disruptions in work occured as Mr. Pettit felt that he had been assigned to work under the supervision of an individual over whom he was much better technically qualified. Specifically, Mr. Pettit was to review the electronic console arrangements proposed by the contractor for the controls. Mr. Kurtz was given the assignment to review and analyze the flow of information through the system. This step was taken by Mr. Erickson to eliminate conflict between project personnel. Mr. Pettit developed a recommendation to change the layout of the console. In working on this he had been instructed to utilize SGT Stafford for advice because of his 15 years of military experience. Thus the intent of the supervisor was to merge the three (3) backgrounds of the individuals involved in

Exhibit D

the study to the best advantage of the laboratory. Arguments and difficulties occured and Mr. Pettit became ill on Palm Sunday, 1966 and remained absent from work. His report on the physical arrangement of the console coincided with the independently developed rearrangement suggested by the contractor. The layout was incorporated into system design reports. Mr. Kurtz had been unable to evaluate the contractor's proposals because of the pressure of more important major projects which were assigned him. The layout report prepared by Mr. Pettit was acceptable. The report which Mr. Pettit claims the Missile Command accepted with great enthusiasm was one prepared by Mr. Kurtz relating to the system data flow diagram and not the one related to the layout. Two letter reports are involved. One dated 30 March 1966 and one dated 3 May 1966. Both are on a classified project and the title of the letter report being in both cases, "Human Factors Engineering Evaluation of the Nike-X Display System (U)". In the 30 March letter to the Missile Command, ATTN: AMCPM-NXB-II-Mr. E. J. Walker, Mr. Erickson is shown as the dictator, the transmittal letter having been signed by Dr. Weisz. The draft of this letter had been initialed by Mr. Kurtz, Mr. Pettit, Mr. Erickson and SGT Stafford. Mr. Pettit's name was shown on one of the drawings as an inclosure to this report. On the 3 May letter report, Mr. Kurtz is shown as the dictator and it is directed toward the discussion of the data flow diagram for the system and was the basis for the trip to Redstone Arsenal. Other reports relating to the overall Nike-X evaluation by the HEL do not substantiate the contention that Mr. Pettit oriented the program for other reports submitted by Mr. Kurtz. The contention that these reports were used to justify a promotion for Mr. Kurtz is only partially true. Mr. Kurtz was promoted on the basis of referral on an AMC talent bank list, from Civilian Personnel with his name near the top for an opening as a GS-12. Because of Mr. Pettit's illness, apparently occasioned by differences of opinions with his coworkers, he was taken off of the Nike-X project and was given another task by Mr. Brickson. This task involved an ATAC request for HEL to review their proposal for a study of side view mirrors for trucks. This project was given Mr. Pettit upon his return from his sickness in April 1966. He objected to this assignment of working for Mr. Sova and after Mr. Sova left the lab he reported direct to Mr. Erickson. He wrote a preliminary test plan after studying the proposal and was given additional guidance by Mr. Erickson for modifying his test plan. Mr. Erickson meanwhile departed TDY on another project and while he was absent, Mr. Kalen and SGT Stafford had to take care of the data collection required for the mirror project as Mr. Pettit was too sick to get out of his car. Mr. Pettit's name is on the mirror study letter report and mirror study technical note. He had been given three weeks to do the project and took until the middle of the Summer for the tests and until October 1966 to produce the letter report.

Response to Example 2. Report referred to on the mine planting system TM-66 does indeed show that Mr. Emery furnished technical assistance

in the program. It should be pointed out that the report cover page credits Mr. Gentry and Mr. Randall. Mr. Gentry actually departed HEL while the report was in process of preparation. Mr. Pettit's participation in the project came about through his request to Mr. Erickson in which he asked if he could assist Mr. Gentry in the design of a seat mount as shown in Figure #1, Page 4 of the report (copy attached). This figure includes Mr. Gentry. Mr. Erickson told Mr. Pettit that it would be agreeable for him to work on the design of the seat mount if it did not interfere with his work on the ~~mine~~ mirror study and if Mr. Sova posed no objections. Mr. Pettit did not like the idea of Mr. Sova controlling, by his decision, whether Mr. Pettit did work on the project or not. The only role in which Mr. Pettit did work was in relation to the attachment of the seat to the fixture which was considered a minor role in the overall project. A promotion for Mr. Emery was not on the basis of this report alone. He had two major projects which he had handled for the HEL. Details are shown in the DF submission for the promotion. SOP of the laboratory is to allow the Project Director, in this case Mr. Gentry, to acknowledge any assistance in carrying out projects in the official project report. Mr. Gentry, a Negro, chose to give credit for technical assistance to Mr. Emery. He did not.

Reference Paragraph 3. Mr. Erickson stated that he had never made any comment about the length of time of employment in the laboratory being a controlling factor in who was recommended for promotion, except that normally an individual would be expected to work in the branch a minimum of one year prior to consideration for promotion.

Reference Paragraph 4. Again Mr. Erickson reiterated that length of time in grade is not in itself a basis for promotion.

Reference Paragraph 5. Mr. Erickson acknowledges that he had committed himself to make a promotion request for Mr. Pettit in December, 1966, if he demonstrated by doing a thorough job on his road sign study that such action was warranted. No such promise was made in the fall of 1966.

Reference Paragraph 6. Primary duties assigned Mr. Pettit resulted in his completion of one technical note now in process of being printed in the Field Printing Plant, two letter reports and the design of a test for side view mirrors and the road signs. One test referred to involved the side view mirrors.

In the second paragraph under Paragraph 6 - Mr. Pettit was assigned the project in October of 1966 to investigate the problem on military road signs as requested by the Engineering Research and Development Laboratories, Fort Belvoir, Va. This was done because Mr. Pettit had finished his work on the mirror program and had done a good job. He was asked to research the literature on road signs and upon a more formal request on 1 December from the ERDL of Fort Belvoir, Mr. Pettit was given

this project as his only assignment at that point, except for completing his technical note on the mirror study. This assignment included responsibilities for preparation of the test plan, estimating study costs, obtaining approval of the plan by the lab and ERDL and firming up funds. Since Mr. Erickson was going on a trip to Huntsville, Alabama and would not be at HEL to consider a promotion for Mr. Pettit, Mr. Erickson informed Mr. Pettit to get his study plan prepared, do it on his own. Mr. Pettit was told that if he would do all this and that if the program turned out well, that a promotion would be put in for him, upon Mr. Erickson's return from Huntsville. At approximately 1 February 1967, Mr. Pettit's study proposal was given to Mr. Erickson while at Huntsville for review. (Hand carried by another HEL employee). He wrote notes back to Mr. Pettit and suggested changes in the proposal as he felt the approach was much too complicated and could be the source of errors and he instructed Mr. Pettit to contact three other individuals in HEL for their advice and assistance. The symbols proposed by Mr. Pettit were considered too numerous and complicated. Mr. Pettit did talk to Miss Davis, a psychologist at the laboratory as directed by Mr. Erickson and argued with her approximately two days about the requirement for a change in his symbol proposals. The possibility of an error factor in the data collection process was pointed out to Mr. Pettit but he did not feel that an error factor of the magnitude discussed was important.

In mid-March, because 5 months had elapsed since Mr. Pettit was informally assigned the project, the study was given to Miss Davis to complete. A letter report is now expected prior to 1 May. In response to the 2nd paragraph under Paragraph 6, Mr. Erickson furnished information that he came back to HEL in mid-February rather than March as expected. He informed Mr. Pettit, because of lack of progress in preparing the military road sign study report that he had done an insufficient amount to justify submission of a request for promotion. After a discussion in which strong feelings developed he told Mr. Pettit that if he felt a promotion was justified, that he should put together the justification and that he (Mr. Erickson) would put in a DF through HEL requesting such action even though he did not agree that it was justified or could be substantiated. The DF went to Dr. Weisz thru Dr. Katchmar. Later Mr. Pettit informed Mr. Erickson that he had an appointment with the AMC IG and requested an appointment with Col. Raeen, Commanding Officer of BRL and HEL. He did not state that he was satisfied with Mr. Pettit's work in regard to the road sign study. He feels that Mr. Pettit's comment quoting Mr. Erickson as stating "forget about a promotion" was taken out of context. Discussion included the fact that Mr. Emery, an equipment specialist and Mr. Randall, an engineering technician, were not the recipients of an automatic pay increase given all scientific and engineering personnel because they were in non-professional jobs. He may have said something to indicate that Mr. Pettit should forget about a promotion until he had completely demonstrate d by project work that he was deserving of a promotion.

The last two paragraphs concerning discriminatory treatment alleged as prevailing within the laboratory have been reviewed. In Mr. Erickson's opinion, the reason for Mr. Sam Hicks leaving HEL was not because he was denied a promotion but because he had an opportunity at the Social Security Headquarters, Woodlawn, Md., for a promotion to a GS-13 position. None was available in HEL. As for Mr. George Gentry's departure, stated reason for leaving the laboratory was that he had had an opportunity for a promotion from GS-11 to GS-12 at the Bureau of Standards located in Gaithersville, Md. Since he lives in (SW) Baltimore, this is much more convenient work location, plus a promotion. Mr. Erickson had not promised Mr. Gentry a promotion as stated. Mr. James Mooreland plans on leaving HEL within a short period. Westinghouse Corporation has for the second time made him such a good offer that from a professional point of view, he felt he could not afford to pass it up. A quality increase, incidently, was given Mr. Mooreland a couple of weeks ago at a ceremony at HEL and Dr. Weisz has personally expressed his regrets that of Mr. Mooreland's decision is to leave HEL. He is considered a very excellent and well qualified employee.

Signed 24 Jan 67

JOHN R. ERICKSON
Chief, Missile Communication/
General Support Branch
Systems Research Laboratory
Human Engineering Laboratories

ABERDEEN PROVING GROUND, MARYLAND 21005

DEEOO -- MR. EARL R. HAAG Ext. 4504

Attachment to BTN. No. 713-7

COMPLAINT OF DISCRIMINATION IN THE FEDERAL GOVERNMENT BECAUSE OF RACE, COLOR, CREED, OR NATIONAL ORIGIN

(Please Type or Print)

(FOR AGENCY USE)

1. WHAT IS YOUR (COMPLAINANT'S) FULL NAME?
GEORGE DAVID PETTIT

2. WHAT IS YOUR TELEPHONE NUMBER INCLUDING AREA CODE IF YOU HAVE ONE?
301-278-2511

YOUR STREET ADDRESS (OR RD NUMBER OR POST OFFICE BOX NUMBER)
Route 3, Box 300E

HOME PHONE:
301-272-4230

YOUR CITY: Aberdeen | STATE: Maryland | ZIP CODE: 21001

WORK PHONE:
278-2511

3. WHICH FEDERAL OFFICE DO YOU BELIEVE DISCRIMINATED AGAINST YOU? *(Prepare a separate complaint form for each office which you believe discriminated against you.)*

A. NAME OF OFFICE WHICH YOU BELIEVE DISCRIMINATED AGAINST YOU:
HEL, Systems Lab, Missile Branch

B. STREET ADDRESS OF OFFICE:
Aberdeen Proving Ground

C. CITY: Aberdeen | STATE: Maryland | ZIP CODE: 21005

D. NAME AND TITLE OF PERSON(S) YOU BELIEVE DISCRIMINATED AGAINST YOU *(if you know)*:
John Erickson-Supervisor

4. ARE YOU NOW WORKING FOR THE FEDERAL GOVERNMENT?

☒ YES (ANSWER A, B, C AND D BELOW.)

☐ NO (CONTINUE WITH QUESTION 5.)

A. NAME OF AGENCY WHERE YOU WORK:
Aberdeen Proving Ground

B. STREET ADDRESS OF YOUR AGENCY:
Aberdeen Proving Ground

C. CITY: Aberdeen | STATE: Maryland | ZIP CODE: 21005

D. WHAT IS THE TITLE AND GRADE OF YOUR JOB?
Electronic Engineer GS-11

5. DATE ON WHICH MOST RECENT ALLEGED DISCRIMINATION TOOK PLACE:

MONTH	DAY	YEAR
Jan	2	67

6. CHECK BELOW WHY YOU BELIEVE YOU WERE DISCRIMINATED AGAINST. BECAUSE OF YOUR:

☒ RACE OR COLOR. IF SO, SHOW YOUR RACE OR COLOR Negro.

☐ CREED. IF SO, SHOW YOUR RELIGION _____.

☐ NATIONAL ORIGIN. IF SO, SHOW YOUR NATIONAL ORIGIN _____.

7. EXPLAIN HOW YOU BELIEVE YOU WERE DISCRIMINATED AGAINST (TREATED DIFFERENTLY FROM OTHER EMPLOYEES OR APPLICANTS) BECAUSE OF YOUR RACE OR COLOR, CREED, OR NATIONAL ORIGIN. *(You may continue your answer on another sheet of paper if you need more space.)*

SEE ATTACHED SHEET.

8. WHAT CORRECTIVE ACTION DO YOU WANT TAKEN ON YOUR COMPLAINT?

A promotion and a chance to work without harassment.

9. DATE OF THIS COMPLAINT:

MONTH	DAY	YEAR

10. SIGN YOUR (COMPLAINANT'S) NAME HERE:

CSC FORM 894 MARCH 1967

14 Apr 1967 (Date) | Deputy Equal Employment Opportunity Officer (Title) | Earl R. Haag (Signature)

This is to certify that the complainant has reaffirmed this complaint in my presence and stated the facts therein contained, the substance of his complaint, are true to the best of his knowledge.

Attachment to BTN. No. 713-7 (2)

YOUR COMPLAINT OF DISCRIMINATION REGARDING EMPLOYMENT PRACTICES

How, When, and Where Complaint Should Be Filed and How It Is Processed

- This form should be used only if you as a qualified applicant for Federal employment or a Federal employee think you have been treated unfairly because of your race, color, creed, or national origin by a FEDERAL agency.
- Your complaint must be filed within thirty days of the date of the action about which you are complaining. However, if you are complaining about a removal, suspension, or reduction in rank or pay, you must submit your complaint within ten days of effective date of such action.
- These time limits may be extended if your complaint concerns a continuing action, or if you can give a good reason for not submitting the complaint within the prescribed time limits.
- If you need help in the preparation of your complaint, you may contact the Deputy Equal Employment Opportunity Officer at the local office, or a representative of your choice.
- Your complaint should be filed by you or your representative with the Deputy Equal Employment Opportunity Officer for the local office, or with the Equal Employment Opportunity Officer in the headquarters office of the agency concerned.
- You may have a representative at all stages of the processing of your complaint.
- You will have an opportunity to talk with an investigator and give him all the facts you have which you believe show discrimination.
- After the investigation of your complaint has been completed, you will be told of the results and an attempt will be made to resolve the matter informally.
- If your complaint cannot be settled informally, you will be given the right to request a hearing which will be conducted by the agency and held at the installation where the alleged discrimination occurred, as that is where the witnesses and records are located.
- If you ask for a hearing, you may present witnesses in your behalf.
- You will be given a transcript of the hearing or a summary of the testimony.
- Your case will be referred to the Equal Employment Opportunity Officer at the headquarters level of your agency before final decision is made on your complaint, and you will be notified in writing of that decision.
- If you are not satisfied with the final agency decision, you will have the right to appeal that decision within ten days after receipt to the Board of Appeals and Review of the U. S. Civil Service Commission, Washington, D. C. 20415.

PLEASE FILL OUT THE OTHER SIDE OF THIS SHEET

U.S. GOVERNMENT PRINTING OFFICE : 1967 O - 255-045 (88)

GEORGE DAVID PETTIT (Cont'd)

7. EXPLAIN HOW YOU BELIEVE YOU WERE DISCRIMINATED AGAINST (TREATED DIFFERENTLY FROM OTHER EMPLOYEES OR APPLICANTS) BECAUSE OF YOUR RACE OR COLOR, CREED, OR NATIONAL ORIGIN.

Mr. Erickson recommended three (3) of my co-workers, Mr. Kurtz, Mr. Emery and Mr. Randall for a promotion, but refused to recommend me. He did this despite the following facts known to him at the time of his actions:

1. I had been assigned and had performed duties equal to and, in most cases, above those assigned and/or performed by my associates.

2. I had performed duties that had been accredited, by Mr. Erickson, to Mr. Kurtz and Mr. Emery.

EXAMPLE NO. 1: Mr. Kurtz had been on the Nike-X program for about 18 months when I was assigned to the program by Mr. Erickson. I was told that a report was nine months overdue; that Mr. Kurtz had not been able to get out a suitable report. I reviewed the report that Mr. Kurtz had prepared and, too, judged it unsuitable for publication. After discussing this report with Mr. Erickson I was told to conduct a study and prepare a report. I completed the study and the report in less than 90 days. Mr. Erickson was pleased with the report. It is my understanding that the report was received, by the Missile Command, with great enthusiasm. So much, that a request was made for the engineer, who designed the proposal, to come to the Command for a discussion of the report. Mr. Kurtz and Mr. Erickson made the trip. According to the files, in this office, Mr. Kurtz is the originator of that report. I, not only produced the basic report, I, oriented the program for the other reports subsequently submitted by Mr. Kurtz. These reports were used to justify a promotion for Mr. Kurtz according to Mr. Erickson.

EXAMPLE NO. 2: According to the report on the mine-planting system, TN-66, Mr. Emery is accredited as being the "Technical Assistance" on this program. The records will show that I not only proposed the instrumentation necessary to record the data, but actually designed and supervised the building of some of the equipment used in the test. However, there is no doubt in my mind that the technical assistance given to this program was used to justify a promotion for Mr. Emery.

3. Mr. Randall and I were transferred to this Laboratory at the same time, that would counter any claim of Mr. Erickson's that I had not been here a sufficient amount of time to warrant a promotion. Mr. Randall was recommended.

4. I have worked for Human Engineering for more than six years and have been in grade for nearly 11 years against, probably, not more than 4 years for either of the others, or more than 11 years, if their time in-grade was all added together.

5. Mr. Erickson had promised to submit my name for promotion in the fall of 1966 but did not do so.

6. In addition to other duties, I had completed one Technical Note, two reports, designed two tests and conducted one test.

When Mr. Erickson refused to recommend me for a promotion he stated that he would recommend me upon his return from a six-week trip. When I objected on the basis of past experience he told me that I could not classify him with others and that he (John Erickson) would carry out his promise.

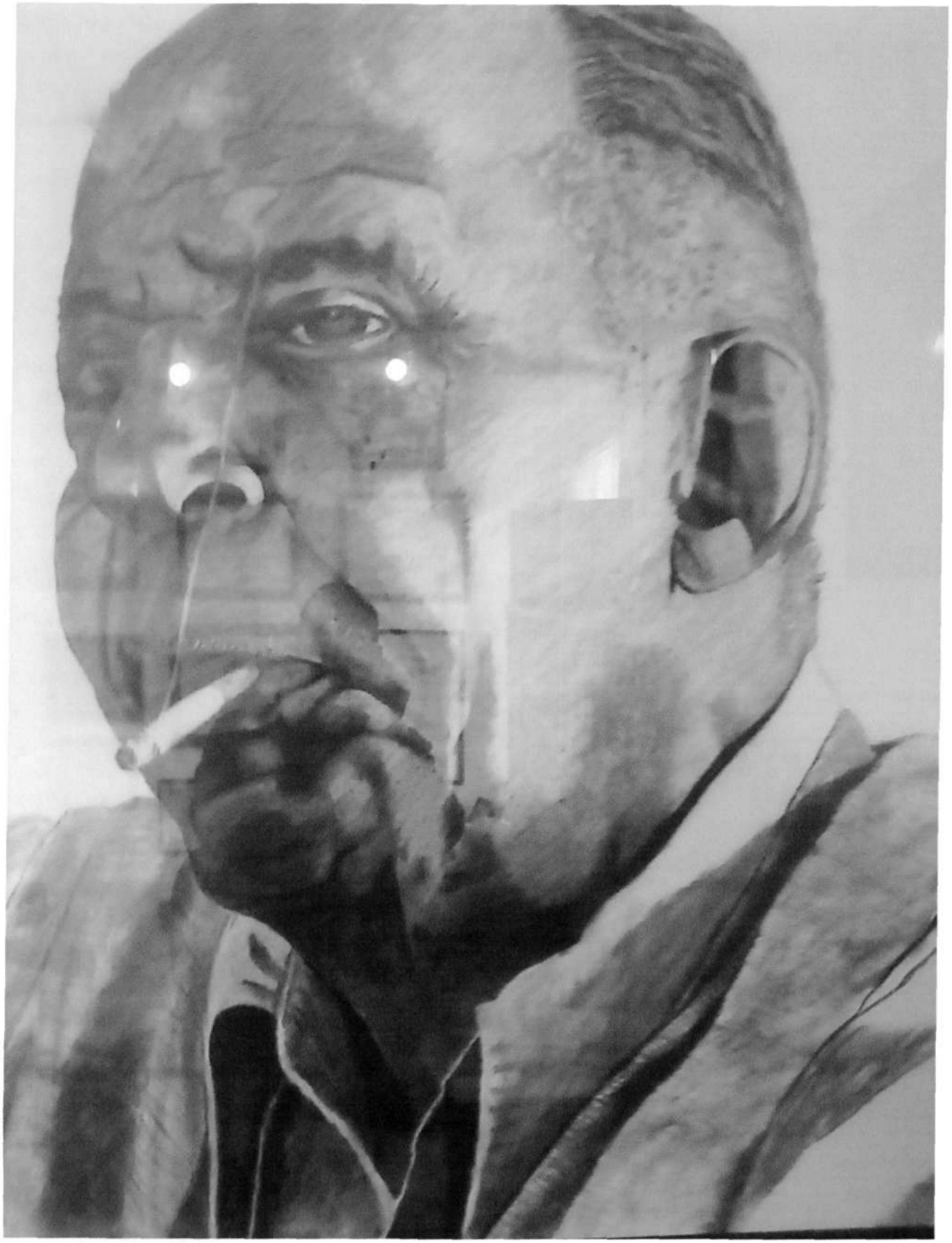
Upon Mr. Erickson's return (I waited for two weeks), I asked him if he had recommended me for a promotion. Mr. Erickson stated that he had not had the time but he would do it right away. I waited three weeks and asked Mr. Erickson what his intentions were. He stated that I had received a special pay increase and that he was concerned with Mr. Emery and Mr. Randall who he said did not get the promotion that he had recommended. He further stated that Miss Davis (who was employed less than one year ago) would be recommended before he would consider a promotion for me. He stated that he was satisfied with my work but that he would advise me to "forget" about a promotion. This he concluded, without any more qualification than that he had other people who needed a promotion other than me.

