Record - - No. 53

RAYMOND A. PEARSON, PRESIDENT, W. M. HILLEGEIST, REGISTRAR, AND GEORGE M. SHRIVER, JOHN M. DENNIS, WILLIAM P. COLE, HENRY HOLZAPFEL, JOHN E. RAINE, DR. W. W. SKINNER, MRS. JOHN L. WHITEHURST AND J. MILTON PATTERSON, MEMBERS OF THE BOARD OF REGENTS OF THE UNIVERSITY OF MARYLAND,

VS.

DONALD G. MURRAY, OTHERWISE DONALD GAINES MURRAY.

HERBERT R. O'CONOR,
CHARLES T. LeVINESS 3RD,
For the Appellants.

THURGOOD MARSHALL,
CHARLES H. HOUSTON,
WILLIAM I. GOSNELL,
For the Appellee.

IN THE

Court of Appeals

OF MARYLAND.

APPEAL FROM
THE BALTIMORE CITY
COURT

APPEAL TO THE
OCTOBER TERM, 1935.
OF THE
COURT OF APPEALS
OF MARYLAND.

Filed July 31, 1935.

Press of
THE DAILY RECORD COMPANY
11-15 East Saratoga Street
Baltimore, Md.

TRANSCRIPT OF RECORD

FROM THE

BALTIMORE CITY COURT

IN THE CASE OF

RAYMOND A. PEARSON, PRESIDENT, W. M. HILLEGEIST, REGISTRAR, AND GEORGE M. SHRIVER, JOHN M. DENNIS, WILLIAM P. COLE, HENRY HOLZAPFEL, JOHN E. RAINE, DR. W. W. SKINNER, MRS. JOHN L. WHITEHURST AND J. MILTON PATTERSON, MEMBERS OF THE BOARD OF REGENTS OF THE UNIVERSITY OF MARYLAND

VS.

DONALD G. MURRAY, OTHERWISE DONALD GAINES MURRAY

TO THE

COURT OF APPEALS OF MARYLAND.

HERBERT R. O'CONOR,
Attorney General,

CHARLES T. LeVINESS, 3RD,
Assistant Attorney General,
Attorneys for Appellants.

THURGOOD MARSHALL,

CHARLES H. HOUSTON,

WILLIAM I. GOSNELL,
Attorneys for Appellee.

IN THE COURT OF APPEALS OF MARYLAND

APPEAL FROM THE BALTIMORE CITY COURT.

Action commenced in the Baltimore City Court on the 18th day of April, in the year 1935, by the filing by Donald G. Murray, otherwise Donald Gaines Murray, of a Petition for a Writ of Mandamus directed to the members of the Board of Regents of the University of Maryland, to accept the application of your Petitioner and his investigation fee, and to consider the same and to investigate his qualifications in the regular manner as an applicant for admission as a first year student in the Day School of the School of Law of the University of Maryland for the academic year 1935-1936.

Petition for Writ of Mandamus and Petitioner's Exhibits A and B, filed the 18th day of April, 1935:

In the Baltimore City Court.

Donald G. Murray, 1522 *McCulloh Street, Baltimore, Maryland,*

vs.

Raymond A. Pearson, President; W. M. Hillegeist, Registrar, and George M. Shriver, John M. Dennis, William P. Cole, Henry Holzapfel, John E. Paine, Dr. W. W. Skinner, Mrs. John L. Whitehurst and J. Milton Patterson, Members of the Board of Regents of the University of Maryland.

PETITION FOR A WRIT OF MANDAMUS.

To the Honorable, the Judge of said Court:

The petition of Donald G. Murray respectfully shows:

First: Donald G. Murray, otherwise Donald Gaines Murray, is twenty-one years of age, a citizen of the United States and the State of Maryland and resides in Baltimore City. He has applied for admission as a first

year student in the Day School of the School of Law of the University of Maryland, for the academic year beginning September 25, 1935.

