

*U. S. Circuit Judge,
Charlotte, N. C.*
**APPENDIX TO BRIEF FOR
APPELLANTS**

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 5273

T. HENDERSON KERR AND LOUISE KERR,
Appellants,

v.

THE ENOCH PRATT FREE LIBRARY OF BALTI-
MORE CITY, a corporation, et al., *Appellees.*

Appeal from the District Court of the United States for the
District of Maryland.

FILED

MAR 1 - 1945

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CLERK

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IN THE
District Court of the United States

DISTRICT OF MARYLAND

Civil Action No. 2071

- | | |
|--|--|
| 1. T. HENDERSON KERR
1907 Division Street | 2. LOUISE KERR
1907 Division Street
(Both of Baltimore, Md.) |
| and | <i>Plaintiffs,</i> |

vs.

- | | |
|---|--|
| 1. THE ENOCH PRATT FREE LIBRARY OF BALTIMORE CITY, a corporation, Cathedral, Franklin and Mulberry Sts. | 6. ALBERT D. HUTZLER
Pomona, Pikesville
7. ROBERT W. WILLIAMS
917 Poplar Hill Road
8. WILLIAM G. BAKER, JR.
U. S. F. & G. Bldg.
9. JOSEPH L. WHEELER
5726 Uffington Road
10. JAMES A. GARY, JR.
101 E. Fayette St.
11. HENRY DUFFY
Mercantile Trust Bldg. |
| 2. THOMAS S. CULLEN
20 E. Eager St. | |
| 3. HENRY STOCKBRIDGE, III
307 Woodside Road | |
| 4. BLANCHARD RANDALL, JR.
4901 Greenspring Ave. | |
| 5. WILLIAM J. CASEY
3906 Canterbury Road | |

and

12. MAYOR AND CITY COUNCIL OF BALTIMORE, a corporation, City Hall
(All of Baltimore, Md.)

Defendants.

**COMPLAINT FOR INJUNCTION, DAMAGES, AND
DECLARATORY JUDGMENT.**

1. Jurisdiction is based on Section I of the Fourteenth Amendment to the Constitution of the United States; the United States Code, Title 8, Sections 41 and 43, and Title 28, Section 41—Subsections (1-a) and (14) and Section 400, Rule 57, of the Federal Rules of Civil Procedure.

2. Plaintiffs are Negro citizens of the United States and State of Maryland, and for many years past have been and are now residents in the City of Baltimore. Plaintiff T. Henderson Kerr owns personal and real property situated in the City of Baltimore on which he pays municipal taxes levied by the defendant Mayor and City Council of Baltimore, a corporation, and delivered out of the municipal treasury by said Mayor and City Council of Baltimore to the defendant, The Enoch Pratt Free Library of Baltimore, a corporation, to be expended by said corporation for the free public education of the people of Baltimore. Plaintiff T. Henderson Kerr sues herein as a taxpayer.

3. Plaintiff Louise Kerr sues as the party deprived of the equal protection of the law guaranteed her by Section I of the Fourteenth Amendment to the Constitution of the United States and her civil rights guaranteed her by Title 8, Section 41, United States Code, by the individual defendants, (2) Thomas S. Cullen, (3) James A. Gary, Jr., (4) Henry Duffy, (5) Henry Stockbridge, III, (6) Blanchard Randall, Jr., (7) William J. Casey, (8) Albert D. Hutzler, (9) Robert W. Williams, (10) William G. Baker, Jr., (11) Joseph L. Wheeler, and the corporate defendant (1) The Enoch Pratt Free Library of Baltimore City, barring her from all opportunity to qualify for and take a certain Library Training Course offered by said corporate defendant, The Enoch Pratt Free Library, as more fully set out, below, solely because of her race or color.

4. Defendant (1) The Enoch Pratt Free Library of Baltimore City is a corporation created by the laws of Maryland, 1882, C. 181 and delegated by the State to perform the State's public governmental function of "perpetually promoting and diffusing knowledge and education among the people of the city of Baltimore" by operating a free public library with not less than four branches within the corporate limits of the City of Baltimore. The control and management of said corporation and performance of the States'

public governmental functions aforesaid were delegated by the Legislature of the State of Maryland (Law 1882, c. 181) to the Board of Trustees of the Enoch Pratt Free Library of Baltimore City and their successors in office. At the times of the events hereinafter complained of, the defendants Cullen, Gary, Duffy, Stockbridge, Randall, Casey, Hutzler, Williams, and Baker were regularly elected and functioning members of said Board of Trustees, and the defendant Wheeler was Librarian charged by said Board of Trustees with executing its policies and program. The individual defendants are sued in their official capacity and individually.

5. At all times material herein the corporate defendant, The Enoch Pratt Free Library of Baltimore City, and the individual defendants in their respective capacities above noted, have purported to exercise the public governmental functions aforesaid, through the use of real and personal property of the Mayor and City Council of Baltimore and through employees and other facilities paid for chiefly out of public moneys levied by taxation imposed for such purposes upon the residents of The City of Baltimore, including this plaintiff T. Henderson Kerr, by the Mayor and City Council of Baltimore.

6. As an integral part of the exercise of the aforesaid governmental functions, the individual defendants acting through the corporate defendant, The Enoch Pratt Free Library of Baltimore City and said corporate defendant and by and through the same State has for years conducted on public property and with public facilities an annual Library Training Class to prepare individuals for staff positions in libraries, primarily the Enoch Pratt Free Library and its branches. The course begins in September and continues for nine (9) months, and the students admitted to the course are paid at the rate of Forty (\$40.00) Dollars per month out of public money, effective January 1, after three months of training have been successfully

completed. Due to war emergency the start of the 1943 course was advanced to July 15, 1943.

7. The requirements established for admission to said course are that the applicant reside in the Baltimore District, be not less than 18 nor more than 35 years of age, possess a doctor's certificate of a complete physical examination of the student certifying the applicant to be well and strong, and, preferably, to be the holder of a college degree representing a scholastic average of 80% for the entire course; but students may be admitted with one or more years of college or normal school work if they show unusual aptitude for library work, a high scholastic average, and more than average reading background in the natural and social sciences as well as in general literature. All applicants are required to take a competitive entrance examination, the number admitted to the examination being limited to the 15 or 20 applicants who, in the opinion of The Librarians, the Director, and several Department Heads, seem most likely to function well in library work. Final selection is made from those applicants who have qualified by scoring the highest in the tests and whose previous education, training, experience and personality seem best to fit them for the work.

8. Over a period of years, Negroes meeting every qualification above set forth have duly applied to the defendant Librarian, and the corporate defendant, The Enoch Pratt Free Library of Baltimore City, for admission to said course, but their applications were uniformly rejected by all the defendants solely because of said applicants' race or color. On September 17, 1942, the individual defendants, Cullen, Gary, Duffy, Stockbridge, Randall, Casey, Hutzler, Williams and Baker, acting as the Board of Trustees of The Enoch Pratt Free Library of Baltimore City, adopted the following resolution:

“Resolved that it is unnecessary and unpracticable to admit colored persons to the Training Class of The

Enoch Pratt Free Library. The Trustees being advised that there are colored persons now available with adequate training for library employment have given the Librarian authority to employ such personnel where vacancies occur in a branch or branches with an established record of preponderant colored use."

9. In April, 1943, applications were being received by the defendant Wheeler and by the corporate defendant The Enoch Pratt Free Library of Baltimore City for the Library Training Course opening in July 15, 1943. Plaintiff Louise Kerr in said month duly made application for admission to said course and tendered herself ready, able and willing to conform to all lawful uniform requirements for admission thereto. Nevertheless, said defendants refused to receive or consider her application solely because of her race or color.

10. Plaintiff Louise Kerr, a native Baltimorean of good character and reputation, was then and is now in the best of health and strength and was prepared to furnish a doctor's certificate to that effect based upon a complete physical examination if her application had been received. She is 27 years of age, graduated from the Public High Schools of Baltimore City in 1934 with an average of 86%, graduated from the Coppin Normal School of Baltimore City, a Baltimore City Teachers' Training School, upon completion of a three-year normal course in 1937, with an average of 90%, ranking second in her class. In addition, she had three summers' work at the University of Pennsylvania, 1939, 1940, and 1941, and successfully taught in the elementary schools of Baltimore City for five years, 1937-1942. She had been more than average in reading background in the natural and social sciences as well as in general literature, and was, and is genuinely interested in public library work, particularly the public function of the Pratt Library System. Nevertheless, the defendant Wheeler and the corporate defendant The Enoch Pratt Free Library of Baltimore City refused to receive or consider her application solely because of her race or color.

11. Plaintiff Louise Kerr appealed, June 28, 1943, to the defendants Cullen, Gary, Duffy, Stockbridge, Randall, Casey, Hutzler, Williams, and Baker, as the Board of Trustees aforesaid for consideration of her application for and admission to said Library Training Course; but acting under their policy formally expressed in their resolution of September 17, 1942, heretofore referred to in paragraph "8" hereof, they refused to give her application any consideration solely because of her race or color.

12. The Library Training Course aforesaid at all times material herein was and is the only library training course within the State of Maryland, conducted with public funds available to plaintiff Louise Kerr, and no equivalent therefor has been provided plaintiff or any other Negro resident in the City of Baltimore or State of Maryland.

13. Plaintiff Louise Kerr at all times material herein had and still has a civil right guaranteed her by the equal protection clause of Section I of the Fourteen Amendment to the Constitution of the United States and by Section 41, Title 8, United States Code, to have her application for said library course received and considered by defendants without discrimination because of her race or color, and said defendants are and each of them is under a plain, legal and ministerial duty so to receive and consider her application. By their respective arbitrary acts in refusing so to receive her application the defendants did severally violate the equal protection clause of Section I of the Fourteenth Amendment to the Constitution of the United States, and Section 41, Title 8, United States Code, and did make themselves severally liable to plaintiff under Section 43, Title 8, United States Code.

14. As a result of defendants' wrongful acts aforesaid plaintiff Louise Kerr has suffered and still suffers great humiliation and mental anguish and has been injured by defendants in the amount of Five Thousand (\$5,000.00) Dollars.

WHEREFORE, she claims judgment against each individual defendant for Five Thousand (\$5,000.00) Dollars besides costs.

COUNT 2: FOR INJUNCTIVE RELIEF FOR PLAINTIFF LOUISE KERR:

15. Plaintiffs adopt by reference all foregoing allegations and aver that, although plaintiff Louise Kerr still desires said library training course and is still an applicant for the same, unless restrained by this Court, the defendants The Enoch Pratt Free Library, a corporation, and Cullen, Stockbridge, Randall, Casey, Hutzler, Williams, Baker, Wheeler, Gary, and Duffy will always continue to refuse to receive said Louise Kerr's application for said library training course or to consider her application without discrimination because of her race or color; that said refusal has caused her irreparable injury and will continue to cause her irreparable injury in the future which cannot be compensated by damages. Wherefore she prays for a permanent injunction against defendants herein named, refusing to receive said Louise Kerr's application for said library training course or to consider her application without discrimination because of her race or color whenever her said application is made during the period when applications for said course are being otherwise received.

COUNT 3: FOR A DECLARATORY JUDGMENT:

16. Plaintiffs adopt by reference all foregoing allegations and aver that an actual case or controversy presently exists between them and the defendants The Enoch Pratt Free Library, a corporation, and Cullen, Stockbridge, Randall, Casey, Hutzler, Williams, Baker, Wheeler, Gary and Duffy as to their right to have said defendants receive said Louise Kerr's application for said library training course and to consider same without discrimination because of her race or color. The time between the date when applications for said course are received by said defendants and the date when said course begins is always so short that plain-

tiffs cannot get their case filed and heard as to any particular annual course before the question becomes moot as to that course. The unavoidable delays attendant on legal proceedings will always substantially nullify plaintiffs' rights unless this Court enters a declaratory judgment herein.

Wherefore, plaintiffs pray for a judgment declaring the correlative rights and duties of the parties to this action, and establishing said Louise Kerr's right to have said defendants receive her application for said library training course and to consider the same without discrimination because of her race or color, whenever her said application is made during the period when applications for said course are being otherwise received.

**COUNT 4: FOR INJUNCTION IN FAVOR OF
T. HENDERSON KERR TAXPAYER**

17. Plaintiffs aver that by contract adopted by the Mayor and City Council of Baltimore with the late Enoch Pratt pursuant to Maryland Laws of 1882, C. 181, aforesaid, and Ordinance 106, July 15, 1882, the Mayor and City Council of Baltimore agreed to pay to the Enoch Pratt Free Library of Baltimore an annuity of Fifty Thousand (\$50,000.00) Dollars perpetually; that by Ordinance 275, 1906-1907, the Mayor and City Council of Baltimore agreed to issue an annual tax levy not less than 10% of a capital gift of Five Hundred Thousand (\$500,000.00) Dollars by Andrew Carnegie, to be expended by the Board of Trustees of the Enoch Pratt Free Library of Baltimore. Nevertheless, the Mayor and City Council of Baltimore transfer to The Enoch Pratt Free Library of Baltimore not only an annual appropriation of One Hundred Thousand (\$100,000.00) Dollars public money to be expended by said Board of Trustees for library purposes as in its judgment the said Board sees fit, but also transfers annually nearly Four Hundred Thousand (\$400,000.00) Dollars public money to said library corporation under the same conditions.

18. If said library corporation is a private corporation beyond the control of Constitutional restraints on public corporations, said appropriations in excess of One Hundred Thousand (\$100,000.00) Dollars annually are *ultra vires* and void and constitute the taking of plaintiff T. Henderson Kerr's property without due process of law in violation of Section I of the Fourteenth Amendment to the Constitution of the United States.

Wherefore, plaintiff T. Henderson Kerr prays that the Mayor and City Council of Baltimore be perpetually restrained from transferring to The Enoch Pratt Free Library of Baltimore, if a private corporation as aforesaid, any public moneys derived in part out of taxes levied against him in excess of One Hundred Thousand (\$100,000.00) annually.

In addition to the specific relief prayed for, plaintiffs seek general relief, and costs.

ANSWER

The answer of The Enoch Pratt Free Library of Baltimore City and of Thomas S. Cullen, Henry Stockbridge, III, Blanchard Randall, Jr., William J. Casey, Albert D. Hutzler, Robert W. Williams, William G. Baker, Jr., Joseph L. Wheeler, James A. Gary, Jr. and Henry Duffy, to the Complaint of T. Henderson Kerr and Louise Kerr, is—

1. They admit the allegation of paragraph 1 but they deny the applicability to the issues made by the Complaint, of Section 41 of Title 8 of the United States Code and they deny that they or any of them has subjected the plaintiffs or either of them to the deprivation of any right or immunity secured to them by the Constitution and laws of the United States or that they or any of them have deprived plaintiffs or either of them of any right, privilege or immunity secured to them by the Constitution of the United States or of any right secured to them or either of them by any law of the United States providing for equal rights to citizens of the United States.

2. They admit the allegations of section 2 of the Complaint except the allegation therein made that the Plaintiff, T. Henderson Kerr, sues as a taxpayer and the allegation that municipal taxes paid by him are delivered out of the municipal treasury by the Mayor and City Council of Baltimore to The Enoch Pratt Free Library of Baltimore to be expended for the free public education of the people of Baltimore; further answering the allegations of said section 2, they say that the defendant, The Enoch Pratt Free Library of Baltimore City, was incorporated by Chapter 181 of the Acts of the General Assembly of the State of Maryland passed at the January Session of 1882 and that said Act defines the purposes of said Corporation and the manner in which its property shall be controlled and managed; that the purposes of the said Corporation are further defined in an Ordinance of the Mayor and City Council of Baltimore No. 1195 approved December 16th, 1930; and

these defendants refer to said Act of the General Assembly and to said Ordinance, copies of which are filed herewith marked "Defendants' Exhibit A", for a statement of the powers of the corporate defendant and the purposes for which moneys entrusted to it may be expended.

3. Answering section 3, they deny that they have barred Louise Kerr from all opportunity to qualify for and to take a certain Library Training Course offered by said corporate defendant and thus deprived her of the equal protection of the law and of her civil rights, because of her race or color; the facts as to an application made by her to take the said course and the disposition of that application are more fully set forth in section 9 hereof, to which reference is made.

4. They admit the allegation of section 4 of the Complaint as to the incorporation of The Enoch Pratt Free Library of Baltimore City but deny that by the act of incorporation the State delegated to it the right or obligation to perform any of its public governmental functions. In answer to the allegation in said section 4 that the control and management of the Corporation and the performance of the State's public governmental functions were delegated to the Board of Trustees of the Library and their successors in office, these defendants say that by the term of the Act incorporating said corporate defendant, certain individuals therein named and their successors were constituted a body corporate and authorized—

"to do all necessary things for the control and management of said Library and its branches";

they admit that the individual defendants other than the defendant Wheeler, constitute the Board of Trustees of the Library and that the defendant Wheeler is its Librarian and that he is charged with executing the policies and program of the Board of Trustees but under their supervision and subject to their direction.

5. They deny as is alleged in section 5 of the Complaint, that they have exercised or purport to exercise any public governmental function; they admit that title to the property constituting The Enoch Pratt Free Library is in the Mayor and City Council of Baltimore and that said Trustees maintain the library and its branches and conduct its activities to a large extent by means of moneys appropriated by the Mayor and City Council of Baltimore and that most of said moneys constitute public moneys levied by taxation upon residents of the City of Baltimore; they do not either admit or deny that T. Henderson Kerr is a taxpayer.

6. They deny again that the defendants or any of them as Trustees of the Library or as its Librarian or that the Library itself has exercised or exercises governmental functions; they admit that the corporate defendant has for years conducted on the Library property and with the Library facilities, an annual Library Training Class to prepare individuals for positions in the library of the corporate defendant but not for positions in other libraries as is alleged; that the class usually commences in September and continues for a period of nine months and that students admitted to the class were paid at the rate of \$40.00 a month out of Library funds, after the first three months of training had been successfully completed, except, however, that the training class organized in 1943 commenced on July 15th of that year and that the payment to the students in that class was fixed at \$50.00 a month commencing August 1st, 1943.

7. They admit the allegations of section 7 of the Complaint.

8. They deny the allegations of section 8 of the Complaint except the allegation as to the adoption on September 17th, 1942, of the resolution therein set out which they admit. Further answering said paragraph, they say that inasmuch as the training class was designed to train applicants for

positions in the Library of the corporate defendant and inasmuch as at the time said resolution was passed, there were available for such appointment sufficient colored persons to fill all positions which in the judgment of the Trustees it was desirable or practicable or feasible to fill with colored people, it would have been a futile act to have accepted the application for admission to said class which was made at or about the time said resolution was passed, by a colored woman; and further answering said paragraph, these defendants say that on September 26th, 1942, a competitive examination was given to four colored women who were applicants for the position of Second Assistant Librarian at Branch No. 1 and that the position was filled by the appointment to that position of a colored woman, Iona Wood Collins, on September 28th, 1942; that on the 13th of February, 1943, another competitive examination was held for the purpose of appointing another Assistant Librarian at said Branch No. 1, that eight Baltimoreans took the examination and two people from out of the State and that as the result of that examination, another Negroess, Thelma Thomas, was appointed as Assistant Librarian at Branch No. 1.

9. They admit the allegations of paragraph 9 except the allegation that they refused to receive or consider the application of Louise Kerr solely because of her race or color, in answer to which allegation, they aver as follows: at the time she made application for admission to the Library Training Course, there were available, in the judgment of the Trustees of the Library, sufficient properly qualified negroes to fill all of the vacancies which in the judgment of the Trustees it was feasible, desirable or practical to fill by the appointment of Negroes; it would have been a futile act to have admitted her to the class, the sole purpose of which was to qualify its members for positions in the Library, when at that time, there were no positions available to her and in the judgment of the Trustees, there was no likelihood of positions being available at the conclusion

of the class to which she applied to be admitted; it was for that reason that her application was refused.

10 and 11. They neither admit nor deny the allegations of paragraphs 10 and 11 of the Complaint except the allegation that Louise Kerr applied for admission to said Library Training Course on or about July 29th, 1943, which they admit and except the allegation which is repeated in each of said paragraphs, that the defendants refused to receive or consider the application of Louise Kerr solely because of her race or color; for answer to that allegation made in each of said paragraphs, they repeat their answer to the same allegation made in paragraph 9.

12. They admit as alleged in section 12 of the Complaint, that the Library Training Course conducted by the corporate defendant is the only library training course conducted in the State of Maryland and that to the best of their information, knowledge and belief, there is no equivalent for that course that can be had in the City of Baltimore or State of Maryland.

13. They deny that Louise Kerr had and has a civil right which is guaranteed to her under Section I of the Fourteenth Amendment to the Constitution of the United States and by Section 41 Title 8 of the United States Code, which required that her application for the Library Training Course be received and considered; they deny the remaining allegations of section 13 of the Complaint.

14. They deny the allegations of section 14 of the Complaint.

WHEREFORE, the individual defendants pray that the claim for judgment against them be dismissed and that they be allowed their costs.

AS TO COUNT 2

The answer of these defendants to those allegations of Count 1 which are by reference, adopted in Count 2, section

15, is reiterated here by reference; they deny all the other allegations made in said section.

WHEREFORE, they pray that the application of the plaintiffs for an injunction as prayed in said Section 15, be dismissed.

AS TO COUNT 3

The answer of these defendants to those allegations of Counts 1 and 2 which are by reference adopted in Count 3, section 16, is reiterated here by reference. Further answering said Count 3, section 16, these defendants deny that an actual case or controversy presently exists between them and the plaintiffs as to the right of the plaintiffs to have said defendants receive Louise Kerr's application for said Library Training Course and to consider the same without discrimination because of her race or color but assert that whenever such application is made, it will be considered with reference to the facts and the law existing at the time. They admit that the time elapsing between the date when an application for admission to any one of the Library training courses conducted by the defendant, The Enoch Pratt Free Library, can be made and the date when the said course commences may be although that is not necessarily true, so short that plaintiffs could not have their cases filed and heard as to any particular course before the question became moot as to that course; they deny that any delays, avoidable or unavoidable, attendant on legal proceedings, will always substantially nullify plaintiffs' rights unless this Court enters a declaratory judgment herein.

WHEREFORE, these defendants respectfully pray that the application of the plaintiffs for declaratory judgment be dismissed.

AS TO COUNT 4

These defendants deny that the Mayor and City Council of Baltimore agreed to pay to this corporate defendant perpetually an annuity of \$50,000 pursuant to Chapter 181 of the Acts of the General Assembly of Maryland passed

at the Session of 1882 and Ordinance No. 106 of the Mayor and City Council of Baltimore approved on the 15th day of July, 1882, but aver on the contrary, that pursuant to said Acts of the General Assembly and said Ordinance and in consideration of the payment by Enoch Pratt to the Mayor and City Council of Baltimore, in cash, of the sum of \$833,333.33 and the conveyance by Enoch Pratt and Maria Louisa Pratt, his wife, to the Mayor and City Council of Baltimore of a certain lot of ground on Mulberry Street in the City of Baltimore and the improvements thereon, constituting the first Enoch Pratt Free Library, the Mayor and City Council of Baltimore did contract, covenant and agree, for itself and for its successors with the Enoch Pratt Free Library of Baltimore City and its successors, to pay yearly and every year forever to The Enoch Pratt Free Library of Baltimore City and its Trustees and their successors, the sum of \$50,000, in equal quarterly instalments, accounting from the first day of July, 1883, said agreement being incorporated in the indenture dated the 2nd day of July, 1883, by which the said Enoch Pratt and Maria Louisa Pratt, his wife, conveyed to the Mayor and City Council of Baltimore, the said lot of ground and the improvements thereon constituting the first main library of this corporate defendant. And further answering said Count 4, these defendants say that the said Act of the General Assembly provided that the annuity to be paid by the Mayor and City Council of Baltimore should be paid to a board of nine trustees and their successors for the purchase and maintenance of said library and provided further, that the control and management of said library and other property should be in said board of trustees, and these defendants say, further, that said Ordinance No. 106 of the Mayor and City Council of Baltimore likewise provided that the control and management of said library and property should be in said board of trustees and that said annuity so to be paid to them should be applied by them to the purposes and the maintenance of said library as established and defined

in the Act incorporating it, in such manner as they shall think proper. Said Act of the General Assembly also provided that said Trustees should have the right to make all necessary by-laws and regulations for the government and administration of said trust and for the appointment of the necessary officers and agents. These defendants admit that pursuant to Ordinance No. 275 of the Mayor and City Council of Baltimore approved on the 11th day of May, 1907, said Mayor and City Council did agree to make annual provision in the tax levy, for a sum not less than ten per centum of the amount—\$500,000—given by Andrew Carnegie for the construction of branch library buildings but they aver that said Ordinance provided that the amount so appropriated should be expended by the Trustees of the Library for maintenance of such branch buildings. Said moneys, these defendants, therefore, say is applicable only for the maintenance of branch libraries under the control of the Trustees of this corporate defendant. These defendants admit that the Mayor and City Council of Baltimore provides annually by its Ordinance of Estimates a sum in excess of said annuity of \$50,000 provided for in the indenture between it and Enoch Pratt and Maria Louisa Pratt, his wife, plus an amount equal to ten per centum of the amount of the gift made by Andrew Carnegie, to defray the cost of conducting the said Enoch Pratt Free Library and that this additional amount so appropriated has amounted in recent years to more than \$400,000 per annum.

In answer to paragraph 18 of said Count 4, these defendants deny that if said Corporation be a private corporation and beyond the control of Constitutional restraints on public corporations, to the extent that there be any such Constitutional restraints on public corporations such as the corporate defendant, an appropriation in excess of \$100,000 per year is *ultra vires* and void and constitutes the taking of property of the plaintiff, T. Henderson Kerr, without due process of law and in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

WHEREFORE, the defendants pray that the prayer of said Count 4 for a restraining order directed to the Mayor and City Council of Baltimore, be dismissed.

Further answering said entire complaint, these defendants say: neither the corporate defendant nor the individual defendants or any one of them has discriminated and that there is no imminent danger or likelihood that they will discriminate, against the plaintiff, Louise Kerr, or against any other Negress in passing upon any application which she or any other Negress may make, to be permitted to enroll in the Library Training Course; they assert that as Trustees charged with the management of the Library and the control of its activities, they have the right to select employees and to determine when there are available sufficient Negroes to fill places on the Library Staff, which the said Board of Trustees in their judgment, deem advisable to fill with Negroes and that it is within their right, without Constitutional restraint, when they have in good faith decided that there is no vacancy among the employees which in their judgment should be filled by a Negro, to refuse to accept the application of a Negro for the Training Class; they aver that they are entitled without Constitutional restraint, to make the decision as to which libraries shall be serviced by librarians of the white race and those which are to be serviced, in whole or in part, by librarians of the Negro race and that their judgment in the matter is not subject to restraint or control.

And further answering said complaint and all of it, these defendants say that the organization of the Library Training Course does not involve the employment of those who are accepted nor is it a school in the general accepted understanding of that word, for the training of librarians but on the contrary, it is an adjunct of the library which is conducted for the purpose of training persons to meet its needs only and that it is under no obligation to admit to that training, a person for whom it has at the time the application is made, no need and at a time when to the knowledge of the Trustees there are available in Baltimore

City, persons qualified to fill any particular requirement of the library.

And finally answering said complaint and all of it, these defendants call to the attention of the Court as evidence of the good faith in the contention herein made, that they have not and that there is no imminent danger that they will discriminate against any one applying for admission to the Library Training Course on account of race or color, the fact that in September 1942 a Negress was appointed as Assistant Librarian to one of the branch libraries; that on March 15th, 1943, another Negress was given a similar position; that in September, 1943, a competitive examination for the position of Librarian was had which was opened to and participated in by Negroes as well as by white people.

WHEREFORE, these defendants deny that the plaintiffs are entitled to the relief sought by them or any of it and pray that the complaint be dismissed and that they may be allowed their costs.

**ANSWER OF DEFENDANT,
MAYOR AND CITY COUNCIL OF BALTIMORE,
HEREINAFTER CALLED "CITY"**

FIRST DEFENSE

The complaint fails to state a claim against Defendant City upon which relief can be granted in this Court. The City, therefore, moves the Court to dismiss this action against the City for this cause.

SECOND DEFENSE

The contractual relations between the City and The Enoch Pratt Free Library of Baltimore City are set out in the following named statutes and ordinances to the printed volumes of which the City refers for a full and accurate statement of such relations:

1. Chapter 181, Laws of Maryland, 1882
2. Ordinance No. 106 of the City, approved July 15, 1882 (Baltimore City Code, Art. 34, Sections 1 and 2)
3. Ordinance No. 64 of the City, approved May 14, 1883 (Baltimore City Code, Art. 34, Sections 3, 4 and 5)
4. Ordinance No. 275 of the City, approved May 11, 1907 (Baltimore City Code, Art. 34, Sections 7 and 8)
5. Sections 969, 970, 971 of the Baltimore City Charter (1938 Edition), pp. 532, 533
6. Article 4, Sec. 6, Sub-section 14A, of the Baltimore City Charter (1938 Edition), p. 24

Further answering, the City says that all the paragraphs of the complaint, except Paragraphs 17 and 18, relate to the alleged action of other Defendants herein, over which the City has no control, except that in case of any abuse of their powers by the Trustees of said Enoch Pratt Free Library of Baltimore City, the City has the right to resort to the proper courts to enforce the performance of the trust imposed on them. If the relief sought by Plaintiff Louise Kerr against other Defendants herein is granted, no relief is sought by either of the Plaintiffs against the City. Consequently, the relief sought against the City by the

Plaintiff, T. Henderson Kerr, can only be granted, if at all, after the Court has adjudicated that the Plaintiff, Louise Kerr, has no cause of action against the other Defendants. Wherefore, the City says that two separate actions having no necessary connection are joined herein. The City moves the Court to dismiss this action as to it for this reason.

THIRD DEFENSE

The City admits that the Plaintiffs are citizens of the United States of America and the State of Maryland and, for the purposes of this action, admits that T. Henderson Kerr owns personal and real property situated in the City, upon which he pays municipal taxes. The City also admits that it pays to The Enoch Pratt Free Library of Baltimore City, the sums of money which it is under obligation to pay by reason of the statutes and ordinances hereinbefore referred to. It also admits that it appropriates and pays over to the said Library other sums which it deems proper for the equipment, maintenance and support of said Library, in accordance with the provision of the City Charter (Section 4, Article 6, Sub-section 14A, page 24, 1938 Edition). The City denies that any of its actions in connection with said Library are *ultra vires* and void, or that such actions constitute the taking of Plaintiff T. Henderson Kerr's property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States. The City says that as between it and the Plaintiff, T. Henderson Kerr, the legality of its action under the aforesaid statutes and ordinances is justiciable in the Courts of the State of Maryland and not in this Court. The City, therefore, moves that this action be dismissed as to the City.

FOURTH DEFENSE

All allegations of fact, as distinguished from conclusions of law, in the Complaint, except to the extent admitted in this Answer, relate to acts of the City's Co-Defendants, about which the City is not well informed, and which acts do not bind the City and for which the City is not respon-

sible. The City denies all legal conclusions of the Complaint that are contrary to the position herein stated, and all allegations of fact with reference to its actions not hereinbefore either admitted or denied.

The City further denies that the payment by it to the said Library of the sums hereinbefore admitted constitutes a violation of any statute or constitution. If the actions of its Co-Defendants violate some constitutional right of the Plaintiffs, (and about this no opinion is expressed), it does not follow that the City's acts in paying the aforesaid sums to The Enoch Pratt Free Library violate the constitutional rights of either of the Plaintiffs herein.

AND NOW HAVING FULLY ANSWERED, the Defendant City prays to be dismissed with its proper costs.

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

Findings of Fact

1. The Training Course referred to in the complaint is conducted by the Enoch Pratt Free Library, purely as a function of its internal management for the instruction of prospective employees, and is not a course for general educational purposes or a general library instruction course.

2. The refusal of the Library Management to consider the application of the plaintiff, Louise Kerr, as a member of the Training Class was not based solely on account of her race or color, but in good faith because the Library had no available position to offer her if she had been enrolled and had successfully graduated from the Course.

3. Until 1942 the Library Management had not appointed any persons of the Negro race to the technical staff of Library Assistants, about 80 in number. In that year the management did appoint two Negroes as Assistant Librarians at one of the 26 branch libraries in Baltimore City where the patronage of the library was predominantly by Negroes.

4. The policy and practice of the Library management in selecting only white persons for its technical staff (with the

exception mentioned) had not been due to any personal prejudice or discrimination by the Trustees on account of race or color, but in the exercise of their best judgment in the selection of employes in the interest of the public service to be rendered, and in consideration of the fact that the largely predominant patronage of the main and branch libraries (with the one exception mentioned) has been by white persons.

5. The evidentiary facts are stated and discussed in the accompanying opinion, to which reference is hereby made therefore.

Conclusions of Law.

1. The Enoch Pratt Free Library in the selection and appointment of its employes, and its internal management, is acting as a private corporation and not as a governmental agency, and its action in that respect does not constitute state action within the scope of the 14th Amendment to the federal Constitution, or the particular federal statutes relied upon by the plaintiff.

2. The voluntary appropriations made by Baltimore City for the maintenance of the Enoch Pratt Free Library are not *ultra vires* and do not constitute the taking of property of the plaintiff, T. Henderson Kerr, as a taxpayer of Baltimore City without due process of law within the meaning of the 14th Amendment to the federal Constitution.

3. All four counts of the complaint should be dismissed, the plaintiffs to pay the taxable court costs.

ORDER DISMISSING COMPLAINT.

The Complaint in this cause and the answers thereto of the defendants having been read and considered, testimony was taken in open Court on behalf of both the plaintiffs and the defendants and argument of counsel for the respective parties in support of their contentions having been heard, the Court handed down and caused to be filed, its Findings of Fact and Conclusions of Law and its Opinion in which it held that the plaintiffs' complaint must be dismissed and

that the Fourth Count of the complaint must be dismissed generally.

WHEREFORE, it is this 27th day of March, 1944, by the District Court of the United States for the District of Maryland, ORDERED that the complaint in the above captioned cause be dismissed as to every count thereof.

OPINION OF JUDGE CHESNUT.

The Enoch Pratt Free Library is a very well known institution in Baltimore City. Its main branch, centrally located in the heart of the city, is housed in a large specially designed building with all modern library equipment, and it operates twenty-six branch libraries located in other sections of the city. It is generally regarded as one of the outstanding free libraries in the United States. It is a Maryland corporation created by Chapter 181 of the Maryland Acts of Assembly of 1882. By that Act its management was vested in a Board of nine (9) Trustees named in the Act, with power to elect their successors, "the control and management of the said Library and other property to be in said Board of Trustees". It is a non-stock corporation, the purpose of the corporation as indicated in the Act was for the object "of perpetually promoting and diffusing knowledge and education among the people of the City of Baltimore". At the present time the Library has about 800,000 books, and in its main library and branches employs about eighty professionally trained assistant librarians. The entire library system lends approximately three million books a year to 300,000 Baltimoreans.

As a purely intra-mural activity, the management of the Library periodically gives a training course for the technical instruction of prospective employees as Assistant Librarians, to fill vacancies in its technical staff as they occur from time to time. On April 23, 1943, the plaintiff in this case, Louise Kerr, a well educated young colored woman resident in Baltimore City, applied to the Library for ad-

mission to its current training class, for the purpose of obtaining an appointment and employment as an Assistant Librarian. The management of the Library declined to accept her as a member of the training class for the assigned reason that at that time there was no vacancy in the technical staff of the Library which, in the opinion of the Board of Trustees, could properly be filled by a colored woman. In this respect the policy of the Board of Trustees had been stated in a resolution of September 17, 1942 reading as follows:

“Resolved that it is unnecessary and unpracticable to admit colored persons to the Training Class of The Enoch Pratt Free Library. The Trustees being advised that there are colored persons now available with adequate training for library employment have given the Librarian authority to employ such personnel where vacancies occur in a branch or branches with an established record of preponderant colored use.”