I have no doubt that I have not been promoted solely because of my race and nothing else; that being of the minority race has caused Mr. Erickson and others in these laboratories to act in a manner that would not be considered acceptable if they were dealing with a person of the majority race.

The facts stand for themselves. Mr. Samual Hicks, who has more publications to his credit than any other individual in these laboratories, according to "Milestones - A Directory of Human Engineering Laboratories Publications, 1953-1966", left in January 1967 because he had been denied a promotion. Mr. George Gentry, who held a Master's degree in Psychology, left in September 1966. He had been promised a promotion, which he never

received. Except for me, the last professional Negro in Human Engineering is slated to leave in the near future, because he was "passed over" for a promotion. These men did not leave because they wanted to do so. They left because they had decided that they didn't care to "fight the system". One fellow, preparing to leave, said to me, "Your eleven years in grade is enough to convince me. I am getting out while I have my youth". But, for me, twenty one years of service, eleven years in the same grade, and seven of those years spent in these laboratories without a promotion, has collected a large toll from my youth.

George D. Pettit



203 Ct.Cl. 207, 488 F.2d 1026, 6 Fair Empl.Prac.Cas. (BNA) 1166, 6 Empl. Prac. Dec. P 9036

United States Court of Claims.

George D. PETTIT

v.

The UNITED STATES.

No. 253-72.

Dec. 19, 1973.

Action was brought by a black federal employee working at the Human Engineering Laboratory, Aberdeen Proving Grounds, alleging that he was denied promotion to the next highest civil service rating because of racial discrimination, and seeking back pay. The Court of Claims, Nichols, J., held that the Court had jurisdiction to entertain the claim under the "Civil Rights" Executive Orders; that the employee's claim was not barred by failure to exhaust administrative remedies; but that, in the absence of a specific finding of the grade and pay of the position the employee would have filled but for the discrimination and the date of the personnel action by which he would have filled it, the action would be remanded to the Civil Service Commission for further proceedings.

Cross motions for summary judgment denied and case remanded to Civil Service Commission.

Cowen, C. J., dissented and filed opinion.

Skelton, J., dissented and filed opinion.

Bennett, J., dissented and filed opinion.

West Headnotes

[1] KeyCite Citing References for this Headnote

393 United States
393VIII Claims Against United States
393k113 k. Presentation, Allowance, and Adjustment. Most Cited Cases

While General Accounting Office has no power to review decisions of court of claims, its decisions respecting money claims are binding on executive branch of government. Budget and Accounting Act, 1921, §§ 304, 305, 31 U.S.C.A. §§ 44, 71; Dockery Act, § 8, 31 U.S.C.A. § 74.

[2] KeyCite Citing References for this Headnote

170B Federal Courts
170BXII Claims Court (Formerly Court of Claims)
170BXII(A) Establishment and Jurisdiction
170Bk1073 Particular Claims, Jurisdiction
170Bk1079 k. Employees' Claims. Most Cited Cases
(Formerly 106k449(1))

Court of Claims has jurisdiction over cases for back pay and other relief under "Civil Rights" Executive Orders. 28 U.S.C.A. § 1491; Civil Rights Act of 1964, § 701 et seq. as amended 42 U.S.C.A. § 2000e et seq.

[3] KeyCite Citing References for this Headnote

378 Time
378k7 Days
378k10 Sunday or Other Nonjudicial Day
378k10(9) k. Appeal and Error and Other Proceedings for Review. Most Cited Cases

Where last date for appeal by civil service employee from adverse ruling on claim for promotion and back pay made under "Civil Rights" Executive Orders fell on Saturday and employee gave notice of appeal by telephone on Monday and in writing shortly thereafter, notice of appeal to board of appeals and review was timely. 28 U.S.C.A. § 1491; Fed.Rules Civ.Proc. rule 6(a), 28 U.S.C.A.; Court of Claims Rules, rule 25(a), 28 U.S.C.A.

[4] KeyCite Citing References for this Headnote

15A Administrative Law and Procedure
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(D) Hearings and Adjudications
15Ak513 k. Administrative Review. Most Cited Cases
Sufficiency of notice of administrative appeal should be liberally construed as long as adverse party is not prejudiced thereby.

[5] KeyCite Citing References for this Headnote

393 United States
393I Government in General
393k39 Compensation of Officers, Agents, and Employees
393k39(8) k. Compensation After Suspension or Removal. Most Cited Cases
Government employees are entitled to back pay where they can show that, but for specific instance of racial discrimination, favorable personnel action would have been taken. 28 U.S.C.A. § 1491.

[6] KeyCite Citing References for this Headnote

170B Federal Courts
170BXII Claims Court (Formerly Court of Claims)
170BXII(B) Procedure
170Bk1119 Judgment
170Bk1119.1 k. In General. Most Cited Cases
(Formerly 170Bk1119, 106k470)
Where, in action by black civil service employee for promotion and back pay on ground that promotion had been denied because of racial discrimination, specific finding had not been made as to grade and pay of position employee would have filled but for discrimination and date of personnel action by which he would have filled it, action would be remanded to Civil Service Commission for hearing and making of findings on missing elements in employee's claim. 28 U.S.C.A. § 1491.

[7] KeyCite Citing References for this Headnote

393 United States
393I Government in General
393k39 Compensation of Officers, Agents, and Employees
393k39(11) Recovery of Compensation
393k39(13) k. Pleading and Evidence. Most Cited Cases
Prima facie case of failure to promote because of racial discrimination is made by showing that plaintiff belongs to racial minority, that he was qualified for promotion and might have reasonably expected selection for promotion under Government's ongoing compensative promotion system, that he was not promoted, and that supervisory level employees having responsibility to exercise judgment under promotion system betrayed in other matters predisposition for discrimination against members of involved minority. 28 U.S.C.A. § 1491.

[8] KeyCite Citing References for this Headnote

393 United States
393I Government in General
393k39 Compensation of Officers, Agents, and Employees
393k39(11) Recovery of Compensation
393k39(13) k. Pleading and Evidence. Most Cited Cases
When civil service employee has established prima facie case of failure to promote because of racial discrimination, burden is shifted to Government to show, as to each passing over of employee, that nonselection was for legitimate, nondiscriminatory reasons. 28 U.S.C.A. § 1491.

[9] KeyCite Citing References for this Headnote

393 United States
393I Government in General
393k39 Compensation of Officers, Agents, and Employees
393k39(8) k. Compensation After Suspension or Removal. Most Cited Cases
Civil service employee was not entitled to recover back pay on allegations that promotion was denied him because of racial discrimination merely because Army allegedly failed to comply with applicable procedural regulations. 28 U.S.C.A. § 1491.

*1027 Alvin Dwight Pettit, Washington, D. C., atty. of record, for plaintiff.

LeRoy Southmayd, Jr., Washington, D. C., with whom was Acting Asst. Atty. Gen. Irving Jaffe, for defendant.
Before COWEN, Chief Judge, and DAVIS, SKELTON, NICHOLS, KASHIWA, KUNZIG and BENNETT, Judges.

ON PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
NICHOLS, *Judge:*

Plaintiff is a black who is employed at the Aberdeen Proving Grounds at Aberdeen, Maryland, and is a classified Federal Civil Service employee, Engineer Human Factors in the Human Engineering Laboratory (HEL), Aberdeen Proving Grounds. He brings suit to recover for his losses resulting from the Government's failure to promote him because of racial discrimination practiced by its employees.

Plaintiff's case is distinguished from racial discrimination cases previously heard by this court in that he seeks to recover not only back pay, but also either compensation for future losses or to be promoted to that position he would have attained, but for "racial discrimination". Jurisdiction is asserted under 28 U.S.C. § 1491, which provides as follows:

The Court of Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, * * * To provide an entire remedy and to complete the relief afforded by the judgment, the court may, as an incident of and collateral to any such judgment, issue orders directing restoration to office or position, placement in appropriate duty or retirement status, and correction of applicable records, and such orders may be issued to any appropriate official of the United States. * * * (Supp. II, 1972).

This plaintiff relies on Executive Order No. 10722, 3 C.F.R. 1954-1958 Comp., p. 384 (1957); Executive Order No. 10925, 3 C.F.R. 1959-1963 Comp., p. 448 (1961); Executive Order 11114, 3 C.F.R. 1959-1963 Comp., p. 774 (1963); Executive Order 11162, 3 C.F.R. 1964-1965 Comp., p. 215 (1964); Executive Order 11246, 3 C.F.R. 1964-1965 Comp., p. 339 (1965), now Executive Order 11478, 3 C.F.R. 1966-1970 Comp., p. 803 (1969); and the Regulations of the Civil Service Commission, 5 C.F.R. §§ 4.2 and 713.202. These provisions explicitly require all Government agencies to offer their employees equal opportunities in all respects without regard to race.

The present controversy originated in April 1967. Plaintiff as an Electronic Engineer, GS-11, Step 7, filed a complaint*1028 alleging that he was denied promotion to GS-12 solely because of his race. The complaint was investigated by Earl R. Haag, Deputy Equal Employment Opportunity Officer. Mr. Haag, in his Summary of Investigation concluded that Mr. Pettit's complaint was baseless.

Plaintiff requested a formal hearing. The Hearing Officer, William J. Bivens, concluded in his voluminous Statement of Findings of Fact and Recommendations that "Mr. Pettit's failure to be promoted from GS-11 to GS-12, was not the result of racial discrimination, but rather because Mr. Pettit did not merit a promotion."
******

The Recommendations of the Army read as follows:

In view of the discriminatory actions to which Mr. Pettit has been subjected by his supervisors, he should be given preferential consideration for promotion to the next GS-12 vacancy within Human Engineering Laboratories provided he is among the best qualified candidates referred. Further, in order to preclude any future display of discriminatory actions, the supervisors who were found to have engaged in such practices *1030 against Negro employees should be disciplined and any promotion actions in which they would be the selecting official pre-audited by AMCDL for compliance with required technical competence requirements for referred applicants.

While these Findings are not without ambiguity, we read them as rejecting the holdings of the Hearing Officers that plaintiff's non-promotion was due to lack of qualification. They substitute, instead, the notion that somewhere along the line, or more than once, a personnel action or actions were taken, that passed the plaintiff over for promotion because of his race and not on the merits. Here, as in other of these cases, we confront reports which omit the specific we would need for a back pay award for the reasons, among others, that the writers were not aware that back pay could be awarded or that we would desire details of personnel actions.

The plaintiff accepted the Modifications of the Findings of Fact, but appealed the recommended actions to AMC. In his letter of appeal Pettit requested: 1) an immediate promotion to GS-12, 2) effective date of such promotion retroactive to 1960, 3) immediate opportunity to compete for a GS-13 position, 4) restitution for expenses of hearing to include attorneys' fees, and 5) a cease and desist order against the management of the laboratories. Said appeal was denied by a letter from Albert Kransdorf, Director of the Employment Policy and Grievance Review Staff of AMC, dated September 22, 1970, and received by Pettit on October 2, 1970. The letter deemed Mr. Pettit's request that he be promoted to GS-12 satisfied by his promotion to that level which was effective as of August 10, 1970. However, the letter went on to say the plaintiff's request for retroactive promotion was barred by decisions of the Comptroller General and that there was no provision made under the Federal Equal Opportunity Program to reimburse complainants for expenses incurred by them in pursuing their claims. It also advised Pettit of his right to appeal to the Board of Appeals and Review (BAR), United States Civil Service Commission, "no later than 15 days from the date you receive this decision."

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On October 15, 1971, the Court of Claims decided Madrith Bennett Chambers v. United States, 451 F.2d 1045, 196 Ct.Cl. 186, and Melvin Allison v. United States, 451 F.2d 1035, 196 Ct.Cl. 263 (1971). These cases support the proposition that the Court of Claims will grant a plaintiff back pay where he can show he would have been promoted at a *1031 specific time if it were not for discrimination. Based on these decisions the plaintiff petitioned the Civil Service Commission, the General Accounting Office, Department of the Army, and Army Materiel Command for reconsideration. Plaintiff requested those Agencies and Departments to award him back pay and compensation for losses to be incurred in the future as the result of past discrimination, based on his computations. All Agencies denied their authority to do either until authorized by GAO and therefore accepted his appeal as filed before them, but deferred to the decision making power of the GAO.

GAO advised plaintiff's counsel on June 5, 1972, that it would not follow the decisions of this court, but would again deny the Government's power to pay on a retroactive claim arising out of discrimination. Plaintiff considered such denial that of the petitioned Agencies and Departments since they apparently vested their decision making power in GAO, and therefore he petitioned this court for relief on June 19, 1972.

[1] ☑ [2] ☑ While the GAO has no power to review the decisions of this court, United States v. Jones, 119 U.S. 477, 7 S.Ct. 283, 30 L.Ed. 440 (1886), its decisions respecting money claims are binding on the Executive branch of the Government, 31 U.S.C. §§ 44, 71, 74. It is, therefore futile to press before Executive Agencies a claim the Comptroller General has rejected, whether rightly or wrongly. The Government argues however that this court has no 28 U.S.C. § 1491 jurisdiction of cases for back pay and other relief under the "Civil Rights" Executive Orders. This contention does not merit further discussion since it has been previously rejected by this court in Chambers and Allison, supra. Defendant admits that plaintiff has no right to sue under the Equal Employment Opportunity Act of 1972, Pub. L. 92-261, which confers jurisdiction for the future on the District Courts. A suit here by a plaintiff having access to the District Court would raise a different question, with which we do not deal.

[3] ☑ [4] ☑ The Government's defense of failure to exhaust administrative remedies is also without merit. BAR was in error in dismissing plaintiff's appeal as untimely. This is true even if the 15 day period for appealing AMC's decision is measured by "calendar days" rather than "working days" as contended by the defendant. Plaintiff had only 14 calendar days to appeal since the fifteenth day fell on a Saturday during which no one was present at BAR to receive the appeal. Both the Federal Rules of Civil Procedure and the Rules of the court take into consideration the fact that most Government offices are closed on Saturdays, Sundays and Holidays by extending a deadline that falls on such a day to the next working day. Fed.R. Civ.P. 6(a), Ct.Cl. R. 25(a). Pettit's telephone call on Monday, October 19, possibly was sufficient to constitute a timely appeal since he was not told flatly that the notice of appeal would have to be in writing, and the call was followed up in writing shortly afterwards. The sufficiency of a notice of administrative appeal should be liberally construed as long as an adverse party is not prejudiced thereby. See, Gernand v. United States, 412 F.2d 1190, 188 Ct.Cl. 544 (1969), where this court held that a letter to President Kennedy was sufficient to constitute notice of appeal to the Civil Service Commission. Moreover, the futility of pressing before an Executive Agency a money claim the GAO has rejected, must be obvious to all, and in Allison, supra, we viewed it as excusing the plaintiffs from running out their string with the BAR, to achieve a sufficient exhaustion of administrative remedies to satisfy the doctrine involved.

[5] We reaffirm our prior cases holding that Government employees are entitled to back pay where they can show that but for specific instances of racial discrimination, favorable personnel action would have been taken. *1032 Chambers v. United States, supra; Allison v. United States, supra; Small v. United States, 470 F.2d 1020, 200 Ct.Cl. 11 (1972).

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[6] In sum, although Mr. Pettit avoids the short shrift given the plaintiff in Small he does not come to this court with administrative Findings that meet the requirements necessary for relief as laid out in Chambers and Allison. Therefore we remand to the Civil Service Commission*1033 under the authority given to us by Congress in 28 U.S.C. § 1491, as amended by Pub.L. 92-415 (August 29, 1972) to hear evidence and making Findings on the missing elements enumerated above.

Equal Employment Opportunity cases present this court with the difficult task of maintaining the delicate balance between two considerations which are difficult to reconcile. We do not intend to pay mere lip service to a legal right by saddling plaintiffs with a burden of proof so high as to preclude a remedy in most of the typical cases of this sort. On the other hand, that a plaintiff is black does not mean he is excused from the clear-cut showing of legal wrong required of other claimants, or that we are desirous of usurping the discretionary decisions of the Executive branch as to the opening of vacancies, the availability of funds, or the relative qualifications of different applicants for competitive promotion.

The Supreme Court resolved this dilemma in a recent case where plaintiff claimed defendant failed to rehire him because of racial discrimination. This was done by shifting the burden of proof to the defendant once plaintiff established a prima facie case. The case, McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802, 93 S.Ct. 1817, 1824, 36 L.Ed.2d 668 (1973), contains relevant language as follows:

The complainant in a Title VII trial must carry the initial burden under the statute of establishing a prima facie case of racial discrimination. This may be done by showing (i) that he belongs to a racial minority; (ii) that he applied and was qualified for a job for which the employer was seeking applicants; (iii) that, despite his qualifications, he was rejected; and (iv) that, after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications. 13 * * * (Footnote Omitted.)

The burden them must shift to the employer to articulate some legitimate, nondiscriminatory reason for the employee's rejection.

******

[9] Plaintiff's contention that he is entitled to recover back pay without consideration of the merits because allegedly the Army failed to comply with the applicable procedural regulations is not supported by the authorities cited. Even if we accept as true plaintiff's allegation that he was divested of procedural rights, the cases which he cites apply only to adverse personnel actions such as discharge or demotion rather than a failure to promote as we have here. Service v. Dulles, 354 U.S. 363, 77 S.Ct. 1152, 1 L.Ed.2d 1403 (1957) *1034 (discharge); Vitarelli v. Seaton, 359 U. S. 535, 79 S.Ct. 968, 3 L.Ed.2d 1012 (1959) (discharge); Greene v. United States, 376 U.S. 149, 84 S.Ct. 615, 11 L. Ed.2d 576 (1964) (loss of security clearance); Chisholm v. United States, 149 Ct.Cl. 8 (1960) (discharge); Garrott v. United States, 340 F.2d 615, 169 Ct.Cl. 186 (1965) (termination of retirement annuities).

We, therefore, deny both cross motions for summary judgment and remand to the Civil Service Commission, pursuant to Pub.L. 92-415, 28 U.S.C. § 1491, for further proceedings consistent with this opinion. The Civil Service Commission can seek guidance from the Equal Employment Opportunity Act of 1972, Pub.L. 92-261, which expressly confers on the Commission power to grant back pay in cases such as this. In accordance with this Court's General Order No. 3 of 1972, plaintiff's attorney of record shall advise this court, by letter to the clerk, of the status of the remand proceedings. Such advice shall be given at intervals of 90 days or less, commencing from the date of this opinion.

COWEN, Chief Judge (dissenting):

None of the parties in the Allison and Chambers cases called the court's attention to Section 701 of the Civil Rights Act of 1964 (78 Stat. 253). It was not mentioned or alluded to in the oral arguments, in the briefs, or otherwise. However, on September 23, 1973, about three weeks before our decisions in Allison and Chambers, the Sixth Circuit issued its decision in Ogletree v. McNamara, 449 F.2d 93 (6th Cir. 1971). The decision was not published or otherwise brought to our attention before the decisions in Allison and Chambers were announced.

******

In view of the foregoing, I find it unnecessary to discuss any other question raised in this case. The long and short of it is that we did not have jurisdiction of the suits brought in the Chambers and Allison cases, and we do not have jurisdiction of plaintiff's action.

SKELTON, Judge (dissenting):

I agree with the able dissenting opinions of Chief Judge Cowen and Judge Bennett. However, I would like to add the following:

This court does not have jurisdiction of this case.

******

BENNETT, Judge (dissenting):

I dissent from the opinion of the majority because I believe that, in its rightful concern to correct what it believes to be racial discrimination, it has wrongfully construed the law. However much we may sympathize with any who have suffered or believe they have suffered discrimination, there is a definite limit to what we can do about it. In the instant case we have no jurisdiction.

****** I agree with Chief Judge Cowen and Judge Skelton that defendant's motion for summary judgment should be granted, plaintiff's motion should be denied, and the petition should be dismissed.

Ct.Cl.,1973.
Pettit v. United States
203 Ct.Cl. 207, 488 F.2d 1026, 6 Fair Empl.Prac.Cas. (BNA) 1166, 6 Empl. Prac. Dec. P 9036

END OF DOCUMENT

MILITARY STATUS:

Honorable Discharge from the United States Air Force, 1971. Highest Rank obtained: 1st Lieutenant

ACTIVITIES AND AWARDS:

Undergraduate

Intercollegiate Athletics - Football
Kappa Alpha Psi Fraternity
AFROTC - Cadet Colonel - Group Commander
Distinquished AFROTC Cadet, 1967
Holland Ware Award, 1967 - awarded to senior athlete with all around achievement in athletes and academics.

Law School:

25-45 hour work week prevented extra-curricular activities.

Young Lawyer of the Year - Monumental Bar Association, 1974

PROFESSIONAL MEMBERSHIPS:

Bar

State of Nebraska (admitted February, 1971)
Federal District of Nebraska (admitted February, 1971)
U.S. Court of Claims (admitted June, 1971)
Maryland Court of Appeals (admitted, 1973)
Maryland Federal District Court (admitted 1973)
U.S. Supreme Court (admitted, 1974)

PROFESSIONAL ASSOCIATIONS AND ORGANIZATIONS:

National Bar Association
Nebraska Bar Association
American Bar Association
Monumental Bar Association - Office held; President

ORGANIZATIONAL MEMBERSHIPS:

NAACP
ACLU
Kappa Alpha Psi Fraternity

GETTING TO THE MARYLAND BAR

The bar exam: A pitfall for black law students

(First of a 2 part series)

By Clarence W. Hunter
AFROStaff Reporter

Of the 125 black law graduates who took the Maryland Bar Examination in late July only 10 passed.

"I thought I had flunked," said Elijah Eugene Cummings, one of the few black law graduates who passed the exam. "I had started studying again a week after I took it so I could psyche myself up if I failed so I would be ready for the next time."

Cummings' statement represents just one reaction to the growing suspicion that the state bar exam could very well be a pitfall for budding black lawyers.

"It's a travesty," said Dwight Pettit, president of the Baltimore Monumental Bar Association and one of the leading black lawyers in the city.

"The exam is arbitrary and capricious because no standards have ever been validated to test the student's ability to practice law."

The state bar exam is a two day exam given twice a year on the last Tuesday and Wednesday in February and July.

Each exam is six hours long with three hours of testing in the morning and three hours of testing in the afternoon.

The Maryland essay section is given on the last Tuesday of each testing period with questions developed by the Maryland State Bar Examiners on key points of state law.

The other section of the exam is called the multi-state exam.

Developed by the National Conference of Bar Examiners, this section is given on the last Wednesday of each period, with multiple choice questions centering around factual situations of law.

Although bar examiners have stated that candidates are not listed by race or sex, the exam has come under attack because of allegations of racial bias and the low passing grades of black students.

Pettit believes the bar exam is discriminatory. He said there is currently a class action suit awaiting decision before Judge C. Stanley Blair contending that the exam is racially bias and that it should be reviewed.

Pettit also said the Supreme Court has not helped the case because by refusing to hear a suit brought by 45 prospective lawyers who failed the bar exam in Georgia and a case in Washington, D.C. where the police entrance exam came under attack.

"It's really a shame," he said. "If we can't change the exam by litigation maybe it needs to be changed by legislation."

John E. Boerner, secretary of the Maryland State Bar Examiners, said the exam is by no means discriminatory.

Boerner explained the exam has come under fire several times with allegations of this nature, however, there has not been sufficient proof to charge racial bias.

Although there are some black lawyers and prospective lawyers who believe the exams is racially bias there are some who are not quite sure.

Charles Duncan, dean of the Howard University Law School who took the exam 15 years ago, said while he personally does not know if the test is discriminatory, he stated statistics on the exam seem to suggest otherwise.

Cummings, who graduated from the University of Maryland Law School and plans to enter the firm of Johnson and Smith, stated if there is any racism in the exam he does not know where to look.

He agreed with Pettit that there is some question as to whether or not the test exam is a true tester of a lawyer. He suggested law schools, especially the one at the University of Maryland, should look into the test and gear their course of study towards the test.

Everett Goldberg, dean of the Maryland Law School, who stated it is "unfortunate" that so many black law graduates flunk the bar exam, contends that his school offers the best basic education in law.

Yet a recent tally revealed out of the 23 black law students who took the exams at Maryland Law School, only four passed the bar.

Michael Middleton, one of the Maryland law graduates who failed the exam, plans to take it again in February.

He, like Cummings, Duncan and others, have

(Continued on Page 20)

427 F.Supp. 282, 23 Fed.R.Serv.2d 96

United States District Court, D. Maryland.

Alvin Dwight PETTIT et al.

v.

Vincent L. GINGERICH, Chairman et al.

Civ. No. B-72-964.

Feb. 22, 1977.

Black persons who had failed to pass the Maryland bar examination brought a class civil rights action, claiming that intentional and inherently discriminatory practices in giving the examination denied them equal protection in contravention of Fourteenth Amendment. The District Court, Blair, J., held, inter alia, that administration of the bar examination involved neither intentional nor inherent racial discrimination.

Judgment for defendants.

West Headnotes

[1] KeyCite Citing References for this Headnote

170A Federal Civil Procedure
170AII Parties
170AII(D) Class Actions
170AII(D)3 Particular Classes Represented
170Ak186.15 k. Racial, Religious, or Ethnic Groups in General. Most Cited Cases

Class certification, on behalf of all blacks who had taken and failed the Maryland bar examination, would be given in class action in which it was claimed that intentional and inherently discriminatory practices in giving of such examination deprived class members of equal protection in contravention of Fourteenth Amendment. 28 U.S.C.A. §§ 1331, 1343; 42 U.S.C.A. §§ 1981, 1983; U.S.C.A.Const. Amends. 13, 14; Fed.Rules Civ.Proc. rule 23(a), (b)(2), (c)(1), 28 U.S.C.A.

[2] KeyCite Citing References for this Headnote

170B Federal Courts
170BIX District Courts
170BIX(B) Three-Judge Courts
170Bk993 Nature of State Statutes or Action Challenged
170Bk993.1 k. In General. Most Cited Cases
(Formerly 170Bk993)

Where blacks, in claiming that Maryland bar examination was discriminatorily administered and therefore deprived them of equal protection, challenged constitutionality of neither Maryland law governing admissions to bar nor rule pursuant to which bar examination was administered, but instead challenged constitutionality of bar examination itself, empanelment of three-judge court to consider such allegations was unnecessary. 28 U.S.C.A. §§ 1331, 1343; § 2281 (Repealed 1976); 42 U.S.C.A. §§ 1981, 1983; U.S.C.A.Const. Amends. 13, 14; Code Md.1957, art. 10, §§ 1-8, 3(d); Md.Rules Governing Admission to the Bar, rule 7, subd. c.

[3] KeyCite Citing References for this Headnote

170B Federal Courts
170BI Jurisdiction and Powers in General
170BI(B) Right to Decline Jurisdiction; Abstention Doctrine
170Bk42 k. Federal-State Relations in General. Most Cited Cases

Existence of state remedy, without more, is not sufficient to permit federal court to abstain.

[4] KeyCite Citing References for this Headnote

170B Federal Courts
170BI Jurisdiction and Powers in General
170BI(B) Right to Decline Jurisdiction; Abstention Doctrine

170Bk47 Particular Cases and Subjects, Abstention
170Bk48 k. Civil Rights in General. Most Cited Cases
Where blacks, in their class action claiming that Maryland bar examination was racially discriminatory and therefore deprived them of equal protection, did not seek individual review of bar examination performance, district court would not abstain from entertaining suit because of fact that plaintiffs might have had various state remedies available. 28 U.S.C.A. §§ 1331, 1343; 42 U.S.C.A. §§ 1981, 1983; U.S.C.A.Const. Amends. 13, 14.

[5] KeyCite Citing References for this Headnote

92 Constitutional Law
92VI Enforcement of Constitutional Provisions
92VI(C) Determination of Constitutional Questions
92VI(C)2 Necessity of Determination
92k977 k. Mootness. Most Cited Cases
(Formerly 13k6)
Where, after filing class action contending that Maryland state bar examination was racially discriminatory, named plaintiffs passed such examination and were admitted to practice law in Maryland, and where only equitable relief was sought in such class action, controversy was moot as to such named plaintiffs. 28 U.S.C.A. §§ 1331, 1343; 42 U.S.C.A. §§ 1981, 1983; U.S.C.A.Const. Amends. 13, 14.

[6] KeyCite Citing References for this Headnote

170A Federal Civil Procedure
170AII Parties
170AII(E) Necessary Joinder
170AII(E)2 Particular, Necessary or Indispensable Parties
170Ak219 k. Governmental Bodies and Officers Thereof. Most Cited Cases
Maryland Court of Appeals was not required to be joined as defendant in class action attacking Maryland bar examination as discriminatory, even though such court had duty of making final decision as to whether applicant would be admitted to Maryland bar. Code Md.1957, art. 10, § 3, (c); 42 U.S.C.A. § 1983; Fed.Rules Civ.Proc. rule 19, 28 U.S.C.A.

[7] KeyCite Citing References for this Headnote

78 Civil Rights
78III Federal Remedies in General
78k1314 Adequacy, Availability, and Exhaustion of State or Local Remedies
78k1321 k. Other Particular Cases and Contexts. Most Cited Cases
(Formerly 78k209, 78k13.9)
Plaintiffs were not required to exhaust state remedies before bringing civil rights class action contending that Maryland state bar examination was racially discriminatory and deprived blacks of equal protection. 42 U.S.C.A. §§ 1981, 1983; U.S.C.A.Const. Amends. 13, 14; 28 U.S.C.A. §§ 1331, 1343; Md.Rules Governing Admission to the Bar, rule 8, subd. b(3).

[8] KeyCite Citing References for this Headnote

45 Attorney and Client
45I The Office of Attorney
45I(A) Admission to Practice
45k4 k. Capacity and Qualifications. Most Cited Cases
State has legitimate interest in regulating admission to bar through imposing licensing standards to insure professional competence.

[9] KeyCite Citing References for this Headnote

78 Civil Rights
78III Federal Remedies in General
78k1416 Weight and Sufficiency of Evidence

⚖78k1422 k. Other Particular Cases and Contexts. Most Cited Cases
(Formerly 78k242(1), 78k13.13(3))

Evidence in civil rights action showed, as matter of law, that manner in which Maryland bar examination was administered was neither intentional nor inherently discriminatory against blacks, and that blacks therefore were not denied equal protection when they were denied admittance to bar after failing to pass such examination. 42 U.S.C.A. §§ 1981, 1983, 1988; U.S.C.A.Const. Amends. 13, 14; 28 U.S.C.A. §§ 1331, 1343; Act June 25, 1948, 62 Stat. 968; Code Md.1957, art. 10, §§ 1-8, 3(c, d); Md.Rules *Governing Admission to the Bar, rules* 7, *subds. c, d, e, 8, subd. b*(3); Fed.Rules Civ.Proc. *rules* 12(b), 19, 56, 28 U.S.C.A.

*284 Kenneth L. Johnson and Alvin Dwight Pettit, Baltimore, Md., and Jack Greenberg and Linda Greene, New York City, for plaintiffs.

Francis B. Burch, Atty. Gen., and George A. Nilson, Deputy Atty. Gen., Baltimore, Md., for defendants.

BLAIR, District Judge.

The general question presented by this suit is whether the Maryland Bar examination is color-blind. The specific question presented is whether the seven black plaintiffs and the members of the class whom they seek to represent are being and have been deprived of any rights, privileges and immunities secured by the Constitution and laws of the United States because they have failed the Bar examination and been denied admission to practice law.

Suit is brought under 42 U.S.C. ss 1981 and 1983 to secure rights protected by the Thirteenth and Fourteenth Amendments. The court has jurisdiction under 28 U.S.C. ss 1331 and 1343.

Defendants are Vincent Gingerich, Charles Dorsey, and Dorothy Thompson, the members of the Maryland State Board of Law Examiners (Board). No question of capacity has been raised by the defendants and it is apparent that they are being sued in their official capacity. See Burt v. Board of Trustees, 521 F.2d 1201, 1205 (4th Cir. 1975).

Because of what they perceive and allege to be intentional and inherently discriminatory practices, plaintiffs contend that the Bar examination denies them equal protection in contravention of the Fourteenth Amendment. They support their allegations in part by alleging that the Bar examination has a disproportionately adverse impact on blacks who are severely underrepresented in the legal profession. They seek as relief (1) a declaratory judgment that defendants' testing practices are racially discriminatory and unlawful, (2) a permanent injunction against such practices, (3) attorneys' fees, and (4) other appropriate relief.

This suit was filed in September 1972 and, with the court's concurrence, the parties engaged in extensive formal and informal pre-trial procedures to develop the underlying facts. The matter is now before the court on defendants' motion for summary judgment, the issues have been fully briefed and the parties heard at oral argument. Before addressing the merits, the court will deal with various preliminary questions.

Class Action

[1] ☑ Plaintiffs seek to maintain a class action on behalf of all blacks (a) who have taken and failed the Bar examination or (b) who have not yet taken the Bar examination or (c) who have failed the Bar examination three times or more and have been denied the opportunity to retake it or (d) who wish or will wish to practice law in Maryland. Defendants oppose certification of a class on the ground that each Bar examination is a separate event and that each is graded individually. Plaintiffs have not moved separately to certify the class.

Ostensibly, determination of whether a suit is to be maintained as a class action is to be made as soon as practicable after it is commenced. F.R.Civ.P. 23(c)(1). What is practicable must be determined within the peculiar context of each case. In this case, the court (and apparently the plaintiffs) did not move to certify a class, conditionally or otherwise, for a number of reasons. Among those reasons were the development of facts which would illuminate the propriety and scope of class certification and a determination by the court of the adequacy of representation by the named plaintiffs and their counsel.

Even where the parties fail to move for class certification commentators have suggested that the court has an independent obligation to determine the propriety of a class action. See Frankel, Some Preliminary Observations Concerning Civil Rule 23, 43 F.R.D. 39, 39-42 (1967); 7A Wright & Miller, Federal Practice & Procedure, Civil, s 1785 (1972 and 1976 Supp.). But cf. *285 Carracter v. Morgan, 491 F.2d 458 (4th Cir. 1973) (plaintiff has primary responsibility for initiating certification of class).

The court finds that the four preconditions of Rule 23(a), F.R.Civ.P., have been met in this case. It further finds that this action falls under the provisions of Rule 23(b)(2), F.R.Civ.P. As noted earlier, the suit has been pending for over four years and has received a fair amount of public notice. There is little doubt that the affected members of the class are fully aware of the suit and

the issues it presents. Class certification, in the court's view, is proper in this action and the appropriate class is hereby designated to be: all blacks who have taken and failed the Maryland Bar examination.

Three-Judge Court

[2] Defendants' answer raises the question of whether the claims in suit must be decided by a three-judge court. Title 28 U.S.C. s 2281 as it existed prior to the enactment of Pub.L. No. 94-381, effective August 12, 1976, is applicable.

Plaintiffs do not question the constitutionality of the Maryland law governing admission to the Bar. See Annotated Code of Maryland, art. 10, ss 1-8 (1976); nor do they question the constitutionality of the Rule pursuant to which the Bar examination is administered. Rule 7(c) provides:

It is the policy of the Court (of Appeals) that no quota of successful candidates be set, but that, insofar as practicable, each candidate be judged upon his fitness to be a member of the bar as demonstrated by his examination answers. To this end the examination shall be designed to test the candidate's knowledge of legal principles in the subjects in which he is examined and his ability to recognize, analyze and intelligibly discuss legal problems and to apply his knowledge in reasoning their solution. The examination will not be designed primarily to test information, memory or experience.

Rule 7(c) was apparently adopted pursuant to Annotated Code of Maryland, art. 10, s 3(d) (1976).

Plaintiffs' challenge is to the constitutionality of the Bar examination which is administered pursuant to these authorities. The scope of the requirement of a three-judge court has traditionally been strictly construed. See Board of Regents v. New Left Education Project, 404 U.S. 541, 545, 92 S.Ct. 652, 30 L.Ed.2d 697 (1972). Since neither a state law nor an order or regulation adopted pursuant thereto is under attack, this suit may be resolved by a single judge.

Abstention

[3] Defendants argue alternatively that abstention would be appropriate in this case because the plaintiffs have available to them various state remedies. It is true that the plaintiffs may have available to them certain state remedies. What they seek in this suit, however, is not individual review of Bar examination performance but consideration of claims of racial discrimination in contravention of their federal constitutional rights. The existence of a state remedy, without more, is not sufficient to permit a federal court to abstain. Wisconsin v. Constantineau, 400 U.S. 433, 437-39, 91 S.Ct. 507, 27 L.Ed.2d 515 (1971). See also Zwickler v. Koota, 389 U.S. 241, 248, 88 S.Ct. 391, 19 L.Ed.2d 444 (1967). Abstention is appropriate only when there are special circumstances. Harris County Comm'rs Court v. Moore, 420 U.S. 77, 83, 95 S.Ct. 870, 43 L.Ed.2d 32 (1975).

In Colorado River Water Conserv. District v. United States, 424 U.S. 800, 813-17, 96 S.Ct. 1236, 47 L.Ed.2d 483 (1976), the Court noted three categories where abstention would be appropriate: (1) where a federal constitutional question might be mooted or presented in a different posture by state court determination of state law; (2) where the case presents difficult problems of state law implicating substantial public policy concerns; and (3) where with certain exceptions an injunction is sought to restrain state criminal proceedings or closely related civil proceedings or the collection of state taxes.

*286 [4] This case does not come within the first category. See Lake Carriers' Ass'n v. MacMullan, 406 U.S. 498, 509-13, 92 S.Ct. 1749, 32 L.Ed.2d 257 (1972); Askew v. Hargrave, 401 U.S. 476, 477-78, 91 S.Ct. 856, 28 L.Ed.2d 196 (1971) (per curiam). Plaintiffs present no state law claim nor are any uncertain issues of state law involved. There is no vague statute or administrative rule susceptible to a saving judicial construction. The statutes and rule under which the Bar examination is given are not attacked. Unlike Reetz v. Bozanich, 397 U.S. 82, 90 S.Ct. 788, 25 L.Ed.2d 68 (1970), these are not unresolved questions of state constitutional law. Moreover, there is no state action pending that could resolve or modify on state grounds the claim presented. See Harris County Comm'rs Court v. Moore, *supra*.

Similarly, this case does not fall within the second category of cases in which abstention is appropriate. In those cases, as a matter of comity, abstention has been ordered where complex problems have been delegated to state regulatory agencies which have developed special expertise and sensitivity to the proper consideration of predominately local factors. Alabama Public Service Comm'n v. Southern Ry. Co., 341 U.S. 341, 348-50, 71 S.Ct. 762, 95 L.Ed. 1002 (1951); Burford v. Sun Oil Co., 319 U.S. 315, 327-34, 63 S.Ct. 1098, 87 S.Ct. 1424 (1943). No subtle regulatory problems depending upon special local expertise or predominately local factors are presented in this suit.

That the suit presents no claims which would fall within the third category requires no elaboration.

Having chosen a federal forum for adjudication of their federal constitutional claims, this court concludes that plaintiffs need not first seek relief in the state forum. See Timmons v. Andrews, 538 F.2d 584, 586 (4th Cir. 1976).