Thereafter on October 5, 1943, the plaintiff filed the instant suit against the Library Corporation, its several Trustees individually, its present Librarian and the Mayor & City Council of Baltimore, in which she alleged that she had been refused admission to the Training Course “solely because of her race or color”; and that the action of the corporation in this respect violated the equal protection clause of Section 1 of the 14th Amendment to the Constitution of the United States, and Section 41, Title 8 United States Code Annotated, and that the defendants thereby became severally liable to the plaintiff under 8 USCA, s. 43. In consequence the plaintiff in count 1 of the complaint sues for pecuniary damages of \$5,000 against each individual defendant, and in count 2 for injunctive relief against continued refusal to receive the plaintiff as a member of said Training Course; and in count 3 for declaratory judgment to establish her right to have her application for the Training Course considered by the management of the Library, “without discrimination because of her race or color”. The defendants, other than the Mayor and City Council of Bal-

timore, resist the plaintiff's demands on the factual ground that the plaintiff was not refused admission to said Training Course solely because of her race or color; and all the defendants, including the Mayor and City Council of Baltimore, further defend on the legal ground that in the management of the said Library and the filling of appointments to the Library Staff, the Trustees are acting as a *private* and not a *public governmental agency*, and therefore are not within the scope of the 14th Amendment and the federal statutes on which the plaintiff relies. The case has been fully presented on the pleadings, evidence and arguments of counsel for the respective parties.

Dealing first with the factual defense, it is important to learn from the evidence just what is the Training Course referred to and why the plaintiff was not received into it. The Course has been conducted at periodic intervals for about 15 years. The requirements for admission to the class are described in the circular of information filed in evidence as Defendant's Exhibit No. 1. Among them are the following:

"In general, the educational qualifications necessary for teaching and for library work are the same. The preferred preparation for admission to the Training Class is a college degree representing a scholastic average of 80% for the entire course. * * * Initiative, personality, enthusiasm, sympathy and serious purpose are requisite qualities. * * * All applicants are required to take a competitive entrance examination. * * * The large number of applicants makes it necessary to limit the number who take each examination to the 15 or 20 who, in the opinion of the Librarians, the Director, and several Department Heads, seem most likely to function well in library work. Members of the Training Class will be chosen from those applicants who have qualified by scoring the highest in the tests and whose previous education, training, experience and personality seem best to fit them for the work. * * * As the practical work is equivalent to part-time employment in the Library, members of the class will be paid at the rate of \$40.00 a month, effective January 1, after

the first three months of training have been successfully accomplished. * * * Although the primary purpose of the Training Class is to prepare individuals for positions on the staff of the Enoch Pratt Free Library, the Library does not guarantee to appoint graduates of the Training Class. It is probable, however, that those who stand high in the work will receive such appointments. In return for the training given, an applicant is expected to work on the staff for one year after graduation, providing a position is offered."

It thus clearly appears that the Training Course is only a feature of the internal management of the Library, and is not conducted either as a general library instruction course or for purposes of general education. The evidence in the case shows that the plaintiff has the requisite educational requirements for the class but, as her application was not accepted or considered by the Management, it does not affirmatively appear whether she would otherwise have qualified for admission into Class through competitive examination, physical condition and personality. However, these latter considerations seem unimportant in the case in view of the fact that her application was not further considered by the Management on the ground that if she had successfully competed there would have been no position to which she could or would have been appointed by the Board. In short, the position of the Board in declining to consider her application was placed on the ground that the Training Course was a purely intra-mural activity for the purpose of giving technical instruction to prospective employes and as there was no vacancy to which the plaintiff could have been appointed, it would have been unfair to her to let her take the Training Course and an unnecessary expense to the Library in giving such training.

I find from the evidence, which in this respect is practically uncontradicted, that the reason given by the management of the Library for its refusal to consider her application was genuine and in good faith, and not solely by reason of her race or color. This finding of fact would seem to be conclusive in favor of the defendants on consideration of

the complaint as literally framed. But counsel for the plaintiff contends that there is implicit in the complaint a broader view of the case which, despite the particular finding, justifies the conclusion that the failure of the management to consider the plaintiff's application was really based solely on reasons of race or color. Thus it is argued that the Training Course is only a means to an end, that is, appointment to a position as Assistant Librarian; that vacancies in the whole staff of 80 professional assistants are continually occurring and are filled from the successful graduates of the Course; and that therefore there would have been vacancies occurring which might well have been filled by the appointment of the plaintiff to such a position, were it not for the hitherto established policy of the Board of Trustees to appoint to positions as Assistant Librarians only white persons. In this connection, counsel for the plaintiff advanced the proposition that the Board of Trustees of the Enoch Pratt Free Library constitute a *public agency* administering a public governmental function and therefore all applicants for positions of employment in the Library System must be fairly considered by the Trustees on their individual merits irrespective of race or color; and that the policy of the Board in generally employing only white persons in the capacity of technical Assistant Librarians is contrary to the requirements of the 14th Amendment and the federal statutes referred to.

The evidence shows that from 1882 to 1942 only white persons have been employed by the management of the Library as Assistant Librarians, although there were numerous colored employes serving in minor clerical or more ministerial activities. However, in 1942 the Board departed from its prior practice by engaging two technical Assistant Librarians for service at one of the branches of the Library System where the patronage of the Library was predominantly by Negroes; and the testimony shows that this departure from prior practice was experimental and tentative on the part of the Trustees for the purpose of determining whether

in their judgment it was desirable in the interest of the best public service, and whether, as tested by experience, it could be wisely further extended in practice. The positions just referred to were filled after competitive examination taken by Negro applicants who, to the knowledge and information of the Board, had become sufficiently qualified for the work without having received the instruction in the particular Training Course conducted by the Library.

For the purposes of this case it may be assumed that appointments to positions made by a *governmental agency* must be without discrimination solely on the ground of race or color;¹ but to bring the plaintiff's case within the scope of the 14th Amendment, it is clearly established as a matter of law that the exclusion of a Negro from appointment to a position or office must have resulted from what constitutes *State* action, and not only an action of a private agency or individual. The precise applicable language of the 14th Amendment, s. 1, is "No State shall * * * deny to any person within its jurisdiction the equal protection of the laws". And sections 41 and 43 of 8 USCA, defining and protecting civil rights, are not broader in this respect than the

¹ See *Alston vs. School Board of Norfolk*, 4th Cir. 112 F. 2d. 992; *Mills vs. Lowndes* (D. C. Md.), 28 F. Supp. 792-801; *Mills vs. Board of Education of Anne Arundel County* (D. C. Md.), 30 F. Supp. 245. In *People vs. Crane*, 214 N. Y. 154, 108 N. E. Rep. 427, 431 (a case applying a State statute excluding aliens from employment of certain public works), Mr. Justice Cardozo, then a member of the Court of Appeals of New York, said:

"In thus holding that the power exists to exclude aliens from employment on the public works, we do not, however, commit ourselves to the view that the power exists to make arbitrary distinctions between citizens. We do not hold that the government may create a privileged caste among the members of the State. * * * We do not hold that it may discriminate among its citizens on the ground of faith or color. * * * A citizen may not be disqualified because of faith or color from service as a juror. For like reasons we assume that he may not be disqualified because of faith or color from serving the State in public office or employment. It is true that the individual, though a citizen, has no legal right in any particular instance to be selected as contractor by the government. It does not follow, however, that he may be declared *disqualified* from service unless the proscription bears some relation to the advancement of public welfare. * * * The Legislature has unquestionably the widest latitude of judgment in determining whether such a relation exists, but we are not required to hold that there is no remedy against sheer oppression. Where the line must be drawn we do not now determine."

particular Constitutional provision. These sections read as follows:

“41. All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishments, pains, penalties, taxes, licenses and exactions of every kind and to no other.

“43. Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or caused to be subjected, any citizen of the United States or other person within the jurisdiction thereof to deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proceeding for redress.”

The scope of prohibition by these constitutional and statutory enactments is therefore limited to what in any particular case constitutes State action, and does not include action by private individuals or corporations. *United States vs. Cruikshank*, 92 U. S. 542, *Strauder vs. West Virginia*, 100 U. S. 303; *Ex parte Virginia*, 100 U. S. 339, 346; *James vs. Bowman*, 190 U. S. 127; *Virginia vs. Rives*, 100 U. S. 313, 318.

What constitutes State action is a problem for judicial determination in each case and is not always easy to determine. This was succinctly stated by Mr. Justice Frankfurter in his concurring opinion in *Snowden vs. Hughes* (U. S. Sup. Ct. January 17, 1944), the latest case which I have noted dealing with the civil rights statutes:

“But to constitute such unjust discrimination the action must be that of the state. Since the state, for present purposes, can only act through functionaries, the question naturally arises what functionaries, acting under what circumstances, are to be deemed the state for purposes of bringing suit in the federal court on the basis of illegal state action. The problem is beset with inherent difficulties and not unnaturally has had a

fluctuating history in the decisions of the court. Compare *Barney vs. City of New York*, 193 U. S. 430, with *Raymond vs. Chicago Traction Co.*, 207 U. S. 20, *Memphis, vs. Cumberland Tel. Co.*, 218 U. S. 624, with *Home Tel. & Tel. Co. vs. Los Angeles*, 227 U. S. 278. It is not to be resolved by abstract considerations such as the fact that every official who purports to wield power conferred by a state is *pro tanto* the state. Otherwise every illegal discrimination by a policeman on the beat would be state action for purpose of suit in a federal court."

The problem involved constitutes a federal question on which decisions of the particular state are not in themselves conclusive. In *Nixon vs. Condon*, 286 U. S. 73, 88, Mr. Justice Cardozo, for the court, said:

"Whether in given circumstances parties or their committees are agencies of government within the 14th or 15th amendment is a question which this court will determine for itself. It is not concluded upon such an inquiry by decisions rendered elsewhere. The test is not whether the members of the 'Executive Committee' are the representatives of the State in the strict sense in which an agent is the representative of his principal. The test is whether they are to be classified as representatives of the State to such an extent and in such a sense that the great restraints of the Constitution set limits to their action."

In the instant case counsel for the respective parties are, I think, correctly in agreement that the test here is whether the Board of Trustees of the Library are acting in a public capacity as representatives of the State or merely as a private corporation, in the management of the Library. The question thus presented must be determined upon consideration of the public acts of the State of Maryland and the authorized municipal ordinances of Baltimore City, in the light of the evidence bearing upon the subject of the relations between the Library Corporation and Baltimore City. These are unique in the history of the origin and subsequent development of the Enoch Pratt Free Library. No parallel case has been cited by counsel and none is known to the Court. And therefore there is evidently no judicial decision

to serve as a precedent for the determination of the problem in the instant case. Therefore it is necessary to review the history of the Library in some detail.

In 1882 Enoch Pratt, a wealthy and public spirited citizen of Baltimore, proposed to establish "a free circulating library for the benefit of our whole City", and to that end on January 21st, he wrote a letter to the Mayor and City Council of Baltimore in which he proposed to erect a library building on West Mulberry Street in Baltimore City, at a cost of about \$250,000, and to convey the property by deed to the City, and also to pay to the City the sum of \$833,333.00,—

"provided the City will grant and create an annuity of Fifty Thousand Dollars (\$50,000) per annum forever, payable quarterly to the Board of Trustees for the support and maintenance of the Library and its branches. I propose that a Board of nine (9) Trustees be incorporated for the management of 'The Pratt Free Library of the City of Baltimore', the Board to be selected by myself from our best citizens, and all vacancies which shall occur, shall be filled by the Board. The articles of incorporation will contain a provision that no trustee or officer shall be appointed or removed on religious or political grounds. The Trustees are to receive from the City the quarterly payments, and to expend it at their discretion for the purposes of the Library. • • • The Trustees will be required to make an annual report to the Mayor and City Counsel of their proceedings, and of the condition of the Library, and the report will contain a full account of the money received and expended."

This munificent gift was duly accepted by the Mayor and City Council of Baltimore and all necessary and appropriate legislation by the Assembly of Maryland and by Ordinances of Baltimore City duly enacted. The Library was formerly opened to the public on January 4, 1886. The title of the Maryland Act of 1882, s. 181, was "An Act to enable the Mayor and City Council of Baltimore to accept a donation from Enoch Pratt for the establishment and perpetual endowment of a Free Public Library in said City, to be known as 'The Enoch Pratt Free Library of Baltimore City', and

to provide for the appointment and incorporation of Trustees for the management thereof." By this Act, after proper preamble, Baltimore City was empowered to accept Mr. Pratt's proposal on the conditions mentioned. A Board of nine trustees, including Enoch Pratt, George William Brown (then Chief Judge of the Supreme Bench of Baltimore City) Charles J. Bonaparte, James A. Gary, and others, were constituted and appointed the Board of Trustees of the Enoch Pratt Free Library of Baltimore City, and they and their successors—

"are hereby appointed a body politic and corporate by the name of 'The Enoch Pratt Free Library of Baltimore City,' with power and are required to fill any vacancies in said Board occurring by resignation, disability or otherwise and to perpetuate their succession and do all necessary things for the control and management of said Library and its branches, and to perform the duties imposed on them by this Act, and to receive from the Mayor and City Council of Baltimore the said sum of \$50,000 per annum as aforesaid, and expend the same for the purpose of said Library in such manner as they shall think proper, and to make all necessary by-laws and regulations for the government and administration of said trust, *and for the appointment of the necessary officers and agents.*" (Italic supplied.)

It was further provided that Baltimore City should appoint a Visitor "who shall as often as once a year examine the books and accounts of said Trustees and make a report thereof to the Mayor and City Council of Baltimore; and said Mayor and City Council shall, in case of any abuse of powers of said Trustees or their successors, have the right to resort to the proper courts to enforce the performance of the trusts hereby imposed on them." Another provision of the Act was that the Ordinance to be passed by Baltimore City must be approved by a majority of the votes of the legal voters of Baltimore City. The appropriate Ordinance was duly enacted on July 15, 1882, being Ordinance No. 106 of that year. And it was duly ratified and approved by the voters of the City,

By deed dated July 2, 1883, Enoch Pratt and wife conveyed the physical property of the completed library building to the Mayor and City Council of Baltimore and in said deed in consideration of Mr. Pratt's whole gift of property and money, Baltimore City covenanted and agreed with the Library Corporation to pay to it the annual annuity of \$50,000 in equal quarterly installments; and the Library Corporation also covenanted "to appropriate any and all annual sums by it to be received entirely and solely for its corporate purposes, and to make annual reports to the City of the condition of the Library with full account of the moneys received and expended by the Trustees." The deed further provided that by joint action the City and the Library could sell and convey the real estate conveyed "for the purposes of the trust" the proceeds to be invested in other property for the same purposes.

The subsequent history of the Library and the development of its further relations with Baltimore City are also interesting. In 1907 the well known Andrew Carnegie offered to give to the Mayor and City Council of Baltimore \$500,000 for the erection of 20 branch buildings for the use of the Enoch Pratt Free Library of Baltimore City on the sole condition that the City should provide for the maintenance of the branches in the annual amount of not less than 10% of the cost of the buildings themselves, and that sites for the said buildings should be furnished or provided by the City. This offer of Mr. Carnegie was accepted by the City by Ordinance No. 275 of 1907, approved May 11, 1907. In the Ordinance the City undertook and agreed that the sum of \$500,000 "shall be received and expended by the Trustees of the Enoch Pratt Free Library in the erection of twenty branch buildings upon sites furnished or provided by the said Mayor and City Council and accepted by the said Trustees," and that the said branches should be maintained by the City by a yearly provision in the tax levy for a sum of not less than 10% of the amount given by Mr. Carnegie, the annual appropriation to be expended by the Trustees "for the maintenance as aforesaid in such manner as

may be specified from year to year in the Ordinance of Estimates." The Ordinance was impliedly approved by the State Legislature, c. 144 of the Acts of 1908, p. 586, authorizing the City to make appropriation from the levy for the support of the Library. The money was advanced by Mr. Carnegie and twelve library branches constructed therefrom, and Baltimore City has annually made due appropriations for their maintenance, all as provided in the authority given therefor.

By 1927 the Library had so expanded its services to the people of Baltimore that it had outgrown the original building on West Mulberry Street, and some additions thereto, and demonstrated the possibility of its wider utility if it could be furnished with a new, larger, and more modern library building. By the (Maryland Act of 1927, c. 328, the Legislature authorized the City to incur, when approved by the vote of the citizens of Baltimore, a debt of \$3,000,000 for the acquisition of additional real estate and the erection thereon of a modern library building to be used by the Library Trustees. By Ordinance No. 1053 of April 1927, the City appropriately authorized the incurring of this debt upon approval by the people, which was duly given. Thereafter the City acquired by condemnation or purchase the necessary land, and erected thereon a modern library building which now constitutes the central branch of the Library. By Ordinance approved December 16, 1930, No. 1195, the City authorized the incorporation in the new library site of the parcels of land previously occupied by the central branch, the razing of the old buildings, and the erection on the site of a suitable building for a free public library and the installation in said building when completed of the Enoch Pratt Free Library. Section 3 of the Ordinance provided that upon the completion of the buildings "The Enoch Pratt Free Library of Baltimore City shall be installed therein for the purpose of maintaining, conducting and operating a Free Public Library for the purpose of perpetually promoting and diffusing knowledge and education among the people of the City of Baltimore." The building so authorized has been completed and has now been in use for some years past.

The Library under the management of its Board of Trustees has so demonstrated its usefulness that, in addition to the monetary obligations assumed by the City by virtue of the original Pratt and Carnegie gifts, the City has also for many years past voluntarily appropriated from its general funds raised by taxation, large additional sums of money for expenditure by the Library. At the present time the amount of the voluntary appropriations by the City exceeds \$500,000 a year. Until about 12 years ago the moneys were paid over by monthly check from the City to the Library Corporation and directly expended by it. Since that time, however, by agreement between the City and the Library, the accounts are kept and payments made directly by the City upon orders and vouchers approved by the Library Corporation. This arrangement was made to take advantage of the City's comprehensive auditing and disbursement system of accounting. The City auditor has been the Visitor provided for in the original enactments. The amount of the voluntary appropriations by the City for the benefit of the Library are determined each year by the Board of Estimates of the City on consideration and approval or change in the budget submitted by the Library. All appointments to the Library Staff whether technical, clerical or otherwise, are made only by the Library; but in submitting its budget it generally conforms to a scale of salaries for clerical and ministerial positions customary with the City Classified Service. The employees of the Library are, however, not within the jurisdiction of the City Service Commission and are not appointed as a result of Civil Service examinations. However, they are, under a special Act of Assembly (Acts of 1939, c. 16, and Ordinance No. 961 of 1939) included within the City's general pension and retirement system for municipal employees. The management of the Library buys its own supplies and creates no obligation on the City in the management of the Library. All disbursements made by the City in payment of bills incurred by the Library are paid only upon vouchers approved by the Library managers.

The resultant relations of the Library and the City are therefore these. (1) The management and operation of

the Library is wholly committed to the Board of Trustees; (2) the title to all the property of the Library including its equipment of books and furniture, is vested in the City for the use of the Library; (3) the City is legally obligated to pay \$100,000 a year to the Library in accordance with the Pratt and Carnegie gifts, but is not legally obliged to make any further appropriations for the Library; (4) nevertheless the City has for years past made additional voluntary appropriations to a very large amount, and (5) the City has no legal authority to supervise or in any way control the management of the Library by the Trustees with respect to appointments to staff positions or in the amount of annual expenditures, except by reducing partially or entirely the amount of its voluntary appropriations for the benefit of the Library.

On the basis of these relations between the City and the Library, it is argued by counsel for the plaintiff that the dominant factor is the City's economic control of the situation; and it is pointed out that the Library could not possibly function on anything like its present scale of operations except for the large voluntary appropriations made by the City. It is also stressed that the title to all the property of the Library, real and personal, is vested in the City. And from these considerations it is argued that the dominant aspect of the Library, in the receipt and expenditure of public moneys, should be regarded as the exercise of a public governmental function far beyond that of a mere private agency. And reference is pointedly made to the language of Mr. Justice Cardozo in the Nixon case, *supra*, to the effect that it is only necessary for the plaintiff to show that in all the circumstances the functions performed by the Library management are of such a nature that they come within the constitutional limitation. However, this argument rather assumes than demonstrates the proposition that the management of the Library constitutes the exercise of public authority, or in other words, is state action. The question here to be decided is not whether in the broad aspect of the relations between the City and the Library the latter is performing a public service by expenditure of public money, but is the

more limited question whether in the management of the Library the Trustees are acting in a private capacity or are representatives of the State to such an extent that their action amounts to state action, and particularly with respect to appointments to technical staff positions in the Library System. Or more concretely stated, is the nature of the function of the Library management such that the Trustees have the lawful right to fill staff positions by appointing white persons only to these positions.

The evidence shows clearly enough that with very minor exceptions in number in the last year or two, the policy of the Board of Trustees has been not to appoint Negroes to these staff positions, and the reason for this policy has been the determination of the Trustees that better service can be given to the people of Baltimore by selecting them only from white persons, for one reason, because of the great majority of those who use the main library and most of its branches are white persons, and the great majority of the technical staff are also white. "Separation of the races is normal treatment in this State," with equivalent facilities in the benefits of public services. *Williams vs. Zimmerman*, 172 Md. 563, 567; *Durkee vs. Murphy*, 29 Atl. Rep. 2d 253, 256; 181 Md. 259; *University of Maryland vs. Murray*, 169 Md. 478. That the Trustees have exercised their judgment in this matter in the past in good faith and not with any personal hostility to or prejudice against the Negro race is fully supported by the evidence. And it also appears that they have an open mind for the future as to the desirability of appointments of additional young Negresses of suitable qualifications to technical staff positions where it is found in the interest of good public service, considering particularly the predominant character of the patronage of the particular branch library. But apart from this, the court has no authority to interfere with the policy of the Board in selecting its agents, if in the exercise of its function in this respect, the Board is acting as a private corporation, and is therefore not within the scope of the federal enactments.

Both the evidence in this case and the Maryland decisions require the holding that in managing the Library the

Trustees are acting as a private corporation and not as representatives of the government, state or city. In the first place, Mr. Pratt's plan as conceived and consummated is inconsistent with the idea that the Trustees were to function in a governmental capacity. It is highly significant that he expressly reserved the right to personally appoint the original trustees, as a self-perpetuating body. In a very real sense therefore the Trustees were representatives of Mr. Pratt, and not of the government, either city or state. The customary and conventional plan which Mr. Pratt might have followed would have been to create a private corporation and make the gift of property and money directly to it. That was the plan in the formation some ten years earlier of the Johns Hopkins University and the Johns Hopkins Hospital, with which Mr. Pratt doubtless was thoroughly familiar. Under such a plan the Trustees or Directors of the corporation must manage not only the general activities of the corporation but also its finances. Directors or Trustees may be much more competent for one activity than the other. Where the Board must manage the finances of the corporation the amount of its income for annual maintenance may fluctuate with economic factors and varying financial judgment. Evidently Mr. Pratt wished to avoid this possibility by providing with as much certainty as possible that the corporation should have a definite fixed annual income for maintenance. He therefore conveyed the property and money to the City with its covenant to annually pay \$50,000 to the corporation for maintenance; but at the same time he was careful to provide that the expenditure of the annual maintenance fund should be committed, not to representatives of the City, but to a personally selected Board of Trustees. In effect he created two separate trusts, one in the property, of which the City was Trustee, for the payment of a fixed annual income to the corporation and enforceable by the latter as beneficiary, and the other a trust for management by his selected Board of Trustees. The latter trust as we have seen, was enforceable for the benefit of the public by the City. The plan was evidently well thought out and has worked beneficially for the people of

Baltimore as has been demonstrated by sixty years of history. Moreover the state and city legislation constituted a valid contract between Mr. Pratt and the city which may not be impaired by subsequent state and city Acts, under the provisions of the Federal Constitution (Art. 1, s. 10).

While the question under consideration must be resolved by the federal courts, as a federal question, the Maryland decisions are very persuasive authority that the nature of the Library Corporation with respect to its internal management by the Board is private and not public. The legal test between a private and public corporation is whether the corporation is subject to control by public authority, state or municipal. To make the corporation a public one, its managers, whether trustees or directors, must be not only appointed by public authority but *subject to its control*. This has been the Maryland law since the early case of *University of Maryland vs. Williams*, 9 G. & J. (Md.) 365, (dealing with the University of Maryland prior to its reorganization in 1920 when it became for the first time a governmental institution), and in the similar well known case of *Dartmouth College vs. Woodward*, 4 Wheat. 518, 671, it was said:

“When a corporation is said, at the bar, to be public, it is not merely meant that the whole community may be proper objects of the bounty, but that the government have the sole right as trustees of the public interest to regulate, control, and direct the corporation, and its funds, and its franchises at its own good will and pleasure.”

And this test has been reaffirmed and applied in subsequent cases. *St. Mary's School vs. Brown*, 45 Md. 310; *Clark vs. Maryland Institute*, 87 Md. 643; *Finan vs. M. & C. C. of Cumberland*, 154 Md. 563; *University of Maryland vs. Murray*, 169 Md. 478 (dealing with the University of Maryland after its reorganization in 1920), and the general law on the subject is to the same effect. 18 C. J. S. Corporations, s. 18, p. 394, et seq.; *Fletcher, Cyc. Corp.*, Vol. I, p. 194, et seq.; *Trustees vs. Indiana*, 14 How. 268, 276; *Prov. Eng. Co. vs. Downey Corp.*, 2d Cir. 294 F. 641; *Van Campen vs. Olean Gen. Hosp.*, 210 App. Div. 204 (N. Y.) 205 N. Y. S. 554.

There is nothing in the Acts of the Legislature of the State of Maryland or the Ordinances of Baltimore City relating to the Pratt Library to indicate any reserved right of control by the State or City in the management of the Library so long as its maintenance fund is used for the general purpose for which it was created. I do not understand counsel for the plaintiffs to contend that the State has itself directly reserved any such control in the Act creating the Library Corporation. The purpose and effect of the Act was merely to ratify and approve the agreement made between Mr. Pratt and the City and to give the necessary authority of the State to the City to carry out the agreement. While it would doubtless be competent for the State to create and maintain a public library corporation as a feature of public education, clearly the State has not undertaken to do so in this case. It has never contributed any money or property to the library; nor so far as I am aware, has it ever maintained any public library for general educational purposes or otherwise than for the benefit of the state government itself. See Maryland Code, Art. 41, ss. 106, et seq. In Maryland it is the county or city which is the political unit charged primarily with responsibility for public education, including the maintenance of public libraries. *Mills vs. Lowndes* (D. C. Md.) 26 F. Supp. 792; *Mills vs. Board of Education of Anne Arundel County* (D. C. Md.), 30 F. Supp. 245; Md. Code, Art. 77, ss. 162, 168, et seq. While Baltimore City has been authorized by the Legislature to make contributions to the Enoch Pratt Free Library, and to other libraries [See Baltimore City Charter and Public Local Laws 1938 s. 6 (14a)], the Pratt Library is not within the Department of Education of the City. This will readily appear from a comparison of the general provisions of the City Charter relating to the Department of Education (s. 128, et seq.) with the separate provisions therein relating to the Pratt Library [ss. 969-971, and 6(14a)].

It is also very clear from the evidence in this case (see particularly the testimony of Mr. Fallin, Budget Director of Baltimore City for many years) that the City has never

considered that it had any legal authority to control the internal management of the Library by its Board of Trustees; and has in fact never sought to exercise any such control. On the contrary when in 1934 a similar contention to that now advanced on behalf of the plaintiff was presented to the Mayor and referred by him to the City Solicitor, Mr. R. E. Lee Marshall, the then City Solicitor, gave an extended written opinion that the City had no legal right whatever to interfere with the internal management of the Library Corporation. After reviewing the applicable legislation Mr. Marshall's opinion succinctly summarized the matter as follows:

“As appears by the foregoing, the Library Corporation is a private Corporation insofar as the management and direction of its internal business and affairs are concerned. The fact that it is a quasi-public Corporation in all other respects does not change, or affect, its character as a private Corporation in matters relating to its internal management.”

The argument most stressed by counsel for the plaintiff is that Baltimore City has practical economical control over the Library by virtue of its large voluntary appropriations. But with this question the court is not concerned as the problem must be resolved on the basis of the legal right to control and not possible practical control through withholding appropriations. The latter is obviously a matter of policy for the City Authorities who are responsible to the suffrages of the voters of the City in that and other respects. Although the amount of voluntary appropriations by the City are now much larger than the guaranteed annual income for maintenance created under the agreement with Mr. Pratt, it is very clear from the Maryland cases that these voluntary appropriations, no matter how large comparatively, cannot affect the legal question as to where control lies in the internal management of the corporation. In the University of Maryland case, 9 G. & J. 398, above referred to, it was said in speaking of the character of the corporation there involved:

“If eleemosynary and private at first, no subsequent endowment of it by the State, could change its character and make it public.”

Private charitable corporations in Maryland are not made public agencies as a result of public appropriations for their benefit, but when such appropriations are made by a city or county in Maryland, there must be State legislative authority therefor. *St. Mary's School vs. Brown*, 45 Md. 310; *Finan vs. M. & C. C. of Cumberland*, 154 Md. 563. It has long been the practice in Maryland for the State itself to make very substantial appropriations to private charitable corporations. For illustration, see Maryland Acts of 1943, s. 710, p. 1104, et seq.

When in 1927 Baltimore City sought to condemn property for the new Library site and building as heretofore recounted, some of the affected property owners resisted the condemnation on the ground that it was the expressed purpose of the City to turn over the property when acquired for the use of the Enoch Pratt Library as a *private* corporation. In that case (*Johnson vs. Baltimore*, 158 Md. 93), the Court of Appeals held that the condemnation was valid as the City had authority to acquire land for library purposes which was a public use and therefore the interposed defense was not valid; and the Court did not find it necessary to adjudicate the question whether the Library Corporation was private or public, it being said that if there was foundation in fact for the contention that the City had no authority to turn over the property to a private corporation, that question could be subsequently raised in an appropriate proceeding. So far as I know there was no further contest in the matter.

It is argued that if the Library Corporation is held to be private and not public the Trustees could discriminate in the quality and quantity of free library services to the public between the white and colored races; but there is no tenable basis for this view. In Mr. Pratt's original letter of January 21, 1882, he said: “I have for some years contemplated establishing a Free Circulating Library *for the benefit of our*

whole City." (Italics supplied). And in the Enabling Act of 1882 it was recited in the preamble, "And Whereas, the plan thus proposed offers the means of perpetually promoting and diffusing knowledge and education among the people of the City of Baltimore." While the internal management of the corporation, including appointment of necessary officers and agents, was fully committed to Mr. Pratt's personally selected Trustees, it was further provided in Section 3 of the Enabling Act that the City should have a right to appoint a Visitor "who shall as often as once a year examine the books and accounts of said Trustees and make a report thereof to the Mayor and City Counsel of Baltimore; and said Mayor and City Council shall, in case of any abuse of their powers by said Trustees or their successors, have the right to resort to the proper courts to enforce the performance of the trusts hereby imposed on them." As a matter of fact it fully appears from the evidence in this case that the Trustees have been at all times highly sensible of the broad scope of their duties with respect to public services to the whole people of the City, and there has always been full and equal library facilities of all kinds offered to and availed of by the whole public without discrimination between classes or on account of race or color. Any one familiar with Baltimore City in the 80's would at once recognize the names of the Trustees selected by Mr. Pratt as outstanding citizens of Baltimore and men of the highest character, as may also be said of their successors now in office.³

The necessary conclusion of law is that in the appointment of Assistant Librarians and other agents and employes of the Library the Trustees have the right of selection without the restraints of the 14th Amendment or the federal statutes

³ In a letter dated October 1, 1884, from Mr. Pratt to the Trustees, after referring to the completion of the main Library building and four branches, he said:

"These, I think, are all accessible to the people, who, I hope, will avail of the advantages it is my wish to offer them, they being all, rich and poor, without distinction of race or color, who when properly accredited can take out the books, if they will handle them carefully and return them. * * * I now hand the management over to you, not doubting you will make all proper arrangements to carry out my wishes and make the Institution, what I wish for the people of Baltimore and State of Maryland."

relied upon by the plaintiff in this case. And it results that the plaintiff's complaint must be dismissed.

There is an additional feature of the case that must be noticed. T. Henderson Kerr, the father of the plaintiff, Louise Kerr, has also been joined as a party plaintiff in the case, and in the fourth count of the complaint, he advances the proposition that if the Library Corporation is not a public one, the action of the City in making voluntary appropriations for the Library from funds resulting from the general tax levy, is *ultra vires* and without due process of law to the injury and prejudice of himself as a substantial taxpayer, and therefore in alleged violation of the 14th Amendment of the Federal Constitution in that phrase of Section 1, which provides "nor shall any state deprive any person of life, liberty or property without due process of law;". The relief prayed for is an injunction against the City "from transferring to the Enoch Pratt Free Library of Baltimore, if a private corporation as aforesaid, any public moneys derived in part out of taxes levied against him in excess of \$100,000 annually." This relief is asked for only in the alternative, that is, on the condition that the court finds that the Library Corporation is a private and not a public corporation, and therefore if the plaintiff, Louise Kerr, is not entitled to the relief that she claims. The defendants ask for a dismissal of this fourth count of the complaint because (1) there is a misjoinder of plaintiffs and also of the defendants (as to the Mayor and City Council of Baltimore); (2) for lack of jurisdiction because there is no diversity of citizenship and no federal question substantially or sufficiently alleged, or (3) on the legal merits, in that the evidence does not show any lack of due process.

As to the alleged misjoinder of parties, the question is controlled by rules 20 and 21 of the Federal Rules of Civil Procedure. By rule 21, even if there is a misjoinder of parties, that is not a ground for dismissal of the whole action; but parties may be dropped by order of court on motion of any party or by the court on its own initiative at any stage of the action and on such terms as are just, and any claim against a party may be severed and proceeded with separate-

ly. Rule 20 deals with permissive joinder of parties, and one of the conditions is "if any question of law or fact common to all of them will arise in the action." The derivation of this rule is fully explained in Moore's Federal Practice, Vol. II, pp. 2164, et seq. The rule also provides in Section (b) that the court may order separate trials to prevent embarrassment or delay or unnecessary expense occasioned by the inclusion of a party, or may order separate trials or make other orders to prevent delay or prejudice. The rule should doubtless be liberally interpreted and applied in practice when consistent with convenience in disposition of litigation. Nevertheless it may be debatable whether there is or is not strictly speaking, a misjoinder of parties in this case. It is obvious that the plaintiff, Louise Kerr, has no interest in the fourth count of the complaint, and likewise the plaintiff, T. Henderson Kerr, has no interest in the first, second and third counts of the complaint, except insofar as a determination with respect thereto adverse to Louise Kerr may give rise to a right of action by T. Henderson Kerr, against the defendant, the Mayor and City Council of Baltimore, in which event the other defendants are not directly interested. However, as the main purpose of these two rules is for convenience in disposition of litigation and as the whole matter has been covered in the trial and argument, it seems unnecessary at this stage of the case to order separate trials or make other orders not dispositive of the whole case, by reason of the alleged misjoinder.

With respect to the point of jurisdiction, in the absence of any diversity of citizenship, the only basis for jurisdiction is the charge that the public moneys contributed by a taxpayer are being expended by the City without authority and therefore without due process of law as to him. The only factual basis alleged for this legal conclusion is that the City is without authority to make appropriations for the benefit of the Library Corporation, is, as has been determined heretofore in this opinion, the corporation is a private one and not performing governmental functions as representative of the State. It is urged by the defendants that this question is really one of state rather than federal law, and in the

absence of diversity of citizenship the court has no proper jurisdiction to determine it. And it may be argued that even if the federal question is literally alleged to exist it is unsubstantial. If this view is adopted the proper course would be to dismiss the count without prejudice. I should personally prefer to make that disposition of the fourth count as the matter is basically one of state law; but as a federal question is formally alleged and counsel for the plaintiff insists that the court does have jurisdiction, it seems necessary to consider the fourth count in that aspect.* So considered, I find no legal merit in the plaintiff's contention. By the Maryland law Baltimore City and the Counties, as municipal corporations of the State, may not validly make appropriations from public moneys for the benefit of private corporations unless duly authorized by the State Legislature, but when so authorized such appropriations when made to private corporations performing charitable functions are valid. *St. Mary's School vs. Brown*, 45 Md. 310; *Finan vs. M. & C. C. of Cumberland*, 154 Md. 563. As has been pointed out above the Maryland Legislature has expressly authorized Baltimore City to make appropriations to the Enoch Pratt Free Library [Baltimore City Charter, 1938, s. 6 (14a)]. It is obvious that the action of the City is not *ultra vires*. No provision of the Maryland Constitution is referred to by counsel, and none is known to the court, that would make the legislative authority invalid. Nor have counsel for the plaintiff cited any federal authority for the

* By the Act of Congress of 1937, c. 726, an additional sentence was added to what is now 28 USCA, s. 41 (1) reading as follows:

"Notwithstanding the foregoing provisions of this paragraph, no district court shall have jurisdiction of any suit to enjoin, suspend, or restrain the assessment, levy, or collection of any tax imposed by or pursuant to the laws of any State, where a plain, speedy and efficient remedy may be had at law or in equity in the courts of such State."