Standing

[5] After this suit was filed, plaintiffs Pettit and Bettis passed the Bar examination and were admitted to practice law in Maryland. Defendants argue that the suit is moot as to Pettit and Bettis and that they lack standing to remain as plaintiffs. Because only equitable relief is sought, the controversy is moot as far as Pettit and Bettis are concerned. As the Court stated in Roe v. Wade, 410 U.S. 113, 123, 93 S.Ct. 705, 712, 35 L.Ed.2d 147 (1973):

We are next confronted with issues of justiciability, standing, and abstention. Have (plaintiffs) established that "personal stake in the outcome of the controversy," Baker v. Carr, 369 U.S. 186, 204 (82 S.Ct. 691, 703, 7 L.Ed.2d 663) (1962), that insures that "the dispute sought to be adjudicated will be presented in an adversary context and in a form historically viewed as capable of judicial resolution," Flast v. Cohen, 392 U.S. 83, 101 (88 S.Ct. 1942, 1953, 20 L.Ed.2d 947) (1968), and Sierra Club v. Morton, 405 U.S. 727, 732, (92 S.Ct. 1361, 1364, 31 L.Ed.2d 636) (1972)?

Pettit and Bettis no longer have such a personal stake in the controversy. DeFunis v. Odergaard, 416 U.S. 312, 94 S.Ct. 1704, 40 L.Ed.2d 164 (1974) (per curiam); Singleton v. Louisiana State Bar Ass'n, 413 F.Supp. 1092, 1094 n.1 (E.D.La.1976). Moreover, this case does not present a question that is "capable of repetition, yet evading review." Southern Pac. Terminal Co. v. ICC, 219 U.S. 498, 515, 31 S.Ct. 279, 283, 55 L.Ed. 310 (1911). See Roe v. Wade, 410 U.S. at 125, 93 S.Ct. 705. The fact that five named plaintiffs remain in the suit and that a class has been formed assures that the issues presented will not evade review. See Sosna v. Iowa, 419 U.S. 393, 397-403, 95 S.Ct. 553, 42 L.Ed.2d 532 (1975). Pettit and Bettis will be dismissed as plaintiffs in the suit.

Failure to Join Party

[6] Defendants also raise as a defense the failure of plaintiffs to join the Maryland Court of Appeals which makes the final decision as to whether an applicant is to be admitted to the Bar. Annotated Code of Maryland, art. 10, s 3(c) (1976). The Maryland Court of Appeals is not a "person" within the meaning of 42 U.S.C. s 1983. *287 Zuckerman v. Appellate Div., Sec. Dept., Supreme Court of the State of New York, 421 F.2d 625, 626 (2d Cir. 1970). There is nothing to indicate that complete relief could not be afforded plaintiffs without joining the Maryland Court of Appeals and defendants have advanced no specified claim of prejudice. See F.R.Civ.P. 19. The failure to join the Maryland Court of Appeals as a defendant is of no consequence in this case.

Failure to Exhaust State Remedies

[7] Defendants also contend that the suit should be dismissed for the failure of plaintiffs to exhaust available state remedies. Those remedies available, according to defendants, are retaking the Bar examination, filing exceptions to the adverse recommendations of the Board, and/or seeking a writ of certiorari from the United States Supreme Court to review an order of the Maryland Court of Appeals overruling an examinee's exceptions. Review by the Maryland Court of Appeals of an examination graded as unsatisfactory by the Board is provided for by rule:

Exceptions seeking a review by the Court of Appeals of the candidate's answers to the Board's test shall be filed within the time required by section b of Rule 12 . . . . The exceptions shall be accompanied by a statement indicating (i) that the candidate availed himself of the opportunity to review his examination books and the model answers for the Board's test, and (ii) shall specify those questions and answers which the candidate wishes reviewed and the reasons therefor. . . .

Rule 8(b)(3) Governing Admission to the Bar of Maryland.FN1 See also id. Rule 12(b) (time for filing exception). Exhaustion of administrative remedies is not required for s 1983 suits. McCray v. Burrell, 516 F.2d 357, 360-61 (4th Cir. 1975), cert. dismissed, 426 U.S. 471, 96 S.Ct. 2640, 48 L.Ed.2d 788 (1976). A fortiori, plaintiffs are not required to exhaust existing state judicial remedies in an action brought under s 1983. See Timmons v. Andrews, 538 F.2d 584, 586 (4th Cir. 1976).

FN1. The extent to which plaintiffs have availed themselves of these opportunities for review varies. Plaintiffs Pettit and Bettis will not be considered in light of their dismissal from this suit because of lack of standing. Plaintiff Cooper failed the winter 1972 examination, did not take an exception to the result and has not taken subsequent Bar examinations. Plaintiff Marshall took and failed the winter and summer examinations in both 1970 and 1971, the winter 1972 examination, the summer 1973 examination, and the winter 1974 examination. He has filed unsuccessful exceptions to some but not all these failures. Plaintiff McIntosh took and failed the summer 1972 examination, the winter and summer 1973 examinations and the winter 1974 examination. He has taken no exceptions to these failures. Plaintiff Proctor took and failed the summer 1970 examination, the winter and summer 1971 examinations, the summer examinations in 1972 and 1973 and the winter 1974 examination. No exceptions were taken to these results. Plaintiff Waker took and failed the winter and summer 1973 examinations and the winter 1974 examination. An exception, which was denied, was taken to the winter 1973 examination. Plaintiffs' Amended Complaint, PP

3(b)-(f); Defendants' Answer to Amended Complaint, PP 4(b)-(f); Plaintiffs' Answers to Defendant's Interrogatories, PP 8, 10. The above review reflects data only up to the winter 1974 examination.

Summary Judgment and the Merits

Defendants contend that the undisputed material facts show that the Maryland Bar examination is neither intentionally nor inherently discriminatory and that it constitutes a rational and reasonable method of determining an applicant's fitness and capacity to practice law. Rule 56, F.R.Civ.P. Plaintiffs allege that genuine issues of material fact exist with respect to (1) intentional discrimination in administration of the Bar examination; (2) disparate racial impact caused by the Bar examination; (3) the opportunity available to the Board to discriminate; and (4) the accuracy of the Bar examination's measurement of fitness to practice law in the absence of any scientific validation of the test.

The principles governing consideration of motions for summary judgment are familiar but will be restated briefly at the outset of this discussion. The motion should not be granted unless the evidentiary facts are *288 not in dispute and there can be no reasonable disagreement concerning the inferences or conclusions to be drawn from those facts. The moving party has the burden of showing entitlement to summary judgment. Phoenix Savings & Loan, Inc. v. Aetna Casualty & Surety Co., 381 F.2d 245, 249 (4th Cir. 1967). And "summary procedures should be used sparingly . . . where motive and intent play leading roles . . . ." Poller v. Columbia Broadcasting System, 368 U.S. 464, 473, 82 S.Ct. 486, 490, 7 L.Ed.2d 458 (1962); Denny v. Seaboard Lacquer, Inc., 487 F.2d 485, 491 (4th Cir. 1973).

A. Undisputed Facts

Without attempting to be exhaustive, a review of the principal undisputed facts will be useful. The Maryland Bar examination is a bi-annual two-day test administered by the Board which is composed of three practicing attorneys, one of whom is black, appointed by the Maryland Court of Appeals. The board members are assisted in the preparation and grading of the essay portion of the examination by three assistant graders who are attorneys. Presently one assistant grader is black. Since July 1972 the Maryland Bar examination consisted of multiple choice questions given on one day and essay questions given on the second day. The multiple choice or Multi-State Bar Examination (MBE) questions are prepared and graded by the National Conference of Bar Examiners (NCBE) and are administered simultaneously in a majority of the states. The essay questions cover a variety of subjects and are prepared and graded by the Board members and their assistants. The subjects tested are prescribed by the Court of Appeals in Rule 7(d) Governing Admission to the Bar of Maryland. See also Maryland Board of Law Examiners Rules 1, 2(c). After both portions of the examination have been graded, the scores of the essay and MBE portions of the examination are combined into a final grade using the following formulae to determine if the examinee passes:

(i) a score of at least 70% on the Board's test and at least 50% on the MBE test; or

(ii) a combined score of at least 70%, giving the two scores equal weight after adjustment of the MBE score by Method 1 in the National Conference of Bar Examiners Manual for the Interpretation and Use of Scores of the Multi-State Bar Examination. . . .FN2

FN2. By Maryland Board of Law Examiners Rule 2(e)(2) "the Board may, in the interest of justice, lower (but not raise) any or all of the foregoing requirements at any time before notice of the results."

Maryland Board of Law Examiners Rule 2(e)(1). See Rule 7(e) Governing Admission to the Bar of Maryland. Thereafter the Board meets to establish a review range; essay papers falling within that review range with otherwise failing scores are then reevaluated. As a result of this reconsideration, failing scores can be and have been raised to passing grades. Dorsey Deposition at 33-34, 80-82; Defendants' Answers to Plaintiffs' Interrogatories, PP 35, 69; see Tyler v. Vickery, 517 F.2d 1089, 1092 (5th Cir. 1975), cert. denied, 426 U.S. 940, 96 S.Ct. 2660, 49 L.Ed.2d 393 (1976). The review procedure, already described, is markedly similar to the procedure in Singleton v. Louisiana State Bar Ass'n, 413 F.Supp. 1092 (E.D.La.1976), wherein Judge Wisdom, writing for a three-judge court, observed:

(T)he guidelines prescribed by the . . . examiners who prepare the questions maximize the chances for uniform standards of grading. Furthermore, failing applicants as to any given question are guaranteed review by the . . . examiner who prepared the question. Finally, the review provided by the (examiners) as a whole further protects applicants from unduly harsh judgments of individual graders.

In sum, there is neither the possibility that the opinion of a single . . . examiner, through the use of his guidelines or model answers, shall determine an applicant's failing grade on a particular*289 question, nor the possibility that the opinion of any single individual shall determine an applicant's failing grade on any question. The criteria provided for grading the examinations are neither

irrational nor arbitrary, and the application of such criteria by numerous different graders is a legitimate and effective means of grading the examinations.

413 F.Supp. at 1098 (emphasis original). The Board's procedures are equally valid. As noted earlier, an unsuccessful applicant may compare his responses to model answers and may seek review of his examination by the Maryland Court of Appeals.

Although it does not appear that the thrust of plaintiffs' attack is against the Multi-State Bar Examination, it will be considered since it plays a substantial part in the overall examination administered by the Board. As stated, the MBE is developed by NCBE and tests candidates in a variety of subjects. See Maryland Board of Law Examiners Rule 2(d). The Board does not change any of the MBE questions but reviews each MBE in advance to determine whether to use the test. Gingerich Deposition at 6-8. The Board administers the MBE in accordance with procedures established by NCBE. Pullen Affidavit, P 5; MBE Supervisor's Manual (1975). The NCBE through the Educational Testing Service has sole responsibility for grading the MBE, which is done by scoring of answer sheets that are identifiable only by number and not by the name of the examinee. Pullen Affidavit, P 5. Although the Board determines what will constitute a passing score on the MBE and administers the MBE to examinees, it plays no role in the MBE's preparation or grading.

The Board members and their assistant graders develop the essay questions. Each person involved covers certain subject areas and is responsible for preparing an equal portion of the test. Gingerich Deposition at 20. Questions are derived from the experience of the Board members and their assistants, from prior examinations, and from suggestions from judges, law school professors and materials furnished by NCBE. Id. at 21-22; Dorsey Deposition at 44-45. Additionally the Board members and their assistants prepare model answers to the questions to guide later grading of the examination. Defendants' Answers to Interrogatories, P 17. After the questions and model answers have been prepared, the Board members meet with their assistants and the questions and model answers are reviewed, revised, discarded, amended, pruned and generally subjected to critical evaluation. Out of this review, a final set of questions develop. The court has reviewed copies of essay questions used in the Maryland Bar examination for the years 1970 to 1975 which are exhibits to defendants' motion for summary judgment.

The actual administration of the examination falls principally on the Board's administrative staff and on proctors hired for the occasion. Board members are at the examination site to answer any questions and, on occasion, have assisted in distributing examination materials. Dorsey Deposition at 76-77; Defendants' Answers to Interrogatories, P 67(a).

The grading procedures for the essay portion of the Bar examination are designed to insure anonymity. The examination books do not contain the names of the candidates, but rather are identified through seat numbers. The documents correlating the seat numbers with the candidates' names are in the exclusive control of the administrative staff and are not available to the Board or the assistants.FN3 Pullen Affidavit, P 2; Statement Concerning Administrative Procedures to Preserve Anonymity of Candidates on the Bar Examination. The grading process is succinctly stated in part of Defendants' Answers to Plaintiffs' Interrogatories, P 12:

FN3. Neither the Board and its assistants nor the administrative staff has any systematic data on the race of the candidates taking the Bar examination. The application to take the examination does not require specification of race and no photograph is required. Defendants' Answers to Interrogatories, PP 39, 40.

*290 The answer to each question is graded by the person (Board member or Assistant) who prepared that particular question. Prior to beginning the grading process, each person establishes a method of scoring for recognition of issues, discussion and reasoning within the dictates of Court of Appeals Rule 7c. Each person then grades approximately 25 books containing the answers to their questions. Thereafter each person may make an adjustment in the method of scoring to give the candidates the benefit of the issues more easily recognized than those which may appear to be more obscure to the candidates. He then rereads the books and scores on the new basis. Even if adjustment is not made, the first 25 books are reread. Each Board member reviews the method of scoring used by one Assistant in grading the answers after the Assistant has graded approximately 25 books. At present this review includes an examination by the Board member of the books themselves graded by the Assistant. Thereafter adjustment may be made in the scoring. If adjustment is made, the Assistant rereads the books and grades upon the new basis. After all books in a given subject have been thus read and graded, the person grading the books may upgrade all scores if he feels that would be appropriate.

Thereafter, with the MBE scores available, the Board members reconsider those papers falling within a review range and upgrade certain of those papers to passing scores. Facts omitted from this summary will be included in the discussion which follows where they are pertinent.

B. Discrimination

[8] As a point of beginning, it is worth stating that the State has a legitimate interest in regulating admission to the Bar through imposing licensing standards to insure professional competence. As the Court stated in Schware v. Board of Bar Examiners, 353 U.S. 232, 239, 77 S.Ct. 752, 756, 1 L.Ed.2d 796 (1957):

A State can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar, but any qualification must have a rational connection with the applicant's fitness or capacity to practice law. . . . Even in applying permissible standards, officers of a State cannot exclude an applicant when there is no basis for their finding that he fails to meet these standards, or when their action is invidiously discriminatory. (citations omitted).

See also In re Griffiths, 413 U.S. 717, 722-23, 93 S.Ct. 2851, 37 L.Ed.2d 910 (1973); Martin-Trigona v. Underwood, 529 F.2d 33, 35 (7th Cir. 1975) (per curiam); Hawkins v. Moss, 503 F.2d 1171, 1175-76 & n.5 (4th Cir. 1974), cert. denied, 420 U.S. 928, 95 S.Ct. 1127, 43 L.Ed.2d 400 (1975).

[9] Plaintiffs do question whether a rational relationship exists between the Maryland Bar examination and competency to practice law. Specifically, plaintiffs allege that the Bar examination is not scientifically designed by experts in testing, that it tests only legal memorandum skills, memory and ability to cram, that it is not graded on an absolute scale of professional competence and that the examination is inherently discriminatory or culturally biased against blacks as evidenced by the disproportionately high black failure rate.FN4 *291 Plaintiffs also allege that the Board has intentionally discriminated against black applicants. The Board is alleged to have the opportunity to ascertain the race of Bar applicants through the possible availability of the master lists matching candidates' names with seat numbers, the possibility that the attorneys conducting the in-person character interviews relate racial information about candidates to the Board, the alleged availability of law school records, and the alleged ability of the Board to identify a distinctive black writing style. Finally, plaintiffs assert that the Board has the arbitrary right to review those papers near the passing level and may in this process further perpetrate racial discrimination.

FN4. Plaintiffs allege that between 1962 and 1972 approximately fifty percent of the examination papers submitted by whites received a passing grade; for the comparable period, the black passing rate was six percent. Beginning with the winter 1973 examination on ten out of the previous eleven examinations, plaintiffs allege that approximately fifty percent of the examination papers submitted by whites received a passing grade whereas the comparable figure for blacks was twelve percent. Finally, plaintiffs contend that since 1962 and apparently through the winter 1973 examination, seventy percent of the whites taking the Bar examination eventually succeeded in passing while only twenty percent of the blacks eventually passed the examination. Plaintiffs' Amended Complaint, PP 9-11. These figures were derived through informal monitoring of Bar examinations by black candidates. Defendants, claiming to lack any systematic data on the race of the Bar applicants, have not supplied any comprehensive information on possible racial disparities between success rates on the Bar examination. They do, however, question the consistency of plaintiffs' statistics.Plaintiffs suggest that the dispute over the passing statistics should defeat summary judgment. For the reasons to be discussed concerning the opportunity to discriminate, these differences do not pertain to genuine issues of material fact.

1. Intentional Discrimination

Plaintiffs' claims of intentional racial discrimination by the Board find no support in the undisputed facts. None of the affidavits submitted by plaintiffs in response to defendants' motion for summary judgment reveal any specific instances of racial discrimination. Plaintiffs appear to rely primarily on the differing passing rates for blacks and whites to support an inference of intentional discrimination.FN5 Even if these purported statistical disparities and the incidents outlined in footnote 5 were to suggest the possibility of racial discrimination, the record shows without dispute that the Board neither discriminated nor had any opportunity to discriminate.

FN5. See note 4 supra. In the affidavit of Charles B. Marshall two incidents are recounted apparently for their possible inference of discrimination. After the February 1971 Bar examination a group of blacks who had failed the test met with the Board to discuss their grievances. Subsequently all the unsuccessful black candidates who had attended the meeting, except affiant Marshall, passed the July 1971 Bar examination. Marshall suggests that his failure stems from his earlier, more intimate contact with the Board. Marshall also asserts that after the February 1971 examination he met with a former Board member to review his deficient examination. According to Marshall all of his examination books were marked with a small "c". Upon inquiry the Board member said the letter represented an administrative code. Apparently plaintiffs wish this court to construe the marking as meaning colored. David Allen's affidavit relates the proctors' practice during the Bar examination of inquiring of all candidates their name and seat number to check attendance. This procedure, plaintiffs suggest, could effectively be used to discriminate. There is nothing in the record to suggest, however, that the checking process has been used to gather racial information or that even if the process were so used, that the Board had access to the data.

The alleged opportunities for discrimination have been canvassed previously. With respect to the availability of the master lists containing the names of the examinees and their seat numbers, the affidavit of Pullen, Clerk to the Board, and the affidavits of

the Board members conclusively demonstrate that these master lists are never available to the Board. Moreover, the lists do not identify the race of the examinees.

The supposed possibility that racial information could filter through to the Board from the attorney conducting the character interview of the examinee is conclusively disposed of by the deposition of Board Chairman Gengerich. Board members only become involved in the character review process where there has been an adverse recommendation. Gingerich could recall no character review hearing held by the Board involving a black. Even if the Board were to have received racially identifying information about black applicants in the character review process (and the uncontroverted evidence is that they did not) the Board still did not possess the capacity to match candidate names with their seat numbers. Without this correlation, the Board lacked the opportunity to discriminate. The same conclusion applies to any Board access to law school or preceptor records; moreover, such records would not necessarily disclose a candidate's race. Likewise, when the Board members review papers in the review range they do not possess either a candidate's*292 name or any racial information and the review procedure does not present a feasible opportunity for discrimination.

Lastly, plaintiffs argue that a black writing style could be gleaned by the Board and it assistants in grading examination papers. This allegation of a discernible black writing style is wholly unsupported by the plaintiffs. In their interrogatory responses, plaintiffs admit that they would not be able to discern a black writing style in Bar examination answers, but for unexplicated reasons, they asserted that the Board had such an ability. Plaintiffs' General Answers to Defendants' Interrogatories, P 35(b), (e). Each Board member has specifically denied any ability to identify the race of a Bar examination candidate on the basis of handwriting or writing style. Gingerich Affidavit, P 9; Dorsey Affidavit, P 8; Thompson Affidavit, P 8. The court accepts these uncontroverted statements as true. See Tyler v. Vickery, 517 F.2d at 1093-95.

In Tyler v. Vickery, 517 F.2d at 1093, the court upheld the district court's grant of summary judgment in a case, very similar to the one at bar, involving a challenge to the Georgia Bar examination based on racial discrimination. The Tyler court stated:

However, discriminatory motivation, even if proved, is not in itself a constitutional violation, Palmer v. Thompson, 1971, 403 U.S. 217, 91 S.Ct. 1940, 29 L.Ed.2d 438, and becomes so only when given the opportunity to manifest itself in discriminatory conduct.

That opportunity is not present in the conduct of the Maryland Bar examination.