There is no doubt that the State law and practice includes a plain, speedy and efficient remedy in the Maryland courts in the instant case; but otherwise this prohibition of jurisdiction does not seem to include plaintiff's case as here stated because he is not attacking any present or future assessments or collection of taxes, but the paying over of tax moneys heretofore or hereafter collected, to the Library Corporation over and above the contractually guaranteed sum. Therefore even though liberally construed, as I think it should be, this particular statutory provision seems not applicable here. Cf. *Sears, Roebuck & Co. vs. Roddewig* (D. C. Iowa), 24 F. Supp. 321. As a preliminary injunction was not prayed for by the plaintiff, 28 USCA, s. 380, which requires a three-judge federal court in certain proceedings to enjoin the enforcement of state statutes also seems inapplicable.

proposition that the voluntary appropriations by the City take the plaintiff's property without due process. It results that the fourth count of the complaint must be dismissed generally.

Counsel may submit the appropriate judgment in due course.

TRANSCRIPT OF TESTIMONY.

2 The above cause came on for hearing before Dis-
 trict Judge W. Calvin Chesnut on February 24, 1944,
 at 10:45 a. m.

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5 **Dr. Joseph L. Wheeler**, one of the defendants, of
 lawful age, produced on behalf of the plaintiffs, hav-
 ing first been duly sworn, was examined and testified as
 follows:

6 *Direct examination*

By MR. HOUSTON:

Q. Your official position, Dr. Wheeler, is what? A. Librarian.

Q. Of the Enoch Pratt Free Library? A. Yes.

Q. As Librarian, do you come in contact with or function with the Board of Trustees in any way? A. Yes, continually.

Q. Do you sign the minutes of the Board of Trustees? A. No. When the Secretary of the Board, Mr. Stockbridge, is present, he naturally signs the minutes of the Board. If he is not present and I am, I sign as Secretary for him.

Q. You usually sit in with the Board in its meetings? A. Always, if I am available.

Q. How long have you been connected with the Enoch Pratt Free Library? A. Seventeen years and eight months.

Q. How long have you been Librarian? A. All that time.

7 Mr. Houston: Just to go back a little bit in the legislative history, if your Honor please, I should like to call your Honor's attention to the Laws of Maryland 1882, Chapter 181, March 30, 1882, pages 258-261 of the Laws. I think your Honor has a photostat copy in front of you. Pursuant to the power granted the Mayor and City Council in the Act of Legislature of 1882, Ordinance 106 of July 18, 1882, accepting the offer of Mr. Pratt, was enacted. Does your Honor have that photostat copy?

The Court: Yes, I have Ordinance 106. I was looking for the date.

Mr. Houston: July 18, 1882.

The Court: I suppose the exact date and year is unimportant?

Mr. Houston: It is unimportant.

The Court: That is followed by a deed from Enoch Pratt and wife to the Mayor and City Council of Baltimore.

Mr. Houston: Without making formal proof on each document, may it be considered that the documents referred to will be incorporated in the record without supporting evidence?

8 The Court: If agreeable to counsel.

Mr. Baetjer: Yes.

The Court: All right.

Mr. Houston: I then call your Honor's attention to the deed, of which you have a copy, from Mr. Pratt to the Mayor and City Council of Baltimore, conveying the property, and then I would call your Honor's attention to Ordinance 64 of May 14, 1883.

The Court: I do not seem to have that for the moment.

Mr. Baetjer: You don't have that, your Honor.

Mr. Houston: Then I will read that to the Court.

The Court: Ordinance what?

Mr. Houston: Ordinance 64, May 14, 1883. May I say to the Court that the provisions of Mr. Pratt's gift, the money gift, was \$833,333.33 and at six per cent that comes to just a few pennies under fifty thousand dollars, so that

fifty thousand dollars, which was to be the annual grant from the city for maintenance and for the construction of at least four branch libraries represented a six per cent return on the investment of \$833,333 at that time. Ordinance 64 makes provision for disposition of that \$833,333 as follows:

9 The Court: What are you reading from, the annual Ordinance?

Mr. Houston: Annual Ordinance 64.

The Court: Where did you get that, from the Baltimore Bar Library?

Mr. Houston: Yes.

The Court: You don't have a copy of it, Mr. Baetjer?

Mr. Baetjer: No, I didn't have that photostated. I will have it, your Honor.

The Court: Go ahead.

Mr. Baetjer: Ordinance 64 of May 14, 1883, Section 1, reads as follows:

“Be it enacted and ordained by the Mayor and City Council of Baltimore, That so soon as Enoch Pratt shall pay to the Mayor and City Council of Baltimore the sum of eight hundred and thirty-three thousand and three hundred and thirty-three dollars and thirty-three cents, according to the terms and provisions of Ordinance No. 106, approved July 15, 1882, it shall be the duty of the Commissioners of Finance to invest the same in Baltimore
10 city stock heretofore authorized to be issued at par as a sinking fund, to be known by the name of the ‘Enoch Pratt Free Library Sinking Fund’.”

I think, as far as I have been able to find out, that that closes the legislative history which surrounds the original grant; that is the date of construction of the building, the deeding of the building over to the Mayor and City Council of Baltimore; the payment over to the Mayor and City Council of the cash, \$833,333.33, and the provisions for its investment, so that it would produce almost fifty thousand dollars and thereby relieve the tax levy of the city.

Ordinance 145 of October 10th, 1884, provided for the appointment of a visitor for the Library. I was probably in error in saying that the ordinance, as I quoted before, closed the legislative history of the original grant because it was provided for the appointment of a visitor and Ordinance 145 of October 10, 1884, authorized the Mayor to appoint a visitor. I do not think that need be read.

By Mr. Houston:

11 Q. Now, about 1907, the records show, Dr. Wheeler, the gift from Andrew Carnegie, do they not? A. A half million dollars.

Q. For the purpose of erecting branch libraries on sites provided by the city? A. That is right.

Mr. Houston: In that connection, I would call attention to Ordinance 275 of May 11, 1907, pages 295-297, which deal with the Andrew Carnegie gift. Does your Honor have that Ordinance?

The Court: Yes, I have that before me.

Mr. Houston: I call your attention there, if your Honor please, that the Ordinance provides that there shall be no tax levy until there has been authorized by the Legislature—

The Court: All right.

Mr. Houston: That legislation was provided in the Laws of 1908, Chapter 144, which authorized the Mayor and City Council of Baltimore to make appropriations for the equipment and maintenance of a library. Does your Honor have that?

12 Mr. Baetjer: No, sir, you haven't.

The Court: No.

Mr. Houston: May I read it for your Honor's information? It is short. Laws of 1908, Chapter 144:

“AN ACT to add a new paragraph to section 6 of article 4, title ‘City of Baltimore’, of the Code of Public Local Laws of Maryland, sub-title ‘General Powers’, to be headed ‘Libraries’, and to come in immediately before the paragraph of said section 6 headed ‘Licenses.’

"SECTION 1. Be it enacted by the General Assembly of Maryland, That a new paragraph be and the same is hereby added to section 6 of article 4, title 'City of Baltimore', of the Code of Public Local Laws of Maryland, subtitle 'General Powers', to be headed 'Libraries', and to come in immediately before the paragraph of said section 6, headed 'Licenses', and to read as follows: Libraries—
 The Mayor and City Council is authorized and empowered to appropriate and pay over such sum or sums, as it shall
 13 from time to time deem proper, for the equipment, maintenance or support of the Enoch Pratt Free Library of Baltimore City, or of any other free public library in Baltimore City, or of the branches of the Enoch Pratt Library of Baltimore City, or of any other free public library in Baltimore City, provided, that the title or ownership of the property of every such library or branch is vested in the said Mayor and City Council of Baltimore.

"Sec. 2. And be it further enacted, That this Act shall take effect from the date of its passage.

"Approved March 30, 1908."

To make the record complete, I would call your Honor's attention to the fact that Ordinance 275 of May 11, 1907, which authorized acceptance of the Andrew Carnegie gift, was reenacted as Ordinance 249, April 23rd, 1920. The only point in the reenactment, as far as I can make a comparison, is simply that the condition about enabling legislation having been performed and the enabling legislation having been passed, the Ordinance was reordained without that condition. In other words, it stands the same with
 14 its substantive provisions as the former Ordinance and I do not think it, therefore, need be read.

By Mr. Houston:

Q. Now, Dr. Wheeler, did there come a time when the Central Branch of the Library was moved or enlarged from the original building provided by Mr. Pratt? A. Yes, I

don't recall what year but the Trustees of the Library acquired three properties facing on Cathedral Street adjoining the original Pratt building.

Mr. Houston: I call your Honor's attention to the Laws of 1927, Chapter 328, April 1, 1927, and I ask your Honor if you have a photostat copy of that?

Mr. Baetjer: You do not.

Mr. Houston: In substance, may it please the Court, without reading all of it, it provides that the Mayor and City Council of Baltimore shall be authorized to issue certificates of indebtedness of said corporation of an amount not exceeding three million dollars, said certificates of indebtedness to be issued from time to time in such amounts and bear such interest as the Mayor and City Council by ordinance from time to time shall provide and then it provides that no stock or bonds shall be issued until
 15 the issue has been ratified by the legal voters, and it is provided further that the three million dollars shall be for the acquisition of land and the construction thereon of a free public library in Baltimore City.

Pursuant to that enabling legislation, Ordinance 1053, April 13th, 1927, was ordained. Your Honor has a photostat copy of that ordinance, I believe.

Mr. Baetjer: 1195 is the only other ordinance I have had prepared.

Mr. Houston: Ordinance 1053 of April 13, 1927, starts out by reciting the enactment of the Laws of 1927, Chapter 328, which I have just called your Honor's attention to; provides for the issuance of certificates of indebtedness in the amount of three million dollars, provision for redemption in 35 yearly series, the first series amounting to \$86,000, provides for interest as may be determined—the certificates of indebtedness shall bear interest as may be determined by the Commissioners of Finance at the time any of the certificates are issued, and it provides also for a tax
 16 levy for meeting the obligations under the issue, for submission to the voters of the City of Baltimore,

and then in Sections 6 and 7, which I think are particularly important—for the purposes of this case—I read:

“Section 6. And be it further ordained, That the proceeds of the certificates of indebtedness, not exceeding their par value, hereby authorized to be issued shall be used for the acquisition, by purchase or condemnation, of land and construction thereon of a free public library in Baltimore City.

“Section 7. And be it further ordained, That in the expenditure of the proceeds of the certificates of indebtedness to accomplish the purposes herein provided the Mayor and City Council of Baltimore shall be controlled by the following conditions:

“1. The Board of Trustees of the Enoch Pratt Free Library of Baltimore City shall approve the site for the erection of the public library before such site is acquired by the Mayor and City Council of Baltimore.

“2. The Architectural Commission of Baltimore City, existing by virtue of Ordinance No. 243, approved January 25, 1909, shall employ an architect or architects, to
17 design, prepare, plan, lay out and supervise the erection and construction of the library building, and the compensation of said architect or architects for supervising the construction of said public library shall be fixed by the Board of Estimates and, together with the compensation of said architect or architects for designing and planning said building, shall be paid for out of the proceeds of the loan herein authorized.

“3. The plans and specifications for the library building when completed shall be approved by the Board of Trustees of the Enoch Pratt Free Library of Baltimore City prior to the final acceptance thereof, and the approval by the Board of Trustees shall be endorsed on said plans.

“Approved April 13, 1927.”

By Mr. Houston:

Q. Dr. Wheeler, at the time this Ordinance was passed, were you then Librarian of Enoch Pratt Free Library? A. I was, yes, sir.

Q. Did the Board of Trustees approve the site for the erection of a new building? A. They did.

Q. Did the Board of Trustees approve the plans and specifications for the building itself? A. They did, and endorsed the plans as it says there.

Q. Was the land for the new library building acquired out of this bond issue? A. Yes.

Q. Was the building erected out of the bond issue? A. It was.

Q. Was the building furnished out of the bond issue? A. It was.

Q. Are you now using that site, that building and equipment with its replacements and substitutions for the operation of the Enoch Pratt Free Library of Baltimore City? A. We are.

Q. And is the site, building and equipment paid for out of public funds? A. It is paid out of the three million dollar loan which was voted by the people of Baltimore by a majority of fifty thousand, and there was a balance of about \$75,000 which the Trustees were able to save in the construction and preparation of the building and that reverted to the city.

Q. The books in the library, you say, approximate how many? A. In the whole library system?

Q. Yes. A. Approximately 800,000.

Q. And of that 800,000, since you have been the Librarian, would you estimate the majority have been purchased out of public funds? A. That is a hard question to answer offhand without looking through the records. The question is whether a majority of the present book stock was bought out of public funds? Yes, I think so.

Q. In addition to the Central Library, you operate how many branches? A. Twenty-six now.

Q. How many branch buildings were constructed out of the Carnegie gift, if you remember? A. I would say twelve.

20 Q. Are all of the twenty-six branches on land which is owned by the Mayor and City Council of Baltimore? A. Every piece of property that is in the control of the Board of Trustees of the Enoch Pratt Library is owned by the Mayor and City Council and they hold the title to all that property. The Mayor and City Council own or have the title to all property under the control of the Pratt Library Trustees.

Q. The Pratt Library Trustees own no property, is that correct?

The Court: How about the books?

The Witness: The Mayor and City Council have the title to the books and all properties of the library.

By Mr. Houston:

Q. I say, the Trustees of the Enoch Pratt Free Library, the corporation, owns no property? A. That is a technicality that I can not answer with assurance, but I would say no, they own no property.

The Court: How is the title to the books gotten into the city?

21 The Witness: As far as I know, your Honor, only by the wording of these enabling acts and ordinances which have been read here, which make that statement. As far as I know, the Trustees have no possession of property as Trustees. Does that answer the question?

By Mr. Houston:

Q. Yes. A. There may be some technicality about that that I do not understand, but I think that is correct.

Mr. Houston: If the Court please, I am not trying to be technical. What I am trying to establish is the fact that this corporation is really operating under public grant, in a public building with public equipment, a free public library for the City of Baltimore.

Q. As a matter of fact, Dr. Wheeler, where the Library receives a gift, where the Library Trustees receive a gift, they, in turn, turn the property over to the city, do they not? A. They do as far as books and any such things are concerned, but in the case of two or three endowments and two or three gift funds, they have been kept in the accounts of the Library itself.

22 Q. But when those funds have been used and purchases have been made out of the funds, then the title reverts to the city? A. That is right.

Q. So that the only thing that the Trustees hold would be such gifts up to the time when they are incorporated into the library service itself? A. I would say that is a correct statement.

Q. Dr. Wheeler, in proportion to the total expenditures of the Library, how much would you say the Library now has or has had on an average—this is just roughly—from these private gifts as distinguished from city grants? A. Well, during the last three or four years, during which these gifts have been mostly received, I would say the average income during three or four years might be as much as six or eight thousand dollars.

Q. That is against a total library budget expenditure of how much? A. The total library appropriation for 1943 was \$511,575.

23 Q. In other words, it is roughly about one per cent, between one and two per cent? A. That is right.

Q. So that if the Library, if the Trustees of the Enoch Pratt Free Library were not able to operate on city property, in a city building, with city equipment, and with money appropriated by the city for current running expenses, they would have no adequate funds with which to carry out the purposes of the corporation? A. You would have to put in the word "adequate" because you have already recited the \$50,000 annuity from the Pratt setup and also the obligation which the city made to put up \$50,000 a year in addition for the support of the Carnegie branches.

Q. So that you have \$50,000 annual income as a contribution of the city in consideration of Mr. Pratt's gift, you have a provision in the ordinance that the city should spend at least ten per cent of the Carnegie gift per year in maintenance of the branches erected out of the Carnegie gift and you have about six per cent of the \$6,000 income from private gifts, making \$106,000. Could you operate the

Central Branch on \$106,000 per year as it is now
24 operated? A. No.

Q. Would the branch libraries, if you took out the Central Branch, be able to function effectively? A. If you spent all your money on the Central, obviously, the twenty-six branches would fold up.

Q. The point is, you could not operate the Central as now operated on \$106,000 a year? A. That is true.

Q. So that you would have everything folding up or reduced down to a very inadequate scale? A. That is true.

Mr. Houston: I call your Honor's attention to Ordinance 559, December 7, 1928. I do not think your Honor has that, does he, Mr. Baetjer?

Mr. Baetjer: You do not.

Mr. Houston: That Ordinance was approved on December 7, 1928, and provides for the acquisition by purchase or condemnation of a site for a public library in the City of Baltimore, "the fee simple title to the following lots or parcels of ground situate in said city in the block bounded
by Franklin Street, Cathedral Street, Mulberry
25 Street and Park Avenue, that is to say:

"1. All that lot or parcel of ground lying and being at the southwest corner of Franklin and Cathedral Streets, the improvements on which are known as No. 101 West Franklin Street.

"2. All that lot or parcel of ground fronting on Cathedral Street, the improvements on which are known as No. 410 Cathedral Street.

"3. All that lot or parcel of ground fronting on Cathedral Street, the improvements on which are known as No. 412 Cathedral Street.

“Section 2. And be it further ordained, That the City Solicitor is hereby authorized and directed to acquire the fee simple title to said lots or parcels of ground for the Mayor and City Council of Baltimore for a site for a free public library, and if he is unable to agree with the owner or owners of said lots or parcels of ground, he is hereby authorized and directed to institute the necessary legal proceedings in the name of the Mayor and City Council of Baltimore to condemn said lots or parcels of ground for said purpose.

26 “Section 3. And be it further ordained, That this ordinance shall take effect from the date of its passage.

“Approved December 7, 1928.”

By Mr. Houston:

Q. Do those boundaries indicated in this ordinance represent the boundaries of the New Central Branch Library?
 A. No, they represent the boundaries of one property that was formerly owned by Dr. Johnson on the corner of Cathedral and Franklin Streets, which had to be acquired and there were two adjoining properties facing on Franklin. All of those were bought out of the loan. They were bought by the Mayor and City Council through the City Solicitor's Office.

Mr. Houston: I should like to call your Honor's attention to a famous case which grew out of this litigation, the case of *Johnson vs. Mayor and City Council of Baltimore*, 158 Md. 93, decided January 7, 1930.

The Court: The Court of Appeals held the city had the right to condemn the land.

Mr. Houston: I am just citing that as a part of the history, developing the history of the Library, and
 27 calling your Honor's attention also to the fact that the Court refused to decide the question of the operation of that free public library by the Enoch Pratt Free Library Corporation. It said that that was a matter which

involved the future act of the city, with the presumption that the city would do no illegal act and if anybody thought he would be aggrieved by turning over a site for the Library, that point could be raised at the proper time in the proper manner.

The Court: Nobody has ever raised it, have they?

Mr. Houston: It may incidentally be raised in this case.

Mr. Baetjer: Will not be raised of record, I don't think.

Mr. Houston: I hope not. I hope we will get a construction which will obviate that necessity. I should like to call your Honor's attention, however, to page 105, in which that point is discussed in the case itself.

The next ordinance in the legislative history is Ordinance No. 1195, December 16, 1930, which your Honor has.

28 The Court: I don't know whether I have or not.

Mr. Baetjer: Yes, you have that one.

Mr. Houston: Ordinance 1195, December 16, 1930.

The Court: I am quite unconscious of having it, Mr. Baetjer.

Mr. Baetjer: I have copies. I thought I attached mine. I had copies, white copies, for your Honor, and two copies for myself.

The Court: I would very much rather have the white copies but if you want to discriminate against me, all right.

Mr. Baetjer: I thought you always liked the first copies.

The Court: No, I think the other way. I think it is perfectly terrible on the eyes to try to read white on black. It is quite possible there is also less inconvenience to read black on white. This is all white on black and I can not very well read it.

Mr. Houston: Will you take the book itself?

The Court: Yes.

29 Mr. Houston: May I have the photostat copy? I think the important part of that Ordinance, may please your Honor, it incorporates the newly acquired land and the original site of the Library which Mr. Pratt conveyed to the city into one parcel or into one site

and preparation for raising the buildings on the different parcels, erecting of a suitable building for a free public library into another side and then Section 3, "That when said building is completed, the Enoch Pratt Free Library of Baltimore City shall be installed therein for the purpose of maintaining and conducting and operating a free public library for the purpose of promulgating, promoting and diffusing knowledge and education among the people of the City of Baltimore."

By Mr. Houston:

Q. Now, I think you testified, Dr. Wheeler, that when that library building was completed, the Trustees of the Enoch Pratt Free Library received the same from the city and have since that time operated the Enoch Pratt Free Library Central Branch on the premises? A. That is true, correct.

30 Mr. Houston: The next law I wish to call your Honor's attention to is the Law of 1939, Chapter 16, which provides for the extension of the pension system to the employes of the Enoch Pratt Free Library, "to provide by ordinance for granting to the officers, agents, servants and employees of the Enoch Pratt Free Library, the Walters Art Gallery, the Baltimore Museum of Art, and the Municipal Museum of Baltimore, any of the benefits and advantages of the Employees' Retirement System of the City of Baltimore and specifying the credits which may be allowed said officers, agents, servants and employees for prior service."

Pursuant to that enabling act, Ordinance 961 of May 29, 1939, was ordained, which provided for extension of the pension system to the Enoch Pratt Free Library employes and contributions by the city.

By Mr. Houston:

Q. Dr. Wheeler, is the money which is paid by the city on account of the bond issue either by way of interest or

retirement charged to the library budget? A. No, it is appropriated to the Pension Board as part of their
31 budget and does not appear in our library budget.

The Court: This is a very large room, Dr. Wheeler, and you will have to speak louder if you want us to hear. I hear pretty well, but I am closer to you than the others.

By Mr. Houston:

Q. I think I unintentionally confused you. I am going back to the \$3,000,000 bond issue and there are certain city taxes provided to pay the interest on the bond issue and certain retirements. My question is, is the tax money so appropriated for the interest and retirement features of that bond issue charged to your library budget? A. No.

Mr. Davis: I don't think you would know that, would you?

Mr. Houston: I think he would.

The Witness: I know the answer. My answer is, No, they are not a part of the library budget.

By Mr. Houston:

Q. The contributions of the city to the pension system are not part of the library budget? A. That's correct.

32 Q. Will you give me again the figure of the Library budget? A. The tax appropriated for 1943 was \$511,575.

Q. So that the \$511,575 appropriated for the operation of the Library is over and above the tax money expended for interest and retirement of the bonds and for the contribution of the city to the pension system as far as the benefits to the Library employes are concerned? A. That's right.

Q. That figure, \$511,575, does that include the \$50,000 which the city obligated itself to pay as an annuity under Mr. Pratt's gift? A. No.

Q. So that the actual money appropriated by the city, does it include also the money which it obligated itself to appropriate under the Carnegie gift? A. Yes, it does.

Q. So that the \$511,575 appropriated for 1943 by the City of Baltimore is over and above \$50,000, the annuity under the Pratt gift, contribution of the city to interest and retirement on the bond issue, and the contribution of
33 the city to the pension system for benefits of the Library employes? A. All of that is correct, yes, sir.

Q. The Library employes have been incorporated into the municipal salary scheme? A. That is true.

Q. Will you please explain the operation of that and what was the source of the authority? A. Well, as I recall, in 1941 Mayor Jackson appointed a committee of which the city budget director was chairman, to draw up a salary scheme so that all the departments of the city, and also the employes of those various institutions which you recently recited, would be incorporated. The Pratt Library staff was incorporated, and the legislation for that, as I recall, was in the form of an ordinance of the Mayor and City Council of Baltimore, and that had, as I recall, been previously approved by the Board of Estimates before it went to the Council to be made into the ordinance. Does that answer your question?

Q. I think it does.

The Court: It does not answer it for me, because
34 I do not understand just what you are saying or implying. Do you mean that the salaries of the employes of the Library are fixed by the Board of Estimates in the city budget, and not by the Trustees of the Library?

The Witness: Well, your Honor, no, I did not intend to give that impression. In the first place, the Board of Trustees of the Library prepares a budget for the ensuing year and presents that to the Board of Estimates as a basis for the appropriation. The individual salaries, as we expect they will be the following January 1st, are incorporated as

separate items in that budget. Now, the salaries that are paid to the individuals are based on the city salary scale, which counsel have just inquired about, and I understood his question to be what the history of that salary scale is.

The Court: The question is, who determines what shall be paid to the employes of the Library, including yourself as Librarian.

The Witness: The Trustees of the Library decide upon the salaries, provided the salaries are within the range of the city salary scale as provided for different types of employment.

By Mr. Houston:

Q. That is to say, a stenographer in the employment or service of the Trustees of the Enoch Pratt Free Library would get the same salary as the stenographer of the same grade and qualification employed by the municipality? A. Yes, your Honor, she will be classified in the same salary grade as her qualifications would entitle her to if employed in some city department.

The Court: What is the ordinance or law that establishes that?

Mr. Houston: I would say I looked for it and haven't found it. I tried to run the legislative history down and that is one of the links.

The Court: I think if you are making a point of it, if you think it is important it will have to be shown by some official who knows what it is. I do not think Mr. Wheeler is any more competent to answer questions about that than possibly yourself or myself or other counsel in the case.

36 Mr. Houston: We have subpoenaed the city officials at a later date but I wanted to exhaust Mr. Wheeler's knowledge on the point.

The Court: He hasn't any, as far as I can see.

By Mr. Houston:

Q. Are the Library employes paid by city check? A. Yes, the checks are issued from the city payroll office.

Q. Signed by the Mayor and City Council—I don't mean that, but signed by the Mayor— A. Signed by the Mayor and City Council of Baltimore and by the payroll officer.

Mr. Davis: Not by the Mayor.

The Witness: Not individually by the Mayor.

Mr. Davis: The accounting office will tell you that and give you the whole story of it, if you want.

By Mr. Houston:

Q. They are paid by city check? A. That's right.

Mr. Davis: Paid through the central payroll bureau.

The Court: What do you mean, Mr. Davis?

37 Mr. Davis: What happens, Dr. Wheeler's salary is fixed by the Board of Trustees of the Pratt Library and every other salary, but they try to conform to a salary schedule set up by the Mayor and City Council of Baltimore. The funds are appropriated in the annual ordinance of estimates, so much to the Pratt Library. That amount of money is not turned over to the Pratt Library. As a matter of convenience, it is disbursed in total monthly or semi-monthly to the disbursing officers, which is the central payroll bureau.

The Court: I think that is a very different picture from what one would get from what Mr. Wheeler previously said, and I thought possibly he was familiar with the matter if not covered by ordinance.

Mr. Davis: Mr. Fallon will be on the stand. I did not want to object, but I thought it went a little far.

The Court: Go ahead.

By Mr. Houston:

Q. In the operation of the Library, Mr. Wheeler, certain fines are collected on books loaned out on overtime? A. That's correct.

38 Q. Is the money from those fines retained by the Trustees of the Enoch Pratt Free Library in its treasury, or handed into the city treasury? A. It is handed back into the city treasury.

Q. Your bills for heat and light, are they paid out of the treasury of the Enoch Pratt Free Library, or paid by the city? A. All of the checks drawn on the appropriation for the Library are drawn from the city disbursing office.

The Court: Just a minute. How does it come about that the fines that are imposed for delayed return of books go to the city? That is to say, in the first place, what is the underlying authority to impose the fines for late return of books? Is there any Act of the Legislature or Ordinance of the city to impose any such fines?

A. Well, your Honor, I am sorry I do not know the history.

Q. Fines were established, were they not, back in 1882?

A. That is correct.

39 Q. When the Library was first opened? A. That's correct.

Q. And by whom were they established, do you know? You were not here then, were you? A. No, I am not positive, but I think they were established by the Board of Trustees.

Q. Has there been any public act dealing with the subject of fines that you know of? A. Not to my knowledge, no.

Q. Why is it you turn over the fines to the city? What is the history or origin of it? A. I should say one of the reasons is that in the budget which the Trustees prepare and submit to the Board of Estimates, they list there the expected receipts for the following year, and among those receipts are the expected book fines, as they call them.

Q. What is the rate of fines for late return of books? A. Two cents a day.

Q. That has been so ever since 1882, hasn't it? A. As far as I know.

Q. As long as you have been there that has been
40 the fine? A. That is true, your Honor.

The Court: You see, counsel, some of us are of sufficient age to remember the opening of the Pratt Library, and some of us were subscribers or borrowers of books, and I suppose some of us got fined.

By Mr. Houston:

Q. As a matter of fact, Dr. Wheeler, what account does the Treasurer of the Trustees of the Enoch Pratt Free Library pay out of the treasury of the Trustees? A. Well, the Treasurer of the Pratt Library disburses the moneys in those various gifts and endowment funds which I referred to a few moments ago.

Q. Would you say, the, would it be fair to say that out of the \$511,575, plus the \$50,000 annuity in the Pratt gift, the treasury of the Trustees of the Enoch Pratt Free Library would dispose of approximately around \$6,000 only? A. Well, I would say, maybe six or ten thousand dollars, depending on what year it is.

By the Court:

Q. Who authorizes the disbursement of the money?
41 A. The Board of Trustees authorizes the Treasurer to dispose of the money from those special funds.

Q. How does the Treasurer go about it? Counsel asked you in substance whether it is paid by the city, but what is the mechanics of it? If you buy a book who authorizes you to buy the book? A. Are you speaking of a book purchased from the book appropriation, or a gift?

Q. I am asking you where you, as Librarian, where your authority comes from? A. The Board of Trustees.

Q. You have general authority to buy books. When you buy a book, how is it paid for? A. If the purchase is made from the regular appropriated money, the bills are prepared in our business office and transmitted to the city disbursing office, and the check is there issued.

Q. In other words, as Mr. Davis explained, the moneys appropriated by the city are held by the city and disbursed by the city on orders coming from the Pratt Library? A.

That is correct, your Honor, and in the case of purchases made from these gift funds, the payment is made by checks drawn upon the bank funds of the Library by our Treasurer.

The Court: All right, go ahead.

Mr. Houston: I just wanted to find some notes, if your Honor please.

By the Court:

Q. Who is the Treasurer of the Trustees? A. Mr. Blanchard Randall, Jr.

Q. Is he a member of the Board? A. Yes, sir.

By Mr. Houston:

Q. Dr. Wheeler, you have been personally familiar with the minutes of the Executive Committee of the Board and the Board of Trustees since 1930, have you not? A. That's correct.

Q. Will you get those minutes so we can refer to them? Will you take both the Executive Committee minutes and also the Trustees' minutes, and if you will take them to the table, perhaps that will be more convenient.

Mr. Baetjer: We borrowed the loose leaf sheets of the last three meetings, and they are probably not complete. The last three meetings have not been put in the book.

The Court: Which ones do you want to refer to?

Mr. Houston: I have several, running from 1932 right down to 1943.

The Court: Is it possible I have to listen to ten years of minutes?

Mr. Houston: No, sir. The extracts—you asked what period. In other words, I am covering approximately an eleven year period.

The Court: Very well, go ahead.

By Mr. Houston:

Q. Can you find them? Dr. Wheeler, about 1928, the Library inaugurated a training course, did it not, library training course? A. That is correct, yes.

The Court: What year is that?

Mr. Houston: About 1928.

The Witness: It was in 1928.

Q. The training course is given by whom, taught
44 by whom? A. The training class director and department head of the Pratt Library.

Q. Their salaries are paid from what funds? A. Our regular appropriations.

Q. In other words, moneys received from the Mayor and City Council of Baltimore? A. Yes, except that those two special funds are included, namely, the Pratt and Carnegie, they are part of the money set out in the city disbursing office.

Q. But no special allocation is made? A. That is correct, they are all——

The Court: Pardon me a moment. I would like to know more about the training course, because I think that is probably a very important issue in the case. What is the training course, who originated it, how did it come about, what has been its history?

A. The training course at Pratt Library was established by action of the Board of Trustees in 1928 in order that we might prepare persons living in Baltimore or the immediate vicinity for general service in the Pratt Library, so that
45 they could give better service to the patrons of the Library than we had been able to give in the past.

That has been continued each year since.

Q. Is there any resolution or original order or minute of the Board of Trustees establishing the training course, or how does that come about? Was it by verbal direction made to you or the result of general discussion by the Board in your presence, or did you suggest it to the Board?

In other words, I want to know the genesis of it, the birth of it, the rearing of it and the final development of it to maturity, if it has one yet. A. I did suggest to the Board of Trustees that they authorize a training course be established in 1928 for the reason I spoke of. I have had no occasion to go back in the records, but I am quite sure that the Trustees, by resolution of the Board, did officially create or authorize me to start a training course.

Q. Now, stop there. Has anybody been able to find such resolution?

Mr. Baetjer: No, sir.

Mr. Houston: I haven't.

46 The Witness: Did you look for it?

Mr. Houston: I did look for it, very hastily.

Mr. Baetjer: I looked for it and haven't found it.

Mr. Houston: I will make another search at recess.

By the Court:

Q. You think there was a resolution. It was your recommendation verbally to the Board back in 1928? A. That's correct, your Honor.

Q. And they authorized you to establish a training course. Was there anything more at that time? Were the plans for it defined, were they limited or not; that is to say, was there any inclusion or exclusion at that time of any particular person or classes of persons? Tell me all about it, I really want to know what the matter is.

The Witness: Your Honor, as I recall, the Trustees authorized me to proceed with the training course and we then found the best person to become the director of the training course, and we also proceeded to assemble the most promising candidates, and at the beginning of the first year's training class, we held a competitive examination, and we have held a competitive examination for admission to this training class ever since. We have given an examination in June, and a second examination in September of each year.

47

Q. Is the examination to enter the class or to graduate from the class? A. No, this is to enter the class, because there are a great many persons who do not have the knowledge and abilities that we require for our staff. I am quite sure that the Trustees at no time have given any instructions to me as to what class or what people or type of people should be admitted, but these questions of admission have been left to the Librarian and the executives of the Library to decide according to their judgment, as to what would be the best for the Library. I mean the ability of each applicant would be borne out by the examination and the personal qualifications of each candidate would be brought out by interviews which the candidates have with various members of our staff as to their personality and how they would get along with the public.

Now, the class has been maintained ever since and has started in September and finished in June of each year, until 1942, at which time it became evident that we would have to have an additional training class, so that in August, 1943, instead of September, we started a training class which graduated on January 5, 1944, and our intention has been to have another training class start immediately and to conclude this coming summer.

Q. Are there any written requirements for entering one of your training classes? A. Yes, the requirements are publicized in a booklet which is issued each year, setting forth the high qualifications, and explaining to them in general we should prefer college graduates, but we do not make a rule limiting admission to college graduates, because we have found some exceptional persons who did not happen to be college graduates.

The Court: Have counsel the book referred to?

Mr. Baetjer: I have the reports.

Mr. Houston: I have the reports, and some announcements.

Mr. Baetjer: The wording is slightly different, but substantially the same over a period of years.

By the Court:

49 Q. Is there any fee required from a person entering this training course? A. On the contrary, your Honor, the training course of the Pratt Library, I should explain one of the fundamental principles involved is that this is not a regular library school. This is a training class in order to prepare persons to be employes of the Enoch Pratt Free Library itself, and one admitted to the training course has an understanding with us that they will complete the course, and if we consider they are qualified to complete it and upon graduation from the training course, they will be appointed to the Pratt Library staff if we think at that time they are suitable. They are under obligation to join our staff after finishing the training, provided we think they are competent.

Q. Are you under obligation to employ them? A. No, we are not under obligation, but, as a matter of fact, all the competent persons who have been graduated have been employed in the Library.

Q. In what positions are they employed? What are they employed to do? A. Generally, they are employed
50 to work in positions which we designate as "library assistants", and their duty is to work with the public in helping them find what they want and seeing that the public wants the proper books; in other words, what we call professional positions as contrasted with clerical positions.

Q. Are they more than library assistants? For instance, to illustrate what I mean, a person desires to borrow a book and take it out from your library. He goes to a certain desk and fills out a card. Of course, there has to be a library assistant to get the book from the stacks. Is that the position you are referring to? A. The act of charging or discharging a book, as we call it, is something we expect our clerical assistants to handle, but the professional people have to do it and are trained to do it if they have to.

Q. In other words, the positions you are training for in the training courses are more advanced with respect to the knowledge of books than the mere physical act of getting a book from a shelf and giving it to a borrower? A. Your Honor, it is a question of book knowledge and the ability of the staff to help the public find what it wants.