The materials filed in this case concerning the summary judgment motion reveal that the Board has no opportunity to discriminate in either the preparation, administration or grading of the Maryland Bar examination. As the affidavits of the Board members relate, race of examinees is not known by the Board members. FN6 The stringent procedures adopted by the Board, related in the affidavit of Pullen and the exhibits filed therewith, conclusively insure the anonymity of Bar examination candidates and concomitantly, the impossibility of discrimination. There is no genuine issue as to a material fact and the defendants are entitled to summary judgment on the issue of intentional discrimination. Tyler v. Vickery, supra; Singleton v. Louisiana State Bar Ass'n, supra; Harris v. Louisiana State Supreme Court, 334 F.Supp. 1289, 1304-07 (E.D.La.1971). Cf. Feldman v. State Bd. of Law Examiners, 438 F.2d 699, 703-04 (8th Cir. 1971).

FN6. The affidavits disclose that "in extremely isolated circumstances" candidates, contrary to instructions, write their names on examination books. Gingerich Affidavit, P 6; Dorsey Affidavit, P 5; Thompson Affidavit, P 5. Even with this knowledge of a candidate's name and seat number, the Board would not know anything about the candidate's race. The only instance in which a member of the present Board has known the race, name, and seat number of a candidate occurred when a candidate approached a member of the Board during the examination and without prompting volunteered his name and seat number. The examinee, who failed the examination, was white. Thompson Affidavit, P 3. Since the winter 1972 examination, the Board has had a practice generally to remain outside the examination room a procedure which would prevent any opportunity for any test site identification of candidates' seat numbers and race. Gingerich Affidavit, P 7; Dorsey Affidavit, P 6; Thompson Affidavit, P 6.

2. Inherent Discrimination

Plaintiffs also contend that a genuine issue of material fact exists with respect to whether the Bar examination, absent any scientific validation, accurately measures an applicant's fitness to practice law. It is well settled that the appropriate standard of review is whether the Maryland Bar examination bears a rational relationship to the state's admittedly valid interests in professional licensure. Schware v. Board of Bar Examiners, 353 U.S. at 239, 77 S.Ct. 752; Tyler v. Vickery, 517 F.2d at 1099-1101; Whitfield v. Illinois Bd. of Law Examiners, 504 F.2d 474, 476 n.5 (7th Cir. 1974) (per curiam); Feldman v. State Bd. of Law Examiners, 438 F.2d 699, 705 (8th Cir. 1971); Chaney v. State Bar of California, 386 F.2d 962, 964-65 (9th Cir. 1967), cert. *293 denied, 390 U.S. 1011, 88 S.Ct. 1262, 20 L.Ed.2d 162, reh. denied, 391 U.S. 929, 88 S.Ct. 1803, 20 L.Ed.2d 670 (1968); Lewis v. Hartsock, No. 73-16 at 15-16 (S.D.Ohio, Mar. 9, 1976); Shenfield v. Prather, 387 F.Supp. 676, 686 (N.D.Miss.1974). That plaintiffs allege disparate racial impact

stemming from the Bar examination does not suffice to evidence a suspect racial classification and thereby trigger a strict scrutiny analysis. Hunter v. Erickson, 393 U.S. 385, 391-93, 89 S.Ct. 557, 21 L.Ed.2d 616 (1969). As the Court recently stated in Washington v. Davis, 426 U.S. 229, 242, 96 S.Ct. 2040, 2049, 48 L.Ed.2d 597 (1976): FN7

FN7. In Washington the Court expressly rejected the contention that Title VII standards apply in resolving a Fourteenth Amendment equal protection claim.

We have not held that a law, neutral on its face and serving ends otherwise within the power of government to pursue, is invalid under the Equal Protection Clause simply because it may affect a greater proportion of one race than of another. Disproportionate impact is not irrelevant, but it is not the sole touchstone of an invidious racial discrimination forbidden by the Constitution. Standing alone, it does not trigger the rule, McLaughlin v. Florida, 379 U.S. 184 (85 S.Ct. 283, 13 L.Ed.2d 222) (1964), that racial classifications are to be subjected to the strictest scrutiny and are justifiable only by the weightiest of considerations.

In contesting the validity of the Maryland Bar examination, plaintiffs do not question the use of essay questions.FN8 Plaintiffs appear to rely principally upon the affidavit of Dr. Richard Barrett, Director of the Laboratory of Psychological Studies and Professor of Management Science and Director of the Division of Applied Psychology at Stevens Institute of Technology. The substance, however, of Dr. Barrett's affidavit is that the Maryland Bar examination as presently designed, administered and graded does not comport with the standards for educational and psychological tests as published by the American Psychological Association. Barrett Affidavit, Exhibit A. As the Court stated in Washington v. Davis, an employment test attacked on equal protection grounds need only be rationally job related. 426 U.S. at 248-52, 96 S.Ct. 2040; Richardson v. McFadden, 540 F.2d at 748-49. The standards of the American Psychological Association are not those used in applying the "rational relationship" equal protection test. Dr. Barrett's criticisms are at best indications of how the Bar examination could be improved and are not suggestions of constitutional infirmity. See Tyler v. Vickery, 517 F.2d 1089, 1102 (5th Cir. 1975), cert. denied, 426 U.S. 940, 96 S.Ct. 2660, 49 L.Ed.2d 393 (1976).

FN8. The use of such questions on Bar examinations has been repeatedly upheld. See, e. g., Tyler v. Vickery, 517 F.2d at 1102; Feldman v. State Bd. of Law Examiners, 438 F.2d 699, 705 (8th Cir. 1971); Chaney v. State Bar of California, 386 F.2d 962, 964-65 (9th Cir. 1967), cert. denied, 390 U.S. 1011, 88 S.Ct. 1262, 20 L.Ed.2d 162 reh. denied, 391 U.S. 929, 88 S.Ct. 1803, 20 L.Ed.2d 670 (1968).

In their response to defendants' motion for summary judgment, plaintiffs particularly question the validity of the Board's cutoff passing scores. Maryland, as many other states, requires a seventy percent score for passing. See Maryland Board of Law Examiners Rule 2(e)(1). The seventy percent requirement has been upheld as being rationally related to the determination of minimum professional competency. Richardson v. McFadden, 540 F.2d at 749-50; Tyler v. Vickery, 517 F.2d at 1102; Shenfield v. Prather, 387 F.Supp. 676, 689 (N.D.Miss.1974). As the court stated in Shenfield :

Once it is agreed that some minimum standard is permissible, the question becomes one of degree. . . . The 70% passing requirement, which has been adopted by 16 of the 24 states whose practice is known to us, is a reasonable yardstick by which competence . . . may be determined.

In their complaint plaintiffs also alleged that the Bar examination tests only legal memorandum skills, memory and cramming ability. Yet as the court stated in *294 Lewis v. Hartsock, No. 73-16 (S.D.Ohio, Mar. 9, 1976):

The state has a substantial interest in assuring that persons licensed to practice law meet minimum standards of professional competence. The bar examination provides such a guarantee. Lawyers must be versed in the major areas of the law. They must be trained in legal craftsmanship and capable of understanding legal writing, because knowledge of the law is communicated primarily through writing. The law itself is codified in statutes and construed in written decisions. The constitution the Court applies today is a written document. The lawyer must be able to analyze facts to determine their legal significance. And perhaps most importantly, the lawyer must be able to communicate the relevant facts and the applicable law in writing. If he cannot do so, he will not be able to draft wills, contracts and other legal instruments for his clients, and he will not be able to adequately defend his client's interests in litigation.

Slip op. at 16-17. See Feldman v. State Bd. of Law Examiners, 438 F.2d 699, 705 (8th Cir. 1971); Chaney v. State Bar of California, 386 F.2d 962, 964-65 (9th Cir. 1967), cert. denied, 390 U.S. 1011, 88 S.Ct. 1262, 20 L.Ed.2d 162, reh. denied, 391 U.S. 929, 88 S.Ct. 1803, 20 L.Ed.2d 670 (1968); Shenfield v. Prather, 387 F.Supp. at 682, 689.

The court believes no genuine issue of any material fact exists as to whether the Bar examination is rationally related to the state's strong interests in the professional competence of its attorneys. The essay portion of the examination and the MBE test a

broad spectrum of basic legal principles. The examination requires rapid legal analysis of fact situations and the ability to convey that analysis in reasoned written form. These attributes are the hallmark of the legal profession. The defendants are entitled to summary judgment on this issue.

Conclusion

For the reasons stated in this opinion, the court concludes:

a) that Pettit and Bettis must be dismissed as plaintiffs

b) that the remaining plaintiffs shall represent a class consisting of all blacks who have taken the Maryland Bar examination and failed.

c) that no genuine dispute exists as to any material fact and the defendants are entitled to summary judgment as a matter of law.

The court further concludes that an award of attorneys' fees is inappropriate. See Alyeska Pipeline Co. v. Wilderness Society, 421 U.S. 240, 269-71, 95 S.Ct. 1612, 44 L.Ed.2d 141 (1975); cf. Act of October 19, 1976, Pub.L. No. 94-559 (to be codified at 42 U.S.C. s 1988).

Judgment will be entered separately.

D.C.Md. 1977.
Pettit v. Gingerich,
427 F.Supp. 282, 23 Fed.R.Serv.2d 96

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45 Md.App. 682, 415 A.2d 606

Court of Special Appeals of Maryland.
MAYOR AND CITY COUNCIL OF BALTIMORE et al.
v.
James CROCKETT et ux.

No. 1139.
June 12, 1980.

The Circuit Court, Baltimore City, Mary Arabian, J., granted summary judgment in favor of owners in action brought by city to enjoin owners from maintaining for sale sign. The Court of Special Appeals, Thompson, J., held that ordinance which amended city's comprehensive rezoning ordinance and which prohibited sale or lease signs on individual residence in those parts of city which had been zoned residence and office-residence districts but permitted such signs within those districts on multiple-family dwellings, apartment hotels, and nonresidential buildings was unconstitutional.

Affirmed.

West Headnotes

KeyCite Citing References for this Headnote

⚖414 Zoning and Planning
⚖414III Modification or Amendment; Rezoning
⚖414III(A) In General
⚖414k1158 Particular Uses or Restrictions
⚖414k1159 k. In general. Most Cited Cases
(Formerly 414k167.1, 414k167)

Ordinance which amended city's comprehensive rezoning ordinance and which prohibited sale or lease signs on individual residence in those parts of city which had been zoned residence and office-residence districts but permitted such signs within those districts on multiple-family dwellings, apartment hotels, and nonresidential buildings was unconstitutional. U.S.C.A.Const. Amend. 1.

***607 *682** C. Laurence Jenkins, Jr., Asst. City Sol., and Michael A. Pretl, Sp. Deputy City Sol., of Smith, Somerville & Case, Baltimore, with whom were Benjamin L. Brown, City Sol. and Richard M. Hartman, Chief City Sol. on the brief, for appellants.

***683** Henry M. Decker, Jr., Baltimore, with whom were David K. Hayes and A. Dwight Pettit, Baltimore, on the brief, for appellees.

Argued before THOMPSON, LOWE and MacDANIEL, JJ.

THOMPSON, Judge.

On July 19, 1974, the Mayor of Baltimore approved Ordinance No. 701 which amended the City's Comprehensive Rezoning Ordinance which had been passed and approved in 1971. The effect of the amendment was to prohibit sale or lease signs on individual residences in those parts of Baltimore which had been zoned "Residence and Office-Residence Districts." The Comprehensive Zoning Ordinance had, prior to the amendment, permitted such signs. Curiously, the amendment permitted such signs within those districts on multiple-family dwellings, apartment hotels, and non-residential buildings.

"1. One non-illuminated sale or lease sign for (each street frontage of the lot, not exceeding a height of five feet, and having an area not exceeding six square feet. For) multiple family dwellings, apartment hotels, and non-residential buildings. Such (such) sign shall not exceed a height of eight feet if free standing, and shall not extend above the roof line if attached to a building and shall not exceed an area of 36 square feet."

James and Mary Crockett, appellees, *** posted a "For Sale" sign on the property. A violation notice was issued by the City and when the sign was not removed the appellants, the Mayor and City Council of Baltimore and James J. Dembeck, Zoning Administrator, (both together are hereinafter called the "City" and considered as one body) filed a bill of complaint in the Circuit Court of Baltimore City seeking an injunction. The Crocketts filed an answer admitting all of the material allegations in the bill but asserting that the zoning ordinance was unconstitutional. The Crocketts thereafter ***684*** filed a motion for summary judgment and the City answered claiming that there was a dispute between the parties as to material facts.

A hearing was held before a master on March 27, 1979, at which time an affidavit of the Zoning Commissioner, James J. Dembeck, was filed. ****

The file contained no testimony but several letters from community groups generally expressing the idea that "For Sale" signs in neighborhoods undergoing racial transition could create panic selling. There were several letters from real estate interests, expressing the view that it was improper to deprive homeowners of the means by which a substantial portion of home properties are sold.

**** The Court concludes there is no genuine dispute of the material facts.

*****

"The Court wishes to take the opportunity to say that from its observations, the citizens of Baltimore generally are proud of their City and it is highly unlikely that they will become victims of unethical panic peddling and resort to panic selling."

The City failed to allege in its pleadings the only triable issue of fact which could possibly have permitted the ordinance to be sustained under Linmark ; we affirm the ***691*** chancellor's grant of the motion for a summary decree. Our position is supported by Harris v. City of Buffalo, 90 Misc.2d 561, 394 N.Y.S.2d 794 (1977). In that case Harris, et al. sought to have a city ordinance which banned "For Sale" signs declared unconstitutional and the Court granted their motion for summary judgment stating:

"Even assuming the continued validity of that holding, (Barrick) however, the instant motion must be granted as the defendant City has offered absolutely no factual support of its conclusory allegations concerning 'block-busting', 'panic selling' and other evidentiary criteria upon which the Barrick decision and the City's position herein are founded."

DECREE AFFIRMED.

APPELLANTS TO PAY THE COSTS.

Md.App., 1980.
Mayor and City Council of Baltimore v. Crockett
45 Md.App. 682, 415 A.2d 606

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450 U.S. 967, 101 S.Ct. 1485, 67 L.Ed.2d 616

Supreme Court of the United States
MAYOR AND CITY COUNCIL OF BALTIMORE et al., petitioners,
v.
James CROCKETT and Mary Crockett

No. 80-1138
March 2, 1981

Facts and opinion, 45 Md.App. 682, 415 A.2d 606.
Petition for writ of certiorari to the Court of Special Appeals of Maryland.
Denied. U.S.,1981
MAYOR AND CITY COUNCIL OF BALTIMORE et al., petitioners, v. James CROCKETT and Mary Crockett
450 U.S. 967, 101 S.Ct. 1485, 67 L.Ed.2d 616

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Now and then — *by g. james fleming*

Dwight Pettit: Carter's Md. man

Jimmy Carter's "Mr. Big" in Maryland's Afro-land is a vibrant, young lawyer, Alvin Dwight Pettit. He will also have a key role in the statewide campaign, beyond racial lines.

Pettit hitched up with Carter over 18 months ago, when the Democratic candidate for president was still "Jimmy Who?" and when most blacks were still very much perturbed and undecided as to whether they would, or should, support the Georgia peanuts farmer.

Pettit offered his support and services, and refused pay, except for actual traveling and related expenditures. He made several trips to Plains, Ga.; held many "skull" sessions with Carter and his top aides and kept them busy reading his position papers and memos.

When Carter made his "ethnic purity" slip, Pettit sent him a gigantic telegram — a helpful telegram — continuing his support and offering a plan to overcome the criticism that broke over Carter. Cost of telegram: $200.

When other Marylanders — the big names and others — led a drive to deliver the state primary to California's Jerry Brown, Pettit stuck with Carter. Result: Baltimore's Seventh District gave a majority to Carter and left Pettit in a most favorable position, as compared with all others.

The Carter top eschelon has shown appreciation for Dwight Pettit. It consults with him often, assigns him to many speaking engagements outside the city and he was a floor manager ("whip") for Carter at the New York Convention.

"I was overawed at the convention," the Carter backer admits, "but I learned a great deal."

Asked what black people should expect of Carter, he paraphrased a sentiment from a Carter speech to a group of black voters, that blacks will receive from President Carter "even more than they expect."

Reflecting the attitude of black Georgians, who know Gov. Carter best, Pettit is exuberant in his estimate of the candidate's past, his present, and his future. He has no doubts but that Carter will win next November, whether his Republican opponent is Gerald Ford or Ronald Reagan.

His only regret about being "on call" in the Carter campaign, he said half jokingly, is that "So many of my clients think I am so busy working for Carter that I won't have time for them; so they take their business to some other lawyer."

Alvin Dwight Pettit was born 31 years ago in Rutherton, N.C., was graduated from the Aberdeen, Md. High School in 1965, from Howard University in 1967, and from the Howard Law School in 1970. He lived in Silver Spring until he moved to Baltimore City.

He was a "distinguished" Air Force ROTC cadet while at Howard, served in the Air Force and was discharged in 1971 with the rank of first lieutenant.

He began his professional life as a trial attorney for the Small Business Administration in Washington. Since then, he has been admitted to the bars of the Federal District Court of Maryland, the Maryland Court of Appeals, the U.S. Supreme Court and the U.S. Court of Claims. He is also a member of the Nebraska bar.

Pettit is a member and active in the National Bar Association, the American Bar Association, the Monumental Bar Association and the American Civil Liberties Union. He is a member of Kappa Alpha Psi Fraternity.

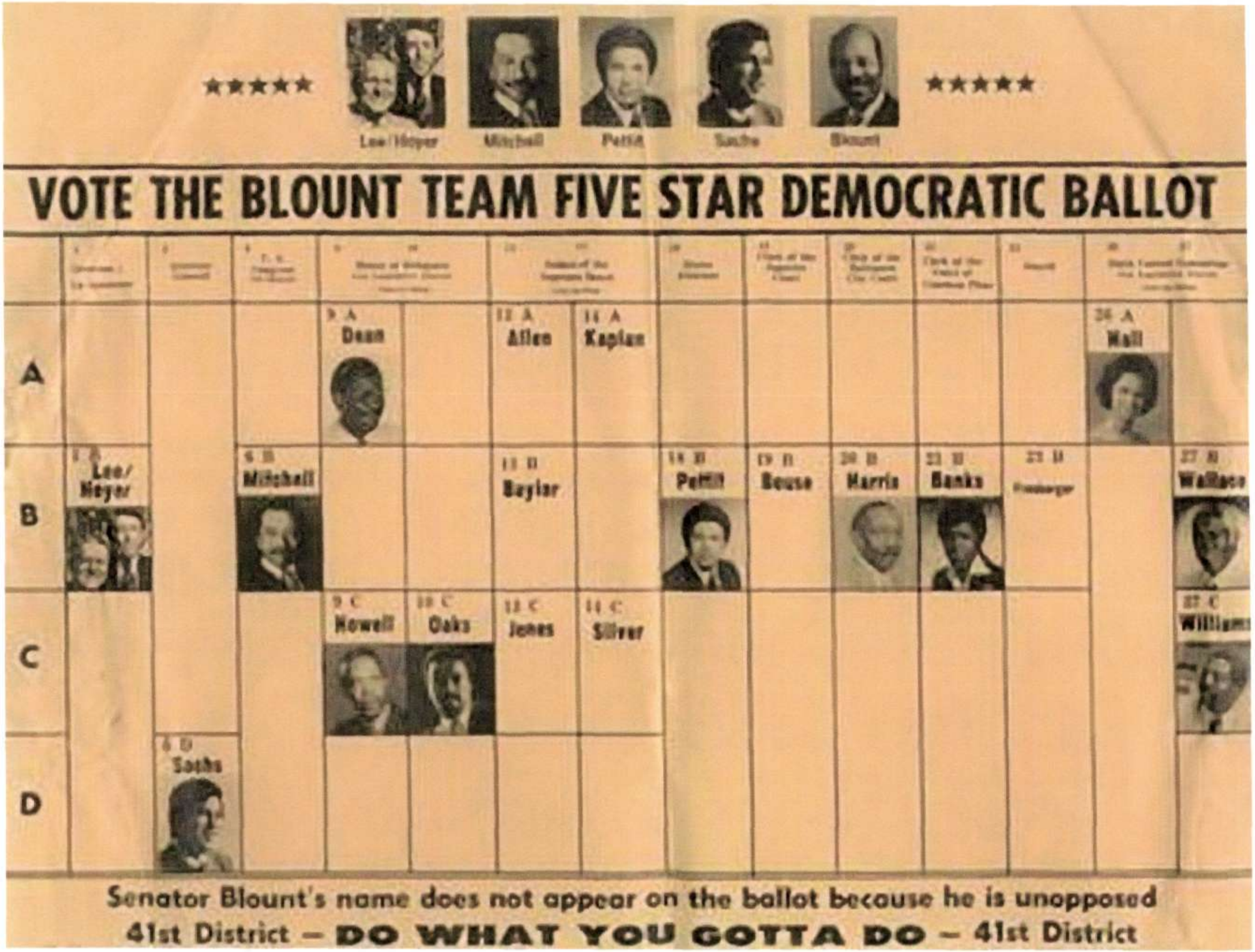
He is married to the former Barbara Moore, a high school teacher of French. They have two children: Dwight Jr., 5, and Nahisha, 3.