51 Q. How many such positions have you? A. I should say perhaps 140 or 150.

Q. Is there much of a turnover in that from time to time? A. Yes, there is always a turnover, and we gauge the size of the training class by the number of vacancies which will occur during the ensuing year.

Q. Is there an average size or number in these training classes? A. We try to recruit classes of 15 to 18 students in normal days, but during the war I think the turnover has been greater.

(Thereupon, at 11:55 a. m. a short recess was taken.)

The Court: Now, Mr. Houston, you may proceed.

By Mr. Houston:

Q. Dr. Wheeler, during the time that the trainees or part of the trainees are taking the course, they receive compensation, do they not? A. Yes, the amount and the
52 number of months for which compensation is given has varied according to the economic situation from year to year.

By the Court:

Q. What do you mean by that? A. Your Honor, we have been paying \$40 a month to the members of the training class because, as I started to point out, our training class is not like a library school, and it makes provision for certain practical work to be done in the afternoons. This work would otherwise have to be done by untrained substitutes, particularly in our branch libraries. Therefore, we are justified in paying members of the class for the time they give after the first month or two, when they become

familiar with it. They, therefore, begin to serve the public as trainees, but with ability fairly equal, or probably in all cases, superior to that of the untrained substitutes whom we otherwise would have to employ to cover our busiest hours in the system. Does that answer your question?

Q. By the economic situation, what do you mean by that?

A. During the war period we can not—I believe beginning in 1942 we started to pay the members of the class at the end of the first month instead of at the first two months, and in 1943 we began to pay them \$50 a month beginning two weeks after the class started.

By Mr. Houston:

Q. And they are paid out of the same appropriations, out of the general appropriation? A. Yes, not only that, but their checks are issued as part of our regular pay checks from the city payroll office.

Q. Now, I ask you to turn to that announcement of 1929-1930. I think that is the one I first gave you. Will you state what the specifications for admission were at that time?

The Court: What year is this?

Mr. Houston: 1929-30.

The Witness: You mean

Q. Well, no, I am talking about— A. Requirements for admission?

Q. Yes. A. Well, in the circular of information, your Honor, which was published in the summer of 1929, that would have been for the second training course, we published this statement as to requirement for admission: "Education. A high school diploma is a requisite for admission to the training course. College or normal school training is desirable, however, as formal education supplies the best possible background for library work." Do you want any more?

Q. About the qualifications educationally? A. "General qualifications. Only those should seek admission to the training course who are interested in the work of an

institution whose purpose is to give the best service to the greatest number of citizens, and who are prepared for and like hard work. Initiative, enthusiasm, and devoted purpose are requisite. Those who are merely 'seeking a job' and who think that 'library work is easy', or who have proved for other types of work, need not apply. Library work requires the best of health.

"Entrance examination. All applicants are required to take a competitive entrance examination. This examination consists of the following:"

Q. You need not read the details. Your Honor, without reading any more I should like to introduce this pamphlet.

The Court: Pass it up, please.

55 (Circular of Information on Training Course marked, "Plaintiffs' Exhibit 1").

The Court: Who established these requirements and formulated this circular?

The Witness: I should say, your Honor, that I did. I mean I take the responsibility, and, as I recall, did not report back any of these details to the Trustees. When I say that I did, of course, I mean that I did in consultation with various department heads and the training course director, and other executives of the Library.

The Court: All right.

By Mr. Houston:

Q. In order to save the record, might I ask Dr. Wheeler if, substantially, the same qualifications have been brought down to date? A. Yes, as far as paper qualifications are concerned, but the standards in our code of admission in the training classes have been raised each year, so that I would say that at the present time we require an even higher type of candidate or student than we did at the beginning, and I might illustrate that by the fact that

56 when the training class was graduated in 1944, all the students were college graduates.

Q. In that time, the training class has been continued from 1928 down to date, is that correct? A. That's correct.

Q. In that course of time, has any person known to be a Negro ever been admitted? A. No.

Q. Has any person known to be a Negro ever been permitted to take the examination? A. No.

Q. Have Negroes applied for admission to the course? A. They have, yes.

Q. Have Negroes applied for admission to the course whose qualifications, apart from their race, would have been in the range of acceptable students?

Mr. Baetjer: If you know.

Mr. Houston: Yes, if you know.

The Witness: My reply on that would be that I could not give a flat answer on that because we made no effort to find out about the qualifications of those students.

57 Q. As a matter of fact, Miss Jean Adams made application? A. Yes.

Mr. Baetjer: She is not a party to this suit.

Mr. Houston: That makes no difference. I am talking about his admission of Negroes and whether he knew that Negroes who have applied have met the standards.

The Court: I think you can answer that. You better be more specific, however, about the date and what he knows about it personally.

Mr. Houston: We discussed this application, your Honor.

The Witness: This person, Miss Jean Adams, first made an application to be admitted to our training course, showed upon her application that she had already had library training and also had had some experience as a librarian in the Mississippi Agricultural College. She had taken special library training there, and served as librarian of the Agricultural College for one year, and we, therefore, considered her not as an applicant for the training course, but as this happened after the Board of Trustees

58 had, by resolution, authorized the Librarian to appoint colored assistants at one of our branches, we considered her as an applicant for one of those positions at that branch.

The Court: What year was that?

The Witness: September, 1942.

By Mr. Houston:

Q. Do you know anything about the library course at Mississippi Agricultural College? A. Well, I imagine it covers the rudiments of library work.

Q. Not imagine, do you know anything about the library course at Mississippi Agricultural College? A. No, I can't say that I know in detail about the course.

Q. Did you make any investigation? A. No, not that I recall.

Q. You organized your course in accordance with the standard requirements set up for membership by the American Library Association, didn't you? A. At that time the American Library Association was promulgating standards for training classes, but during the inter-
59 vening years they have discontinued that and pay no attention to training classes like ours.

Q. But when you set that training class up, you set it up according to the standards set up by the Board of Education of the American Library Association? A. Yes.

Q. Did you make any investigation to find out whether the Mississippi Agricultural course met those standards? A. No, but I assumed that they did.

The Court: I think you better tell us, Dr. Wheeler, a little more definitely what you know about this case. What is her name, the Adams person?

The Witness: Miss Jean Adams. My recollection is that she applied about the time the Trustees were considering the matter of appointing colored assistants at our Branch No. 1, which is patronized almost a hundred per cent by colored people.

Q. Where is that branch? A. Fremont and Pitcher streets. The requirements of the American Library Association were met, because in our training classes we have always laid a great deal of weight on the subject of book knowledge instead of mechanics, and we have a very high class training class at Pratt Library as compared with training courses given in some of the other libraries, but the distinction between the training class and the regular library school is that the training class, like ours, is designed primarily and only for preparation for positions in our own system, and it does not attempt, in fact, the understanding we have with the students furthermore is that they are not preparing themselves for library work in general, or for positions elsewhere. We do not undertake to train people for library work in general, and we do not expect them to take positions elsewhere until they have at least spent a year on the staff of the Pratt Library, the hope being that they will continue.

Q. I must bring you back to the particular case. Did the applicant apply to you personally for admission to the training class and, if so, did you interview her, and what qualifications did you find, in your judgment, she had, and, if she was not admitted, why was she not admitted? A.

Your Honor, I have the original application from Miss Adams, dated September 3, 1942, and I have no recollection as to whether I interviewed her personally, but the probability is that I did. I mean, if she should stand up here, I might not recognize or recall the individual, but I have the original application and, as it says here, she had taken a library school training in a school in Florida instead of Mississippi, the Florida Agriculture and Mechanical College, in 1940-41, and she had served as librarian of the school in the years '40-'41. Under those circumstances—

The Court: Just a minute. You say you have no personal recollection of talking to her? A. That's right.

Q. Did you have any written communication with her that would apply to her application? A. Yes, your Honor, we had some written communication with her.

Q. Did the matter come before the Board of Trustees at all? A. Not as an individual case, your Honor. On September 21, 1942, I wrote to Miss Adams that I would
62 appreciate having her come to the Library. That was two or three weeks after she made the application—to have a personal interview with members of our committee on appointments. The committee on appointments—that is the committee which has to do with appointments to positions in the Library, and is not a committee on admission to the training class, which has to do with whether people will be admitted to the training class.

Q. Just read the letter you wrote her. A. “I’d appreciate it if you would come to the Library at your early convenience to have personnel interviews with the members of our committee on appointments, and I would also ask that you stop at Branch 1, after telephoning Madison 0756 and making an appointment with Miss Martignoni, the librarian there, who will talk with you and perhaps have you do a day or two of work for a try-out.

“Also, and most important, please report on the third floor of the Central Library Building at one o’clock on Saturday, September 26th, for a written competitive examination which will be given to candidates for appointment to a position at our Fremont and Pitcher street
63 branch.”

Q. What happened after that? A. Well, Miss Adams did appear at the examination on the 26th and was one of four applicants for the position of assistant at the Fremont and Pitcher street branch, and she was not one of the four finally appointed. There were three other colored girls who had qualifications we considered good enough to admit to the competitive examination, and we then appointed a colored girl named Iona Wood Collars.

By Mr. Houston:

Q. If Miss Adams was not good enough for appointment to the staff, but at the same time met the requirements to enter the staff examination, she also met the requirements for the training class, didn't she? A. Well, the answer is that any one who had had library training and had had library experience would to our minds not be considered for admission to the training class because they had already been trained.

Q. You didn't know how much she had been trained, did you? A. Well, no more than the fact that all teacher
64 training institutions are certified by a certifying body, and their course of library work in teacher training institutions is probably well standardized throughout the country.

Q. Did you know whether this was a standardized course? A. No.

Q. The answer is, you didn't know how much training she had? A. That's correct, I said that before.

Q. Then the question comes back whether she didn't have the qualifications for admission to the training class if she was eligible for admission to staff examination. In other words, weren't her qualifications equal to the qualifications of the persons admitted to the training class? A. On the latter question, as to whether her qualifications were equal to those admitted, I will say as far as the particular qualifications were concerned, yes.

Q. And you made no other investigation to find out about any other qualifications? A. Well, not for admis-
65 sion to the training class.

Q. That is what I am talking about. The answer is, No? A. That is right.

By the Court:

Q. If you have a training class to provide a reservoir of competent appointees for library work, why do you hold examinations at particular branches? It is apparent, as

your last answer indicated, that such appointments—I don't quite understand the practice and procedure and method which is involved in the making of the appointments. A. The answer is, it is impossible to predict from one year to another just how many vacancies there will be, and we know also from experience that it is impossible to create what we call a reservoir. In other words, the kind of persons we want to appoint to positions on our staff are not the kind of persons who will get themselves ready and sit around the city of Baltimore waiting for positions in the Pratt Library. In other words, they are so good we have to appoint them within a month or two after graduation. At this time we had no such persons available. There

66 were no colored—there were no—there were colored trained librarians available in the City of Baltimore, for positions at Branch No. 1, and our examination on September 26, 1942, four of those colored persons who already had library training and were considered to be qualified for that position.

Q. Let's see if I can get a clear, comprehensive picture of the procedure throughout the branches of the Library. Your ordinary procedure is that you have a training class to prepare competent people for positions anywhere through the city in any of the branches as well as the main building, is that right? A. Yes, in the capacity of junior assistants, that is, beginning on the work.

Q. Now, if you need a new library assistant at, say, well, I recall there is a branch at Roland Park, if you need one there, where do you get such a person? Do you take them from the graduates of the training classes if they are satisfactory? A. If there are any still available, we, of course, draw from the graduates of the training class. In other words, they are all appointed, and we fill as many

67 positions as we can from graduates of the training class, but also attempt to get as many persons qualified and finished our training class as there will be positions, or whether available or not.

Q. Suppose you had no available person on your list resulting from the training class, or otherwise, for an appointment as an additional assistant at the Roland Park Branch. How would you go about getting such a person? Would you hold an examination out there for the position in Roland Park or not? A. We would immediately communicate with various library schools, or find out in any way we could what available trained candidates there might be who would consider the position which is open.

Q. You mean outside of Baltimore? A. Or even in the city. There may be some one in some other library in Baltimore.

Q. Then having gotten a certain number of names, would you hold an examination for them or not? A. Yes, if they seemed to have all equal qualifications and there was some question as to which was the most competent, we
68 would hold an examination and judge them upon their personality and personal qualifications.

Q. I got rather the impression merely from the fact that you gave the only instances of it that these examinations were held only where you had decided to appoint a negro library assistant. Is that right or wrong? A. No, we have held competitive examinations on other occasions when there were several candidates who seemed to have fairly equal qualifications for the position.

Q. But you don't hold any such examinations for the graduates, we will say, of your training class? A. That's correct, because they have already gone through all of these various examinations.

By Mr. Houston:

Q. How many competitive examinations have you held for white appointees? A. I should say probably five or six in the last six or eight years.

Q. For what positions? A. One of the positions, I recall, was an assistant in our literature department,
69 or first assistant in the literature department of the Central Library.

Q. That is a position above the level of the positions of these assistants at branch libraries? A. That is correct, yes.

Q. How many examinations have you held among white candidates on the level of these beginning positions? A. I should say three or four of those.

Q. When? A. I can't recall exactly the dates.

Q. Your usual procedure, however, has been to fill these beginning positions as far as whites are concerned from graduates of the training class? A. That's correct.

Q. You also fill them sometimes from credentials, don't you, without examination? A. We fill them quite often by credentials and interviews.

Q. Without examination? A. Yes.

Q. But the only appointments you have made of Negroes to your library staff has been by competitive examination? A. That is correct.

70 By the Court:

Q. How many of those have you held? A. We have held two.

Q. Just recently? A. The first was in September, 1942, and the second on February, in February, 1943, and they were both for assistants at the Fremont avenue and Pitcher street branch.

Q. This particular branch you mention at Fremont and Pitcher street, is that the only place where you have engaged or employed Negro assistants? A. So far.

Q. Are there other branches in what might be regarded as predominantly Negro residential districts? A. There are one or two other branches in sections where there is a very large proportion of Negroes. The question is, this is predominantly colored.

Q. Has the Board any established policy with regard to when and where and under what circumstances Negroes will be appointed as library assistants? A. Well, it might be better for a member of the Board to answer that, but, as

Librarian, I would interpret my instructions to proceed with a good deal of care and to feel our way along and see how we get along with this employment of colored assistants. It has been going on now for only a year and a half.

71 Q. Where they are engaged in this one branch, how many library employes are there, who is in charge of the branch?

A. We have a white librarian named Mrs. Oney and these two trained colored assistants and two or three colored part time substitutes, mostly high school or college students who come in and work in the afternoon or evening.

Q. When was that branch opened? A. 1886.

By Mr. Houston:

Q. As a matter of fact, the policy has been not to admit Negroes to the training class? A. That is correct.

Q. Regardless and no investigation has been made of the application because since or as soon as they are found to be Negroes, their application is denied. That is correct, is it?

72 A. I have made the statement to each one of these applicants in as many cases as I could manage to interview personally to the following effect: that the Library up to 1942, my statement would have been that we were not employing colored assistants, and, therefore, there would be no point in admitting them to the training class because after they had finished it there would be no provision for them, and since 1942 I have made the statement that we have in Baltimore trained assistants to fill the positions which we see might become vacant at Branch 1, and that, therefore, there is no point in admitting them to the training class because when they had finished their training, there wouldn't be any position.

Mr. Baetjer: May I have that answer read in full?

The Court: I heard it. If you want it read, all right.

Mr. Baetjer: I didn't hear it.

(Answer repeated by the stenographer.)

By the Court:

Q. How do you know you have these available trained Negro assistants or persons who are competent to fill the positions at this Fremont and Pitcher branch? A.

73 That statement that I quote myself as having made, I began to make that at the time after the Trustees had authorized the appointment of colored people at the branch. At that time we knew, you might say, by general knowledge, a knowledge of certain colored individuals around the city, that there were quite a number of trained colored librarians in Baltimore city.

Q. You say you knew it how? A. We knew that by general information among the library people, you might say, for example, through principals of the colored schools and through having seen librarians of the colored schools and by knowledge of the fact, for example, that Miss Collars was a graduate of a library school. That was proved in the examination of 1942. There were four, there must have been other candidates, but we singled out these four as the most promising to give a competitive examination, and in February, 1943, when they gave the second examination, there were ten, there were ten who took the examination.

By Mr. Houston:

Q. As a matter of fact, some of them took the examination out of the State, didn't they? A. That's right, one in Virginia and one in North Carolina, as I recall.

Q. How do you recruit your applicants for your training classes? A. Well, that is a rather lengthy process, but if you want the details of it—

Q. I want you to start on the details. A. We circularize the various colleges in the eastern part of the United States.

Q. Do you mean all of the colleges? A. No, I don't mean all of the colleges.

Q. Do you mean Morgan College, for example? A. No, I mean the colleges which would most likely have the most promising sort of candidates for our training class.

Q. You mean white colleges, don't you?

Mr. Baetjer: Objected to. He means what he says. He did not circularize all colleges.

The Witness: We don't circularize all of the white colleges.

By Mr. Houston:

75 Q. Do you circularize any Negro colleges? A. No.

Q. You limit your circularization to white colleges? A. That is correct. After that we communicate with all of the sources of information we can think of as to what may be found, especially colleges, and finally, we advertise in the Sunpapers which have the largest circulation of any paper in the city, calling attention to the competitive examination for entrance to our training class.

Q. In the Sunpaper examination you do not specify, "Whites", do you? A. That's correct.

Q. But if a Negro answers you say to the Negro that he is not eligible for admission? A. For the same reason I explained to you a moment ago.

Q. Will you give us some samples of the advertisement and the circulars you send to the colleges? A. Your Honor, I have three of the printed examinations here and also the typewritten draft of the examinations as they were sent in.

Q. You don't mean the examinations, do you? A.
76 I mean notices for the last four or five years right here.

The Court: I shouldn't think the details would be very important. The effect can be summarized, I suppose.

Mr. Houston: I don't want to do more than introduce one for the sake of the record. This is 1943, this one here.
A. Right.

Q. Suppose we take the 1942. If your Honor please, I would like to take The Sun advertisement of August 30,

1942, which was behind the period when Miss Kerr made her application, and ask that it be marked as an exhibit.

(Sunpaper advertisement of August 30, 1942, marked, "Plaintiffs' Exhibit 2").

Q. Now, you have some letters. I would like to get a sample letter to the colleges. A. Your Honor, I believe Dr. Houston has some copies of those.

Mr. Houston: I have a copy of the circular you sent the students.

Mr. Baetjer: Here are the letters you had on
77 Monday. You had them Monday and handed them back to me.

By Mr. Houston:

Q. (Handing witness paper) Are they typical letters?
A. Your Honor, these extracts which Dr. Houston asked me to cite here, are letters which were written to vocational directors of various colleges, assistant deans of women and other officials in various colleges in this portion of the country. Is that what you want?

Q. Yes, limiting the colleges to the colleges as we have described them in your examination. A. What is the question?

Q. Limiting the word "colleges", you mean white colleges? A. The colleges that we just described.

Q. And talked about, yes, all right.

Mr. Houston: Just for the purpose of an example, I would like to introduce one of these. This is dated February 24, 1941, a letter from Joseph L. Wheeler, Librarian, to Miss Mary A. Johnson, Assistant Dean of Women, University of Maryland.

(Letter of February 24, 1941, from Dr. Wheeler
78 to Miss Johnson marked, "Plaintiffs' Exhibit 3").

By Mr. Houston:

Q. Is this, as far as you know, the only library training class in Maryland? A. As far as I know, they may have

one at Johns Hopkins University for their own institution, but I don't know that.

Q. Do you know of any other training class which is maintained and in which the students or trainees are paid out of public funds? A. I wouldn't know the answer.

Q. I mean in Maryland. A. Probably, as far as I know.

Q. The answer is, there is no other as far as you know? A. As far as I know, I said.

Q. Will you turn to the minutes, if you please. Just one question before that. You have had a considerable amount of difficulty in keeping your library staff recruited? A. Correct.

Q. As a matter of fact, your training classes for
79 the last two years, the last two or three years, have been declining in numbers? A. It has been too small.

Q. And it has not fulfilled the needs in the sense of furnishing you with replacements to fill up your staff? A. That is correct. We have had to depend on graduates of the regular library schools.

Q. So that from the standpoint of vacancies in the staff, there were more vacancies than you had graduates from the library training course in the last few years to fill the vacant positions? A. That's correct.

Q. Nevertheless, Negroes were not eligible for appointment to any of these vacancies? A. Except the positions at Branch 1 since 1942.

Q. Excluding the positions at Branch 1 since 1942, were there still more vacancies in the library staff than the number of graduates from the training class? A. There were.

Q. And as to these additional vacancies, Negroes
80 were not eligible for appointment? A. That is correct.

Mr. Houston: Without reading the material, if your Honor please, I should like to call your attention to the reports of the library.

By Mr. Houston:

Q. Dr. Wheeler, will you identify and examine these and tell whether these are official reports of the Library? A. Yes, sir, I know the outside by heart, so I am sure they are the reports.

The Court: What is the purpose of that?

Mr. Houston: A description of the training course. I can tell you specifically what I am talking about in the report itself. It is a ten year report of the Enoch Pratt Free Library from 1926 to 1935.

The Witness: Right.

Q. And on page 149, in Section 7, I read as follows: "The Library is under direct obligation both to the taxpayers at large and to all liberal patrons to exercise the same care in business methods and economies as if it were a competitive business."

By Mr. Houston:

81 Q. There is no doubt about the fact that the Trustees of the Enoch Pratt Free Library consider it a public library as distinguished from a private library, is it?

Mr. Davis: Now, your Honor.

A. I wouldn't be able to answer that question. I don't know what the definition of a private or public library is in the law.

The Court: Then the question is also what the Board of Trustees considers.

Mr. Houston: Let me eliminate that.

The Court: I suppose the answer to your inquiry is in their Answer in the case.

Mr. Houston: I suppose, as a matter of fact, your Honor, whether they say or do not, it is really in the law and I withdraw the question as being a conclusion of the witness, which is unnecessary to press.

The Court: I think it might be well to develop some things that are perfectly well known. That is to say, here in Baltimore city they may be known, but not elsewhere,

and it is relevant to the case and should be in the record rather than simply implicit with people who know
 82 about it. Is there any discrimination of any kind in the service that the Library performs for the benefit of all classes of Baltimoreans, irrespective of race, color or previous condition of servitude, if any? A. I am proud to say the answer to that is a flat, No, that we have gone far beyond what might have sufficed in trying to serve any class of people in the city who might, for any reason, be considered under privileged. I mean people living in the poorer sections of the city or in any other way. We take literally the instruction from Enoch Pratt that our service should be without discrimination.

Q. In other words, is there or not—I will ask you to tell me, any discrimination between races, Chinese or American, foreigners or naturalized citizens, white or colored, rich or poor, in the service that you perform; that is to say, the books that you hand out; can anybody who behaves himself and takes care of the books, borrow a book? A. There is no discrimination whatever of any sort, so far as I know, and the instructions are quite well understood throughout our entire system that there shall be no
 83 discrimination.

Q. How about the actual management or conduct of the Library itself, the reading rooms, are they open to all classes of people? A. Without any discrimination, our literature rooms, our meeting rooms, are open to whites and colored, not only at the branches but at the Central Building.

Q. Did the Library ever employ colored assistants or attendants or employes in any capacities? A. Yes, sir, your Honor, we employ the building staff, janitors, we have one elevator operator. We did that until he was drafted, and a carpenter's assistant, colored carpenter's assistant.

Q. Is there a difference in the scale of pay between the Negro assistants at the Fremont and Pitcher street branch and others in the same grade of employment? A. There

is no difference whatever, and all are equal in whatever grade they may be in, they are paid the same as the whites. There is no discrimination as to salary.

The Court: I would like to ask counsel, by way
84 of legal discussion, is it implicit in the case that the Board of Trustees of the Library is obliged to appoint Negroes to positions in the Library course if they are otherwise eligible; in other words, can the Board, according to your contention, lawfully say, "We think it proper to have only white employes?"

Mr. Houston: My answer to that is the Board can not lawfully say that. I have to answer your first question as to the affirmative appointment of Negroes with an answer of, No, because the Constitution does not guarantee to any particular class of people affirmative rights, as I understand. The Constitutional guarantee is against discrimination, so that if the Board of Trustees of the Enoch Pratt Library actively exercising a public trust or function, that they are within constitutional restraints, then I say as a matter of principle, as distinguished from a matter of administration, I take it your Honor recognizes the distinction I am making that the Library Board could not eliminate arbitrarily a whole group of citizens solely on the question of race and color.

The Court: You mean as to the appointments?
85 Mr. Houston: As to appointments, or as to the benefits of this particular class, in view of the fact that as far as the record shows, it is the only available class that is mentioned.

The Court: One reason I asked the question was, here for sixty years the Library has been functioning, and apparently up to two or three years ago there have been no Negro employes other than the particular capacities referred to by Dr. Wheeler, and I was just wondering whether that question had ever been raised, or whether it has ever been publicly thought or contended for that it was obligatory on the Trustees to appoint to various posi-

tions, including that of Librarian, for instance, the most qualified man entirely irrespective of race, color or religion?

Mr. Houston: Let me make two answers to that, first, as to the matter of fact, the agitation has gone on since the early '30's. This is a culmination of about eleven years' agitation. The second answer is more abstract, and that is this, that just as children and babies have to grow, 86 groups of people have to grow and observe progress at different stages.

The Court: On that, that is a very interesting observation. Who is to determine when that group has reached a point capable of public service in particular capacities?

Mr. Houston: The answer on that is, apart from the questions of discrimination, these people still are charged with a public trust.

The Court: I see, all right.

Mr. Houston: But as far as discrimination is concerned, that is an entirely different proposition, and I say they must act within the constitutional limits or plead discrimination.

By Mr. Houston:

Q. Dr. Wheeler, since 1942, you have had Negro assistants at the Pitcher street branch No. 1? A. Yes.

Q. As I understand, there is no discrimination on account of race in the services of the Library to its patrons? A. Correct.

87 Q. That is, any Negro citizen, as long as he behaves himself, can go to any branch or the Central branch? A. Yes.

Q. He can have the same access to the public space of the Library as any other citizen, I mean as far as getting books or reading? A. To all services he gets the same.

Q. A white person has the same privilege of going to the Pitcher street branch? A. Oh, yes.

Q. As a matter of fact, you know some people do come to the Pitcher street branch, don't they? A. My inquiries for

some time have indicated that there are absolutely no, or practically no white person comes there.

Q. But a white person has the right to come there? A. They may be going there, as far as I know.

Q. Would you make any special exception? Suppose there was only a Negro assistant on duty at Pitcher street and no other person on duty except that Negro assistant, and a white patron came in, would that patron be
88 served by that Negro assistant? A. As far as I know, if they would satisfy the white patron, if he would accept the services from a Negro assistant, the answer is, Yes.

Q. The answer is, it is up to the patron? A. Yes.

The Court: Just a minute. He would either have to take the services that you offered or he would have to forego any services, wouldn't he?

A. That's correct.

The Court: I am not quite sure that I got the implication of the question.

Mr. Houston: That is the implication of the question.

The Court: Yes.

By Mr. Houston:

Q. A Negro assistant can serve Negroes at the Pitcher street branch? A. Yes, can serve whites, too.

Q. But a Negro assistant can not serve Negroes at the Central branch? A. That's correct.

89 The Court: You mean because there are no Negroes there. That is to say, if they had a Negro assistant couldn't he do it?

Mr. Houston: The answer is, the policy is not to appoint Negroes at any other branch or the Central branch except that Branch No. 1.

The Witness: So far.

By Mr. Houston:

Q. That is the established policy of the Board up to the present time? A. So far, yes.

Mr. Davis: You have a resolution on that, haven't you?

The Witness: Yes.

Mr. Davis: Why don't you put that in? He is fighting around the bush.

Mr. Houston: No, we are not going around the bush.

Q. Will you turn to the minutes of the Trustees of June 14, 1933, page 37. These minutes were signed by you as Acting Secretary? A. Correct.

Q. They have been approved by the Board of Trustees? A. That is right, at the next ensuing regular meeting.

Q. Will you read the next, the last paragraph of those minutes? A. This quotation reads:

"The question of the employment of Negro assistants in the library service staff having been brought up again by letters and interviews, it was moved, seconded and unani- mously voted that no change in the present policy be adopted, in view of the public criticism which would arise and the effect upon the morale of the staff and the public."

Q. What was that policy? A. Not to appoint colored assistants.

Q. Where, any place in the library system? A. Up to that time, correct.

Q. Turn to the minutes of January 21, 1938, page 89, I ask you if those minutes were signed by you as Act- 91 ing Secretary? A. They were.

Q. Have they been approved by the Board of Trustees as correct? A. They were, yes.

Q. Will you please read me the paragraph at the bottom of the page? A. "The Librarian pointed out the increas- ing difficulty of getting a sufficient number of properly qualified candidates for the training class during the last two or three years, with the result that we have several positions in the Library now covered by poorly prepared temporary substitutes, and expressed the hope that a mini- mum salary of \$100-110 may be obtained within the next year or two in contrast with the \$95 which, for the last

eight years, has been offered college and training class graduates."

Q. The shortage, then, so far as your recruitment of junior assistants is concerned, has existed for a considerable period of time? A. It has its ups and downs. We have had as many as 700 applicants for the training
92 class, but I couldn't say that at the end of that class we had enough students on hand to fill positions.

Q. There has been a shortage as reflected by those minutes? A. As reflected in that statement, correct.

Q. That statement was true, was it? A. It was at that time, yes.

By the Court:

Q. How many positions as library assistants do you have throughout the whole city? You gave me the number. I have forgotten what it was. I am not sure I made a memorandum. Was it several hundred? A. I gave the figure of 150, but that included the senior assistants. I was speaking of the professionally trained staff, about 150 of whom, I would say possibly 80, are junior assistants. They are the kind of trained people who come out of the training classes or out of the library schools, and start on the work before they are promoted to the next grade.

Q. And you say there is quite a turnover every year?
A. Yes.

93 Q. You lose approximately how many, would you say, by resignation, marriage, or other reasons? A. We have a very attractive staff up at the Library and they get married at a rapid rate. Our turnover is surprising, sometimes possibly twenty per cent of our professional staff each year.

The Court: Gentlemen, it is one o'clock. I think we had better take our usual recess until two o'clock.

(Thereupon, at 1 p. m., a recess was taken until 2 p. m.)

After Recess (2 p. m.)

Mr. Houston: May it please the Court, the individual Library Trustees are also parties defendant under United States Code 8, Section 43. For that reason I should like to have noted in the record the names of the individual Trustees who were present and acting at the time these resolutions were adopted.

The Court: Very well.

Mr. Houston: Will you go back to the minutes of 94 June 14, 1933, Dr. Wheeler, about page 35, I imagine your minutes begin.

The Court: Page 37.

Mr. Houston: That is the page on which the resolution occurred. I wanted to go back to the beginning. Referring you to page 35 of the minute book, the meeting of June 14, 1933, will you please read into the record those Trustees who were present at that meeting?

A. "Present: Messrs. Baker, Gary, Duffy, Randall and Robinson."

Q. Are they now members of the Board of Trustees? A. All except Mr. Robinson, who is deceased.

By the Court:

Q. What Robinson was that? A. Edward L.

Q. President of the— A. Eutaw Savings Bank.

Mr. Houston: For the purpose of the record, I call the attention of the Court to the fact that the record shows that the resolution concerning no change in the present policy as to Negro employment was unanimously voted.

95 By Mr. Houston:

Q. Turn to the minutes of April 11, 1938, please, Dr. Wheeler. A. The page?

Q. 92. A. Right.

Q. Will you read the paragraph about holding library training graduates? A. On page 92: "The Librarian outlined the difficulty of holding graduates of the training class

at the salaries paid them, which are considerably out of line with those paid in other municipal offices for persons of the same high qualifications, and asked permission to make an increase of five dollars to seven of the graduates of the 1937 training class. Inasmuch as this involves some new policies, brought out by discussion, the Librarian withdrew his request and stated that he would take up individual cases in the ordinary routine direct with the Executive Committee."

Q. So that as of that date you were having trouble in holding your staff for the reason stated? A.
96 Salaries.

Q. I say, for the reasons stated? A. Right.

Q. April 15, 1940, page 129. A. About salaries?

Q. No, beginning with, "The following letter was read", please. A. "The following letter was read:

"March 23, 1940

"Dr. Thomas S. Cullen,

"President of the Board of Trustees of the

"Enoch Pratt Library,

"20 East Eager Street,

"City.

"Dear Dr. Thomas:

"On several recent occasions a committee consisting of representatives from the Baltimore Council of the Workers Alliance of America, the Youth Co-Workers Club, and the Maryland Youth Congress, had interviews with Mr. Saint Johns in Dr. Wheeler's absence, and finally one with Dr. Wheeler himself, on Saturday, March 9, 1940. The
97 object of these interviews was to learn if the Enoch Pratt Library System would agree to extending its N. Y. A. project for librarians' helpers, such as is operative in a number of library branches that cater exclusively to whites, to the branch at Pitcher street and North Fremont avenue, which caters almost exclusively to Negroes, to include the employment of several Negro girls as librarians' helpers.

“Our interviews with Mr. Saint Johns being unsatisfactory, through our insistence, we, finally, had our interview with Dr. Wheeler Saturday, March 9, 1940. Dr. Wheeler told us that, since his position is an administrative one, he could do nothing about making such a move.

“Inasmuch as the policies of the Enoch Pratt Free Library system are made by its Board of Trustees, we, hereby, request that, at its next meeting, a committee from the Baltimore Workers Alliance, the Youth Co-Workers Club, the Maryland Youth Congress, and other organizations supporting us in this effort be permitted a half hour to present to it our proposal, viz: the extension of the N. Y. A. librarians’ helpers’ project to include the employment of several Negro girls as librarians’ helpers at 98 the branch at Pitcher street and North Fremont avenue.”

The Court: I am sorry, I do not get that.

Mr. Houston: My voice is stronger. Perhaps I may read it.

The Court: Yes, you may read it. What were you reading, a letter from somebody?

Mr. Houston: A letter to the Trustees and action was taken on the basis of that letter.

I will pick up where Dr. Wheeler left off:

“We will appreciate an early reply.

“Yours sincerely,

Signed, “William Pearlman,
Chairman, Baltimore Council of
the Workers’ Alliance of America.”

“It was moved by Mr. Gary and seconded by Mr. Baker that the President of the Board of Trustees write to the Workers Alliance of America, stating that the Board was not contemplating at this time the addition of any N. Y. A. workers—colored or white—at Branch 1, Fremont and Pitcher street. This motion was passed unanimously.”

Mr. Houston: And the minutes show that at that
 99 meeting—I now refer to page 126 of the minutes—
 there were present the following: President Cullen,
 Vice-President Gary, Messrs. Baker, Duffy and Williams,
 constituting a quorum, as well as the Librarian and Assist-
 ant Librarian.”

By Mr. Houston:

Q. Dr. Wheeler, the Enoch Pratt Library had been using
 some white girls and white employes from the N. Y. A.
 rolls, hadn't it? A. Yes.

Q. Had it used any Negro employes? A. Not up to that
 time.

Q. You mean at the time that resolution was adopted,
 there were no Negroes employed from the N. Y. A. or used
 from the N. Y. A. staff? A. That's correct.

Q. Subsequently, were any Negroes employed from the
 N. Y. A. staff? A. There were.

Q. Where? A. At Branch 1, Fremont and Pitcher
 streets.

Q. Any place else, as far as you know? A. I don't
 100 think so. I am not quite sure.

Q. What did the N. Y. A. workers do? A. Doing
 what we call clerical work, putting books back on the
 shelves, keeping the books arranged properly on the
 shelves.

Q. They had— A. Filing cards alphabetically, and so
 on.

Q. Did they have anything to do with the issuance of
 books? A. Yes, they were permitted—well, I am not sure—
 I can't recall whether they were permitted to stay at the
 desk under the supervision of the trained people and do the
 mechanical work of discharging books or not, but it may
 have been.

Q. But you do remember that they had the tasks of put-
 ting books on the shelf, rearranging books, and doing some
 card filing? A. That's right, they were instructed and had

no contact with the public by way of giving information or service about the books.

Q. You say Negroes were permitted to put books
101 on the shelves and do the filing only at the Pitcher street library? A. I am quite sure that is correct.

Q. The minutes of December 18, 1940, page 145? A. Yes, I have it, what about it?

Q. The reference there is to letters received from Richard O'Connell, President of the City Council, and Mr. Carl Murphy? A. Do you want me to read it?

Q. No, is that a fact, from the minutes? A. There is a reference on the bottom of page 145 to a letter from Mr. Richard O'Connell. This is a copy of it.

Q. Is that a copy of your reply? A. Correct.

Mr. Houston: I ask that Mr. O'Connell's letter of December 17th be marked Plaintiff's Exhibit 4 and Dr. Wheeler's reply be marked Exhibit 5.

(Letter of Mr. Richard O'Connell of December 17th marked "Plaintiffs' Exhibit 4". Dr. Wheeler's reply thereto marked "Plaintiffs' Exhibit 5".)

102 The Court: I have read them both.

Mr. Houston: I want to call your Honor's attention particularly to this paragraph, a paragraph in Dr. Wheeler's reply:

"We have, as you know, no colored branch library, and there never will be one, because, in the Charter of the Library, it was definitely arranged that no discrimination should be made in the services received by colored and white patrons of the Library."

By Mr. Houston:

Q. Now, the minutes of September 17, 1942, page 199, Dr. Wheeler. A. Right.

Q. Will you first tell us who was present and what page? A. On page 192, there begins the minutes of a special meeting of the Board on September 17th. "There were present

Messrs. Cullen, Gary, Randall, Duffy, Casey, Hutzler, Williams, Stockbridge, Wheeler and Hamill.”

Q. On page 199 there is a letter. Do you want me
103 to read it to relieve you? A. I certainly do, thank
you.

Mr. Houston: Your Honor, I read from the minutes of the meeting of September 17, 1942, of the Board of Trustees, page 199 of the minute book, Item 6, which is headed, “Colored People, Employment for Training.”

“On September 8th W. A. C. Hughes, Jr., attorney, wrote to Mr. Wheeler as follows:

“22 St. Paul Street
“Baltimore, Maryland
“September 8, 1942

“Dr. Joseph P. Wheeler, Director
“Enoch Pratt Free Library,
“Cathedral and Franklin Streets
“Baltimore, Maryland

“Dear Dr. Wheeler:

“Dr. Charles H. Houston of Washington, D. C., and I, as counsel for Mrs. Elsie Gene Adams, herewith enclose her application to be admitted to the examination for a library training class, which I understand is to be held on September 12, 1942, in the Main Library Building. Mrs.
104 Adams had an interview with you on September 3, 1942, at which time you refused to consider her for the examination solely on the basis of her color. We hereby demand that she be admitted to this examination or that reasons be assigned for refusal to consider her application. Please notify me not later than September 10, 1942, your final decision in this matter. If you so desire, I will be pleased to discuss the matter with you personally or with your representative, any time before September 12, 1942.

“Very truly yours,

Signed “W. A. C. Hughes, Jr.”

“The Library reported that after consulting Dr. Cullen and Mr. Williams, Chairman of the Executive Committee, he had called up Mr. Hughes from Mr. Williams’ office and advised him that a reply would be sent him by the 24th of September, and that a supplementary examination would be given on September 26th for any person who seemed eligible for admission to the training class.”

“It was noted that in filling vacancies on the staff, personnel was drawn from three sources of supply, viz, 105 persons employed in other libraries, persons trained in recognized library schools, and persons qualified through the training class of the Pratt Library.”

“Whereupon, on motion duly made, seconded and unanimously carried, it was

“Resolved, That it is unnecessary and impracticable to admit colored persons to the training class of the Enoch Pratt Free Library. The Trustees being advised that there are colored persons now available with adequate training for library employment have given the Librarian authority to employ such personnel where vacancies occur in a branch or branches with an established record of preponderant colored youth.”

By Mr. Houston:

Q. Now, Dr. Wheeler, was the supplementary examination held as stated on September 26, 1942?

The Court: If you don’t know, you can say, “I don’t know.”

Mr. Baetjer: He knows, if he is given a moment.

The Witness: Pardon me, your Honor. I am trying to refresh my memory from this memorandum here. 106 Will you repeat the question?

The Court: Was the supplementary examination held on September 26th of that year?

Mr. Baetjer: You may see the letter you wrote to Mrs. Adams on September 21st, to her, a letter from Dr. Wheeler.

The Witness: I don’t seem to have the data for a direct

answer to that question, but I can say that on September 26th an examination was given for the position of assistant at Branch No. 1.

By Mr. Houston:

Q. Was any supplementary examination given for admission to the training class? A. Yes.

Q. Were Negroes admitted to that supplementary examination? A. No, they were not.

Q. Now, the minutes of October 12, 1942, page 202. A. Pardon me. The reason I couldn't answer that fully was I don't seem to find the memorandum as to the date of that supplementary examination which was given for admission to the training class. It was some time between the 12th and 26th.

Q. Whenever it was, Negroes were not admitted? A. That's right. Now, what is the next page?

Q. 202, October 12, 1942. A. Right. Is this the paragraph?

Q. Yes. A. Would you mind reading it?

Mr. Houston: I read from the minutes of the Board of Trustees of October 12, 1942, minutes at page 202, as follows:

"Mr. Wheeler reported that on September 26th a competitive examination had been given for four colored candidates for the position of second assistant at Branch 1 and Mrs. Iona Wood Collins had been appointed to that position at \$1500 a year, effective September 28th. The Librarian submitted a plan to have another competitive examination with higher requirements, given some time in January, to select a first assistant at the Branch, and to appoint a librarian some time next summer, between June and September, if a qualified person can be found.

108 Miss Martignoni is to continue working with the new librarian for two or three months before being transferred to another point, the intention being to see that each

of the new colored appointees is given sufficient practice to measure her abilities and to see that she is well acquainted with the work before leaving her on her own. The Board postponed action on this until a later date."

By Mr. Houston:

Q. What were the requirements that governed this examination? A. You mean what was included in the examination?

Q. What were the requirements for admission to the examination, what standards were set up? A. Well, the first standard would be, if possible, to get a college education. The second requirement would be library training in some library school or training class.

Q. Any minimum on that? A. No.

Q. No minimum standard on that library training school or training class? A. No, we have never set any minimum.

109 Q. What was the third? A. The third qualification would be the personality qualification, which would be adjudged by interviews on the part of our committee on appointment.

Q. What was a passing grade in that examination? A. There wasn't any passing grade in that or other examinations. We always choose from the person who stands at the top of the examination as many as we think we need and combine the marks in the written examination with the ratings in the interviews and on personality. Is that clear, your Honor?

The Court: Yes, I understand that.

By Mr. Houston:

Q. I call your attention to the minutes of January 21, 1943, at page 205, and ask you who was present at that meeting? A. "The following members were present: Dr. Cullen, Mr. Gary, Mr. Stockbridge, Judge Duffy, Mr. Hutzler and Mr. Williams, as well as Mr. Wheeler and Mr. Hamill."

Q. I call your attention to the extract on page 208. A. The quotation from page 208:

110 "At the meeting of the Executive Committee on January 8, Miss Martignoni, the branch librarian, had discussed the situation, reporting that Miss Collins, colored assistant appointed in October, while not as forceful and effective as could be desired, is improving constantly and is as good as the average white assistant in other branches. The Committee authorized the librarian to proceed with a competitive examination and appointment for another trained assistant at this branch, but he is to make no promises or commitments beyond that."

Q. Is there anything in the case that there was any dissenting vote to the adoption of that action?

The Court: What action? I don't quite get the significance of that.

Mr. Houston: May I read it again?

The Court: Perhaps you had better.

(The quotation was repeated by Mr. Houston.)

The Witness: That was all incorporated in the motion, and, as far as I recall, it was unanimous.

Mr. Baetjer: They made a motion and it was seconded.

Mr. Houston: It says so.

111 The Witness: It doesn't state it was a motion. It said the Committee authorized the librarian.

Mr. Baetjer: That is all I had. I didn't think it was a motion.

The Court: I don't see that it makes any difference whether it is a motion or not.

Mr. Baetjer: I thought your Honor asked.

By Mr. Houston:

Q. I think you testified previous to this that there were about 80 positions of assistants? A. That is correct.

Q. Down to the time of the first authorization of the competitive examination for an assistant at Branch No. 1,

not a single one of the 80 positions was assigned to Negroes?

A. That is correct.

Q. And at the time of the first examination, September 26, 1942, there was one position out of 80 open to Negroes?

A. That is right.

Q. On January 21, 1943, you opened position No. 112 2 to Negroes? A. Yes, that's right.

Q. So as far as the other 78 positions were concerned, they were still closed? A. Yes, I put the word "approximately" in there, because I don't know the exact number.

Q. I accept the approximation, and that policy still holds up to the present day? A. Correct.

Q. April 19, 1943, pages 211 and 212. I don't think, your Honor, it is necessary. May I just look at these a second so we can shorten the record? Just to telescope the examination of minutes of that day, April 19, 1943, it reports the result of the second competitive examination on February 13, 1943, and the appointment of Miss Thelma Thomas to the position as second assistant at Branch 1.

The Witness: May I correct that? Not the second assistant position, but the second of the positions as assistants, because they are classified the same.

Mr. Houston: What I wanted to call your attention to, however, is this resolution on page 212, which starts 113 out with:

"Owing to the difficulty of securing or holding a sufficient number of properly qualified students in our training course, the Library has, after consultation with Mr. Williams, telescoped the 36 weeks' training course into 26 weeks so that the present class will conclude its regular session on April 7, after which there will be, on Library time, a weekly forenoon class session with problems and practice work on the personal time of the four remaining students. On April 1 they would also be appointed to regular full time positions and would be awarded certificates in June as usual. Mr. Wheeler asked approval on starting next year's training

class July 7 instead of September 20, completing the course January 14, 1944, without eliminating any of the major requirements or subject matter of the course. Also, he asked that the student be paid \$50 a month for six months (\$300) compared with the \$40 a month which we have been giving for five months (\$200). This would mean \$100 additional per student for the coming year, but there would be a smaller number of students than in previous years.

114 Without this payment we would not be able to get a sufficient number of adequate college graduates who have so many competing offers. Moved, seconded and voted that this action be approved."

"It was moved, seconded and voted that this action be approved by the Trustees."

By Mr. Houston:

Q. Has your employment situation eased any since the time of that meeting, as far as recruitment of your staff is concerned? A. Yes, I am glad to say it is a good deal better in the last three months, especially since January 1, when salaries were increased on account of the bonus.

Q. Are all positions on the staff filled now? A. At the present time all professional positions in the Library are filled with the exception of the first assistant in the Maryland Department and the first assistant in the Children's Department.

Q. How many graduates of the training classes have you on a waiting list unappointed up to the present time? A. None.

115 Q. Will you take a sample schedule of the date of closing the applications and then go through the date of notification of those who are eligible for the examination, the date of the examination, the date of reporting, the cards received and the date of the announcement of the successful candidates and the date of the beginning of the course—and I say, if your Honor please, we have asked for declaratory judgment and this question is addressed to

the proposition where there is time ordinarily in the routine of court procedure for a litigant to have her case heard and determined so as to allow her to go on with the course—

The Court: Do you make any point about that?

Mr. Baetjer: No.

Mr. Houston: As a matter of fact, it is admitted.

Mr. Baetjer: We make no point about it.

Mr. Houston: We can skip that.

By Mr. Houston:

Q. The city approves the budget of the Trustees, doesn't it? A. It approves it by the act of passing.

Q. Until the budget is passed, you haven't the
116 money with which to run, have you? A. No, but the budget is always passed in advance of the fiscal year.

Q. But until the budget is passed the city has no funds or basis upon which to make the appropriation? A. That's right.

Q. And the city has to approve the budget before it goes to appropriation, before it is included in the appropriations?

A. That is right. The Library budget is included in the general city budget and all passed at one time by the Board of Estimates.

Q. I show you the qualifications of Miss Louise Kerr, and I would say to you that she has also a record of successful teaching in the Baltimore Public Schools for five years, and I would ask you whether the qualifications which she presents along with her record, would bring her within the level of the persons who were accepted for admission to the examination? A. Well, the answer to that is, we have a
117 great many applicants who have been to high school and college and even through normal school and have taught school, and still we do not admit them even to the competitive examination to enter the training class. I am talking about white people.

Q. I understand. Also, she has had graduate work at the University of Pennsylvania for three summers. A. The

same applies for persons who have had graduate work. In other words, there are many other qualifications beside these paper records.

Q. But her paper records, are they equal to bring her to the level of persons admitted to the examination? A. As far as the paper records are concerned, they are equal to a good many white applicants who were admitted to the examination.

Q. And subsequently after passing the examination were admitted to the training class? A. Correct.

Q. I call your attention to some correspondence between Mr. Randall L. Tyus. I ask that the records be marked. I don't think it is necessary under those circumstances to introduce these as exhibits.

118 The Court: I don't know what they are. I have no idea about them.

Mr. Houston: It is the scholastic record of Miss Kerr at the Frederick W. Douglass High School and Teachers College and the University of Pennsylvania, but inasmuch as it is admitted that she would be eligible as far as paper qualifications are concerned, it seems unnecessary to take this space in the record, so I do not introduce those.

By Mr. Houston:

Q. I call your attention to some correspondence between Randall L. Tyus, Executive Secretary of the Baltimore Association for the Advancement of Colored People, and the Library, in the spring of 1943, and ask you if you have the originals or copies of that correspondence. Specifically, I show you— A. I have copies of that, Dr. Houston.

Q. Can you recognize that, and I will read that as soon as they are identified.

The Court: What is the relevancy?

Mr. Houston: On the question of their policy on
119 admission of Negroes.

The Court: Haven't you got that fairly well established? Why accumulate the evidence on that?

Mr. Houston: I want it established. Finally, may I just read a question from the inquiry and the answer? For the purpose of the record I will read a letter, extract from a letter of March 31, 1943, from Randall L. Tyus to Mr. Harry L. Hamill, Assistant Librarian, Enoch Pratt Free Library: "Dear Mr. Hamill, there are two questions I will appreciate an answer to at this time: Question 2: Will qualified colored persons be permitted to take the future library training courses?" The reply from Mr. Hamill to Mr. Tyus on April 15, 1943: "The answer to your second question is No."

Mr. Houston: Your witness.

The Court: Do you wish to cross-examine, Mr. Baetjer?

Mr. Baetjer: Yes, sir.

Cross-examination

By Mr. Baetjer:

Q. Mr. Wheeler, the present Central Building or 120 Main Library Building of the Pratt Library includes not only buildings that were built out of the \$3,000,000 loan but does it also include other buildings on Mulberry street? A. Yes, and also three houses that I spoke of this morning, which the Trustees had acquired subsequently to the opening of the old original building.

Q. Did the new library, when it was moved into the present Main Library Building, take with it all of the equipment and the books of the old library building on Mulberry street that were given by Mr. Pratt? A. They were all of the books and a large part of the equipment. The rest of the equipment was distributed among the branches.

Q. What is the nature of the gifts that you have, the income on which is expended by the Library independently of the city? A. I believe all of those gifts, with the exception of what we call the Humphrey Moore Fund that come to the Library within the last six or eight years, the Humphrey Moore Fund was created by a bequest of Mr. Humphrey Moore, who used to be a bookseller in Balti-

121 more and wanted to establish a public forum, and the Trustees of the Humphrey Moore Fund officially give over that money to the trust of the Trustees of the Pratt Library.

Q. What did it amount to? A. As I recall, at that time, about \$25,000. At the present time I think the principal has increased to about \$32,000.

Q. Will you give us the other funds, if there are any others? A. Yes, Mr. Louis Hutzler gave us a fund to buy old books, and that was a fund of a thousand dollars a year for five years. We also receive about \$300 a year from a life insurance group in Baltimore to buy expensive and specialized books on life insurance. We also have a fund of about a thousand dollars ordinarily from the Baltimore Music Society to buy phonograph records to loan to the public and Mr. Harry Black at one time gave us \$25,000. In 1941 he gave us \$10,000.

Q. What is the income—I will ask you this, have you a copy of the financial statement of the Library for
122 1943? A. I have it right here. It gives the cash balance on January 1, 1943, the expenditures and receipts during the year, and covers all of these gift funds.

Q. Have you the report for 1943? It is in the report to the Board of Trustees which is dated April 4, 1943. I hand you that report and ask you if you will look it over before you answer the question. A. You say is this in the same form as the report of April, 1943?

Q. Have you the report for 1943 made up in the same way as the report made to the Trustees for 1942? I now hand you that statement. A. Mr. Baetjer, no, we don't have it ready yet.

Q. How soon would it be available? A. Well, maybe in a week.

Q. Let me ask you, if I may, that report shows receipts and expenditures for the year 1942 in quite a little detail? A. That's right.

Q. The total of the receipts is \$581,820.51, and all of that is spent except \$875.11. As far as items of income, 123 not amount, is concerned, is the income for 1943 as great as the income for 1942? A. No, it was greater.

Q. I don't say as to amount, but items.

The Court: The same source of income.

The Witness: No, I believe—well, I would say approximately the same.

By Mr. Baetjer:

Q. When you say approximately, what do you mean?

A. Mr. Baetjer, I would have to go back and analyze the various accounts and what the balance was in each fund and whether there were any gifts in '42, I can't remember.

Q. In 1943 you said your total income was \$511,575.

Mr. Houston: Approximately.

The Witness: That was the tax appropriation.

By Mr. Baetjer:

Q. During 1943 did you receive, or were you credited with \$50,000 provided for by the Pratt gift? A. Yes.

Q. And the \$50,000 through the Carnegie grant?

124 A. No, Carnegie is part of the regular appropriation.

Q. Were you credited with or did you receive it—I don't mean necessarily did you receive it, but was the item of \$50,000 from the Pratt gift and the appropriation of \$50,000 acquired by the Carnegie gift, were both of those appropriations available to you in 1943 as well as 1942? A. Yes, in the same way.

Q. In 1943 you have given this figure. Do you know what your income was from your private funds?

The Court: He said five to six thousand dollars.

The Witness: I said approximately five to six thousand dollars.

By Mr. Baetjer:

Q. What is the method of determining the salaries of the employes of the Library, and when is it done? **A.** It is a continual process going on every day, every time—

Q. How are those salaries fixed, or wages, as the case may be? **A.** Well, the majority, I would say about
125 90 per cent of the salary changes are made at the beginning of the year, according to the city salary scale.

Q. Will you explain just what you mean by that? **A.** I mean, for example, in January, 1944, practically all employes of the staff were entitled to an automatic increase according to the city salary scale for length of service.

Q. How was the original salary of those men and women fixed? **A.** Well, during the last two years, since the city salary scale has been in effect, any new appointee on the staff is started in at a minimum salary of the grade to which he or she is entitled, or in which they are supposed to be placed.

Q. Is there a category in the city salary scale to which category your employes correspond? **A.** Yes, there's quite a number of grades of Library assistants.

Q. Where are Library assistants except in the Pratt Library? **A.** They are employed, junior assistants
126 and senior assistants, and first assistants and department heads are employed at the Central Library, and those three groups of assistants and branch librarians are employed in the branches.

Q. Where are there any library assistants except in the Pratt Library in the city's setup? **A.** Your Honor, I don't know whether there are any similar titles and positions. For example, in the Legislative Reference Bureau or not, but there may be. I never had occasion to find out.

Q. Is the salary fixed by reference to the Trustees? Do they have any voice in fixing the salaries? **A.** Yes, a great deal.

Q. What voice do they have in fixing the salaries? A. In the case of a few salaries, where there is any departure from the salary scale, or some emergency arises where we want to get a person and have to ask the Board of Estimates to make an exception and give additional increase, the Trustees would have to take it up with the Board of Estimates.

Q. If an assistant librarian wanted an increase in
127 salary, or if one of those assistant librarians coming through the training course wants a job, to whom does he apply. A. To me, first.

Q. What do you do with the application? A. If it was an upper position in salary, I would recommend to the Board to pay the salary, but they would have to take it up with the Board of Estimates.

Q. They would approve or disapprove? A. Yes.

Q. If they disapproved it, could these assistant librarians take it over your head and go to the city? A. I don't think they could, and I know they wouldn't.

Q. Who determines the number of employes to be engaged in the Library? A. I suppose as a compromise between what the Librarian wishes we had as to the number of employes, and what the Trustees would think a fair burden to the taxpayers, and what the Trustees can prevail on the Board to supply.

Q. Who initiates the employment of a person in
128 the Library? A. Officially, I do.

Q. What do you do with it when you determine there should be some one employed? A. In the case of a junior assistant and positions in general running less than \$1800 and \$2000 a year, if we are in line with the city salary scale, I have authority of the Executive Committee to go ahead unless there is some question of policy involved, in which case I have to take it up with the Trustees.

Q. You have how many employes today? A. We have 285 full time employes, including the building staff.

Q. Who would determine whether or not you should have 285 or 325? A. Well, I could determine that pretty well by comparative figures published every year by the American Library Association as to what their libraries are doing.

Q. Whose judgment is it whether they should employ more people or create vacancies by letting people go or not?

A. All of those things are matters for the Board of Trustees to decide.

129 Q. Who determines the categories among the employees of the Library? A. I guess I am the officially responsible person, but, of course, I do that according to specifications and descriptions of the job that have already been set up and are in operation.

Q. Who set them up? A. They were set up as the result of the work of a committee on salary scale and myself and approved by the Board of Trustees.

Q. How are supplies to the Library billed and in what name? A. They are billed and delivered to Enoch Pratt Free Library. The bills are approved, certified by us, and sent to the city disbursing office to be paid there.

Q. Up to the amount of your budget, has the Library or the city any discretion as to how to expend the money? A. The Board of Trustees has all the discretion as to how the Enoch Pratt money is to be spent.

Q. Will you look at the last circular with regard to the training school. I think I handed it to you this morning? A. All right.

Q. That has a note on it, Mr. Wheeler, to this effect, that it was published in February, 1940, and used in 1940, 1941, 1942 and 1943. Do you know that that is the same circular used for those three years? A. Yes, I wrote that myself. The reason is we saved the cost of printing by using the same book for three years.

Mr. Baetjer: I offer this booklet in evidence.

(Booklet for Training Class marked, "Defendants' Exhibit 1.")

By Mr. Baetjer:

Q. What is the difference between the course of training of the appointees of the library training course and the general library training courses that you mention in the book and which you called attention to as being different from yours? A. That is a very important matter and I will try to make that clear. I said this morning that the training classes of Pratt Library had been established to prepare and train people for positions in the Pratt Library itself. It does not make any attempt and it is understood by the applicants and printed in these descriptive booklets, that the training class of the Pratt Library does not attempt to give as full a course as given in the regular library school. The full fledged library schools are certified and approved by the American Library Association, and they are full time courses. That is, they provide for no practice work or no time to be given for outside employment. The training course gives one-half of that instruction because the second half is used for actual work for which we do not pay the student. In other words, the difference between them is in the amount of instruction. The second reason, although it gives a certificate showing it has been completed, it is not connected with any university and can give no degree, and the training class of the Pratt Library has no situations like that of a regular library school.

Q. How many such generally library courses are given from Boston down to Richmond along the seaboard?

Mr. Houston: May I ask the relevancy of it?

The Court: It is not apparent to me at first blush.

132 Mr. Baetjer: It is on the question of whether there are any facilities, or approximately the same facilities available. I wanted to ask if there are facilities at Washington or Hyattsville. This may not be essential, but in the Howard case with the University of Maryland, there were no like facilities available.

Mr. Houston: Within the State.

Mr. Baetjer: Outside.

Mr. Houston: I beg your pardon.

The Witness: Are you asking me a question?

By Mr. Baetjer:

Q. The one I asked before. A. Are there any training classes within the State of Maryland?

Q. Yes. A. I can't say for certain, but there used to be a training course at the Hagerstown Free Library. Whether it is still operating there, I am not sure.

Q. Is there such a training course operated in connection with Johns Hopkins University or the University of Maryland?

133 The Court: I don't quite see the relevancy of such courses outside of Baltimore when this case relates to Baltimore. It is not a case against the State, it is a case against a library in Baltimore and Baltimore city. That is to say, I take it that if there were a similar training course in St. Mary's county, that would not affect the problem for Baltimore city in this particular litigation.

Mr. Baetjer: That is all now, he has answered the question, and I think if it does not develop to be material we will withdraw it, but I think he has answered it, unless your Honor wants it.

The Court: Very well. I have another appointment at three o'clock. I did not understand that the testimony would be so protracted. It is not a complaint, but I thought at three o'clock I would be free to keep the other engagement, so the case must go over now until tomorrow morning at ten o'clock.

(Thereupon, at 3 o'clock the hearing was adjourned until tomorrow morning at 10 o'clock.)

134 In the District Court of the United States for
the District of Maryland

Civil Action No. 2071

Before Judge W. Calvin Chesnut

T. HENDERSON KERR and LOUISE KERR

v.

THE ENOCH PRATT FREE LIBRARY of Baltimore City,
THOMAS S. CULLEN, HENRY STOCKBRIDGE III, BLAN-
CHARD RANDALL, JR., WILLIAM J. CASEY, ALBERT D.
HUTZLER, ROBERT W. WILLIAMS, WILLIAM G. BAKER,
JR., JOSEPH L. WHEELER, JAMES A. GARY, JR., HENRY
DUFFY and MAYOR and CITY COUNCIL of Baltimore

Baltimore, Maryland

February 25, 1944

10 o'clock a. m.

Second Day's Proceedings

135 The Court met pursuant to adjournment.

Mr. Davis: May it please the Court, the City Comptroller's Office representative is here, Mr. Fallon is here. He has an engagement out of the city this afternoon, and, with the consent of the Court and counsel, I would like to have him used now and excused, if agreeable.

The Court: Of course, that is largely a matter for counsel. I haven't anything to rule upon in the matter.

Mr. Houston: We have no objection whatsoever. Our position is for our purposes we have sufficiently developed the financial structure of the Library in relation of this case, so that, as a matter of a prima facie case we need no more information. Before Dr. Wheeler has finished testifying, your Honor indicated there should be a clarification of the relations between the city and the Library on the salary scheme, and I take it, Mr. Davis, that is one of the things you want Mr. Fallon to testify to. It makes no dif-

ference to me who puts Mr. Fallon on as long as I am not bound by his testimony. I have no objection to calling him as a part of my case. All I want is the fact.

The Court: I think that is fairly understandable.
136 The effect of it is Mr. Fallon is really a defense witness. If you want to call him out of turn, apparently there is no objection to that.

Mr. Davis: May it please the Court, I do not find in your library the last edition of the City Charter. I would like to present a copy, with the compliments of the city.

The Court: Thank you very much. I have tried to get it for some time. I do not know why we do not have it on our shelves.

Mr. Davis: If you turn to page 88 you will see the Charter requirements with reference to the Board of Estimates making up what is known as the Ordinance of Estimates each year, and how it gathers the information to do so. Mr. Fallon will refer to that, probably, in his testimony, and I would like to have that before you. I might also show you where it is in the volume, the reference to the statute, the Charter provisions referred to in the Answer of the city. The Answer of the city refers also to Baltimore City Code 1927, which is in the Court's library.

The Court: Do I understand you are presenting
137 this to the judiciary library so as to become the property of the United States?

Mr. Davis: Yes, or the property of Judge Chesnut, whichever you wish.

The Court: I appreciate your suggestion, and I will be very glad to have it put in the judiciary library so everybody can have access to it.

Thereupon—**Herbert Fallon**, a witness on behalf of the Mayor and City Council of Baltimore, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Davis:

Q. Mr. Fallon, you are the head or manager, I believe, of the Bureau of Receipts of the Mayor and City Council of Baltimore? A. I am the head of the Bureau of Control and Accounts.

Q. Not receipts, but disbursements? A. Yes.

138 Q. You control the disbursements? A. Yes.

Q. How long have you been with the city, Mr. Fallon? A. Going on 29 years.

Q. Will you explain to the Court how the budget and appropriation for the Enoch Pratt Library are handled? I have before me, Mr. Fallon—may it please the Court, this is the Ordinance of Estimates of 1942. The ordinance is incorporated in the printed volumes of the ordinance for that year, but for convenience sake there is a similar volume printed, and I refer you to that, and I notice that under the head of Enoch Pratt Free Library, page 14, the appropriation for that year for the Enoch Pratt Free Library shows salaries, \$345,544; expenses, \$153,520, making a total of \$549,064. Will you explain how that was reached and the mechanics of it and the whys and wherefores? A. I wonder if it would be permissible to give a little background of this thing, Mr. Davis, of this library setup.

The Court: Go ahead.

The Witness: This probably has been recited before, but it will give a little background for my answer. The 139 will of Enoch Pratt provided—

The Court: Not the will, I am sure. You said the will?

The Witness: The will.

Mr. Baetjer: The deed.

The Witness: The deed. It was part of his bequest, at any rate. The deed provided for the setting aside of a specific sum of money. I think it was around a million dollars, to be entrusted to the Mayor and City Council of Balti-

more, with the stipulation that they should so invest it that it would produce an annuity of \$50,000, and there was also provided certain property, and that property and this money, together with what other revenue accrued was to be used for library purposes, but up until about ten years ago, it may have been twelve, the city supplemented these funds in the nature of a blanket appropriation, which money was checked out at regular intervals, I think about once a month, in equal instalments. Say, for instance, the city appropriation was \$60,000. Once a month they got \$5,000. That money was turned over to the Pratt Library

and they spent it as they saw fit. I mean, they actually disbursed it themselves. About ten years ago the city, in effect, said to the Board of Trustees,

“Well, gentlemen, the amount the city is contributing is very much greater than the amount that the annuity provides, together with your revenues, and we want some better accounting of this money, so, therefore, we are going to ask you, without abridging your authority, and without taking or depriving you of any of your prerogatives, because it was, after all, under the provisions of the Enoch Pratt setup, you are designated as a self-perpetuating board and we can not inject ourselves into the management of the Library.” That, in effect, is what was done and,

therefore, in order to have a better accounting of the funds as far as the city money is concerned, “We are going to ask you to submit to us a budget in the same manner that other departments submit their budgets. That is, that you give the detail of how you propose to spend the money for salaries, and how you propose to spend the money for expenses, and when you expend those moneys we are organized down here, we have a central payroll bureau, we would

like you to clear your payroll through our central payroll bureau. We have a disbursement bureau, and we would like you to clear your disbursements through our disbursement bureau. We have recognized that you are not amenable to the rules of the City Service

Commission. You can hire and fire at will, but we want that check." So, since that time there has been submitted by the Board of Trustees of the Pratt Library an itemization of their salaries, an itemization of their expenses, and when the amounts are determined upon, when it is determined by the Board how much is to be appropriated, those moneys are spent in accordance—I mean, they are spent through the payroll bureau and the expense items are expended through the Bureau of Disbursements. The Library is not required to go through the City Service Commission, because the city does not have any right, the city recognizes it has no right to exact that, and when it comes to purchases, our regular procedure—and our Charter provides that any purchases in excess of \$500, or any expenditure in excess of \$500, must be expended as the result of competitive bidding, and a contract awarded by the Board of Awards, and any purchases less than \$500 shall be made through the purchasing agent. We do not require
 142 that for the Pratt Library, because we do not feel we have that right. Does that generally answer it?

Mr. Davis: Yes, that gives the picture as far as you know. Will you explain in a little more detail—you really make up this Ordinance of Estimates before the Board of Estimates passes on it, don't you, you and somebody else?

A. I usually check them, the departmental requests are checked in my office, and the tabulation is submitted to the Board of Estimates on the amounts that have been requested by the various departments. It has been a procedure for several years of the Board to designate a committee to review those requests, and that committee has usually consisted of the Mayor and myself. We have reviewed these requests and have reported back to the Board of Estimates our recommendation as to what should be allowed.

Q. When you say you report it to the Board of Estimates the amount that should be allowed— A. Our recommendation.

Q. That applies to the regular departments of the city?

A. Yea, sir.

143 Q. Does it apply to the Pratt Library also? A.

We recognize this fact, and we take this stand, that if the Pratt Library requests appropriation for ten new positions, we may determine that the financial situation in the city does not warrant or can not permit of the full request, and we frequently reduce the amount that is requested.

Q. That is, the lump sum appropriation that you make?

A. We would eliminate an item which would affect the lump sum.

Q. There has been something said here about the Library in submitting its budget conforming to what is called the Municipal Salary Ordinance? A. Well, what happened on that, Dr. Wheeler and I got together at one time and, at Dr. Wheeler's recommendation, I mean he prescribed the amounts and the rates to be paid. I incorporated in a regular salary schedule the rates of salaries to be paid by the Library, but that was Dr. Wheeler's recommendation.

144 Q. To you as a representative of the Board of Estimates? A. It was submitted to the Board of Estimates and the Board approved it as part of the regular salary schedule.

Q. So that the purpose was to bring that list of salaries paid at the Library substantially in accord with the ones paid by the city for corresponding jobs? A. Yes, that is right. We did not feel the Library should be permitted to pay in excess of rates paid in similar classifications in other departments, stenographers, janitors and janitresses, and what not. Of course, the technical help, there wasn't anything comparable to that, I mean in a professional line.

Q. Then you make up a lump sum appropriation which the Charter authorizes the city to appropriate for the maintenance of the Pratt Library. One of the conditions or one of the factors to be entered into the account is this budget submitted by the Pratt Library? A. That's right.

Q. Then, the arrangement is a voluntary arrangement, then, with reference to the Pratt Library conforming to that salary account? A. The city has never recognized that it had any right to exact anything from the Board that the Board did not acquiesce in.

Q. It has been stated here, I don't know whether it was testified, that the employes of the Pratt Library are not in what is called the Merit System or Civil Service System of the city? A. That's right.

Q. And are appointed without regard to the requirements of that law. Is that right? A. Yes.

Q. And it is also stated that they participate in the retirement system of the city? A. That is true. That was the result of their own effort and their own request.

Q. The result of which? A. The result of their own effort. I remember some of the trustees and probably some of the librarians did considerable missionary work among the members of the Board of Estimates to prevail upon them to agree to the submission of an enabling act in the Legislature and the passage of an ordinance which would bring the Library employes within the pension system.

Q. The ordinance you refer to is Ordinance 961 of the Mayor and City Council of Baltimore, approved May 29, 1939. That has been called to the attention of the Court. A. Yes.

Q. I would like to call your attention to one paragraph of that ordinance. "Anything to the contrary in Article XXX of the Baltimore City Code setting up a retirement system notwithstanding, if the governing body of the Enoch Pratt Free Library of Baltimore City, or of the Walters Art School, or of the Baltimore Museum of Art, Incorporated, or the Municipal Museum of the City of Baltimore, Incorporated, determines by appropriate resolution approved by the Board of Trustees of the Retirement System to have said Retirement System extended to their respective employes, then said employes of said cor-

porations shall become eligible for participation in the Retirement System on and after June 1, 1939." Do you know what was done after the passage of that ordinance by the governing body of the Enoch Pratt Library and the Trustees of the Retirement System with reference to putting that into effect? A. It went into effect. I don't know what specific action the Library Board took.

The Court: What was the Act of the Legislature referred to?

The Witness: The Enabling Act.

Mr. Davis: You left that here yesterday.

Mr. Houston: The laws of 1939, Chapter 16.

Mr. Davis: Would you mind reading it or having me read it?

Mr. Houston: Surely.

Mr. Davis: May it please the Court, this Act, it is a new section to the powers granted to Baltimore city under the head of pensions. "To grant to the officers, agents, servants, and employes of the Enoch Pratt Free Library, the Walters Art Gallery, the Baltimore Museum of Art and the Municipal Museum of the City of Baltimore, such of the benefits and advantages of the employes' retirement system of the city of Baltimore, established by Ordinance No.

553, approved February 1, 1926, as the Mayor and City Council may by ordinance provide, except that the retirement system shall not be liable for the payment of any pension or other benefits on account of said officers, agents, servants and employes, for which reserves have not been previously created from funds contributed specifically for such benefits by the city or said officers, agents, servants and employes. Provided, that any ordinance passed under authority of this sub-section may provide that every such officer, agent, servant or employe shall be entitled to credit for all service rendered prior to January 1, 1926, and for one-half for all service rendered between January 1, 1926, and the date of admission to the said

employees' retirement system; provided, further, that any ordinance passed under authority hereof shall provide that any such officer, agent, servant or employe who shall become such after the passage of said ordinance, shall, before becoming a member of the said employes' retirement system of the City of Baltimore, first submit to a medical examination similar to that required for employes in the classified service of the city of Baltimore.