Symbolic of the new breed of black lawyers is the fact that, while Pettit was "up front" with and for Carter, his law-firm partner, Michael Bowen Mitchell, was also "up front" in the Jerry Brown camp, and gets much of the credit for inducing Governor Brown to enter the Maryland primary.

Save for internecine warfare, it appears that Baltimore and the Democrats will be hearing more of Alvin Dwight Pettit.

AFRO-AMERICAN NEWSPAPER
July 31, 1976


Best wishes to Dwight Patt
Jimmy Carter


★★★★★
Lee/Hoyer
Mitchell
Pettit
Sachs
Blount
★★★★★
VOTE THE BLOUNT TEAM FIVE STAR DEMOCRATIC BALLOT
A
B
C
D
Dean
Allen
Kaplan
Hall
Lee/Hoyer
Mitchell
Baylor
Pettit
Harris
Banks
Wallace
Howell
Oaks
Jones
Silver
Williams
Sachs
Senator Blount's name does not appear on the ballot because he is unopposed
41st District – DO WHAT YOU GOTTA DO – 41st District

victory

sence in Prince George's County, it ame very clear that the Mayor was ncerned about the position that St. rk's seemed to be affirming in erence to the fire station when it ap- red that he and the City council eved St. Mark's was in favor of the oning.

he Mayor went on to say that he was pressed by St. Mark's history as a bilizing force in the Garrison - Liber- Heights corridor. It goes without say- that once the Mayor knew and derstood St. Mark's position, he oed the bill.

t is also clear that the City Council d been misinformed concerning St. rk's supporting the rezoning and did at it could by not contesting the yor's veto and moving with dispatch make the land available for a future e station.

n this case, it would appear to me that ryone gained something from the ex- rience: community organizations, St. rk's Church, the Mayor's office, the y Council and indirectly, the Southern ristian Leadership Conference, for Mayor made it very plain, his pro- nd admiration for SCLC and what it, ough Dr. King's leadership, has stood over the years.

The above is much more accurate in your recent article.

MS. WILLA WALKER
Secretary

is important to something [illegible] small. The contenders for the Democratic nomination in the Seventh Congressional district had what was supposed to be a debate.

The term debate has been distorted, castrated and beaten into a creature that in no way resembles what a debate is. A debate is battle of assertions and rebuttals. A debate consists of two people or two groups of persons representing opposing views who defend assertions and attack their opponents assertions.

Debate involves questioning the opposition and vice versa. The term debate has been appropriated to cover any discussion held where opposing candidates get the chance to present their views.

The televised event Tuesday resembled a Manhattan subway platform at rush more than it resembled a debate. Candidates were given 45 second segments and later 15 second segments to present answers to weighty and lightweight questions from a trio of journalists.

The severe time constraint and the unwieldy number of candidates caused the answers to whiz by viewers like formula one cars going full speed at the Indianapolis 500.

Some candidates took their miniscule segments as opportunities for flights of rhetoric, others took them as moments for an experiment in compressing lengthy sentences in increasingly shorter time frames.

Essentially it was an evening that was not critical to any campaign. This worked in favor of the frontrunners for they had the most to lose and the least to gain. Clarence Mitchell, III, Kweisi Mfume

[illegible] substance in the end.

Kweisi Mfume as usual was very articulate on the telecast. He is probably the best orator in the race and in his more exalted moments he can be quite poetic. Still he is not in a poetry contest and he is not in an oratorical contest. It is a quest for leadership.

Mfume's closing remarks about the "American Dream" and his introductory "My Fellow Americans" phrase was vaguely reminiscent of Richard Nixon. Those statements may play in the white or whitewashed areas of the Seventh District and perhaps that was the purpose that they served but it did not play well in parts of the District where the American Dream is synonymous with a black nightmare.

Wendell Phillips also pushed the theme of building bridges to all parts of the district. It seemed to be a definite play for the white vote. After all, black people have never burned any bridges of interracial cooperation and understanding . . . He did not do well in the oratory department and that will hurt his election chances. Black voters expect a minister to be an orator regardless of any shortcomings he might have and Philip's clerical garb raises people's expectations in the realm of speechmaking.

Dwight Pettit was at a severe disadvantage in the television forum. Pettit does well when he is in a setting where there is more exchange among the candidates and he can bring up his opponent's records and make them the issue. On Tuesday he was forced to rush his answers and he was prevented from drawing any blood from his opponents.

Unfortunately his anti-communist

hurt her campaign for Congress, [illegible] may eventually help in preparing [illegible] 1967.

Stewart did extremely well on te[illegible] sion because of her articulation and [illegible] poise.

Theodore Williams did not fare as [illegible] on television as he does in live del[illegible] He seemed to be ill at ease on can[illegible] and his stammering was much more [illegible] quent on Tuesday than it ever is in [illegible] debate where Williams excels. How[illegible] his closing remarks were eloquent [illegible] so heartfelt tht he delivered [illegible] flawlessly.

Williams is a controversial figur[illegible] the race. He has been accused of [illegible] semitism and hatemongering. To th[illegible] points he retorted that the people [illegible] call themselves Jews are not sem[illegible] peoples and he also stated that an[illegible] who takes a probiack stance is accused of hatemongering.

Two candidates who did nothing for their chances in the seventh were Hazel Judd and Edward Makowski. Mrs. Judd was vague on the questions and unclear with her answers.

Makowski appeared to be uninformed about the district and about how to win over black voters.

It is important that voters in the Seventh attend live forums with the candidates where they will have the opportunity to see the candidates up close responding under pressure.

This election is too important to settle for glib answers that never get to the key issue in the Seventh, the empowerment of those people who have been the victims of racism and exploitation. All the grandiose promises mean nothing.

Voters in that district should demand [illegible]

AFRO BOARD CHAIRMAN John H. Murphy III in the home office executive suite greets Carter Campaign Co-Chairman A. Dwight Pettit and Georgia State Rep. Ben Brown.

Pettit will seek Rep. Mitchell's seat

By Michael Shultz
Evening Sun Staff

A. Dwight Pettit has announced he will seek election to Congress from the Maryland's 7th District.

His announcement came amid rumors and new reports that veteran Rep. Parren J. Mitchell has tired and will chose not to seek another term. He won his first term in the northwest Baltimore district in 1970. Eve. Sun

Mitchell scheduled a press conference tomorrow to declare his intentions.

He has told supporters the job tired him and he considered quitting. But many have urged him to seek another term, which would be his eighth.

He has suggested he may chose to run again.

Pettit, a lawyer who ran against then-State's Attorney William A. Swisher in 1978, said he would stay in the race regardless of Mitchell's decision.

"I think we can articulate the issues," he said. "A challenge would be good for the district." DEC 7 1983

Pettit also said he wanted to make clear to a score of other potential candidates he is serious about the race, and perhaps keep them out.

These potential candidates include the congressman's nephews, City Councilman Michael Mitchell and state Sen. Clarence Mitchell, and, as Pettit said, "about the whole black political structure."

Mitchell, 61, has steadily strengthened his control of the 7th District since winning by only 38 votes in a then white-majority district.

He faced only one serious challenge—by George Russell in 1972. The district, which now includes nearly all the city's black neighborhoods, Bolton Hill and the county neighborhoods of Lochearn and Milford Mill, now is 70 percent black.

Pettit, 37, was co-chairman of Jimmy Carter's 1976 Maryland campaign. Pettit has been involved in several community activities. Eve. Sun

A graduate of Howard University, Pettit said he wanted to show voters that "there is something to see beyond Parren."

Pettit steps aside in 7th District race

Attorney A. Dwight Pettit formally withdrew as a candidate for the Seventh Congressional District seat Thursday morning, thus avoiding a battle with Representative Parren J. Mitchell, the incumbent. MAR 10 1984

P[illegible] cited his respect for Rep. Mitch[illegible] and a desire not to "factionalize and divide the district in a way they may not be of service to the overall community," and the opportunity to "commit greater participation to the Jackson Presidential Campaign without the hindrance of the possible appearance of self promotion," as reasons for his withdrawal.

Pettit, who is also vice chairman of the Maryland Jesse Jackson Presidential campaign, announced his candidacy in December of last year when Mitchell indicated his possible retirement.

Pettit said he campaigned in order to bring himself to the attention of the district as an alternative representative. AFRO-AM

"I officially filed even after the Congressman indicated he would run for re-election to insure that if there was a change in that decision, I would be properly registered as a candidate," said the attorney.

Hooks was sentenced to 16 months in prison after he pleaded guilty in 1975 to embezzling almost $12,000 from the now-defunct Organization of Baltimore Cab Drivers. Pettit served as counsel to the group "three or four years" while Hooks was president.

JUN 6 1986

"I did not see that to be relevant and I wasn't asked about it," Pettit said yesterday. "That thing [the embezzlement] occurred so long ago. In my opinion . . . Ed was upstanding. I'd go to one of his stores and he'd be working on the cash register, putting stock on the shelves. In my opinion, he was a hard-working, industrious businessman." EVENING SUN

Pettit said that over the years he represented Hooks in a number of small business matters such as store leases and felt no qualms about testifying in his behalf.

"I have known Ed and represented him over the years," Pettit said. "I've never known of anything like this to come up. . . . I never heard of anything in the streets of him and narcotics."

Hooks contributed $200 to Pettit's congressional campaign in January, according to Federal Election Commission reports.

Pettit said that Hooks' $200 check bounced but that Hooks' wife, June, later made a $1,000 contribution to the campaign.

Other character witnesses for Hooks were Kenneth L. Webster, a two-term state delegate from West Baltimore, and Ernie Carrington, a former vice officer who was the Northern District's policeman of the year in 1974. Neither could be reached for comment yesterday.

Hooks and a companion were arrested on June 30, 1985, by New Jersey state troopers after they were stopped for a traffic violation on the southbound New Jersey Turnpike, Czech said.

JUN 6 1986

A search of the car Hooks was traveling in yielded a white plastic bag containing 18 ounces of high-grade cocaine. The drugs had a street value of anywhere from $700,000 to $1 million, Czech said.

Arrested with Hooks was Melvin Singletary, the car's driver. They were released on $50,000 bond each, which was posted by Hooks.

Singletary had no former police record and his trial ended in a hung jury, Czech said. EVENING SUN

Hooks, meanwhile, went on trial May 26, but two days later he disappeared from his New Brunswick, N.J., hotel room. "He just got cold feet," Czech said.

The trial continued in Hooks' absence and Tuesday he was found guilty of possession of cocaine and possession with intent to distribute the drug.

JUN 6 1986

As president of the now defunct Organization of Baltimore Cab Drivers, Hooks was a prominent player in a two-month strike by 300 drivers against the Checker Cab Company in 1974. EVENING SUN

Czech said that Hooks was arrested for drug possession on the New Jersey Turnpike in 1979 but charges against him were dropped after a motion to suppress some evidence was upheld by a judge.

Pettit expected to oppose Swisher

By DeWAYNE WICKHAM

A. Dwight Pettit, president of the city's black bar association, will enter the Democratic primary for Baltimore state's attorney next week, an informed source said yesterday. JUL 1 1978

Mr. Pettit is expected to announce his 11th-hour entrance into the race to unseat William A. Swisher, a Democrat, at a press conference scheduled for noon Monday outside the office of the Board of Supervisors of Elections. SUN

Monday is the filing deadline for the September 12 primary.

Reached at his law office yesterday, Mr. Pettit said he is "90 per cent certain" to file for state's attorney Monday.

"I've been under a tremendous amount of pressure to run. It's something that I've given a lot of consideration to, and I'm on the verge of making my decision," he said.

Mr. Pettit added that if he enters the race, he will run a "people's campaign in which I will attack Bill Swisher's undistinguished record as state's attorney."

Despite his expressed uncertainty, the 32-year-old president of the Monumental Bar Association "has already made up his mind to enter the contest and is busy this weekend getting his eggs all in the proper baskets," the source said.

"When he comes forward on Monday," the source continued, "he expects to do so with a war chest for financial commitments and a broad section of support from the city's black and white communities." SUN

A co-chairman of Jimmy Carter's 1976 Maryland presidential campaign, Mr. Pettit is expected to attempt to draw support from most of the city's black politicians and from the small group of wealthy white liberals and moderates with whom he worked during the Carter campaign.

But Mr. Pettit will probably have to compete for this support with Anton Keating, Jr., a former state public defender who resigned his post earlier this month to run against Mr. Swisher in the September primary. JUL 1 1978

It had been expected that Mr. Keating would win the support of much of the city's white liberal community and the endorsements of most of Baltimore's major black political organizations for his election campaign. SUN

As late as Thursday, many black political leaders were saying that if no black candidate ran for state's attorney, they would throw their support behind Mr. Keating. Now they are publicly boosting Mr. Pettit's expected campaign.

"I'm very, very happy to hear that he is entering the race," state Senator Verda F. Welcome, (D., 40th, Baltimore) said yesterday. "Dwight Pettit is one of our finest and will make a wonderful state's attorney. He has my full support."

Likewise, state Senator Clarence W. Blount, (D., 41st, Baltimore), said, "Dwight is an outstanding candidate. I see no reason why I cannot embrace his candidacy 100 per cent."

Because of Mr. Pettit's late entry into the campaign, the source said, he will spend a large portion of the $60,000 he expects to raise on radio and television advertisements. JUL 1 1978

Mr. Pettit's expected announcement comes at a time when most of the city's leading black politicians had given up hope of finding a black candidate to contest Mr. Swisher's bid for a second four-year term as the city's chief prosecutor.

The late Delegate Arthur G. Murphy, Sr. (D., 41st, Baltimore), who died June 10 after a heart attack, was considering the race and was expected to reveal his plans June 12 in a meeting with prominent black community and political leaders.

His death, many black leaders said at the time, ended the chances of a black candidate coming forward to challenge Mr. Swisher's re-election bid. SU

The incumbent state's attorney has few friends among the city's black politicians. In the 1974 Democratic primary election Mr. Swisher, who ran a "law and order" campaign, defeated Milton B. Allen, the city's first black state's attorney.

Black political leaders viewed Mr. Allen's defeat as a setback in their efforts to gain a more meaningful measure of political power in Baltimore, where the population is now more than 55 per cent black.

By Robert Hilson Jr. 83
Evening Sun Staff

A. Dwight Pettit, citing the need to devote more time to Jesse Jackson's presidential campaign in Maryland, withdrew today from the 7th District congressional Democratic primary race. MAR 8 1984

The Jackson campaign and his "close respect" for incumbent Democratic Rep. Parren J. Mitchell played heavily in his decision to withdraw, Pettit said. Eve. Sun

"I have strong loyalties to the congressman," added Pettit, 38, an attorney who entered the race in December after getting "strong indications" that Mitchell might not seek re-election.

Mitchell, 61, announced his re-election bid soon after Pettit entered the race.

Pettit announced his withdrawal today at Mitchell's West Baltimore district office. The congressman was at Pettit's side during the announcement.

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refuse to allow him ... groundswell of support ... SEP 20 19

... During the primary, Mr. Pettit had attacked Mr. Swisher as an incompetent, a product of boosism and the administrator of an office where the atmosphere is a bar ... almost simultaneously yesterday, Mr. Pettit blasted his other primary opponent, Anton Keating, who reported on Monday ... were urging him, Mr. Keating to be ... come a write-in candidate.

... I would advise Mr. Keating that ... arrogance is just as dangerous to the community as incompetent ... ism," Mr. Pettit said. During the campaign, Mr. Keating had charged that Mr. Pettit had very little criminal trial experience.

SEP 20 1978

Mr. Pettit said he accepted an invitation from Mr. Swisher, the incumbent ... ing and their differences about Mr. Keating ... state's attorney, to discuss the primary ...

... now," he said.

... dera write-in candidacy ... earlier statement that Mr. ... door, too, is still open, he said.

Mr. Pettit, who is president ... of the city's black bar association and ... recent months has conducted ... frontal assault on alleged ... racism in the administration of Mr. Swisher, said he decided that personal comments ... the apparent bitterness of ... his decision ... should not be a barrier to ... yesterday with Mr. Swisher.

"I don't think anyone ... enough to turn his back on ... office. It can't be say personal ... can't say, 'I'm not going to ... you.' It would be a disservice to the ... represent," he said.

Pettit meets with victor Swisher

By C. FRAZIER SMITH

A. Dwight Pettit, who ran second in a hard-hitting Democratic primary for state's attorney for Baltimore, had lunch at Sabatino's restaurant yesterday with William A. Swisher, the man who defeated him.

Mr. Pettit said he accepted an invitation from Mr. Swisher, the incumbent, to discuss the primary campaign and their differences about Mr. Keating's ability to represent the state's attorney's office.

ANTON Keating

Democratic Candidate for State's Attorney / Baltimore City

FOR IMMEDIATE RELEASE

Good News, a black publication with a circulation of more than 30,000 in Baltimore's black communities, has urged black voters to support Anton Keating in the Democratic Primary for State's Attorney.

In a front page editorial Good News said, "Be sure to vote for Anton Keating. Give him the biggest vote we can get out. It is the only way to stop the racist campaigner and incumbent William Swisher."

The editorial went on to say that even though there is a black candidate in the race, A. Dwight Pettit, "Pettit started too late and with too little money. His campaign manager and close associates have done a very poor job of selling him." The paper concluded that Mr. Keating is the only viable candidate against Mr. Swisher.

The editorial also pointed out that Mr. Keating has a record of fairness and capability, and that he has actively sought the support of the black community.

Mr. Keating said that he is pleased to have received the paper's endorsement and that he believes he will receive substantial support in the black community on election day.

"I have campaigned in every area of the city and I feel that voters have gotten my message that more vigorous and capable prosecution of crime is needed. This need is apparent in black and white neighborhoods," he said.

-30-

FREE

GOOD NEWS

5th Year — No. 14 SEPTEMBER 6, 1978 Baltimore, Md.

DO NOT VOTE FOR PETTIT!!!!!

The most unusual thing for Blacks to do in this Primary is NOT to vote for Black lawyer Dwight Pettit, for States Attorney of Baltimore City.

That's right! DO NOT vote for Mr. Pettit.

Be sure to vote for Anton Keating. Give him the biggest vote we can get out. It is the only way to stop the racist campaigner and incumbent, William Swisher.

Simply, Mr. Pettit doesn't have a chance. He is not an eager beaver, combing every precinct in Baltimore. Pettit started too late and with too little money. His campaign manager and close associates have done a very poor job selling him. In fact, people are asking if Mr. Pettit is a "sincere" candidate.

To the contrary, Mr. Keating is fair, capable and hard hitting. He will make an excellent States Attorney. It is believed Mr. Keating has spoken to and made contacts with as many Blacks in this Primary as Mr. Pettit. To be sure, every vote given Mr. Pettit, who cannot win in this Primary Election, is a vote for Mr. Swisher.

Our readers know of the race price embodied in every issue of GOOD NEWS. However, we would be foolish, and do a great disservice to our race and readers not to warn of the ease with which the unwanted Mr. Swisher can be returned to office.

In addition, Mr. Keating has a goodly following of enlightened Blacks and whites already in his camp. Smart Blacks need to join them. Mr. Keating will even owe Blacks a favor.

512 St. Paul Place / Baltimore, Maryland 21202 / 837-0313

Primary Election Vote Count Totals In Baltimore City

*The following are the final, unofficial results in the primary elections in Baltimore. * denotes the incumbents.*

STATE'S ATTORNEY

Democrats

William A. Swisher*.....44,588
A. Dwight Pettit.....30,930
Anton Keating.....26,140

Republicans

Robert R. Weed.....Unopposed

SHERIFF

Democrats

George W. Freeberger*.....30,993
Ronald D. Jones.....10,159
Grover Adkins, Jr.....7,616
Phillip Smith.....5,951
Phillip J. Smith.....5,230
Luther R. Smith 4th.....4,587
Paul Vince.....3,759
Ferdinand J. Mongeon.....2,098

Republicans

No candidate filed

JUDGE, ORPHANS' COURT

43d DISTRICT

Democrats

J. Joseph Curran Jr.*.....8,552
J. McDonald Kennedy.....2,841

Republicans

No candidate filed

44th District

Democrats

John Carroll Byrnes*.....7,489
John J. Novotny.....4,092

Republicans

No candidate filed

Richard W. Emory Jr.....3,193
Barbara G. Gamse.....3,179
Grenville B. Whitman.....3,031
William J. Madonna Jr.*.....2,779
Kenneth R. Roe.....787
Daniel E. Hogsed.....689
John F. Cadden Jr.....615
Samuel E. Tetso Sr.....292

Republicans

No candidate filed

40th District

Democrats

Troy Brailey*.....5,576

44th District

Democr

Gerald J. Curran*.....
Frank C. Robey Jr.*...
Dennis C. McCoy.....
John J. Gallagher.....
Albert Hybl.....
Richard D. Ayres.....
Cassandra H. Marshal
Richard H. Keller.....
Robert Whitman.....
Frederick J. Cuomo....
Lena C. Fugate.....