149 "And be it further enacted, that this Act is hereby declared to be an emergency law and necessary for the immediate preservation of the public health and safety, and, being passed upon a yea and nay vote, supported by three-fifths of all members elected to each of the two Houses of the General Assembly, the same shall take effect from the date of its passage."

And that ordinance conforms to that statute, I take it.

By Mr. Davis:

How is the contribution to the retirement system fund for the Enoch Pratt Free Library employes handled? A. Of course, they accurately determine the amount to be contributed by each employe, and that amount is determined from his pay check and sent by the central Payroll bureau to the Board of Trustees of the employes' retirement system.

Mr. Davis: May it please the Court, I would like to call attention of the Court to the provision of the Charter, I think page 24, of your edition.

The Court: That is the sub-section of Section 6 of the Charter, is it not?

150 Mr. Davis: Yes, 14-a.

The Court: I don't know whether Mr. Houston mentioned that, but I have read it. It authorizes the Mayor and City Council of Baltimore to appropriate and pay over sums of money as shall from time to time be proper for maintenance, equipment and support of the Enoch Pratt Free Library of Baltimore City, or its branches, or any

other free public library in the city, provided that the title ownership of the property is vested in the Mayor and City Council.

Mr. Houston: I cited that in the laws of 1908.

The Court: I thought you did, yes.

By Mr. Davis:

Q. The appropriation as made in the Ordinance of Estimates is in the discretion of the Board of Estimates, I take it, on that? A. Yes.

Q. And you are not required to conform to the budget of the Enoch Pratt Library in making up that Ordinance of Estimates? A. No.

151 Q. And the Library is not required to conform to the appropriations made in the Ordinance of Estimates of the city except they can not exceed the appropriated sum? A. That is correct.

Mr. Davis: That is all.

By the Court:

Q. What is your official title in the city, Mr. Fallon? A. Budget Director.

Mr. Baetjer: May I be permitted to ask Mr. Fallon some questions?

The Court: I suppose so, yes.

Cross-Examination

By Mr. Baetjer:

Q. Mr. Fallon, in the Ordinance of Estimates for 1943 there is appropriated for the Enoch Pratt Free Library—
A. You will probably find that under the Ordinance of Estimates.

Q. No, this is the Ordinance of Estimates.

The Court: Is it indexed?

Mr. Baetjer: No.

The Court: You can frame the question without that.

152 By Mr. Baetjer:

Q. (Continuing) The sum of about \$600,000? A. I have a copy of the ordinance for this year.

Q. For 1943? A. For 1944. This is 1944.

Q. Yes, either one will do. Will you give us the total amount appropriated for the support of the Library? A. In the Ordinance of Estimates there is this provision for Enoch Pratt Free Library: Salaries, \$487,786.90; expenses, \$162,300, or a total of \$650,086.90.

Q. How is that amount arrived at in determining how much of the city's general funds must be given to the Library as distinguished from funds which the Library has under the Pratt gift and other funds which it has? A. Mr. Baetjer, that comprises the entire budget of the Pratt Library. There is taken into account, however, the revenues, including the annuities that are expected to accrue during that same year, and that revenue is used to reduce the amount that the city has to levy for libraries. In other words, from this amount there is first applied against this amount the revenue to be received and the city levies
153 for the difference.

By the Court:

Q. You mean to say, then, this sum of \$650,000 plus includes the annuities you have referred to? A. That's right.

By Mr. Baetjer:

Q. Does it include as well the amount paid pursuant to the gift provisions under which Mr. Carnegie gave \$500,000? A. Yes.

Q. Does it include what has been referred to here as the fines and other miscellaneous receipts? A. Yes.

Q. Does it include the income the Library has from gifts given it from time to time? A. No, I think that is held by the Library itself. We have nothing to do with that.

Q. Then the amount that the city gives, this total includes the amount that was given under the Pratt gift, the amount reserved under the Carnegie gift, and the amount the Library collects from time to time and like charges? A. That's right.

By the Court:

Q. How does it come about that this item of fines goes through the city treasury? A. It was part of the arrangement, we would handle their finances in order that we might be able to know what was going on.

Q. Mechanically, the fines are collected at the Library and the Library branches. What is done with the money? A. They are remitted once a month to the city by the Library Treasurer.

Q. Do you have anything to do with fixing the amount of the fines or the collection of them? A. No, and we don't check them. We accept what they send in.

By Mr. Baetjer:

Q. Do you pay any bills for the Library directly as distinguished from bills approved by the Library and sent to you for payment? A. I don't know that I get the question.

Q. Does your disbursing bureau pay any bills for the Library except in accordance with vouchers or approved bills submitted to you by the Library? A. No, sir.

Q. Does your payroll departments pay any salaries on behalf of the Library except such as given you as properly payable by the Library? A. No, sir, every expenditure that is made is charged against this appropriation, and first has the approval of the Library.

Q. The city makes no payment except those included in this estimate? A. That's right.

Q. Is there any obligation assumed by the city as far as the records of your office are concerned and for expenditures for obligations of the Library? A. I don't get you there.

Q. Are there any obligations of the Library which the city assumes the obligation to pay other than as such sent by the Library? A. No, sir.

Q. Do you pay any except such as are sent to you
156 by the Library? A. No, sir.

Q. Will you tell us again what is the reason for the non-compliance by the Library with the provisions of the Charter requiring an advertisement in the event of purchases of more than \$500? A. We never felt we had the right to exact that.

Q. Is any department of the city government exempt from that except the Library? A. The Baltimore Museum of Art. That is almost an analogous to the Pratt Library. I don't recall of any other setup.

Q. What categories are there on the Library's payroll that correspond with the categories which the city has in other departments? A. Probably stenographers and janitors and janitresses.

Q. Are Librarians or library assistants so included? A. They are in a category to themselves.

Q. Is there a category for members of the training school or training class of the Pratt Library? A. I don't
157 know whether they have such classification, but, if so, it would be in the professional help, and there would be nothing analogous to it.

Q. There would be no category in the general setup of the city? A. No, sir.

Mr. Baetjer: That is all.

Cross-Examination

By Mr. Houston:

Q. Mr. Fallon, will you look at the Ordinance of Estimates, please, and tell us how much is appropriated to meet the interest on the \$3,000,000 issue of bonds in the ordinance of 1927-28, and also for retiring, such retirement as made or may be made during 1944 or 1945, whichever it is?

A. For interest in 1944 there is provided \$82,160, and for retirement \$86,000.

Q. That is not included in the \$650,000 you have referred to? A. No.

Q. That is in addition to that? A. Yes, sir.

158 Mr. Davis: I don't know whether you can say it is in addition. It is separate.

Mr. Houston: What do you mean by "not in addition?"

Mr. Davis: It is not added to the amount which the city under its Charter appropriates for the use of the Library as the city's debt. It is separate and apart from that.

Mr. Houston: Property that the Pratt Library is using?

Mr. Baetjer: Property that the city bought and took title to.

Mr. Davis: Which your client is getting the benefit of.

Mr. Houston: And which the Pratt Library is using. For the record—

Mr. Baetjer: It represents the purchase price of property which the city owns.

Mr. Houston: And which the Library uses, for the record.

159 The Court: We all know it is using it, certainly.

By Mr. Houston:

Q. The contribution of the city to the retirement system of the Pratt Library employes is how much? A. I don't have that here. I just have the lump sum.

Q. Have you any idea from your familiarity with the Ordinance of Estimates? A. I would say probably \$40,000. I am not sure that that is correct.

Q. Approximately in the neighborhood of \$40,000? A. It might be right, but I would rather not make that definite statement.

Q. Whatever it is, is that in addition to the \$650,000? A. Yes.

The Court: What is the forty thousand?

Mr. Houston: The contribution of the city toward the retirement fund of the Pratt Library employes.

The Court: I see.

By Mr. Houston:

Q. Now, in connection with this matter of budget
160 and accounts, you are familiar, are you not, Mr.

Fallon, with the fact that under the law the Legislature made it the duty of the Mayor and City Council to appoint a visitor to examine the books and accounts of the Trustees once a year? A. I think the city auditor does that.

Q. I mean you are familiar with the fact that that is the law to have the books and accounts examined once a year? A. I assume the city auditor does it. I don't know that definitely.

Q. Are you also familiar with the Ordinance of 1907, No. 275, concerning the Carnegie gift which provides that the money should be expended by the Trustees in such manner as may be specified from year to year in the Ordinance of Estimates? A. Yes.

Q. So that the Board of Trustees of the Pratt Library does not have a complete free hand in the expenditure of the moneys that come under its contract, so to speak?

161 Mr. Davis: That is a law question, isn't it? I object to that.

Mr. Houston: You have been telling us about it all the time, trying to show they had an unrestricted contract?

Mr. Davis: If you want to fall into the same error I did—

The Court: At least, you should not complain if he does. Oh, well, gentlemen, it is helpful to the Court and both sides in that it tends to shorten the extended argument. Very often I think cases are argued by counsel right along. Of course, when we have a jury here, we have to be more careful as to the line of questions that can be asked, but when you are trying a case without a jury I think I will be

able to evaluate the significance and weight of various questions and answers. Of course, I would say that I have known these things that counsel have been asking really on both sides, except I think it is helpful to have Mr. Fallon give the summary from a practical working point of view.

The Witness: My recollection of that stipulation
162 is that the Carnegie gift requires that the city pay about ten per cent or provide ten per cent each year for maintenance and operation of that particular branch that was established as the result of this gift.

By Mr. Houston:

Q. Yes, but what I am talking about is this particular section right here where the Mayor and City Council must have a yearly provision in the tax levy of a sum of not less than ten per cent of any contribution for each of said buildings, such annual appropriations by the Mayor and City Council being for the maintenance as aforesaid, and in such manner as may be specified from year to year in the Ordinance of Estimates. A. That would probably be salaries and expenses. I don't recall just what the provisions would be, but substantially the portion was ten per cent.

Q. So as to that, the city has the right to dictate how that money ought to be spent? A. I would not say so. The Library Board indicated in its request how it was to be spent, and the city always honored that.

163 Q. But the city has the final determining voice under this ordinance, doesn't it?

Mr. Davis: You are pressing your law too far.

The Court: You can ask the provisions, but, obviously, his opinion about it might be helpful to me, but would not be controlling.

By Mr. Houston:

Q. You have exercised on frequent occasions veto powers as to the items in the budget submitted by the Trustees for the Pratt Library, haven't you? A. That's correct.

Q. And there has been no deviation from that policy as you worked it up about ten years ago, from that time down to the present? A. That's right.

Mr. Houston: That's all.

Redirect Examination

By Mr. Davis:

Q. I would like to ask what you mean by your exercising a veto power? A. My answer meant this, as I stated
164 in the beginning. Frequently the Board of Estimates did not deem that the financial condition of the city would warrant the appropriation of the request in its entirety, and it did at times reduce that request. That's what I meant in my answer, any way.

Q. You don't mean the city or your bureau or the Board of Estimates ever undertook to control the amount to be paid by the Board of Trustees of the Enoch Pratt Library except as limited by the lump sum which the city appropriated?

Mr. Houston: Objected to.

The Court: Sustained. I think you can ask him, Mr. Davis, with regard to the Carnegie money specifically, what happened, if he knows, the history of the activities of the city under that ordinance. Mr. Houston refers to the ordinance for the amount that the city is to pay in consideration of the Carnegie gift, which amount is, roughly, \$50,000 a year. The language there is, "subject to approval", or something like that, by the Board of Estimates. You can ask what the practice was from 1907 on with regard to that item.

165 Mr. Davis: The language, may it please the Court, is, "to be expended by said Trustees for maintenance as aforesaid in such manner as may be specified from year to year in the Ordinance of Estimates.

The Court: That is the Ordinance of 1907?

Mr. Davis: Yes.

The Court: You may ask him what has been the practice, if he knows, under that ordinance or under the language in the ordinance. How long have you been with the city, Mr. Fallon, you say twenty years? A. Twenty-nine years.

Q. That would not go back to 1907. A. I handled—

Q. You went there in 1915? A. Yes, my first budget was in 1919.

Q. You have stated that up to about a dozen years ago this accounting system between the city and Pratt Library and the disbursement of moneys, and so on, had not been in vogue. What was done, if you know, from the time you went to the city office in 1915 up to those twelve years ago with respect to supervision or control or participation by the Board of Estimates in the matter of the disbursements or expenditures by the Pratt Library of the \$50,000 which the city contributed under the Carnegie gift? What do you know about that, if anything? Maybe you don't recall anything. A. Yes, I think I do, judge. Up to that time, if I recall correctly—

Q. Up to what time? A. The twelve years you spoke of. The Pratt Library, when it sent its budget to the Board of Estimates, indicated that part which applied to the Carnegie gift and the Board of Estimates treated that in a more or less sacrosanct manner. I don't recall that the total of the budget was ever curtailed or changed. There were other items of lump sums for expenses or salary. At any rate, when that whole sum was appropriated, it was turned over to the Pratt Library in equal amounts. In other words, once a month the Pratt Library would send us a voucher or appropriation or demand on account of the appropriation in the amount of five or ten or fifteen thousand dollars, whatever it was, which money was turned over to the Pratt Library and was disbursed by them direct.

Q. What was the average of the city contributions over and above the Carnegie fund and the Pratt gift up to, say,

1930? Were the appropriations made by the city for the Library small or large comparably up to 1930? A. Judge, I am taxing my memory a bit, but I will try the best I can.

Q. It can be gotten, of course, year by year?

Mr. Houston: I have served notice or made request of Mr. Baetjer, and I understand this was being prepared.

The Court: I don't think it is important as to exact amounts, but I just wanted a general picture of it. Here we have the information that for the last two or three years the city has been appropriating more than \$500,000 a year, which they are not obliged to appropriate at all.

A. I think for a long period of time, aside from the \$50,000 which you spoke of, the appropriation by the city was small, in the nature of seventy-five or eighty thousand dollars.

168 Q. And then? A. From 1919 on it began to grow.

I think one year it reached probably a hundred thousand dollars, until now it has gotten up to over \$600,000.

Q. And the great increase has come from, or very largely, since the city bought the property for the new library building? A. That's correct.

The Court: Is there anything else anybody else wishes to ask?

Mr. Houston: The great increase also has been at least coincident with this new arrangement whereby the city has taken over control, hasn't it?

Mr. Davis: Objected to.

The Court: I will allow the question, but it is a question of law, I appreciate that.

Mr. Baetjer: If he thinks there has been any greater control—

Mr. Houston: I will strike that out and ask it this way.

169 Q. Since the time about twelve years ago when the system of disbursement and budget was introduced, that you have testified to, the appropriations have greatly increased, have they not? A. That is true of all departments.

Q. It is also true of this particular Pratt Library? A. Yes, that has increased as have all other departments. The salary scale has increased.

Q. But running back, would you say, for example—take the year 1925 or take a year closer to that, take 1927, leaving out the matter of the loan, and then take the year 1935 or 1937, take the year 1937, there is a much greater increase between 1927 and 1937 than between 1919 and 1927, isn't there? A. I would say there has been a very liberal attitude on the part of the city.

Mr. Houston: Thank you.

The Court: That is all, apparently.

(Testimony of the witness concluded.)

The Court: Do you want Dr. Wheeler back on the stand?

170 Mr. Baetjer: Yes.

Thereupon, Dr. Joseph L. Wheeler, recalled, testified further as follows:

The Court: Gentlemen, may I suggest that both sides have quite fully developed the matter, and I would not think it necessary to go into minute details further about it unless you have something that is really important, as you may think. I do not want to limit you, but it seems the situation has been pretty well developed on both sides.

Mr. Baetjer: I will try to ask just a few questions.

Cross-examination (continued)

By Mr. Baetjer:

Q. Dr. Wheeler, since yesterday have you gotten—I asked you to have prepared, and I now ask you if this is a statement of the financial situation of the Library for the year ending 1943? A. Yes.

Mr. Baetjer: We offer this in evidence.

(Financial statement of Library for year ending 171 1943, marked, "Defendants' Exhibit 2.")

Q. Dr. Wheeler, I hand you what purports to be and is a bound series of papers beginning with a letter of Enoch Pratt to the city in which he offers the Library, including the Act of the Legislature and the Ordinance under which the Library was started and accepted by the city, and other papers which counsel have seen, and I want to ask you if you have the original of the letter of January 21, 1882, from Mr. Pratt to the city among your archives of the Library? A. Well, your Honor, I can not answer that with authority, because I never had occasion to look for the original document, but I have no doubt it is in the safe of the Library.

Q. You have no doubt this is a copy of the letter? A. No.

Mr. Baetjer: I only want to read from one paragraph of it, your Honor:

“I propose that a board of nine trustees be incorporated for the management of the Pratt Free Library of the City of Baltimore, the board to be selected by myself from 172 our best citizens and all vacancies which shall occur shall be filled by the board. The Articles of Incorporation shall contain a provision that no trustee or officer shall be removed on religious or political grounds. The trustees are to receive from the city the quarterly payments and to expend it at their discretion for the purposes of the Library.”

By Mr. Baetjer:

Q. You were asked yesterday on direct examination something about the examination that was taken by Elsie Gene Adams? A. Yes.

Q. The point being that she was not admitted to the training class. Do you have any correspondence with Elsie Gene Adams? A. Yes.

Mr. Houston: When?

Mr. Baetjer: In the month of September, 1942.

The Witness: Right.

Mr. Houston: Was that about——

Mr. Baetjer: The two letters you have.
 173 The Witness: We referred to those yesterday
 afternoon.

By Mr. Baetjer:

Q. They were not put in evidence, however. Will you identify the two letters purporting to have been sent by you to Elsie Gene Adams under date of September 1, 1942, and September 29, 1942? A. Yes, I will certify these as being true copies.

Mr. Houston: If your Honor please, these letters have to do with the matter of not Mrs. Adams coming into the training class. It has to do with the matter of this special examination and the appointment of the assistant at Branch 1. To that extent, I think they are irrelevant, and while I have no objection to their going in, I simply raise that objection from the standpoint of the record.

Mr. Baetjer: He was interrogated for a long while on direct examination as to the examination she took and the treatment by the Librarian.

The Court: There is no objection. Read it.

Mr. Baetjer: It is dated September 21, 1942, addressed to Mrs. Elsie Gene Adams.

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“September 21, 1942.

“Mrs. Elsie Gene Adams
 “1819 Madison Avenue
 “Baltimore, Maryland

“Dear Mrs. Adams:

“I'd appreciate it if you would come to the Library at your early convenience to have personnel interview with the members of our committee on appointments, and I would also ask that you stop at Branch 1, after telephoning Madison 0756 and making an appointment with Miss Martignoni, the librarian there, who will talk with you and perhaps have you do a day or two of work for try-out.

“Also, and most important, please report on the third floor of the Central Library Building at one o’clock on Saturday, September 26th; for a written competitive examination which will be given to candidates for appointment to a position at our Fremont and Pitcher street branch.

“Very truly yours,

“Joseph L. Wheeler,
“Librarian.”

175 “Letter of September 21, 1942, from Dr. Wheeler to Mrs. Adams marked, “Defendants’ Exhibit 3.”)

By Mr. Baetjer:

Q. Did she ever come to see you, Dr. Wheeler, in reply to your letter? A. She did.

Q. What was the result of the interview with her? A. I concluded that she was eligible and qualified to take the examination as one of four who were given an examination for the appointment at Branch 1.

Q. She did take it? A. She did.

Q. But she was not a successful candidate? A. That’s right.

Q. Was there any limitation on the number who could take that examination? A. None whatever.

Q. Only four applied, is that correct? A. Only four. I might qualify my phrase, “none whatever”, by this remark:

176 that it is an expensive undertaking to give an examination, and the number of the applicants, the greater the number of applicants the greater the expense and time and so forth in grading and what not, and we, therefore, limit it to what we think is a fair number of the best qualified to take the examination. Assuming that we are going to give a fair chance to everybody who seems to be qualified—

Q. How many did apply, do you remember?

The Court: I really think you are going into too much detail about that.

The Witness: I stated yesterday—

By Mr. Baetjer:

Q. No, his Honor says don't go into that. Were any white applicants admitted to that examination? A. No.

Q. Did any apply, any whites apply to take it? A. No, I don't think so. I have no recollection of it.

Q. After you wrote to Mrs. Adams did you hear from her counsel as to the taking of the examination?

Mr. Houston: What examination?

Mr. Baetjer: For the job at Branch 1, the Pitcher street branch.

177 The Witness: I can't recall, Mr. Baetjer.

Q. I hand you what purports to be a letter from Mr. W. A. C. Hughes to you, dated September 22, 1942? A. That's correct, I remember now.

Q. Did you get that letter? A. Yes.

Mr. Baetjer: I would like to put that in evidence.

The Court: Read it. I don't think it has much to do with the case, but go ahead.

Mr. Baetjer: The letter is from Mr. W. A. C. Hughes and is addressed to Mr. Joseph L. Wheeler, and is dated September 22, 1942.

"W. A. Hughes, Jr.

"Attorney at Law

"22 St. Paul Street

"Baltimore, Maryland

"September 22, 1942.

"Mr. Joseph L. Wheeler, Librarian

"Enoch Pratt Free Library

"Cathedral and Franklin Streets

"Baltimore, Maryland

178 "Dear Mr. Wheeler:

"Thank you for your letter of September 19, 1942, in answer to my letter to you of September 8th, in which you quote the resolution passed by the Board of Trustees at a meeting on September 17, 1942.

"I have been advised by my client, Mrs. Adams, that she received a letter from you advising her, among other things, to present herself for examination at one o'clock on September 26th. I feel, under the circumstances, I should notify you that I am reserving further action and all of my client's rights in the premises until such time as something definite is done.

"I can not see, at the present time, that any benefit would result from a conference with you but be assured that I shall be more than happy to come to see you, if you feel otherwise.

"Very truly yours,

Signed, "W. A. C. Hughes, Jr."

(Letter of September 22, 1942, from Mr. Hughes to Dr. Wheeler marked, "Defendants' Exhibit 4.")

179 By Mr. Baetjer:

Q. Did Mr. Hughes ever come to see you about that treatment he complained of? A. No, sir.

Q. Yesterday Mr. Houston said there were 80 positions available a few years ago at one time which he designated and fixed, and that there was only one available for Negroes at a later period, and he fixed that period. There were 78 positions available and only two for Negroes. At that time, were there vacancies among those 80 or 78 positions? A. Well, I would have no occasion to recall the exact answer, and I would not know. It might have been or it might not have been. Probably at that time all the positions were filled. I say probably at that time all the positions were filled, because, naturally, we try to keep the positions filled.

Q. I hand you the minutes of the Board of Trustees of the Library, dated April, 1943, at which meeting the following Trustees are recorded as being present: Dr. Cullen, Mr. Gary, Mr. Randall, Mr. Casey, Judge Duffy and Mr.

Williams; also Messrs. Wheeler and Hamill. On page 180 2, item 3, under the heading, "Colored Assistants at

Branch 1", it refers to a report you made to the Board at that meeting. Is that correct? A. Yes, sir, correct.

Q. And that report is as follows:

"Mr. Wheeler reported that a competitive examination had been held on February 13 to appoint another colored assistant at Branch 1 in addition to the professionally trained assistants who had been appointed in October. Eight Baltimoreans took the examination and two students in Virginia and North Carolina took the examination by correspondence, under proper local supervision. The appointment of committee of Library department heads had held three sessions on the qualifications of the various candidates. He recommended that Miss Thelma Thomas be appointed. She is a Coppin Teachers College graduate, and also graduated from the Hartford Public Library Training Course, plus six years as assistant in the Hartford Public Library.

"Mr. Wheeler recommended that she be appointed as junior library assistant-general, at Branch 1, effective at once, and that Miss Janet Stevens, the present white assistant, be appointed librarian at Branch 13, where Miss Frances Cobb had resigned on January 11th. It was moved and voted that these actions be approved."

By Mr. Baetjer:

Q. Mr. Wheeler, you said yesterday that the application for the appointment, or the agitation of colored people for the training class commenced about thirteen years, did you not? A. The agitation?

Q. Yes.

The Court: I think somebody else said that.

The Witness: I would not recall that agitation began as early as that, except the agitation on the part of the Librarian and the Board of Trustees of the Library.

Q. (Mr. Baetjer) How long ago has it been to your knowledge that there have been efforts on the part of representatives of colored people to be admitted to the training class?

The Court: What is the purpose of that, Mr. Baetjer?

Mr. Baetjer: I want to ask how many applied during that time.

182 The Court: Why not ask him that?

Mr. Baetjer: The reason is this: if people simply walked in and applied, that is one thing and no agitation, but if there has been great agitation and interest and the records show there have been no application, I think there is a difference between the applicants as such and as with regard to the agitation.

Mr. Houston: That is a little too complex. The thing is, if this is a public institution—and the Supreme Court has so held—I have my supreme right, and I don't care who has agitated or failed to agitate.

The Court: I did not appreciate the significance of the word "agitation" in that respect. In other words, I thought when counsel asked whether there was agitation for it, he meant did he have applications from various people. Now, if you will distinguish between agitation by parties who are applying for concrete appointment and others, that may be a different thing.

Mr. Houston: I was talking of the matter of the application filed back in the '30's. By filing, I mean persons that came in and made application. That may have been
183 in writing or not, but I am talking of the individual making application, but I say it seems to me this is irrelevant if the public right is established.

The Court: Of course, I agree with that; that is, the plaintiff's rights in this case are to be determined irrespective of whether she is the only person who wants to be engaged or not. The fact that several million other might apply does not affect her rights in the matter. If, however, it is contended that she was turned down simply on account

of race or color and that the policy of the Board has been to discriminate throughout, then I think it is quite competent for counsel to show that this is the first or second application that they have ever had.

Mr. Houston: On that theory, I have no objection.

The Court: All right, go ahead.

By Mr. Baetjer:

Q. Dr. Wheeler, can you answer the question?

The Court: Ask it again.

By Mr. Baetjer:

Q. Since you have been at the Library, how many applications have been made by colored people to be admitted to the training class? A. Well, your Honor, 184 this is only a guess, but I should imagine during the sixteen or seventeen years I have been there, there may be two or three hundred such applicants.

Q. How many training classes have you had during that period? A. Sixteen, I believe.

Q. How many in each class? A. Anywhere from six to seven up to sixteen to eighteen.

Q. That would mean 96 taken into the classes in that period? A. I believe 112, something of the sort.

Q. Have been admitted during that period? A. That's right.

The Court: I don't quite get those figures, Mr. Baetjer.

Mr. Baetjer: He said for the last six or seven years there has been one class a year with anywhere from twelve to sixteen in each class, and I take that to be 96.

185 The Court: You mean in sixteen or seventeen years the total number of trainees has been less than 100?

Mr. Baetjer: Yes.

The Witness: About 112 or 110, something in that neighborhood.

By the Court:

Q. Did you say that during that period of sixteen years two or three hundred Negroes had applied? A. As compared with probably two or three thousand white persons. One year, for example, we had nearly 700 white applicants for the training class during the depression.

By Mr. Baetjer:

Q. Did you interview each one of them? A. No, I only interviewed the ones that seemed to be the most promising.

Q. Who does interview the others? A. They are usually interviewed by my assistant, or my secretary or stenographer who sits in the aisle room outside the Trustees' office.

Q. Did they report to you the result of the inter-
186 views? A. Yes.

Q. Is that in writing or not? A. No.

Mr. Houston: I think——

The Court: I think we are going far afield in many cases.

Mr. Baetjer: Now, your Honor, I don't think we are. If we are accused of discrimination, it is unfair and unjust if these reports came in and from a group of people who are trained, they say Mary Jones should not be admitted for this reason. I think it is in contradiction of the suggestion that it is a race discrimination to show these people are interviewed by people who have nothing to do with the position as to who is or is not appointed, and who reports solely, whether white or colored, on whether they would be good librarians. I think that is important.

The Court: That may be so if the policy of the Board had not been established that any Negroes would not be admitted to the training class for the reason assigned.

Mr. Baetjer: But the testimony of the members of the Board is and will be that there has been no prejudice,
187 and I think it is very important to show what the people who interviewed these people thought about

their qualifications. They have interviewed some two or three hundred people. I say it bears on the question.

The Court: I did not get a part of the question because I did not think it was framed in such a way as to give me that idea. If you want to develop the fact, if it be a fact, that any colored applicant who entered this training class is interviewed by somebody who goes into the matter with the same unfettered judgment as is applicable when a white person applies, I will take that evidence, but I did not gather from the form of your question that that was the case. In other words, I did not understand your question to be so.

Mr. Baetjer: I meant to ask whether the interviews of applicants for appointment to the training class were had by your assistants to the extent that they were not had by you.

Mr. Houston: I understand that.

Mr. Baetjer: He said they interviewed them and reported to him on whether they should be accepted, did you not?

188 A. Yes, my testimony was to the effect that when the candidates seemed to have the qualifications that make them worth while, that make it worth while giving them an examination for entrance to the class, they come to me for interviews before they are O.K.'d to take the examination.

Q. Before they interview you, who do they see? A. They see first whoever may be on duty in the reception room, and then if they seem to have the qualifications, they are interviewed, perhaps, by one of the assistant librarians or the members of the committee on admission to the training class.

By the Court:

Q. Does that apply to white and colored persons? A. Yes.

Q. Why do you spend the time, or why have you spent the time in the past in interviewing colored people as applicants for the training class if the policy of the Board is

that they did not want them? A. The fact is, these colored persons do not seem to meet the requirements and, therefore, don't get to the point of being admitted to the examination.

189 The Court: I am frank to say I don't understand that. In reference to the resolution of the Board that the Board is determined, as a matter of expediency, that there is no reason for admitting colored girls to the training class for a very good reason, which is that it would be fruitless to admit them if there were no positions for them on the Library staff, after they took the course, it seems to me the Board has very expressly stated its position in the matter in this resolution. Therefore, examination of colored girls who come in and want to enter the training class is a futile thing, it seems to me, and a waste of time as long as that policy is maintained by the Board. It, nevertheless, would help to show that despite that well known resolution of the Board, which would be binding on Dr. Wheeler, that he goes ahead and has other personnel or through his assistant examine each colored applicant for the training class to see whether they possess the qualifications to enter it or not. I would most certainly let you show that, but it seems to me that the resolution of the Board overrides the whole matter up to the present time.

I do not want to restrict the testimony on either side
190 as counsel want to develop it, but I think we have had it developed so fully already that it is hardly worth while to run down the details in the matter.

By Mr. Baetjer:

Q. Mr. Wheeler, do you vote as a member of the Board of Trustees? A. I am not a member of the Board.

Q. Do you have any vote with respect to the policy of the Board in so far as it affects applicants for the training class? A. I do not have any vote as a member of the Board whatever, because I am not a member of the Board.

Mr. Baetjer: That is all.

The Court: Any further examination?

Redirect Examination

By Mr. Houston:

Q. Just one or two questions. Who is the visitor nominated by the Mayor? A. The city auditor.

Q. And he is the officer who makes an annual audit of the books?

191 A. Every year, yes, sir.

Q. Can you point out—I don't know whether I called attention to the ordinance or resolution accepting the benefits of the pension system. A. Can I do what?

Q. Point to the resolution of the Board accepting the benefits of the pension system. That was about 1939, wasn't it? I am not sure. A. Yes.

The Court: I think we should not pause to find that. I have no doubt there is such a resolution.

The Witness: It is on page 115 of the minutes of the meeting of June 5th. There was a resolution passed by the Trustees. I do not need to read it, do I?

Q. No. I think my last question to you is this: You admitted in the answer that this library training course was the only library training course within the State of Maryland, did you not?

The Court: You are asking what is the Answer in the case?

The Witness: As I recall, Dr. Houston, I was
192 asked questions at two different times. The first time I said I didn't know, and the second time I recall it seems to me there may be a training class at the Hagerstown Library.

The Court: The question related to the Answer filed in the case?

Mr. Houston: Yes.

The Court: He would not really know that.

Mr. Houtson: I will strike that.

By Mr. Houston:

Q. You don't know, as a matter of fact, that there is a training course either at Hagerstown or Johns Hopkins, do you? A. Correct.

Mr. Houston: That is all.

(Testimony of the witness concluded.)

Thereupon, **Louise Kerr**, one of the plaintiffs, produced as a witness on her own behalf, having been first duly sworn, was examined and testified as follows:

193 Direct Examination

By Mr. Houston:

Q. Keep your voice up, Miss Kerr. How old are you?

A. Twenty-seven years old.

Q. You were born where? A. Baltimore, Maryland.

Q. Have you resided here all your life? A. All my life.

Q. Where were you educated? A. In the city of Baltimore.

Q. That is, the grammar school, high school and Coppin Teachers College? A. Yes.

Q. You graduated from there when? A. 1937.

Q. What was your competitive rank in your class at high school? A. Seventh.

Q. There were how many in the class? A. Over 100.

Q. What was your rank in the class at Coppin Teachers Training College? A. I stood second.

Q. In a class of how many? A. Forty.

Q. After that, you took work at the University of Pennsylvania, summer work, for how many summers? A. Three summers.

Q. What employment did you have after graduation from Coppin Teachers College? A. I taught in the Baltimore Public Schools for five years.

Q. They were five years running from what period? A. From 1937 to 1943.

Q. Were you employed in the public school system at the time you made application for the training class of the Enoch Pratt Library? A. I was.

Q. Are you now employed in the public school system? A. I am not.

Q. Will you state how it is you are not employed in the public school system? A. I voluntarily resigned in 195 August, 1943.

Q. At that time or prior to that, what was your record in the public school system as a teacher, satisfactory or unsatisfactory? A. Satisfactory.

Q. Miss Kerr, how did you happen to know that there was a training class at Enoch Pratt Library? A. I saw advertisements in the morning Sun and Evening Sun, and the Afro paper.

Q. Why or how did you come to apply? A. It did not specify it was for white or colored, and I was interested and I thought I had every right to apply for the training course.

Q. To whom did you apply? A. I saw Mr. Hamill, the Assistant Librarian.

Q. Approximately when? A. April 23, 1943.

Mr. Houston: Is it conceded that at that time Mr. Hamill was Assistant Librarian?

Mr. Baetjer: Yes, he was.

By Mr. Houston:

196 Q. Did you apply in writing, by telephone, or in person, or how? A. In person.

Q. Where did you apply? A. On the third floor of the Main Library Building.

Q. What was the result of your interview with Mr. Hamill? A. He told me that the Trustees of the Enoch Pratt Library had considered it impracticable and unnecessary to train Negro applicants as they would be no employment for them in the library system of Baltimore city after completion of their course.

Q. Did you have any further discussion that day? A. No, I did not.

Q. After that what did you do? A. I went to the National Association for the Advancement of Colored People and asked them to file suit against the Enoch Pratt Library.

Q. And from then on did you—who in the office did you have contact with? A. Mr. Tyus, the executive secretary.

Q. After that did you have any contact with anybody else in Baltimore? A. No.

Q. Did you have subsequent contact with Mr. Hughes? A. Yes, upon request from Mr. Tyus.

Q. Did you see Mr. Hughes? A. Yes.

Q. After that, your case was placed in Mr. Hughes' hands? A. It was.

Q. Do you still want the library training course? A. I do.

Q. Are you willing to pledge yourself to serve at least a year in the Enoch Pratt Library system, if appointed upon completion of the training course? A. I am.

Q. What is your preference for a life career? A. Librarian.

Mr. Houston: Your witness.

Cross-examination

By Mr. Baetjer:

Q. What have you been doing by way of employment since your application for the library course was declined? A. At first I did volunteer work in the National Association for the Advancement of Colored People. They had a shortage of help there; and then subsequently I was employed as office secretary in the same Association.

Q. What was your salary as a public school teacher at the time you gave it up? A. Seventeen hundred dollars a year.

Q. Do you know what the salary was as junior assistant at the Pratt Library at that time? A. I don't.

Q. Have you since learned what it was. A. I haven't.
Mr. Baetjer: That's all.

Redirect Examination

By Mr. Houston:

Q. Would it make any difference to you if the salary as junior assistant at the Pratt Library were less than your salary as a public school teacher? A. I was not interested from that basis, and it doesn't matter.

199 Q. Is your father able to support you? A. Yes.

The Court: Is the other plaintiff the father?

Mr. Houston: Yes.

The Court: What is his occupation?

Mr. Houston: A druggist.

By Mr. Houston:

Q. At the present time how much is your salary? A. Twenty-five dollars a week.

Q. Were you a member or has your family been a member of the National Association for the Advancement of Colored People for many years? A. It has.

Mr. Houston: That is all.

By the Court:

Q. Do not answer this until counsel have an opportunity to object, if they wish. I do not know that it has any real significance in the case, but I am just wondering why you resigned as a public school teacher. You say you voluntarily resigned? A. I taught for five years and I had 200 decided this year I would resign.

Q. You just got tired of the work, is that the idea? A. Yes, I got tired of teaching as a job.

Q. And you prefer to be a librarian, do you not? A. Right.

Q. Do you want to take this training course for yourself only, or as a qualification for employment as an assistant librarian? A. For qualification for appointment as assistant librarian.

Mr. Houston: I thought that was so, but I thought it might tend to qualify some of the statements in the case that have come from the other side. Just one more question.

Q. When did you first contact the N. A. A. C. P. with reference to this matter of training class? A. I went to them in the month of May.

Q. Then it was after you had made your application? A. It was.

Mr. Houston: For the purpose of clearing the record I think that answers it.

The Court: All right.

Mr. Houston: That's all.

201 By Mr. Baetjer:

Q. Where are you working now? A. In the office of the National Association for the Advancement of Colored People.

The Court. Very well.

(Testimony of the witness concluded).

Thereupon, **T. Henderson Kerr**, one of the plaintiffs, produced as a witness in his own behalf, having been first duly sworn, was examined and testified as follows:

Direct examination

By Mr. Houston:

Q. What is your address, please? A. 1907 Division Street, Baltimore, Maryland.

Q. And your business? A. Retail druggist.

Q. Where is your drug store located? A. 723 George Street, the corner of Myrtle avenue.

202 Q. In addition to the spot trade that you have in the drug store, do you also have pharmaceutical products sold outside of the drug store? A. I do.

Q. Can you just mention one of those pharmaceutical products? A. One is Kerr's Kill-A-Kough.

Q. How widely is that sold or distributed?

Mr. Houston: If your Honor please, this is only preliminary from the standpoint of resources.

The Court: Not advertisement?

Mr. Houston: No, sir.

The Court: All right, go ahead.

The Witness: It is sold over the city of Baltimore and surrounding territory, and I do know that it has been purchased and sent to various people from Maine to Georgia.

By Mr. Houston:

Q. You are also a real estate owner in the city of Baltimore, are you not? A. I am.

Q. Dr. Kerr, how many children do you have? A. 203 Three.

Q. Miss Kerr is one of the three children? A. Yes.

Q. Do you support her application for admission to the training class of the Enoch Pratt Free Library? A. I do.

Mr. Baetjer: Objected to.

By Mr. Houston:

Q. Were you acquainted with her decision to resign her position as a public school teacher? A. Yes, sir, I wanted her to resign.

Q. Were you consulted about the fact that she was going to apply to the Enoch Pratt Free Library Training Course? A. I was.

Q. And your position on that? A. I heartily agreed, readily agreed, excuse me.

Q. If I told you—do you know the salary of the actual starting salary of graduates of the training class if appointed to the staff of the Pratt Library system? A. My daughter and myself were neither interested in salaries.

Q. If there was a four or five hundred dollar difference between her salary in the public school system and in the Pratt Library system, would that have made any difference in your advice to her about taking the training course? A. They can classify her as a dollar-a-year rate as they do the dollar-a-year men. It didn't matter to me.

Q. At the time she was teaching in the public schools where was she living? A. At my home, her address and my address, 1907 Division Street.

Q. In other words, living with you in the family home? A. Yes.

Q. Where has she lived since she resigned her position in the public schools? A. She has never lived any other place. That was her birthplace and she has lived there all her life.

Q. Are you able to support her there whether she works or doesn't work? A. I am able and willing.

Q. I think, your Honor, it is conceded that Mr. Kerr is a taxpayer. You pay both real estate taxes and license taxes? A. I do, in the amount of \$40,000. That is, my holdings in the city of Baltimore.

The Court: You don't mean you pay \$40,000 in taxes?

The Witness: I dont. I mean I pay on property that has cost me \$40,000.

The Court: If it cost that, I have no doubt Mr. Davis will concede it is assessed at that.

By Mr. Houston:

Q. Are you willing to continue to make your contribution in taxes to the support of the Enoch Pratt Free Library system if it is going to discriminate?

Mr. Baetjer: Objected to.

Mr. Houston: All right. Do you want legal action to prevent your taxes, if possible, from being used in support of the Pratt Library system if they are going to discriminate against Negroes simply on account of their race?

Mr. Baetjer: Objected to.

The Court: I sustain it in the form put. Probably
 206 you could rephrase it, if you want to make it ad-
 missible.

By Mr. Houston:

Q. What is the purpose of your bringing this action as
 far as you yourself, the plaintiff, are concerned? A. I
 think it is wrong. I think the training class should be
 open to all citizens.

Q. Why?

The Court: That is clearly argument. You can do it so
 much better than he can.

By Mr. Houston:

Q. Mr. Kerr, when did you approach the National Asso-
 ciation for the Advancement of Colored People on this
 matter?

The Court: Why should we go into that?

Mr. Houston: I withdraw it. Your witness.

Mr. Baetjer: No questions.

(Testimony of the witness concluded).

Mr. Houston: If your Honor please, yesterday we stated
 and there were present in court Miss Mitchell and Miss
 Tucker. I looked around and thought they were
 207 here. They are not here. I can safely say that I
 can make my tender of proof and see whether they
 want to admit it, and, if not, of course, we will have to
 develop it by testimony. The tender of proof will be that
 Dr. Wheeler told them, especially told Miss Mitchell, that
 it was against the custom to have the mixed classes in
 Maryland. She pointed out to him the decision in the
 Pearson v. University of Maryland case and he said, Yes,
 but they were girls. Otherwise, I will ask your Honor's
 permission to put Miss Mitchell on when she gets here
 after we have sent for her.

The Court: The question is whether counsel want to admit it.

Mr. Baetjer: I think I would ask that they prove it.

The Court: They will not admit it.

Mr. Houston: My proof has run out except for that, and I must close my case. If they want to submit their case with permission to me to reopen only on that point, I will be glad to go ahead.

The Court: Oh, yes, are you ready to go ahead?

Mr. Baetjer: Yes. To be certain we have all the
208 papers in the record, some of these papers have been offered. I am not sure all of them have, and I would like to make a tender and put in evidence the following records:

The Acts of 1882, Chapter 141; Ordinance 106 of the Mayor and City Council, approved July 15, 1882; the Indenture from Enoch Pratt and wife to the Mayor and City Council of Baltimore, dated July 2, 1883; the Ordinance of the Mayor and City Council of Baltimore, No. 275, approved May 11, 1907; Ordinance 1195, approved December 16, 1930; the Baltimore City Charter, Section 6 (14-a), Section 969 and Section 971 of the Act of 1943, Chapter 710, and the entire letter or proffer or offer by Mr. Pratt to the City, as the result of which the original Pratt Library was built, the letter being dated January 21, 1882.

The Court: What is the Act of 1943, Chapter 710?

Mr. Baetjer: Making general appropriation to about 100 institutions. We wanted to refer to it in the argument.

The Court: All right.

Mr. Baetjer: Dr. Cullen, will you please take the stand.

209

Thereupon, **Dr. Thomas S. Cullen**, one of the defendants, produced as a witness in his own behalf, having been first duly sworn, was examined and testified as follows:

Direct examination

By Mr. Baetjer:

Q. You are president of the Board of Trustees of Enoch Pratt Free Library? A. I am.

Q. How long have you occupied that position? A. I think two or three years.

Q. You have been a member of the Board how long? A. About twenty-nine years.

Q. What are your duties as a Trustee of the Library? A. Presiding at the meetings, and I have been for years the liaison between the Pratt Library and the city administration in getting the money. We have a fine executive committee. They are referred to first in matters by the Librarian and then the actions of the executive committee are ratified by the Board of Trustees.

Q. How often does the Board of Trustees meet? A. That depends on what the woodpile is.

210 Q. The same is true of the executive committee?

A. Yes, the executive committee meeting can be held any time, but the Trustees try to leave the Librarian as much latitude as possible in the running of the Library. That is his duty.

Q. Is there on the Board of Trustees a member thereof who is designated or named or nominated by the city of Baltimore or any department or official thereof? A. No, there never has been.

Q. Does the city of Baltimore exercise any supervision over the acts of the Board of Trustees of the Library other than approval of those requests for appropriation? A. No. Years ago we were given checks by the city administration and then paid the individual employes. It was found wiser in the last few years, and much easier, to use the machinery of the city government and all checks were paid by the city, so we have nothing to do with finances except the special funds.

Q. That is to say, you have nothing to do with the finances, meaning the disposition, the mechanical payment? A. The mechanical payment.

211 Q. Has there been any change except with respect to the mechanical payment of money between what your former practice of doing was, your practice of paying bills, and the way they are paid today? A. Not the slightest.

Q. Who passes on the contracts for supplies? A. The Librarian.

Q. Does he submit it to the Board of Trustees? A. Only where he is in doubt.

Q. Who determines upon the number of employes that will be employed within the Library? A. The routine depends entirely on the Librarian. Where you have vacancies or new appointments that are necessary, that is, in key positions, then he takes it up with the Board of Trustees.

Q. As far as appointment of the members of the staff or employes in general, does the city exercise any supervision over who they shall have or how many? A. No, never. The city has never, as long as I have been associated with the establishment and before, if I may say, I do not know who is a Democrat or Republican, and if we can get
212 a good person in Baltimore for a key position, we get them. If not, we go outside the city.

Q. Have you, as a member of the Board of Trustees, or has the Board of Trustees as a body, discriminated with respect to the appointment of members of the training class against anybody on account of race or color? A. May I amplify it a little?

The Court: Yes, answer it your own way.

The Witness: We inherited the Library as it was 25 or 30 years ago. We have no colored branches. We are not like a public school that has colored schools and white schools. To have separate libraries would cost a great deal more money, would cost a duplication in books, and we could not afford that. Recently, in the last few years, we have been watching the Pitcher street branch. The Pitcher street branch had a preponderance of colored people coming to

the Library. It was finally decided that we should have some colored assistant librarians there.

In the training school, the training school is just a recruitment agency to get suitable people for vacancies in the

Library. As we had only one or two positions for
213 colored people at the colored branch, and as there

was no available or no further vacancy for a colored branch, the Trustees, after the most careful consideration and looking into the thing, decided it would not be fair to allow colored people to take the training for admission to the Library when no vacancies would be available after they had gone through the course.

Q. There have been introduced in evidence two letters of the Board of Trustees, one at a meeting held on September 17, 1942, the other meeting January 21, 1943, at both of which meetings you were present? A. I remember the resolutions.

Q. Do you remember a resolution passed at the earlier meeting, "Resolved, that it is unnecessary and impracticable to admit colored persons to the training class of the Enoch Pratt Free Library. The Trustees being advised that there are colored persons now available with adequate training for library employment have given the Librarian authority to employ such personnel where vacancies occur in a branch or branches with an established record of preponderant colored use."

214 The resolution passed at the later meeting:

"At the meeting of the Executive Committee on January 8th, Miss Martignoni, the branch librarian, had discussed the situation, reporting that Miss Collins, colored assistant appointed in October, while not as forceful and effective as could be desired, is improving constantly, and is as good as the average white assistant in other branches. The committee authorized the Librarian to proceed with the competitive examination and appointment for another trained assistant at this branch, but he is to make no promise or commitment beyond that."

Taking the first resolution that it is unnecessary and impracticable, was that the only reason the Board did not admit colored people to the training classes? A. And after covering the ground fully, they felt that that resolution expressed their opinion absolutely.

Q. Well, now, what was meant by the statement in the second resolution that Dr. Wheeler was to make no promises or commitments beyond that? Did that refer to the future? A. That was an infant. We had no colored assistant librarians. This was the first step, and it was
215 taken because the majority of the people in that branch were colored and we aimed, accordingly, to give them colored assistant librarians.

Q. Before the solicitations or applications that gave rise to the resolution passed at the meeting of September 17, 1942, had there been presented to you the matter of the appointment of colored people in the training class, and had the Board taken any action with respect thereto? A. We had had no colored people connected with the Main Library or branches, that is, in an official capacity of assistant librarian.

Q. When you said to make no further commitments beyond that, was the Board then speaking as of that time and as of circumstances as of that time, or were they speaking for the future indefinitely? A. Nobody can do that, Mr. Baetjer, or your Honor.

Q. The Board changes from time to time? A. That's right. We had no colored people up to a year or two ago, and then we put two in the Pitcher street branch because of the majority of the people there were colored, and
216 we do not know what turns the city will take in the future, so we can not be positive about the future.

Q. That is responsive, but what I meant was, the personnel of the Board changes, it is a rotating board? A. No, it is a permanent board.

Q. Don't the members, aren't they appointed from time to time, or is it a life tenure? A. It just depends on the Board. Mr. Pratt appointed the first board.

The Court: They elect their successors from time to time as vacancies occur.

By Mr. Baetjer:

Q. It is not a term? A. No, it is only when somebody resigns or dies. Your Honor, may I say, that we have had a very fine sprinkling of judges on the Board.

Q. As far as your disposition is concerned, will colored people be admitted in the future if there are positions available for them?

Mr. Houston: What do you mean?

The Court: I sustain the objection, if you make one.

217 Mr. Houston: I make one.

By Mr. Baetjer:

Q. As to what will happen in the future, as far as you, as a member of the Board, are concerned, will colored persons be able, if they apply to the training class, will they be denied solely on account of their race or color? A. They have not been denied at the Pitcher street branch because of colored preponderance. What will happen in the future I can't tell, but the chief aim of the Board of Trustees is to give appropriate interest in books and in helping one pick out what they should read, and there is no employment of the colored person. A colored person has as much right to go in the Library as a white person, and, in the winter time, I have asked this particularly in the Main Building, the Children's Room, which is most attractive, three-fourths of the children have been colored children, and in the summer time there is not nearly as many there.

Q. Dr. Cullen, I hand you a letter addressed by you as president of the Board of Trustees to W. A. C. Hughes, Jr., and ask did you send the original of which this is a copy, or sign the original of which this is a copy? A. That is correct.

218 Mr. Baetjer: This letter is dated July 7, 1943, and reads as follows:

**“Enoch Pratt Free Library
“Baltimore, Maryland**

July 7, 1943

**“Mr. W. A. C. Hughes, Jr.,
“22 St. Paul Street
“Baltimore-2, Maryland**

“Dear Sir:

“I have your letter of June 29th. You are mistaken in stating that Miss Kerr was refused admission to the library training course solely because of her race. As you know, the Pratt Library has appointed librarians of the colored race, as well as of the white race.

**“The Trustees of the Pratt Library have, after careful consideration, determined what librarian positions are available for members of the colored race, and what librarian positions are available to the white race. At the present time there are no openings or vacancies among those positions filled by, or available for, members of the colored race. The Librarian tells me there is no
219 likelihood that there will be vacancies in those positions in the near future.**

Mr. Wheeler tells me that this was explained to all persons of the colored race applying for admission to the library training course in the spring, and it was also pointed out to them that the library training course was maintained by the Library to train persons to fill vacancies on the Pratt Library staff. The library training course is not designed, and can not undertake, to train persons generally in library work for positions elsewhere.

Under those circumstances, and since no opening as librarian on the staff of the Pratt Library is, in the immediate future, available, the admission of Miss Kerr to the library training course, and her work in that course, could result only in an unhappy and unprofitable waste of her time.

“Very truly yours,

**Signed, “Thomas S. Cullen
“President.”**

Mr. Baetjer: I offer this letter in evidence.

(Letter of July 7, 1943, from Dr. Cullen to Mr. Hughes, marked "Defendants' Exhibit 5").

The Court: We will take a ten minute recess.

(Thereupon, at 11:50 a. m., a recess was taken until noon).

The Court: Had you finished with Dr. Cullen?

Mr. Baetjer: Yes.

The Court: Cross-examine.

Mr. Houston: I didn't know Mr. Baetjer was finished.

Mr. Baetjer: Yes.

Cross-Examination

By Mr. Houston:

Q. Dr. Cullen, you have been a member of the Board for 29 years and president three years, and, as I understand, you are the liaison man with the city? A. I have been.

Q. You are acquainted, then, aren't you, with the effort in 1933 of Negroes headed by the City Wide Forum to get admission to the training class? A. I can't say how far back it was.

Q. You remember that instance back in the '30's? A. I don't remember it in 1933. I can't tell you. The Librarian can answer that.

Q. Were you in the conference with the Board of Estimates and representatives of the Negroes in their efforts to get the Board of Estimates to withhold appropriations to the Library of over \$50,000 unless the Library Board of Trustees changed its policy? A. I can't tell you about that. May I ask you a question?

Q. Certainly. A. Were the Trustees at that meeting? I don't remember ever hearing of it.

Q. Mr. Hughes advises me the Trustees were not present, but the petitions were turned over to them. Let me ask you, did the Board of Trustees receive petitions back in 1933, about 1933, a series of petitions from the Mayor,

transmitted by the Mayor, or Negroes making application for a change in the rules so that they might be admitted to the training class? A. That I can not answer you. I was not president then.

Q. But you were on the Board? A. Yes, but some
222 of these things came to the president and not to the Board.

Q. Getting right down to this matter of 1943, may I see that letter again? Your letter to Mr. Hughes of July 7, 1943, has been read in evidence by Mr. Baetjer. You heard the letter and recognized it as yours? A. Yes.

Q. At that time you were writing in your official capacity, is that right? A. What is the date of it?

Q. July 7, 1943. A. Where is it dated from?

Mr. Baetjer: It is signed as president of the Board of Trustees.

By Mr. Houston:

Q. You were writing in your official capacity? A. Yes.

Q. You say the Trustees have, after careful consideration, determined what library positions are available for members of the colored race, and what library positions
223 are available to the white race. What librarian positions were available to the colored race at the time you wrote this letter? A. I think one or two at Pitcher street.

Q. What librarian positions were available to the white race? A. All the rest.

Q. What change has there been in the policy of the Board since the date of this letter? A. None.

Q. Now, you testified that you did not discriminate against Miss Kerr in denying her admission to the training class on account of race? A. There were no vacancies. There would have been no vacancies in the Pitcher street branch at that time.

Q. So that she was not admitted because there were no vacancies? A. Right.

Q. For Negroes? A. Right, yes.

Q. So that it was the fact she was a Negro that caused you to deny her application? A. Because there were
224 no vacancies in the Negro branch.

Q. As a matter of fact, you don't have any Negro branches, do you? A. We have Pitcher street, which is pretty close.

Q. And why do you have, what is the policy of the Board behind appointing Negroes at the Pitcher street branch? A. Please give that again.

Q. What is the policy of the Board in appointing Negro assistants at the Pitcher street branch? A. The majority of the people going to the Pitcher street branch are colored, and it is only fair to let them have colored assistants there.

Q. What about the three-quarters attendance in the Children's Room? A. That is at the Main Library in the winter time.

Q. What about the fairness of letting colored assistants be there in the children's room in the winter time? A. You take the Library as a whole and there is no comparison between the number of colored people and the number of
white people in the Main Library.

225 Q. We are talking about the Children's Room. A. I am talking about the Library as a whole. I don't divide the Library into various portions.

Q. Do you have an attendant in the Children's Room in the Library? A. You'll have to ask Mr. Wheeler, I can't tell you.

Q. Suppose there was an attendant situation in the Children's Room in the Library, the Main Branch, would you then feel that it was fair to have a Negro assistant stationed in that Library in the Children's Room during the wintertime, in the period when three-fourths of the children are Negroes? A. I preside at the Board meetings. These questions come up before the Board and it is only when there would be a division that I vote, and there never, to my knowledge, has been a division.

Q. Please answer my question. A. I have answered it to the best of my ability.

Q. Oh, no. Will you repeat the question, Mr. Stenographer?

The Court: I think he has tried to answer it. It is an argumentative question, any way.

226 Mr. Houston: All right, sir.

Q. Dr. Cullen, you say you tried to get the best people available regardless of politics or religion for employment in the Enoch Pratt Library staff, is that correct?

A. It is.

Q. Do you try to get the best people available regardless of politics or religion or race, creed or color?

Mr. Baetjer: Objected to.

The Court: I think he can answer it. I don't know whether he can answer it or not. If he can, let him try to answer it.

The Witness: Your Honor, I can't answer that question.

By Mr. Houston:

Q. Put it this way. Suppose two of the applicants, one is white and one is colored, and, in every respect, except the matter of race, and in the matter of race, it is not inferior, as far as I am concerned, but I am making the question that the qualifications are the same. Would you then consider that Negro persons eligible for any of the positions in the Library except the two on Pitcher street?

227 Mr. Baetjer: Objected to.

The Court: I will let him answer, if he can.

The Witness: Your Honor, it depends on the people that come to the Library. If the majority are colored, the best colored person available will be picked out. If it is a branch or the Main Library where the majority is white at the present time, no.

By Mr. Houston:

Q. Then the answer is, regardless of qualifications, a Negro person would not be employed in the Pratt Library except to serve in the branch where the majority of the

patrons is colored? A. It is not with regard to whether they are white or colored, but it is what is the predominating color of the people going into that library.

Q. I am trying to say, the answer is, then, regardless of the qualifications, a Negro, regardless of qualifications, would be considered only for appointment in the branch where the majority of the patrons are colored? A. That is the ruling at the present time.

Q. Now, upon what is that ruling based, is it based
228 upon a State law? A. No, it is based on the mature judgment of the Board of Trustees and they have the responsibility.

Q. Is their judgment based on any city ordinance? A. I have—we are not guided by city ordinances.

Q. Is their judgment based upon customs prevailing in the State of Maryland? A. By customs that have been found the most satisfactory up to the present time.

Q. In the State of Maryland? A. I am not taking in the United States. I am talking for Baltimore.

Q. Then it is based on the customs of Baltimore? A. As we have them and which we are not responsible for.

Q. Then it is based on the customs of Baltimore? A. Right.

Q. I want to ask you also on the matter of following up the application, after you wrote Mr. Hughes your letter of July 7th, did he not write back to you and tell you, as Trustees, that he insisted upon Miss Kerr's rights in the training class, in a letter of July 10th? A. I don't know,
I don't remember that, but I remember a letter of
229 Mr. Hughes demanding certain things. I don't remember when that was written.

Mr. Houston: Do you have the letter of July 10th?

Mr. Baetjer: You have the original. I have a copy.

By Mr. Houston:

Q. This is the letter to Mr. Wheeler. Do you not recall a similar letter going to you? If your Honor please, while it may not be strictly relevant from that standpoint, it is

introduced for the sole purpose of showing every possible remedy was exhausted, and that is the only purpose.

The Court: I think the issue is very clearly made on both sides.

The Witness: This letter was addressed to Dr. Wheeler and not to me.

By Mr. Houston:

Q. Yes, but didn't you receive a similar letter, registered letter? A. I wrote you on July 7th. I was up in the backwoods at the time on my summer vacation, and all the correspondence after that was referred back to the Library.

Q. I won't press that. I will ask you, however, 230 maybe you will refer to this letter. Let me show it to Mr. Baetjer first.

Mr. Baetjer: I have it.

Mr. Houston: This letter reads as follows:

"June 28, 1943

"Mr. Thomas S. Cullen, President

"Board of Library Trustees

"Enoch Pratt Free Library

"Baltimore, Maryland

"Dear Mr. Cullen:

"Miss Louise Kerr, 1907 Division Street, applied for admission to the library training course, starting on July 15, 1943. Miss Kerr was refused consideration for this course, solely because of her race. Miss Kerr was born and educated in Baltimore city, having graduated from Douglas High School in 1943, with an average of 86, and she finished the Coppin Normal School in 1937, with an average of 90, standing second in her class. In addition to this, she has had extension work at the University of Pennsylvania for three summers. She is eminently qualified to take the 231 library training course and refusal to consider her application solely on the basis of her race and color is an unlawful and unconstitutional discrimination against her.

“On behalf of Miss Kerr, I now make formal demand that she be considered for and admitted to the library training course, starting in July of this year, or the reason for refusing her application be fully stated on or before July 7th.

“Yours very truly,

Signed, “W. A. C. Hughes, Jr.”

(Letter of Mr. Hughes to Dr. Cullen dated June 28, 1943, marked, “Plaintiffs’ Exhibit 6”).

The Court: Anything else?

Mr. Houston: No, sir.

Redirect Examination

By Mr. Baetjer:

Q. You were asked, assuming a colored applicant was superior in every way, would she be denied because she was colored. As I understand, your testimony is that the two considerations are given, the capacity of the applicant and the need of those to be served? A. At the present
232 time, it was the needs of those to be served. If there was no vacancy, it would not be a square deal to let a girl go through the training course and not be appointed.

Q. And if you decide to let a girl go into the training class you have to keep in mind, if she is successful, the goal at the other end is employment? A. Not only employment, but if better than others, she will be promoted and the others are not.

Q. And if employed or not, it is only the capacity of the applicant, but also, personality, and that is taken into consideration, who is to be served by her? A. Not only that, but the possibility of keeping the job.

Recross-Examination

By Mr. Houston:

Q. You testify now that you would appoint Negro assistants in the Branch 1 serving Negro patrons predominantly.

Suppose that Negro assistant there were so outstanding that she would be the most outstanding person on the Library staff, would she be eligible for appointment at the Central Branch? A. That question has never come
 233 up and until it does and is brought before the Board of Trustees I can't answer it.

By the Court:

Q. How long have you been in Baltimore, doctor, some of us know. A. I came to Baltimore on September 22, 1891, over 52 years ago.

Q. From where? A. From Toronto.

Q. You are a Canadian? A. I was.

Q. And came here in the early days of organization of the Johns Hopkins Hospital and have been connected with the Medical School of Johns Hopkins on the teaching staff for many years? A. I have. May I say one thing, your Honor? I have in my father's house seen 16 colored people at his dining table at one time.

The Court: That is a little irrelevant.

The Witness: I know it is, but it gives a little
 234 background.

The Court: All right, anything else?

By Mr. Houston:

Q. I just want to ask one question. Doctor, I understand the fact that as far as you are personally concerned, you have no prejudice, your background is Toronto or Canada, and I take it, in Canada this question would not arise if a Negro person were superior and a Canadian, which would be considered on her merits, that is probably true, is it not?

Mr. Baetjer: Objected to.

The Court: I sustain the objection.

By Mr. Houston:

Q. Since you have no prejudice yourself, you are acting solely, then, on the basis of your interpretation of the customs in Maryland?

Mr. Baetjer: Objected to.

The Court: He may answer, if he can.

The Witness: There are certain customs here that stand out and there are certain things that you can do in the north and the south that are very difficult to handle as below or above the Mason and Dixon Line.

235 Q. And you are acting upon the customs of Baltimore? A. The Board acts and I only vote when there is a division, and I have never voted since I have been president.

Q. As far as you know, then, the Board acted on the basis of the customs existing in Baltimore, Maryland? A. The Board's chief object is to give everybody good service in the Library, and they feel at the present time the best service they can give is in the way they are now doing it.

Q. Taking into consideration—

Mr. Baetjer: Let him finish.

Mr. Houston: I am sorry.

The Witness: And I would like to assure his Honor that the Pratt Library at the present moment is looked upon as one of the three or four best libraries in the United States.

By Mr. Houston:

Q. Let's go back, that the Board is acting to give the city in its opinion the best library service, acting in the light of existing conditions in the city of Baltimore, existing social and racial conditions in Baltimore, for which it is not responsible, is that correct?

236 The Court: I am not quite sure what you mean, nor that it is relevant, for which it is not responsible.

By Mr. Houston:

Q. Nor which it did not create. If I have that right—
A. I think I can answer that in the affirmative.

Q. That is, in making its decision and adopting the policy reflected in your letters, and in the resolutions of the Board, the Board was acting in its judgment to give the citizens

of Baltimore, the people of Baltimore, the best free public library service in the light of existing social and racial conditions in the city? A. Yes. Let me add one thing to that. I say, Yes, to that. In addition to that, it is unfair to let these colored women take the training class and then turn them down because there is no vacancy. That would be just a waste of every one's time and expense, to then not let her come in.

Q. And she would have to be turned down because of her race? A. No, because there was no—

237 Q. No vacancy in any position to which her race would be eligible in the library service? A. At the present time.

Mr. Houston: That is all.

(Testimony of the witness concluded).

Thereupon—**Albert D. Hutzler**, one of the defendants, produced as a witness in his own behalf, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Baetjer:

Q. Your present occupation? A. President, Hutzler Brothers Company.

Q. And you have been president of Hutzler Brothers Company how long? A. I think since 1919. It is a thing I don't remember.

Q. You have been connected with Hutzler Brothers—
A. Since 1910.

238 Q. What position do you occupy with respect to Enoch Pratt Free Library? A. I am a trustee and a member of the Executive Committee.

Q. For how long have you been a trustee and a member of the Executive Committee? A. Since 1928, and I think a member of the Executive Committee the following year or very shortly thereafter.

Q. I think Dr. Cullen antedated you in point of service?
A. Yes.

Q. He has testified that the city of Baltimore has no representative on the Board or any control over the management. As far as you know, is that correct? A. None except the budget.

Q. Mr. Hutzler, there have been two resolutions of the Board of Trustees of Pratt introduced in evidence, one passed at a meeting held September 17, 1942, and one at a meeting held January, 1943, and at both of those meetings you are recorded as being present. Do you remember the resolution passed at the earlier meeting, that it was un-

necessary and impracticable to admit colored persons to the training classes. Will you tell his Honor

why it was unnecessary and impracticable for the occasion of the passing of that resolution? A. It was un-

necessary and impracticable because the number of vacancies in technical library work that were available for colored people could be filled without training. In business

or in colleges or in institutions of this type, you don't train people when you can go out and engage them without

training, and in these particular classifications of colored librarians, there were available a sufficient number of

people, according to the information we had and according to satisfactory advice, that it was not necessary to train.

We do not operate an educational institution. Training here is just like any other training class in any other type

of organization. If you can't get people to fill certain jobs who have technical qualifications, whether that happens

to be a technical school or of some professional education, you have to, within your organization, train, but that is

only done, as far as I know except in educational institutions, for people who are to remain with you, and it has

always been my understanding, and I think, the other Trustees' understanding, as far as these

classes were concerned at the Pratt Library, they were exclusively and definitely to fill vacancies on the Pratt

Library staff, and for no other purpose whatsoever, there not being any need in one classification, to wit, colored librarians, so there was no need to admit them in these training classes. Do you want anything further as to why?

Q. Yes. A. The question of colored librarians, as we have heard in the previous testimony, is a question that has been up before the Trustees for quite some time. From time to time the question has come up where the Trustees were interested in—it wasn't a question of employment, but a question of service to the patrons of the Library. It is very important to maintain a very high standard of service. It is very important to give the kind of service which the public wants and should receive. Anything that would tend to hurt that standard of service is a thing that would hurt the Trustees more than anything else. The question was brought up and discussed more than once, and it was felt that perhaps we could experiment
241 slowly and see what developed. In the first place, selected according to where the branch is, and there was only one which was preponderantly colored in patronage. It was felt by the Trustees that service with colored librarians was not what was wanted by the users of the Pratt Library, and we felt it was something that should be worked out slowly. There are certain problems to be met. While no promises were to be made, and it was definitely stated to Mr. Wheeler that no promises were to be made, if the thing was successful we would take the next step after the first step worked all right, and that is the reason the Pitcher street branch was selected as the first one, and we first put one in and then a second was put on, and things were working out in such a way that perhaps a third step will be taken, but, again, no action has been taken by the Trustees.

Q. The Board of Trustees has made no commitments as to its future policy? A. Has made no commitment either positive or negative as to the future policy.

Q. So that the instruction contained in the resolution passed by the Board on January 21, 1943, directing
242 that Mr. Wheeler is to make no promises or commitments beyond that, that resolution was passed because of the fact that there was no policy fixed by the Board? A. It was taken because the Board wanted to leave itself for power of action as events developed.

Q. Mr. Hutzler, you heard read a letter of July 7, 1943, which Dr. Cullen, as president of the Board of Trustees, wrote and identified? A. I hear it read. That represents exactly what I felt to be the attitude of the Board of Trustees at the time.

Q. And you received a letter from counsel for the plaintiff, Louis Henderson Kerr, did you not? A. I think I did at one time.

Q. Demanding that she be admitted to the training course? A. I think I did.

Q. Did you make a reply to that letter? A. I don't believe I did.

Q. Mr. Hutzler, have you, in taking the action which you have taken as a member of the Board of Trustees of the Library with respect to the admission of colored people to the training class, been influenced in the action or vote that you gave solely by reason of race or color of
243 the applicant? A. No, the reason was there would be no job.

Q. That there would be no job? A. Yes.

Q. At the time you took that action, you did, as a member of the Board of Trustees, you have been advised by your professional advisers that as to whether there were or not vacancies and what the type of vacancies were? A. We were advised definitely that any vacancy that might arise at the Pitcher street branch, which we designated for colored people, could be filled without training and that, therefore, there was a supply of colored assistant librarians available, I mean a supply of material for colored assistant librarians.

Q. Were the instructions to the Librarian to appoint a colored person in the Pitcher street branch when the first appointment was made in the fall of 1942 and the second in February, 1943? A. Yes, those resolutions were read in court here.

Q. Was that the action of the Trustees? A. Yes, sir.
244 Mr. Baetjer: That's all.

Cross examination

By Mr. Houston:

Q. Mr. Hutzler, I understood you to state the standard of service to the library patrons is the ultimate determining factor? A. Yes.

Q. And your next statement was that the people of Baltimore did not want to be served by Negro librarians.

Mr. Baetjer: He didn't say that.

The Court: It is cross-examination.

A. I don't remember that statement.

By Mr. Houston:

Q. You said services by colored librarians was not what the public wanted? A. I said in certain branches.

Q. Let's omit Pitcher street. A. That's the way we feel, yes.

Q. How did you determine that? A. By analogy.

Q. What analogy? A. The analogy of service of
245 colored people of a professional nature right throughout the city. If you came from Baltimore you would realize that is pretty well accepted.

Q. In connection with that, what services do the librarians render the public? A. They give advice on books as well as to a certain extent the mechanics, but they are largely in an advisory capacity.

Q. In addition to that, there are people on the staff, positions on the staff where people in a professional status do not come in contact with the public, isn't that true? A. That may be, but they come in contact with other members of the staff.

Q. You mean that is one consideration, the fact that you consider other members of the staff in making the appointments? A. Yes.

Q. And you feel other members of the staff do not want to work with colored librarians? A. Definitely in a
246 large percentage, yes.

Q. Are there any other races, what races are represented on the library staff? A. I haven't the least idea.

Q. Are there any Chinese or Japanese? A. I haven't the least idea.

Q. Any Jewish people on the staff? A. I don't think Jews are races.

The Court: Gentlemen, let's try to get to the point more closely, if you can.

By Mr. Houston:

Q. Is discrimination made against any other race or group by the Trustees of the Library except Negroes in the appointments?

Mr. Davis: Objected to. That implies that it does.

The Court: I think the question is a little difficult to answer even on cross-examination.

By Mr. Houston:

Q. Let me ask the question this way: Are members of any group, religious or racial, denied appointment in the
247 Library because of their religious or racial group except Negroes? A. We have never had any problem up of colored races. I am talking of non-Negro colored races. I don't think we would appoint Chinese. It has never been up, as far as I know. There is no religious discrimination. There is no allocation of such positions which are open to one group and probably not to others. I don't know, I doubt it. I doubt if we would put a Chinese, it is so hypothetical, it is a difficult thing to answer, because it has never come up. I think if we would put any Chinese in the Pitcher street branch, I think it would be

resented, and would give very poor service, but it has never come up.

Q. The answer is the only person or people are applicants whose cases have come before the Board and who have been denied appointment or training because of race has been Negroes.

Mr. Baetjer: He didn't say that.

The Witness: Wait a second, I didn't say that. Nobody has been denied training because they were Negroes. They have been denied training because there was no position for them at the end and we only train for position. We do have certain jobs open to Negroes and certain jobs
248 are not open to Negroes, and if there are any positions open to Negroes, if there wasn't an available supply, then we would meet that when it came up, where you have another training class, but it has not been met yet because it is hypothetical ground.

Q. Have any jobs in the library staff been marked out as banned to any racial or religious group except Negroes?

A. I would say they are barred to any except to white in certain places, but I don't know. It has never been discussed. Therefore, I can't tell what, I can't talk for the whole Board of Trustees.

Q. You are not answering my question.

The Court: Mr. Houston, I really think you are seeking to argue your case with this witness. You can argue it with me.

Mr. Houston: I have no desire to argue it with witness.