Republic

property attractiveness. AFRO camera of photographer

Baltimore Afro American

28 APRIL 5, 1977

HIGHLY RESPECTED — Shown at recent ceremonies at the University of Maryland School of Law during presentation of a NAACP life membership plague to the Black American Law Students Association are; Larry S. Gibson, attorney and law professor; Rep. Parren J. Mitchell; Judge Joseph C. Howard; Mrs. Enolia P. McMillan, president of the NAACP; Michael J. Kelly, law dean; C. Edward Hitchcock, president of BALSA; Edward Laing, an associate professor on the faculty; and A. Dwight Pettit, president of the Monumental Bar Association.

MARYLAND

March 3, 1996 THE SUN

7th District race is too fluid to predict

Cummings is viewed as leader, but 4 others may not be far behind

By WILLIAM F. ZORZI JR.
SUN STAFF

With just two days left before Tuesday's historic primary election to succeed Kweisi Mfume in Maryland's 7th Congressional District, the record-breaking field of 27 Democrats seeking the party's nomination remains extremely fluid.

Del. Elijah E. Cummings, the Maryland House speaker pro tem, is the perceived front-runner, having captured some key endorsements, including that of the *Baltimore Afro-American* newspaper Friday, and having raised more than $220,000, nearly twice that of the next nearest candidate.

Mr. Cummings has used that money to buy the additional name recognition that this three-month, wintertime primary requires, dumping the money into a television ad blitz and a flood of direct-mail pieces, the scale of which no one else has touched.

But the four-term West Baltimore legislator continues to look over his shoulder — at a handful of candidates who have the potential to overtake whatever lead he may have with voters. Candidate polls consistently have shown five candidates jockeying for first place, with a huge percentage of voters in Baltimore City and Baltimore County still undecided.

The Rev. Frank M. Reid III, the powerful pastor of Bethel African Methodist Episcopal Church and Mayor Kurt L. Schmoke's stepbrother, continues to dog Mr. Cummings in this free-for-all, as do Baltimore County Sen. Delores G. Kelley, Baltimore lawyer A. Dwight Pettit and Baltimore Register of Wills Mary W. Conaway (based almost solely on [*See Seventh, 4C*]

Cummings is perceived to lead the pack two days before primary campaign ends

(Seventh, from Page 1C)

her citywide name recognition).

There are other strong contenders, each with his and her dedicated constituencies, including three other members of the Maryland House of Delegates, three other ministers and a few impressive new voices that have emerged since Mr. Mfume declared Dec. 9 that he was leaving Congress to head the National Association for the Advancement of Colored People.

The variables still in play at this late date make the race nearly impossible to predict, even for the most skilled handicapper, given the size of the field, the expected voter turnout of less than 25 percent (about 50,000 voters) and the possibility of rain Tuesday (which could further diminish the vote).

Those factors keep the field volatile, allowing for the chance of a win by hopefuls who are reportedly not high in the polls at this point — candidates such as Del. Kenneth C. Montague Jr., a third-term legislator from Northeast Baltimore with a loyal following; or even newcomer Traci K. Miller, a city prosecutor who has captured the attention of the political establishment and connected with voters everywhere she speaks.

"You could do it with 5,000 votes," said Del. Clarence Davis, a four-term East Baltimore legislator who also is running.

It remains anyone's race, a numbers game dependent largely on the winning campaign's ability to ensure that voters make it to the polls — and vote the right way.

"Like they say, it's not over till the polls close," said Julius Henson, Mr. Cummings' campaign manager.

"You could do it with 5,000 votes."

Del. Clarence Davis, *one of 32 candidates in the 7th District, on the possible margin of victory.*

The contest has been extraordinary from the start, beginning with Mr. Mfume's stunning news that he was stepping down, midway through his fifth term.

Even on a legal, technical level, Mr. Mfume's sudden exit was groundbreaking.

It required emergency legislation to be passed by the General Assembly in January to combine a special primary election to fill his seat with the state's previously scheduled March 5 presidential primary. Without the change in law, two separate primaries would have been required.

Winners from the field of 27 Democrats and five Republicans in Tuesday's election will compete April 16 in a special general election — likely to be a mere formality for the Democratic nominee — to determine which of them will fill the last nine months of Mr. Mfume's term. Those winners also would face each other — unless they declined the nomination, considered highly unlikely — in the Nov. 5 general election for the two-year congressional term that begins in January.

In the three-month sprint from Mr. Mfume's announcement to the March 5 primary, the race has pitted legislator against legislator, clergyman against clergyman, Eastside against Westside, and city against county.

"The political landscape of Maryland will never be the same after this," predicted Del. Salima S. Marriott, another West Baltimore legislator in the race.

One of the more curious turns has been among the city ministers, whose endorsements and political activism were critical to the win of Mr. Mfume in 1986 and that of his predecessor, Parren J. Mitchell, who became Maryland's first black congressman in 1970 when he defeated the machine-backed nine-term incumbent.

This year, the Interdenominational Ministerial Alliance, traditionally the most politically influential of the city's groups of clergy, and the bulk of other minister groups threw its support behind the Rev. Arnold W. Howard, a West Baltimore pastor.

Politically, the weight of Mr. Howard's endorsements could counteract the zealous support of Dr. Reid, whose congregation at Bethel is said to number 10,000.

And there are two other ministers whose names will appear on the ballot: Bishop Theodore M. Williams Jr., a Randallstown pastor; and the Rev. Medgar L. Reid, a West Baltimore pastor who quietly dropped out of the race Tuesday, though his name still will appear on the ballot.

But attempting to make a realistic assessment of the ministerial factors could be risky.

"At least a dozen people who are very active in different churches in the city have told me they are not going to vote for a congressional candidate in the 7th," said Barbara E. Jackson, the city election administrator. "They said they know all of the ministers,

and rather than choose one, they'd rather not vote for anyone for Congress."

Separating church from state, the opportunity to seize the congressional chance of a lifetime — one that resulted in this cattle call of candidates — also has shattered political alliances and split endorsements.

For instance:

▪ Organized labor — which in the past has supported each of the six elected officials in the race — split in a floor fight at the state AFL-CIO's endorsement meeting between supporters of Mr. Cummings and Dr. Reid. Labor ended up not endorsing in the 7th District race, leaving individual unions free to support the candidate of their choice.

▪ The Baltimore City League of Environmental Voters "endorsed" four of the elected officials — Mr. Cummings, Ms. Kelley, Ms. Marriott and Mr. Montague. And in its announcement the political committee of environmental activists also acknowledged, but stopped just short of endorsing, Ms. Miller.

▪ Women's groups and abortion rights organizations have tended to back one candidate — if any, in a primary — but the support is divided in this race.

Mr. Montague is backed by the National Abortion Rights Action League, the political arm of the national abortion rights movement. Ms. Marriott has been endorsed by the National Organization for Women. And Ms. Kelley has won support from three national women's groups that either are or control political action committees — EMILY's List, the Women's Campaign Fund and the National Women's Political Caucus.

▪ Political organizations also have been all over the map.

The Third District Metro Organization, based in Mr. Montague's Northeast Baltimore legislative district, is backing Ms. Kelley, the county state senator. The local and state elected officials from Catonsville, in Ms. Kelley's political back yard, are backing Mr. Cummings, while Baltimore County Executive C. A. Dutch Ruppersberger III is behind his senator.

And the city's Eastside Democratic Organization undercut the potential support of Mr. Davis after its leader, state Sen. Nathaniel J. McFadden, dropped from the race and threw his backing to Mr. Cummings, from the Westside.

▪ Legislators themselves are divided.

Maryland House Speaker Casper R. Taylor Jr. is behind Mr. Cummings, his speaker pro tem, as is much of his leadership team — even though three other candidates are House members. In fact, Del. Howard P. Rawlings, chairman of the Appropriations Committee, and state Sen. Ralph M. Hughes are solidly behind Mr. Cummings, although the two men and Ms. Marriott are from the same West Baltimore district.

And state Sen. Barbara A. Hoffman, chairwoman of the powerful Budget and Taxation Committee, is solidly behind Ms. Kelley, though all three of Ms. Hoffman's 42nd District delegates — Maggie L. McIntosh, Samuel I. Rosenberg and James W. Campbell — are supporting Mr. Cummings.

▪ Mr. Schmoke has a number of allies and close friends in the race but was saved the awkwardness of having to choose among them by endorsing Dr. Reid, who is family. While the mayor himself has been visible, evidence of his considerable political organization has not.

Yet, despite all the political tumult, the race has been a fairly clean fight and, despite the size of the field, it has left officials and community activists pleased with the number of talented candidates seeking public office.

"A lot of people are concerned that we have so many people running," said Marvin L. Cheatham, president of the city election board. "But when you look at the crop of qualified candidates, I think it speaks well for the 7th District. It's just not an easy choice."

MARYLAND
THE SUN
March 4, 1996

7 District hopefuls pass day in church

Candidates on stump 2 days before primary

By JOHN RIVERA
AND WILLIAM F. ZORZI JR.
SUN STAFF

The campaign for the 7th Congressional District seat moved yesterday from the streets to the sanctuary as candidates went to church to worship and to drum up support for tomorrow's primary election.

The day began early in churches in Baltimore city and county, included various types of contact with voters and ended with calls to supporters, urging them to vote and reminding them of commitments to staff polling places tomorrow.

Del. Clarence Davis and Traci K. Miller, the city prosecutor who is running in her first election, each attended four services yesterday.

Ms. Miller started before 8 a.m., visiting churches on the Westside — Concord Baptist, Wayland Baptist, Mount Pisgah Christian Methodist Episcopal and Providence Baptist.

"We were all over the place," Ms. Miller said. "We knew we had to go to a lot of churches because it was the Sunday before the election. ... The folks who go to church by and large vote."

Mr. Davis began yesterday at Mount Tabor Baptist Church and ended with the evening service at Mount Pleasant Baptist Church, both in East Baltimore. Although he spoke at Mount Tabor, Mr. Davis said he had reservations about campaigning in churches.

"I always have had a strong sense of the separation of church and state because politics is somehow so unclean that you somehow do not want to mix Caesar with

[See Seventh, 2B]

7th District hopefuls spend day in church

[*Seventh, from Page 1B*]

Jesus," he said. "I simply asked people for their prayers — not for their votes."

At New Shiloh Baptist Church in West Baltimore, the featured speaker was former Rep. Kweisi Mfume, who resigned the 7th District seat to take over the presidency of the National Association for the Advancement of Colored People.

Mr. Mfume, who has not made an endorsement, did not mention the election to determine his successor in his 30-minute sermon; instead, he focused on the mission and future of the NAACP.

The scene in the vestibule of New Shiloh was similar to that in many of the large African-American congregations in this district, 71 percent of whose residents are black: Representatives of several of the campaigns handed out literature before and after the service.

Although no political plugs were made from the pulpit, the Rev. Frank M. Reid III, pastor of Bethel African Methodist Episcopal in West Baltimore and one of the candidates, did lead the New Shiloh congregation in an opening prayer. Then, he rushed back to Bethel, where his stepbrother, Mayor Kurt L. Schmoke, and representatives of labor organizations who have endorsed him attended the 11 a.m. service.

"We worshiped ... as a family," Mr. Reid said of the presence of the mayor, who also has endorsed him. "It was as much a family event as a political event."

The Rev. Arnold W. Howard, pastor of Enon Baptist Church in West Baltimore and a candidate, put his campaign on hold yesterday. After preaching on Abraham, "the man who called on God," he briefly stopped by his campaign office before heading for Sunday dinner with his wife and children.

"I was doing what I normally do," Mr. Howard said. "[The campaign] doesn't change the order. Church and family, that's my Sunday."

Del. Elijah E. Cummings attended his home church, New Psalmist Baptist downtown, and then went to the First Apostolic Faith Church in East Baltimore, where the pastor, Bishop Franklin C. Showell, endorsed him.

In the two months he has campaigned, Mr. Cummings said, he has attended services at 27 churches: "In the black community, the church is very significant" because attending the services "allows people to see you, greet you, talk to you after the service."

State Sen. Delores G. Kelley, a Baltimore County legislator, began the day by attending services at Grace AME Church in Catonsville. Later, she and Baltimore County Executive C. A. Dutch Ruppersberger III made a midafternoon foray into Baltimore's Chinatown on Park Avenue to greet voters at the Chinese New Year street celebration.

By nightfall, she had returned to the phones, calling volunteers and supporters.

Attorney A. Dwight Pettit also received a personal endorsement from a minister yesterday — the Rev. Melvin B. Tuggle II of East Baltimore's Garden of Prayer Baptist Church.

"Tell your cousins ... tell your neighbors that Dwight Pettit was here," Mr. Tuggle said, pointing to the candidate and his wife, Barbara.

Del. Salima Siler Marriott attended the 8 a.m. service at Mount Lebanon Baptist Church and went on the air afterward with the pastor, the Rev. Olin P. Moyd, who has a radio show.

Del. Kenneth C. Montague Jr. spent the day going door to door in the Woodmoor area of Baltimore County and in Mount Vernon, Hampden and Ednor Gardens in the city.

"I've got to hustle for votes, and this is the style I've always used," Mr. Montague said. "Of course, it's a little different this time — because it's like zero degrees out there."

Sun staff writer Marilyn McCraven contributed to this article.

THE SUNPAPERS SUPPORT KEATING FOR STATE'S ATTORNEY
THE NEWS-AMERICAN

THE SUN

A 18 BALTIMORE, TUESDAY, SEPTEMBER 5, 1978

WILLIAM F. SCHMICK, JR., President and Chief Executive Officer, The A.S. Abell Company
DONALD H. PATTERSON, Publisher • PAUL A. BANKER, Managing Editor • J.R.L. STERNE, Editorial Page Editor

Keating for State's Attorney

In 1974 William A. Swisher was an obscure lawyer turned by the machinations of two aging political bosses and a campaign tinged with racism into state's attorney, at the expense of a very qualified black incumbent. Since then, he has kept the prosecutorial mill churning and has made improvements at the district court level. But he has shown little leadership, preferring to politick while others run his office, thus earning the low esteem of some judges. He has exhibited a reinctance bordering on disdain for tackling political corruption. Mr. Swisher has grown little in office. With a more qualified alternative available, he deserves retirement.

Mr. Swisher faces two challengers in the Democratic primary, A. Dwight Pettit and Anton Keating. Mr. Pettit is a personable, energetic young black lawyer, a man who, we believe, has a political future in this city. Were he the only Swisher opponent, this newspaper well might support him. Many Baltimoreans, black and white, who were justifiably shocked at the way Mr. Swisher went about defeating Milton B. Allen in the 1974 Democratic primary, no doubt feel a Pettit victory next Tuesday would right a wrong done to the city's black citizens.

Yet, we believe, supporting a candidate just because he is black would be as wrong as supporting a candidate just because he is white. To do so would be to fall into the trap of racial polarization. In a city where racial harmony and bi-racial politics should be the goal of every citizen, no office should be the exclusive preserve of one race or the other.

The Sun recognizes that the city's blacks are under-represented in the upper reaches of local government and awaits the day when blacks and whites can compete for major office solely on the basis of qualifications. Through the years, we have supported black candidates on many occasions, including Mr. Allen in 1970, when he won the state's attorney's office, and in 1974. We urged Mayor Schaefer in 1975 to consider a black on his ticket for citywide office, a proposal he spurned to his later regret.

Yet the personal qualifications of candidates must predominate over considerations of race. Anton Keating clearly is a more experienced lawyer than Mr. Pettit. In nine years as a prosecutor and a defense counsel, he has built an excellent reputation as a trial lawyer. He is thoroughly familiar with the criminal justice system and is sensitive to the inequities lingering there from this nation's decades of official racial duality. Mr. Keating's record suggests he would do all in his power—and the state's attorney has considerable power—to see that justice in Baltimore was racially blind. Nothing in the Keating record suggests that Baltimore's blacks have anything to fear from him. He would be a fair and impartial prosecutor and could also stand up to the considerable political pressures thrust upon a state's attorney. *The Sun urges his nomination.*

The News American

The Award Winning Newspaper

8A ★ Friday, September 8, 1978

Keating For State's Attorney

It can be argued that no local public official, with the possible exception of a mayor, affects the community's life more than does the State's Attorney.

Too often regarded merely as the head of an office which prosecutes alleged criminals, he is actually much, much more.

The State's Attorney has a major voice in deciding which persons who are suspected of crime should be prosecuted and which, if any, should not be. It is he, or those whom he appoints, who make — or refuse to make — "plea bargains" by which criminals can get higher punishments than would otherwise be possible. A State's Attorney can initiate and carry out — or refrain from doing either — investigations of suspicious situations in both official and private activity in the city.

Effectiveness of the ever-present war against crime, including "white collar" crime, depends largely upon the vigor, skill and impartiality of the State's Attorney. Therefore the choice of a Democratic nominee for this position (a Republican aspirant is unopposed) is critical for the community.

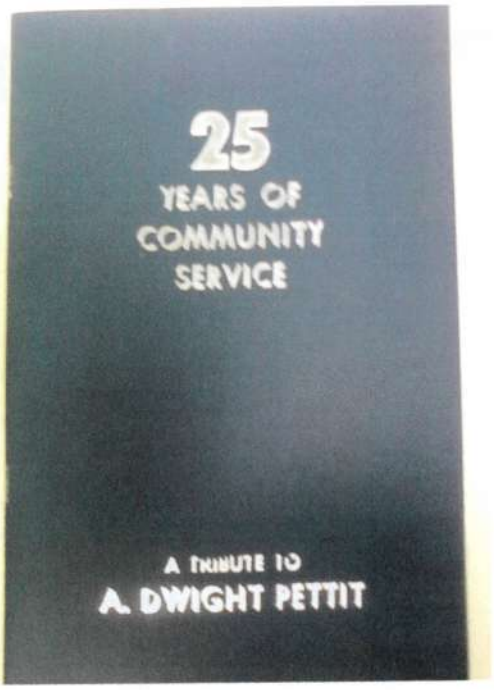
Of the three men who seek the nomination, *The News American* strongly feels that Anton Keating is best qualified to wield the position's vast powers.

He is opposed by William A. Swisher, the incumbent, and A. Dwight Pettit. Four years ago, Swisher's election was maneuvered by two political bosses, both of whom have since died, and his administration can be described as, at best, lackluster. Especially in the area of white collar crime, he has shown little activity, taking refuge in unpersuasive arguments that his facilities are too limited and that federal officials do not cooperate sufficiently.

Mr. Pettit is a young, reputable black lawyer who entered the contest late, largely at the urgence of some black leaders. He has demonstrated political acumen but his qualifications for the job are greatly outweighed by those of Mr. Keating.

Keating has served on both sides of criminal law procedure in Baltimore. For four years he was an Assistant State's Attorney — a prosecutor of alleged criminals. For three years he has been on the Public Defender's staff — a defender of alleged criminals. He knows the stratagems by which some criminal lawyers try to out smart justice; also the devices sometimes used by over zealous police and prosecutors. He has demonstrated ability to foil both.

Beyond that, Mr. Keating has presented ideas which can make the State's Attorney's office a much more alert, effective, wide-ranging instrument against crime, including white collar crime, than it has been during the past four years. He should be given the power to put these ideas into effect.



Community Service of 25 Years
A Tribute
from his friends to

A. Dwight Pettit

"He was there when it counted."

Sunday, October 20, 1985

The Convention Center
Baltimore, Maryland
4:30 to 6:30 p.m.

Program

- Receiving Line
- Hors d'oeuvres
- Continuous Entertainment
  - Cliché
  - Linda Poulson Bethea
  - Jazz Mtazz
- Remarks

Attorney Mary Thornton and A. Dwight Pettit

Aberdeen High School
Office of the Principal
251 Paradise Road
Aberdeen, MD 21001

October 10, 2006

A. Dwight Pettit
3606 Liberty Heights Avenue
Baltimore, MD 21215

Dear Mr. Pettit:

It is an honor to be able to inform you that you have been selected for induction into the Aberdeen High School Hall of Fame.

For more than fifty years, Aberdeen High School has had a proud tradition of excellence. Many times, this tradition has been recognized only within the confines of our own school community. We are a proud community, and we have many reasons to proclaim our identity.

As a graduate of Aberdeen High School, you have been an integral component in our sense of pride, our commitment to high values, and in our determination to prepare leaders for life beyond high school.

Your selection was based on a formal application received on your behalf and a review by a selection committee. Let me be the first to congratulate you on your achievements and contributions to both, Aberdeen High School and the world at large.

A formal induction ceremony will take place on April 2, 2007 at Aberdeen High School. A reception and viewing of your portrait will begin at 8:15 A.M., with the formal induction ceremony beginning at 9:00 A.M. After the ceremony, your portrait will be permanently mounted on our Hall of Fame walkway in the main lobby of the school.

Once again, please allow me to congratulate you on your outstanding achievements. We would certainly be honored if you could attend the ceremony. Please let us know if you will be able to attend, or if you will be able to send a designee to accept this honor. Naturally, as a school event, your friends and family are certainly welcome.

Once again, thank you for all that you have contributed to the fine legacy that is Aberdeen High School. We are honored to be able to induct you into our Hall of Fame.

Sincerely,

Thomas M. Szerensits

'I knew I was innocent'

AMY DAVIS / SUN STAFF

Ronald Patrick Johnson Jr. (right) stands with his mother, Audra Travers, in Towson as he speaks about the dropping of charges against him in connection with the Randallstown High School shooting. At left is his attorney, A. Dwight Pettit.

Owings Mills man freed in Randallstown shooting

Police conclude Johnson played no role in violence outside high school

By Lauren Williams
SUN STAFF

A former Randallstown High School student who had been jailed since shortly after last month's shooting at the Baltimore County school was freed yesterday after prosecutors dropped attempted-murder charges against him.

In announcing that charges had been dropped against 20-year-old Ronald Patrick Johnson Jr. of Owings Mills, Baltimore County Deputy State's Attorney Stephen Bailey said there wasn't evidence linking him to the shooting.

"There is no evidence that he brought a gun to this altercation, no evidence that he ever handled the gun, fired it or discarded it after the shooting," Bailey said. "He bears no legal responsibility in this shooting."

Flanked by his mother, brother, sister and other supporters yesterday, Johnson said he was relieved the five-week ordeal was over. He had been held without bail since his arrest.

"It's been rough," Johnson said, standing on the District Courthouse steps in Towson. "It was real. God is good, and so is my lawyer."

As he spoke, Johnson stood arm-in-arm with his mother, Audra Travers.

"I just cooperated because I knew I was innocent," he said. "It was frustrating because I was on suicide watch. ... I guess they thought I was going to crack."

On May 7, as students were leaving Randallstown High School after a charity basketball game organized by a state lawmaker, shooting erupted in the parking lot.

Antonio R. Jackson, 21, of Owings Mills, Tyrone Devon Brown, 23, of Baltimore and Matthew Timothy McCullough, 17, a Randallstown High School stu- [See Randallstown, A6]

THE SUN

City police are sued for $40 million

Action by family of boy, 7, arrested while sitting on dirt bike

The Baltimore

AFRO

American

Police brutality is epidemic

Police brutality is epidemic

Police brutality is epidemic


Verdicts & Settlements
Baltimore Afro-American
THE SUN
MARYLAND
THE SUN
Owners of bail bond company acquitted of charges
The Examiner
THE SUN
MARYLAND


YouTube - A.Dwight Pettit - Windows Internet Explorer
http://www.youtube.com/watch?v=zvrfpTzWlrI
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RadioOneBmore — January 08, 2010 — Accidental Injuries, Serious Traffic (DWI & DUI), Medical Malpractice, Criminal, and Wrongful Death Attorney
27 views
Our Kids: When Accidents Happen [Part 1 of 4] -...
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"Accidental" Injuries
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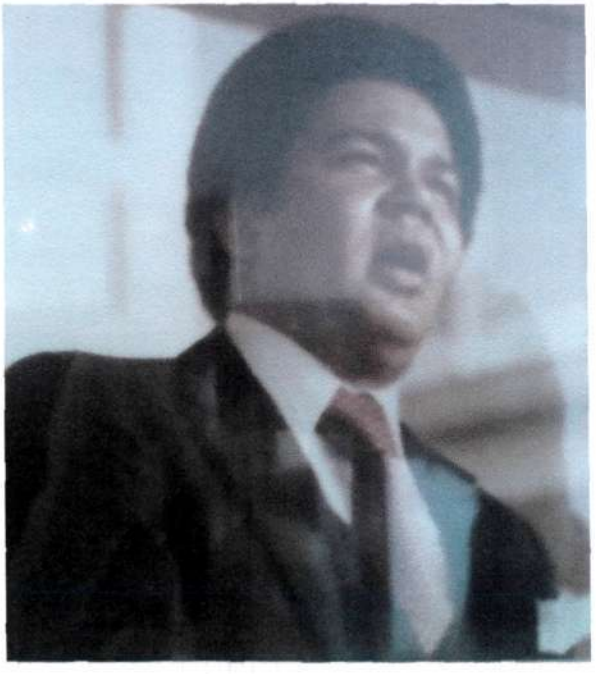
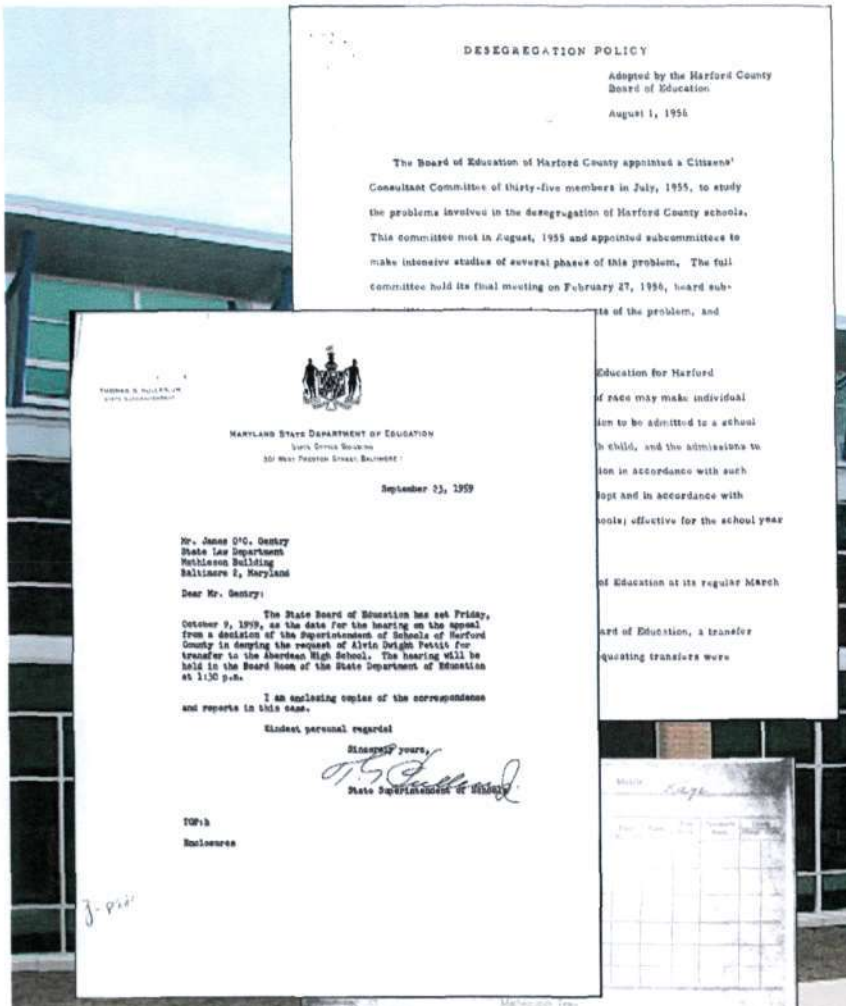
A. Dwight Pettit



Pettit v. Board of Ed. of Harford County



DESEGREGATION POLICY

Adopted by the Harford County Board of Education

August 1, 1956

The Board of Education of Harford County appointed a Citizens' Consultant Committee of thirty-five members in July, 1955, to study the problems involved in the desegregation of Harford County schools. This committee met in August, 1955 and appointed subcommittees to make intensive studies of several phases of this problem. The full committee held its final meeting on February 27, 1956, heard sub-

MARYLAND STATE DEPARTMENT OF EDUCATION

September 23, 1959

Mr. James O'C. Gentry
State Law Department
Mathieson Building
Baltimore 2, Maryland

Dear Mr. Gentry:

The State Board of Education has set Friday, October 9, 1959, as the date for the hearing on the appeal from a decision of the Superintendent of Schools of Harford County in denying the request of Alvin Dwight Pettit for transfer to the Aberdeen High School. The hearing will be held in the Board Room of the State Department of Education at 1:30 p.m.

I am enclosing copies of the correspondence and reports in this case.

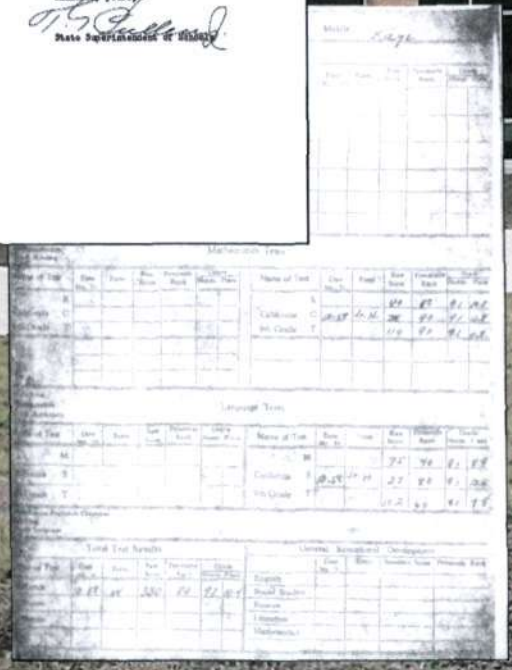
Kindest personal regards

Sincerely yours,

State Superintendent of Schools

TGP:h

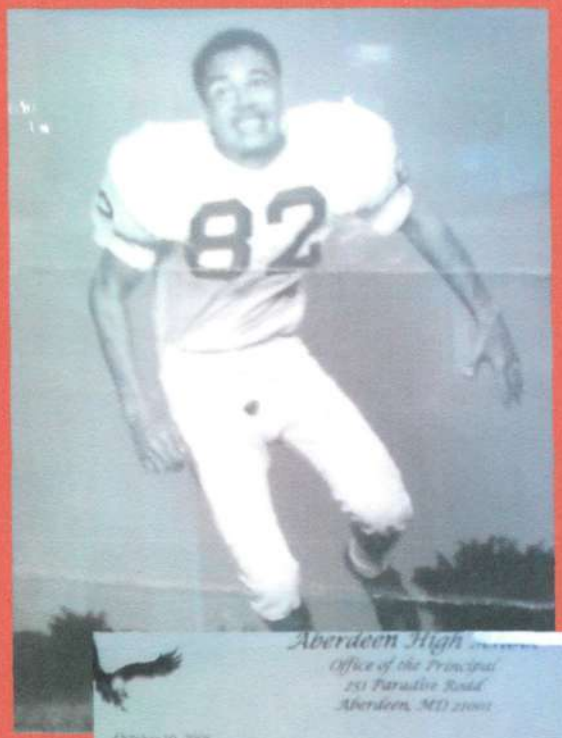
Enclosures

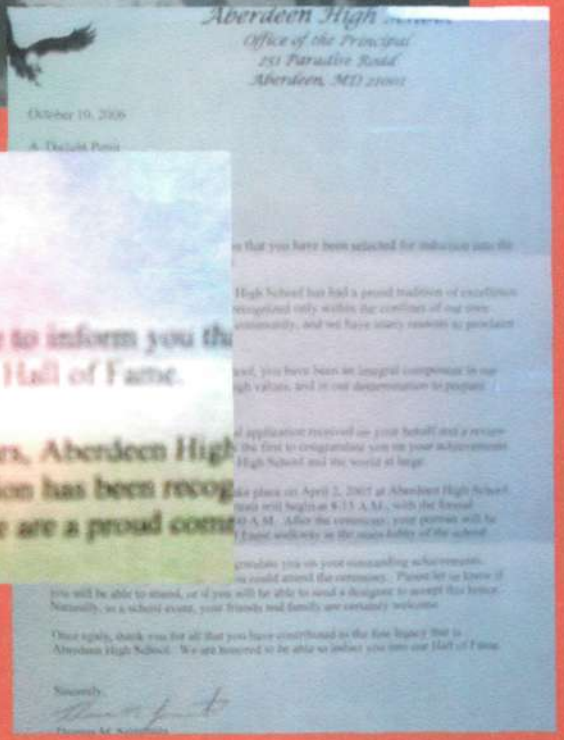


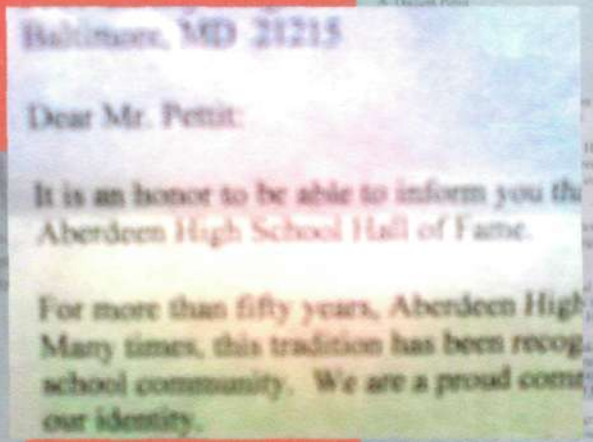
- In 1958, George S. Pettit filed suit, on behalf of his son, against Harford County Schools.
- Pettit's attorneys, Thurgood Marshall and Juanita Mitchell, claimed that the school was discriminating on the basis of race, in violation of *Brown v. Board* (1954).
- School argued that Pettit did not meet the academic standards necessary for entrance.
- The District Court granted Pettit's request for admission.

Pettit v. Board of Ed. of Harford County

- Pettit played for the Aberdeen High School football team.
- The teachers saw Pettit as a local celebrity.
- In 2006, Pettit was inducted into the Aberdeen Hall of Fame.







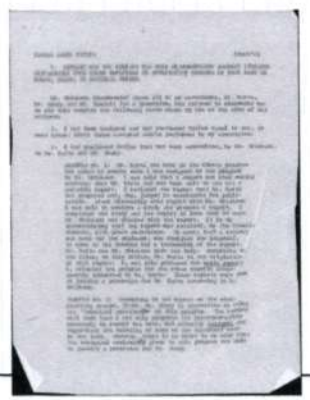
Pettit graduated from Howard University in 1967 and the School of Law in 1970.

That year, he began his career as a trial attorney for the Small Business Administration under President Richard Nixon.

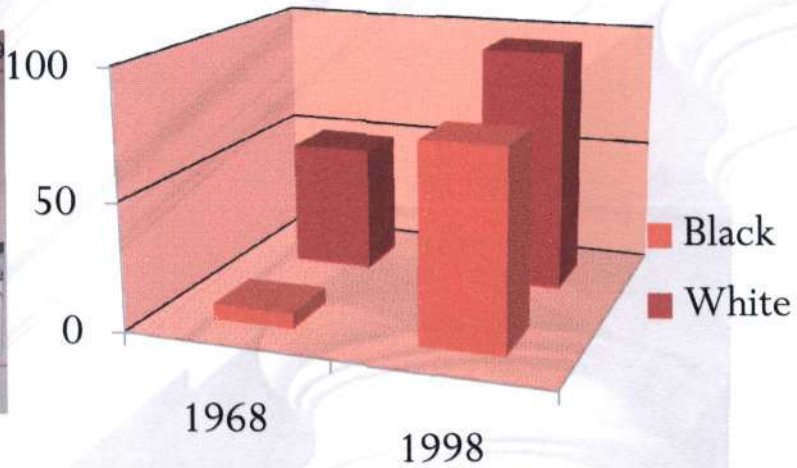
He was discharged from the Air Force in 1971 having attained the rank of 1st Lieutenant.

Pettit v. United States

- In 1973, A. Dwight Pettit filed suit, on behalf of his father, in a discrimination lawsuit against his employer.
- The Court of Claims ruled that Government employees are entitled to **back pay** when they prove **but for** specific racial discrimination, they would have been promoted.



Pettit v. Board of Examiners of Maryland



- A group of Blacks who had failed to pass the Maryland bar exam brought a class action suit, claiming the exam violated their Equal Protection rights.
- "I was upset [because] only one Black at a time was being passed."
- The court held that there was no discriminatory intent, but in response to this and other suits, the Board of Examiners changed the test which led to higher Black passage rates.

Mayor and City Council of Baltimore v. Crockett

In 1980, there was a city-wide ban on all lawn signs.

Pettit, representing James Crockett, a realtor and homeowner in Baltimore City, challenged this ordinance.

The ordinance had passed nine years earlier in order to remedy a panic selling situation.

The ordinance was found to unconstitutionally limit free speech.

RECENT CASES

"MIKE TYSON IS A LUNATIC"

"A TRAGIC DEATH, A SLAM-DUNK CASE"

"I KNEW I WAS INNOCENT"

POLITICS

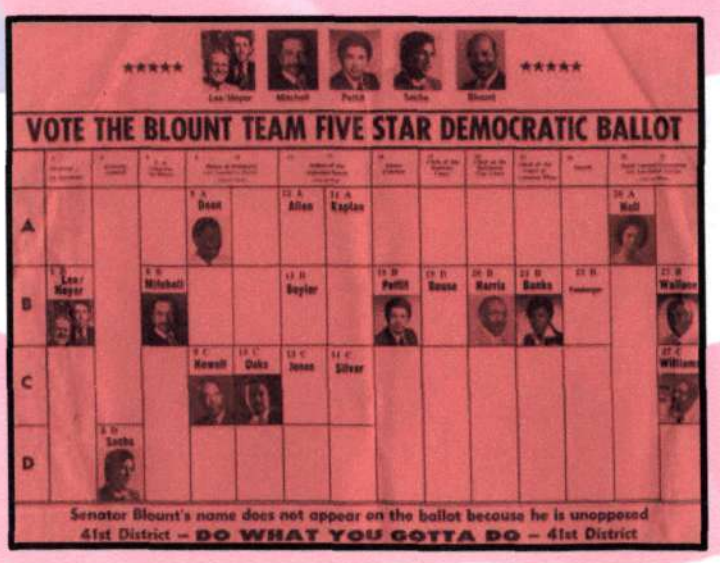
1974 – Carter offered Pettit a position on his campaign staff.

1976 – Pettit appointed to National Democratic Party Compliance Commission after Carter was elected President.

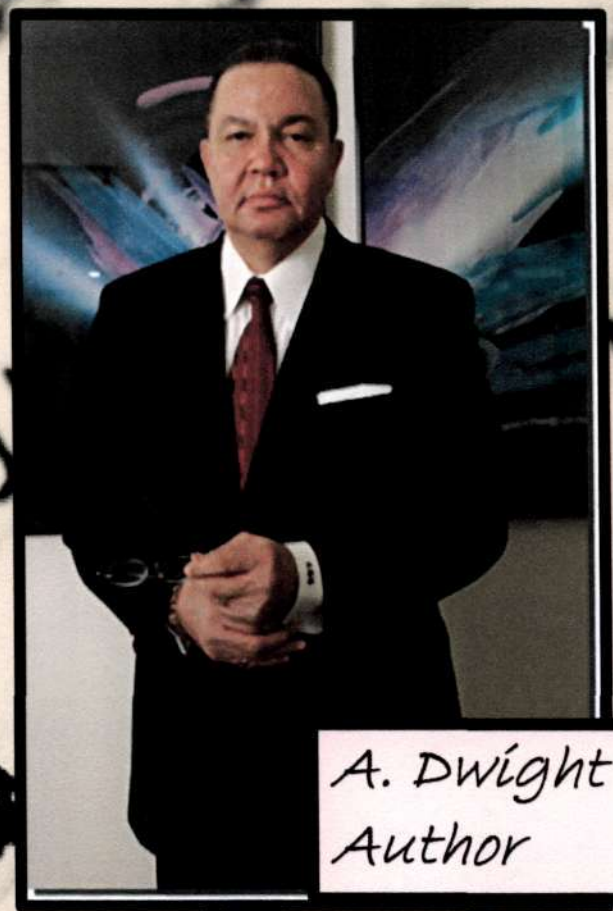
1978 – Pettit ran for Baltimore State's Attorney office. Lost to incumbent Swisher.

1984 – Pettit ran for Maryland's Seventh District congressional seat. Ending campaign to devote more time to Jesse Jackson's presidential campaign.

1996 – Pettit ran for Maryland's Seventh District congressional seat. Lost.



OTHER PROJECTS



A. Dwight Pettit
Author

B. Michael Porter
Editor