The Court: I get the point you make, and it seems to me the situation is so perfectly well developed on the fact—

249 Mr. Houston: No further questions.

The Court: I certainly don't want to restrict your examination.

Mr. Houston: I have no further questions.

The Court: Anything else.

Mr. Baetjer: No.

The Court: It may be well for Mr. Hutzler to state what business experience he has had and what his business practice has been.

The Witness: In the first place, I was born in Baltimore 55 years ago and I have lived here ever since except for six months while I was training. I have been in the department store business since the fall of 1909, out of town, and since 1910 in town, and from about 1919 have been the president of Hutzler Brothers Company, which is at present, I think, the largest store in the south.

The Court: Anything else?

By Mr. Houston:

Q. In Hutzler Brothers, the general policy is not to serve Negroes in many departments? A. In many departments.

In any department, did you say?

250 Q. In many departments. A. In many departments the service to Negroes is restricted. I mean, there is no trying on of garments and no return privileges for garments.

Q. Outside of that, they can buy throughout the store?

A. Outside of that they can buy throughout the store. We do not particularly have any Negro trade because of the restrictions in the garment department, and garments are a great deal, or a large portion, of our business.

Q. And you were acting as Trustee in the light of existing conditions, social and racial conditions in Baltimore, when you acted as Trustee, on the background, against the background of existing conditions in Baltimore? A. Certainly, acting against the background, a long established background of existing conditions in Baltimore.

Q. Which is apparently, or to some extent, reflected throughout the city, somewhat similar? A. That I won't say. I limit it to Baltimore and vicinity.

Mr. Houston: All right.

(Testimony of the witness concluded).

251 Mr. Baetjer: This is the last witness.

The Court: May I suggest to counsel we have gone over so many aspects of this case that it is really hardly desirable to duplicate from each of the members of the Board you are calling as witnesses this same story.

Mr. Houston: I am willing to stipulate they will testify to the same, and I would ask them the same questions.

The Court: It may be Mr. Baetjer wants to ask Mr. Williams particularly some questions, but I am just throwing out the suggestion that it is hardly worth while to thrash over the same ground with everybody. If there is any new point of view or fact, that may be relevant.

Mr. Baetjer: What I want to do is ask the President and two other Trustees the questions.

The Court: I think you can summarize that, Mr. Baetjer, by asking Mr. Williams if he, in the first place, who he is, what experience he has had, how long he has lived in Baltimore, how long he has been a member of the Board of Trustees, has he been in court during the trial of this case, and has he heard the testimony, has he anything to
252 add to it or subtract from it, so you can summarize it without spending a half hour going over the same ground.

Mr. Baetjer: Very well, your Honor.

Thereupon, **Robert W. Williams**, one of the defendants, produced as a witness in his own behalf, having been first duly sworn, was examined and testified as follows:

Direct examination

By Mr. Baetjer:

Q. Will you give your name, please? A. Robert W. Williams.

Q. You are a member of the bar? A. Yes.

Q. And have been a member of the bar in Baltimore for how long? A. Since 1915.

Q. During that entire time, have you been in active practice? A. Except for a period during the last war when I was away in the military service.

253 Q. You are a member of the Board of Trustees of Enoch Pratt Free Library? A. I am.

Q. For how long have you been a member of the Board? A. Since some time in 1939.

Q. You are also a member of the Executive Committee? A. Yes, I am a member of the Executive Committee.

Q. How long have you been on the Executive Committee? A. I think a year and a half.

Q. Are you not also a trustee of Johns Hopkins University? A. Yes, I am a trustee of Johns Hopkins University.

Q. What other positions of public character do you have in the city? A. I have no other positions of general public nature. I have been interested in a number of charitable organizations and have been president of one of the committees of the Community Fund.

Q. What was the charitable organization to which you gave most of the time in that type of activity? A. The Family and Children's Society, which was a consolidation of the Family Welfare Association and the Henry Watson Children's Society.

254 Q. And you were president of that organization for some time? A. I have been for the last two years.

Q. Are you connected with it now? A. I am still a director.

Q. But no longer at the head of it? A. No longer president.

Q. You have heard the testimony given in this case by two other members of the Board, Dr. Cullen and Mr. Hutzler, have you not? A. I have.

Q. As far as you are concerned, did their testimony correctly purport or represent the judgment of the Trustees and your judgment with respect to the appointment of Negroes in the training classes? A. I think it does exactly.

I think it is set forth in the minutes of the Trustees and also in the letter which Dr. Cullen wrote on July, in July, 1943, to Mr. Hughes.

Q. Was your judgment with respect to the admission of colored women to the training class dictated by questions of race or color? A. No, the discussion centered around whether it was desirable to train members of the colored race in the training class which was primarily and it is solely for the purpose of employes on the professional staff of the Pratt Library, and when we found that those positions could be promptly filled by the available trained personnel already in Baltimore City, we felt there was no purpose or need of training further applicants.

Mr. Baetjer: That is all.

Cross examination

By Mr. Houston:

Q. Your decision, then, was based on the fact that there were no positions to which Negroes were eligible, to which this girl could be appointed if she finished the course, is that correct? A. That is true, Mr. Houston. At that time I think we felt we were starting on a course of action which we hoped would be successful, and we did not feel it could be successful if it were advanced too rapidly, and I don't think any of us know just how far or how rapidly we can proceed along this line.

Q. So the decision was, at the time she applied, there were no positions for which Negroes were available to which there would be likelihood of vacancy after she finished? A. That's correct.

The Court: Mr. Houston, if you wish to do so, you can ask him the direct question, which would rather summarize the matter, from what point of view, as a member of the Board of Trustees does he personally approach the problem of appointment of Negro assistant librarian in the Central Branch. Don't ask it unless you want. It

would seem that would summarize the matter very well. You asked the others.

By Mr. Houston:

Q. From what point of view do you approach the question of the appointment of Negroes to professional positions in the Central Branch? A. I think all of the Trustees approached that problem, I certainly did, from the
257 point of view of what is the best service that can be rendered the citizens of Baltimore city, not only to supply books to them, but to advise people what books should be read, and the needs of the individual inquiring for information, and we have to understand the make-up of the people who are the public and apply to us for library service, and we also have to understand the make-up of the very excellent trained staff that we already have in the Central Branch, and those are the considerations.

Q. You mean to say you make your decision in the light of the background of existing social and racial customs in Baltimore? A. I think that is correct.

Mr. Houston: That is all.

(Testimony of the witness concluded).

The Court: Anybody else?

Mr. Baetjer: No, sir, unless Mr. Davis does.

The Court: I don't mean to limit Mr. Baetjer in calling any one, but I merely suggested that you could abbreviate your testimony in the way you have with this witness.

Mr. Baetjer: No, that is all we intended to call.

258 The Court: Very well, is there any other testimony?

Mr. Baetjer: No.

Mr. Houston: I wanted to call Mrs. Mitchell.

The Court: Very well.

Thereupon **Mrs. Juanita Jackson Mitchell**, produced as a witness on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

Direct examination

By Mr. Houston:

Q. Your name is Juanita Jackson Mitchell? A. Yes.

Q. Where do you live? A. 1324 Druid Hill Avenue.

Q. Are you a Baltimorean by birth? A. Not by birth, but I have lived here since I was four years old.

Q. About 1933 were you in Baltimore? A. Yes, I was.

Q. Had you finished school? A. Yes, I had.

259 Q. Will you state what school, please? A. University of Pennsylvania, a B. S. in education.

Q. Did you make at that time any application to the Enoch Pratt Free Library for admission to the training class? A. Yes, in November, 1933, I went to the Pratt Library and made application, but was told by a lady, a Mrs. Rose, that Negro applicants were not being considered.

Q. Did she give you any further reason? A. No, that was all.

Q. After that, after you were denied admission to the training class, was there any petition or anything circulated in Baltimore for the purpose of trying to get the Board of Trustees to change their position? A. Yes, a number of other young women who had come out of school around the same time I had and were interested in library work and had been denied the right to apply for the training course, we were all members of an organization, the City Wide Young People's Forum, and that group took a petition with 5,000 signatures of citizens to the Mayor and Board of Estimates on April 18, 1933, asking the Board of Estimates to withhold appropriations.

260 The Court: I hardly think that is admissible. That is in the nature of political activity, isn't it?

Mr. Houston: The only reason I wanted to bring it out was this, there is a provision that the Mayor and City

Council shall appoint a visitor to oversee the proper execution of the trust by the Trustees of the corporation. It has not been raised as a point, perhaps I was unduly alarmed, but I wanted to show that we have even gone so far in attempting to get the city, in other words, we have exhausted every possible remedy, we have attempted to get the city to force the Board of Trustees to change, and I think in the minutes, without unduly prolonging this, within the minutes of the trustees is an opinion by the City Solicitor around 1934, in which the opinion of the City Solicitor was to the effect that this was a private corporation and the city had a right to make appropriation for its support, but that the directors had a right to admit to the training class whomever they pleased, and I was simply introducing that line of testimony for that purpose. It may be that Mr. Baetjer will, without admitting its relevancy, state whether that opinion is in the minutes.

261 Mr. Baetjer: I don't think it is, but I will look. I don't think it is in.

Mr. Houston: I can find it. I will show it to you.

The Court: I don't understand the point you raise has been made. The whole policy of the Board has been made so clear, and it is uncontradicted, that I don't see the necessity of any further testimony as to how you tried to get the people in the City Hall to change the policy.

By Mr. Houston:

Q. One final question: Have you subsequently had a conversation with Dr. Wheeler? A. Yes, on April 7, 1943, in Philadelphia.

Q. Did at that time anything come out about admission of Negroes to the training class? A. Yes.

Q. What was that conversation? A. It happened to be a conference of the American Library Association, the Regional Institute, and I attended and at the noon hour I talked to Mr. Wheeler about the new library. He expressed pleasure of the appointment of two Negro women at the

Pitcher street branch. I said, How about the training class that we have been interested in for years, and he said he wasn't hopeful about it, but it was not the policy or custom to educate Negroes and whites together, to train them together, and that he was not hopeful about it.

The Court: That is obviously just a casual conversation in which Dr. Wheeler was not speaking for the Board especially or officially. At least it has not been so shown.

Mr. Houston: Your witness.

Mr. Baetjer: No questions.

(Testimony of the witness concluded).

The Court: Anything else?

Mr. Houston: Nothing else.

The Court: What is your judgment now on both sides as to the argument? I see a rather formidable array of books there.

Mr. Houston: Most have been introduced already.

The Court: Have you had opportunity or prepared a trial memorandum?

263 Mr. Houston: If your Honor please, the only trial memorandum I have is in such shape that it is largely abstracts of cases. I haven't a trial memorandum in the sense of a memorandum brief, but I could submit to your Honor at this time, if your Honor please, if you feel you want a trial memorandum brief, I would be happy to submit it, but I should like to have a short oral argument, any way.

The Court: Yes, I will be glad to hear oral argument. We have quite generally announced for a series of years here that it is very helpful to the Court to have counsel submit a trial memorandum at the time of trial. Mr. Baetjer handed me such a memorandum on his part, and I thought possibly Mr. Houston have known of that general practice of the Court and have one, but I am quite

willing to observe anything I can from oral argument. Now, it is nearly recess time. Have you some idea as to how long on both sides you want to orally argue the case? How long will you take, Mr. Houston?

Mr. Houston: I should say a half hour.

Mr. Baetjer: That is all right.

The Court: I am not at all desirous of limiting
264 the oral argument. I try to get help from it, and
I don't want to limit you to a half hour, but looking
at the time of the day, I imagine we would be able to con-
clude today. All right, we will come back at two o'clock.

(Thereupon, at 1 p. m. a recess was taken until 2 p. m.).

AFTER RECESS (2 p. m.)

The Court: You may proceed.

(Thereupon follows argument of counsel).

The Court: Gentlemen, I will study the case. I suppose everybody understands that the Court is in no way charged with the duty or responsibility of working out a policy here one way or the other, and that the Court's decision will have to be based upon the law as determined by the facts, the papers and testimony in the case.

Mr. Houston: There was one thing I almost forgot. I should have put it in the testimony. If your Honor will consider it, it may be immaterial, but the record was slightly
cloudy. It was just this, that after Dr. Wheeler
265 testified on the question of the Hagerstown Library,
and the Hopkins Library, I checked and find the
Hagerstown Library had a training course from 1922 to
1932, for which the entrance qualifications were high school,
and the librarian informs us that the future plans do not
include reopening of the class. Johns Hopkins offered a
library course during 1927 and '28. That course was for
librarians, primarily for Pratt employes, although some
of the out of town people were employed. If there is no

objection, I should like to ask that that be incorporated in the record.

Mr. Baetjer: I don't think it should go in the record. We don't know anything about it.

The Court: Subject to your check.

Mr. Baetjer: That's all, yes.

The Court: Gentlemen, I am much obliged to counsel for presenting a very interesting case. I will be glad to study it and reach a conclusion as soon as possible.

Adjourned.

(Thereupon, at 4:05 p. m. the hearing was concluded).

STATUTES AND ORDINANCES.**Laws of Maryland, 1882.****c. 181.**

An Act to enable the Mayor and City Council of Baltimore to accept a donation from Enoch Pratt for the establishment and perpetual endowment of a Free Public Library in said City, to be known as "The Enoch Pratt Free Library of Baltimore City," and to provide for the appointment and incorporation of trustees for the management thereof.

Whereas Enoch Pratt, of the City of Baltimore, has, with signal generosity public spirit and philanthropy, offered to establish an institute to be known as "The Enoch Pratt Free Library of Baltimore City," and for that purpose has agreed to erect upon a lot on Mulberry street, in said city, owned by him a library building to cost the sum of two hundred and twenty-five thousand dollars, or thereabout, and to convey the said lot and building, when completed, to the Mayor and City Council of Baltimore, and also to pay the sum of eight hundred and thirty-three thousand three hundred and thirty-three dollars and thirty-three cents to the said Mayor and City Council of Baltimore, provided the said Mayor and City Council will accept said conveyance and said sum of money, and agree, by an ordinance, to grant and create an annuity, and to pay annually to a board of nine trustees, and their successors, the sum of five thousand dollars, perpetually, hereafter, forever, in equal quarterly yearly payments, for the purchase and maintenance of the said library, with not less than four branches in different parts of the city, said branches to be established by said trustees within such time as can be reasonably accomplished out of said quarterly payments, the title to said library, its branches, books and all other property to be vested in the Mayor and City Council of Baltimore, the control and management of the said board occurring by resignation, disability or otherwise, and to perpetuate their suc-

cession and to do all necessary things for the control and management of said library and its branches, and to perform the duties imposed on them by this act, and to receive from said Mayor and City Council of Baltimore said sum of fifty thousand dollars per annum as aforesaid, and expend the same for the purposes of said library in such manner as they shall think proper, and to make all necessary by-laws and regulations for the government and administration of said trust, and for the appointment of the necessary officers and agents, provided that none but citizens of Maryland actually residing in the city of Baltimore shall be appointed or elected as members of said board, and provided further that none of the successors of said board, or any officer thereof, shall be appointed or removed on political or religious grounds; and said board shall have power to remove any trustee who shall fail for six months to attend the meetings of said board, said trustees shall make an annual report to the Mayor and City Council of Baltimore of their proceedings and of the condition of said library and its branches, with a full account of the moneys received and expended by them.

Section 3. And be it further enacted, That it shall be the duty of the Mayor and City Council of Baltimore to appoint a visitor, who shall, as often as once a year, examine the books and accounts of said trustees and make a report thereof to the Mayor and City Council of Baltimore, and said Mayor and City Council shall, in case of any abuse of their powers by said trustees or their successors, have the right to resort to the proper courts to enforce the performance of the trust hereby imposed on them.

Section 4. And be it enacted, That the said real estate or personal property vested in said Mayor and City Council by virtue of this act, and to become so by future purchase under the provisions thereof, and the fund and franchises of "The Enoch Pratt Free Library of Baltimore City" shall be exempt from all state and municipal taxes forever.

Section 5. And be it enacted, That before the ordinance which the Mayor and City Council of Baltimore are hereby authorized and empowered to pass for the purpose of accepting said donation and entering into said contract and agreement for the payment of said sum of fifty thousand dollars annually for the maintenance of said library shall take effect, the said ordinance shall be approved by a majority of the votes of the legal voters of said city cast at the time and places to be appointed by said ordinances for submitting the same to the legal voters of said city as required by section seven of Article eleven of the Constitution of Maryland.

Section 6. And be it enacted, That this act shall take effect from the date of its passage.

Approved March 30, 1882.

Ordinance No. 106.

WHEREAS, Enoch Pratt of the City of Baltimore, has agreed to establish a free public library in the City of Baltimore, to be known as the "Enoch Pratt Free Library of Baltimore City," and has agreed to erect upon a lot of ground on Mulberry Street, owned by him, a library building of the estimated cost of two hundred and twenty-five thousand dollars or thereabout, and has agreed to convey said lot and premises to the Mayor and City Council of Baltimore, and also to pay unto said Mayor and City Council the sum of eight hundred and thirty-three dollars and thirty-three cents, provided the said Mayor and City Council will accept said conveyance and said sum of money, and agree by ordinance to grant and create an annuity, and to pay annually to a Board of Trustees, and their successors, the sum of fifty thousand dollars perpetually, hereafter, forever, in equal quarterly payments, for the purchase and maintenance of said library, with not less than four branches in different parts of the city, the said branches to be established by said trustees within such time as can be

reasonably accomplished out of said quarterly payments; the title to said library, its branches, books, and all other property, to be vested in the Mayor and City Council of Baltimore; the control and management of said library and property to be in said Board of Trustees; and

WHEREAS, the General Assembly of Maryland, by an Act passed at its January session, eighteen hundred and eighty-two, chapter one hundred and eighty-one, authorized and empowered the said Mayor and City Council to accept the said proposal of the said Enoch Pratt, and granted full power and authority unto the said Mayor and City Council, upon the conveyance of said lot and the improvements aforesaid, and upon said payment of said sum of money to it by the said Enoch Pratt, to contract and agree, by ordinance, to be approved by the legal voters of said city, as hereinafter provided, to pay perpetually to the Board of Trustees of the "Enoch Pratt Free Library of Baltimore City" the annual sum of fifty thousand dollars, in equal quarterly payments, forever; and

WHEREAS, said "Enoch Pratt Free Library of Baltimore City" has been duly incorporated by said Act of said General Assembly of Maryland and said Enoch Pratt is desirous to make the conveyance aforesaid, and to pay unto said Mayor and City Council the said sum of eight hundred and thirty-three dollars and thirty-three cents; therefore

Section 1. Be it enacted and ordained by the Mayor and City Council of Baltimore, in pursuance of the power and authority vested in it by said Act of the General Assembly of Maryland, and for the purpose of perpetually promoting and diffusing knowledge and education among the people of the City of Baltimore, the said proposed conveyance of the said library building and premises, situate upon Mulberry Street, as aforesaid, and the said proposed payment of eight hundred and thirty-three thousand three hundred and thirty-three dollars and thirty-three cents be and they are hereby agreed to be accepted by said Mayor and City

Council of Baltimore; and for the purpose of carrying into effect the said proposed object, the said Mayor and City Council of Baltimore, by this ordinance doth hereby contract and agree with the said Enoch Pratt, and with the said "Enoch Pratt Free Library of Baltimore, City," the body corporate aforesaid, in consideration of said conveyance of said library building and premises, and of the payment of said sum of money unto it, to grant and create an annuity of fifty thousand dollars, to be paid perpetually hereafter, forever, in equal quarterly payments, for the purposes and maintenance of said library; said annuity to be paid unto the Board of Trustees of said body corporate and their successor, forever, to be applied by them to the purposes and maintenance of said library, as established and defined in the Act of Incorporation thereof.

Section 2. And be it further enacted and ordained that upon the conveyance by said Enoch Pratt or his representatives, by a valid deed, of the clear, unencumbered fee simple estate in said lot of ground, with the improvements thereon, situate on Mulberry Street, in said City of Baltimore, unto the Mayor and City Council, and upon the payment by said Enoch Pratt or his representatives, unto said Mayor and City Council, of said sum of eight hundred and thirty-three thousand three hundred and thirty-three dollars and thirty-three cents, the Mayor of the City of Baltimore, at the time of the execution of said deed, is authorized and empowered to join in the execution of the same, for and on behalf of the Mayor and City Council of Baltimore, and to contract, covenant and agree, for and on their behalf, to pay perpetually thereafter the yearly sum of fifty thousand dollars, in equal quarterly payments, unto the Trustees of the "Enoch Pratt Free Library of Baltimore City" and their successors, forever, the said "Enoch Pratt Free Library of Baltimore City" also joining in said deed, and agreeing to appropriate said sum for its corporate purposes, and to make an annual report to the Mayor and City Council of Balti-

more, of the proceedings of said body corporate, and of the condition of said library and its branches, with a full account of the monies received and expended by said trustees.

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Approved July 18, 1882.

Ordinance No. 145.

An Ordinance directing the Mayor to appoint a visitor to "The Enoch Pratt Free Library of Baltimore City," requested to be appointed by the Act of Assembly of Maryland of 1882, Chapter 181.

Section 1. Be it enacted and ordained by the Mayor and City Council of Baltimore, That the Mayor be and he is hereby requested to appoint, as other city officers are appointed, a visitor to "The Enoch Pratt Free Library of Baltimore City," in accordance with the provisions of the Act of 1882, Chapter 181; and that it shall be the duty of the visitor so appointed, and of his successors in said office, to perform the duties prescribed for such visitor by said Act of Assembly.

Approved October 10, 1884.

Ordinance No. 275 (1906-07).

7. The Mayor and City Council of Baltimore does hereby accept the offer of said Andrew Carnegie, and does hereby undertake and agree that as the sum of Five Hundred Thousand Dollars (\$500,000) offered the City of Baltimore by said Andrew Carnegie shall be received and expended by the Trustees of the Enoch Pratt Free Library in the erection of Branch Library Buildings upon sites furnished or provided by the said Mayor and City Council and accepted by the said Trustees, that upon the completion of such said branch libraries, the same shall be maintained by said Mayor and City Council by a yearly provision in the tax levy of a sum not less than ten per centum of the amount

given by said Andrew Carnegie for the construction of each of said buildings, such annual appropriation by the Mayor and City Council to be expended by said Trustees for the maintenance as aforesaid in such manner as may be specified from year to year in the Ordinance of Estimates.

Ordinance No. 275 (1906-07).

No appropriation shall be effective for the purposes set forth in this ordinance until authority to make such appropriations by the Mayor and City Council of Baltimore to the Trustees of the Enoch Pratt Library shall be authorized by the General Assembly of Maryland.

Approved May 11, 1907.

[The above was taken from the Baltimore City Code.]

Ordinance No. 249.

Section 1. Be it ordained by the Mayor and City Council of Baltimore, that Section 1 of Ordinance No. 275, approved May 11, 1907, entitled "An Ordinance to accept from Andrew Carnegie a sum of money to be used for the erection of Branch Library Buildings of the Enoch Pratt Free Library of Baltimore City and to provide for the maintenance thereof," be and the same is hereby repealed and reordained with amendments so as to read as follows:

Section 1. Be it ordained by the Mayor and City Council of Baltimore, that said Mayor and City Council of Baltimore does hereby accept the offer of said Andrew Carnegie, and doest hereby undertake and agree that as the sum of Five Hundred Thousand Dollars (\$500,000) offered the City of Baltimore by said Andrew Carnegie shall be received and expended by the Trustees of the Enoch Pratt Free Library in the erection of Branch Library Buildings upon sites furnished or provided by the said Mayor and City Council and accepted by the said Trustees, that upon the completion

of such of said branch libraries, the same shall be maintained by said Mayor and City Council by a yearly provision in the tax levy of a sum not less than ten per centum of the amount given by said Andrew Carnegie for the construction of each of said buildings, such annual appropriation by the Mayor and City Council to be expended by said Trustees for the maintenance as aforesaid in such manner as may be specified from year to year in the Ordinance of Estimates.

Section 2. And be it further ordained, That this ordinance shall take effect from the date of its passage.

Approved April 23, 1920.

Laws of Maryland—1927.

Chapter 328.

Section 1. Be it enacted by the General Assembly of Maryland, That the Mayor and City Council of Baltimore be, and it is hereby authorized to issue the certificates of indebtedness of said corporation to an amount not exceeding three million dollars (\$3,000,000), said certificates of indebtedness to be issued from time to time and for such amounts, payable at such periods and to bear such rate of interest, all as the Mayor and City Council of Baltimore shall by ordinance from time to time provide; but no stock or bonds shall be issued in whole or in part unless the ordinance of the Mayor and City Council of Baltimore providing for the issuance thereof shall be submitted to the legal voters of Baltimore City at such time and place as may be fixed by said ordinance, and be approved by a majority of the votes cast at such time and place as required by Section 7 of Article 11 of the Constitution of Maryland. . . .

Section 2. And be it further enacted, That the proceeds of the certificates of indebtedness not exceeding their par value hereby authorized to be issued shall be used for the

acquisition by purchase or condemnation of land and construction thereon of a free public library in Baltimore City.

April 1, 1927.

Ordinance No. 1195.

An Ordinance to authorize the incorporation in the site of the new free Public Library to be erected in the block bounded by Cathedral Street, Mulberry Street, Franklin Street, and Park Avenue in Baltimore City, the parcels of land now or lately occupied by the Central Branch of the Enoch Pratt Free Library on Mulberry Street, between Cathedral Street and Park Avenue and numbers 400, 404, 406 Cathedral Street; to authorize the razing of the buildings on the land in said block now or lately occupied by said Enoch Pratt Free Library, as well as the buildings on the land recently acquired in said block by the Mayor and City Council of Baltimore, and to authorize the erection on said entire site of a suitable building for a free public Library and the installation in said building, when completed of the Enoch Pratt Free Library of Baltimore City.

Section 1. Be it ordained by the Mayor and City Council of Baltimore, That the parcels of land now or lately occupied by the Enoch Pratt Free Library of Baltimore City, namely—the Central Branch of said Enoch Pratt Free Library of Baltimore City, on Mulberry Street, between Cathedral Street and Park Avenue and Numbers 400, 404, 406 Cathedral Street, in Baltimore City, be and they are hereby authorized to be incorporated in the site of the building about to be erected for a Free Public Library in the block bounded by Cathedral Street, Mulberry Street, Franklin Street and Park Avenue, in Baltimore City.

Section 2. And be it further ordained, That the buildings on the parcels of land in said block now or lately occupied by said Enoch Pratt Free Library of Baltimore City, as well as the buildings on the parcels of land recently acquired in said block by the Mayor and City Council of Bal-

timore be razed, and a suitable building for a Free Public Library be erected on said entire site.

Section 3. And be it further ordained, That when said building is completed the Enoch Pratt Free Library of Baltimore City shall be installed therein for the purpose of maintaining, conducting and operating a Free Public Library, for the purpose of perpetually promoting and diffusing knowledge and education among the people of the City of Baltimore.

Section 4. And be it further ordained, That this Ordinance shall take effect from the date of its passage.

Approved December 16, 1930.

Laws of Maryland—1939

Chapter 16

An Act to add a new sub-section to Section 6 of Article 4 of the Code of Public Local Laws of Maryland (1938 Edition), title "Baltimore City," sub-title "General Powers" sub-heading "Pensions," said new sub-section to be known as Sub-section 20E and to follow immediately after Sub-section 20D of said Section 6 of said Article, authorizing the Mayor and City Council of Baltimore to provide by ordinance for granting to the officers, agents, servants and employees of the Enoch Pratt Free Library, the Walters' Art Gallery, the Baltimore Museum of Art and the Municipal Museum of Baltimore, any of the benefits and advantages of the Employees' Retirement System of the City of Baltimore and specifying the credits which may be allowed said officers, agents, servants and employees for prior service, and providing that said officers, agents, servants and employees who become such after the passage of said ordinance shall submit to medical examinations before being admitted to said Employees' Retirement System.

Section 1. Be it enacted by the General Assembly of Maryland, That a new sub-section be and it is hereby added

to Section 6 of Article 4 of the Code of Public Local Laws of Maryland (1930 Edition), title "Baltimore City," sub-title "General Powers," sub-heading "Pensions," said new sub-section to be known as Sub-section 20E, to follow immediately after Sub-section 20D of said Section 6 of said Article, and to read as follows:

20E. To grant to the officers, agents, servants, and employees of the Enoch Pratt Free Library, the Walters' Art Gallery, the Baltimore Museum of Art and the Municipal Museum of the City of Baltimore, such of the benefits and advantages of the Employees' Retirement System of the City of Baltimore, established by Ordinance No. 553 approved February 1, 1926, as the Mayor and City Council may by ordinance provide, except that the Retirement System shall not be liable for the payment of any pensions or other benefits on account of said officers, agents, servants and employees. Provided, that any ordinance passed under authority of this sub-section may provide that every such officer, agent, servant or employee shall be entitled to credit for all service rendered prior to January 1, 1926 and for one-half of all service rendered between January 1, 1926 and the date of admission to the said Employees' Retirement System; provided, further, that any ordinance passed under authority hereof shall provide that any such officer, agent, servant or employee who shall become such after the passage of said ordinance shall, before becoming a member of the said Employees' Retirement System of the City of Baltimore, first submit to a medical examination similar to that required for employees in the Classified Service of the City of Baltimore.

Sec. 2. And be it further enacted, That this Act is hereby declared to be an emergency law and necessary for the immediate preservation of the public health and safety, and, being passed upon a yea and nay vote, supported by three-fifths of all members elected to each of the two Houses of the General Assembly, the same shall take effect from the date of its passage.

Approved February 24, 1939.

Ordinance No. 961.

WHEREAS, By Chapter 16 of the Acts of the General Assembly of Maryland of 1939, authority is conferred upon the Mayor and City Council of Baltimore to provide for the granting of the employees of the Enoch Pratt Free Library, the Walters Art Gallery, the Baltimore Museum of Art, and the Municipal Museum of Baltimore the benefits and advantages of the Employees Retirement System of the City of Baltimore, subject to certain conditions and limitations.

Section 1. Be it ordained by the Mayor and City Council of Baltimore, That a new section be and the same is hereby added to Article 30 of the Baltimore City Code (1927 Edition) title "Pensions," to follow immediately after Section 13, and to be known as Section 14 and to read as follows:

14. Special Classes of Members.

(1) Anything to the contrary of this Article notwithstanding if the governing body of the Enoch Pratt Free Library of Baltimore City, or of the Walters Art Gallery, or of the Baltimore Museum of Art, Inc., or of the Municipal Museum of the City of Baltimore, Inc., determines, by resolution, approved by the Board of Trustees of the Retirement System, to have said Retirement System extended to their respective employees, then said employees of such corporation shall become eligible for participation in the Retirement System on and after June 1, 1939. On that date participation may begin for employees in service on said date, and after that date participation shall be required of new employees, subject to the passage of a medical examination similar to that required for employees entering the Classified Service of the City of Baltimore and to all the other provisions, conditions and limitations, not inconsistent herewith, as are set forth in this Article.

(2) Any eligible employee in service on June 1, 1939, shall become a member as of such date, unless on or before

August 1, 1939, such employee shall file with the Board of Trustees on a form prescribed by said Board a notice of his election not to be covered in the membership of the System and a duly executed waiver of all present and prospective benefits which would otherwise inure to him on account of his participation in the Retirement System. Any employee in service on June 1, 1939 and becoming a member as of that date, shall file a statement of all service rendered prior to January 1, 1926, and for fifty per centum of such service, rendered between January 1, 1926, and June 1, 1939 as prior service in a manner similar to that provided in Section 4 of this Article for City Employees entitled to prior service credit. Members entitled to credit for such prior service may elect to pay to the Retirement System by a single payment or by an increased rate of contribution, as may be approved by the Board of Trustees, the contributions, with interest, which they would have paid had they been members between January 1, 1926 and June 1, 1939, in which event, upon the completion of the payment, they shall be credited for all such service between January 1, 1926 and June 1, 1939, as if they had been members. After June 1, 1939, all employees who are or become members shall be credited with service in a manner similar to that provided in Section 4 of this Article for City Employees. All such employees becoming members, shall, after June 1, 1939, be considered in all other respects as to contributions made by them and benefits payable to them or on their account, as if they were City employees.

(3) The Actuary of the Retirement System shall determine under the provisions of Sub-section 3 of Section 8 of this Article a special "accrued liability contribution" sufficient to cover the accrued liability on account of such employees of such corporation for any service rendered prior to June 1, 1939, with which they are credited, and such contributions, subject to such corresponding adjustments as might affect the "accrued liability contribution" payable by the City on account of City employees, shall be

payable on account of the employees of such corporation in lieu of the rate set for City employees, and for a period of time equal to the period over which the accrued liability contribution of the City is hereafter payable. The normal contribution, likewise to be determined by the Actuary, and such special accrued liability contribution required on account of the employees of such corporation shall be paid by the corporation out of available funds in the possession of such corporation or out of such funds as may be appropriated to such corporation by the Mayor and City Council of Baltimore pursuant to Chapter 181 of the Acts of the General Assembly of 1882 and Ordinance No. 106, approved July 15, 1882, shall not be considered "available funds" within the meaning of this Sub-section.

Approved May 29, 1939.

Letter of Enoch Pratt.

Baltimore, January 21, 1882.

To the Honorable the Mayor and

City Council of Baltimore.

I have for some years contemplated establishing a Free Circulating Library, for the benefit of our whole City, and in pursuance of this plan I have entered into a contract to erect a fireproof building on my Mulberry street lot, capable of holding 200,000 volumes—my purpose being to have branches connected with it in the four quarters of the City, under the same management.

The excavation for the foundation has been commenced, and the building will be well advanced this year, and completed in the summer of 1883. It will cost, when ready for occupancy, about two hundred and twenty-five thousand dollars (\$225,000), and upon its completion I propose to deed it to the City. The title to all the books and property is to be vested in the City, and I will pay to your Honorable

Body, upon its completion, the additional sum of eight hundred and thirty-three thousand three hundred and thirty-three and a third dollars ($\$833,333\frac{1}{3}$), making one million fifty-eight thousand three hundred and thirty-three and one-third dollars, provided the City will grant and create an annuity of fifty thousand dollars ($\$50,000$) per annum forever, payable quarterly to the Board of Trustees, for the support and maintenance of the Library and its branches.

I propose that a Board of nine Trustees be incorporated for the management of "The Pratt Free Library of the City of Baltimore," the Board to be selected by myself from our best citizens, and all vacancies which shall occur, shall be filled by the Board. The articles of incorporation will contain a provision that no Trustee or officer shall be appointed or removed on religious or political grounds. The Trustees are to receive from the City the quarterly payments and to expend it at their discretion for the purposes of the Library.

It is believed that this annual sum will afford a sufficient fund for the purchases of books, for establishing the branches, and for the general management.

The Trustees will be required to make an annual report to the Mayor and City Council of their proceedings, and of the condition of the Library, and the report will contain a full account of the money received and expended.

This plan is suggested not without due consideration of the power of the City to carry it out. The City is expressly authorized by its charter to accept trusts "for any general corporation purpose, or for the general purposes of education"; and although its power of creating debts is limited by the Constitution of the State, yet as the property of the Library is to belong to the City, and as it will receive a sum of money to be disposed of as it pleases, with the engagement only to pay an annual sum for the support of its own Institution, it is believed that such a transaction will not involve the creation of a debt within the meaning of the constitutional prohibition.

I suggest that if the money to be paid by me as above stated, were added to the Sinking Fund, and the Interest carefully funded, it would, in no very long time, pay off the debt of the City; but this is intended only as a suggestion, and the disposal of the money is left to your Honorable Body.

If, however, your Honorable Body should, on mature consideration, be of the opinion that the annual payments as proposed would involve the creation of a debt, authority for that may be obtained by complying with the provisions of the Constitution; that is, the debt may be created by the City, provided it be authorized by an act of the General Assembly of Maryland, and by an ordinance of the Mayor and City Council of Baltimore submitted to the legal voters of the City of Baltimore at such time and place as may be fixed by said ordinance, and approved by a majority of the votes cast at such time and place. I cannot but think that such an authority from the General Assembly, and from the Mayor and City Council of Baltimore, and from a majority of the legal voters of the City, would be cheerfully given.

The plan proposed for the support and management of the Library is the result of long and careful consideration, and, I am satisfied, is well adapted to promote the great object in view, the free circulation of the books of a large and ever-growing Library among the people of the whole City. I trust that it will receive the approval of your Honorable Body, and of the citizens of Baltimore.

ENOCH PRATT.