Second: Raymond A. Pearson is the President and Executive Head of the University of Maryland. W. M. Hillegeist is the Registrar of the Baltimore Schools of the said University of Maryland, which include the School of Law. George M. Shriver, John M. Dennis, William P. Cole, Henry Holzapfel, John E. Raine, Dr. W. W. Skinner, Clinton L. Riggs, Mrs. John L. Whitehurst and J. Milton Patterson constitute the Board of Regents of the University of Maryland.

Third: The University of Maryland is an administrative department of the State of Maryland. It is a State institution performing an essential governmental function. The funds for its support and maintenance are principally derived from the general Treasury of the State, out of funds procured by taxes collected from the citizens of Maryland. The appropriations for it are made by the Legislature of the State of Maryland as part of the public school system.

Fourth: The charter of the University of Maryland as enacted from time to time by the Legislature of the State of Maryland provides:

"That the said University shall be founded and maintained upon the most liberal plan, for the benefit of students of every country and every foreign denomination, who shall be freely admitted to equal privileges and advantages of education, and to all the honors of the University, according to their merit, without requiring or enforcing any religious or civil test, upon any particular plan of religious worship or service."

Fifth: Under the Acts of the Legislature of the State of Maryland which form the charter of the University of Maryland, as now constituted, the Board of Regents, who are appointed by the Governor, by and with the consent of the Senate, are vested with the powers of governing the University. The President of the University of Maryland and the Registrar of the Baltimore Schools aforesaid function as their agents under their supervision and control.

Sixth: Under the charter of the University of Maryland the Faculty of Law is expressly established and the Faculty of Law conducts a School of Law of the University of Maryland as an integral component part of said University subject to the laws and regulations governing the same. The aforesaid School of Law is the only State institution which affords a legal education and is the only law school in Maryland approved by the American Bar Association and a member of the Association of American Law Schools, which gives it and its graduates high standing among the legal profession.

Seventh: The Faculty of Law offers two courses in said School of Law: a day course of three years, denominated a Day School, and an evening course of four years, denominated an Evening School, each leading to the degree of Bachelor of Laws. The requirements for admission to either courses are:

"The requirements for admission are those of the Association of American Law School. Applicants for admission as candidates for a degree are required to produce evidence of the completion of at least one-half of the work acceptable for a Bachelor's degree granted on the basis of a four-year period of study by the University of Maryland or a principal college or university in this State. To meet this requirement a candidate for admission must present at least sixty smester hours (or their equivalent) of college work taken in an institution approved by standard accrediting agencies and exclusive of credit earned in non-theory courses in military science, hygiene, domestic arts, physical education, vocal or instrumental music, or other courses without intellectual content of substantial value. Such pre-legal work must be done in residence and no credit is allowed for work done in correspondence or extension courses."

Eighth: Application blanks for admission to the School of Law are furnished to prospective applicants by the Board of Regents acting by and through the defendant W. M. Hillegeist, Registrar. Said applications are filled out by the prospective candidates and by regulation of the Board of Regents and the Faculty of Law returned to the said Registrar together with an investigation fee of two dollars.

Ninth: The academic year 1935-1936 for the Day School of the School of Law of the University of Maryland begins September 25, 1935, according to the official announcement of said School of Law as issued by the University of Maryland.

Tenth: The Petitioner, Donald G. Murray, is a candidate for admission as a first year student in the Day School of the School of Law of the University of Maryland, and is fully qualified in all lawful and proper respects for admission thereto. He is a resident of the State of Maryland, twenty-one years of age, and a graduate of Amherst College with the degree of Bachelor of Arts conferred in 1934. Amherst College is an institution approved by standard accrediting agencies having regional jurisdiction in the premises, and Petitioner's Bachelor's degree was awarded upon successful completion of a four-year residence course of more than sixty hours of resident college work exclusive of credit earned in non-theory courses in military science, hygiene, domestic arts, physical education, vocal or instrumental music, or other courses without intellectual content of substantial value.

Eleventh: The Petitioner on or about January 24, 1935, pursuant to and in accordance with the aforesaid rules and regulations, same being the rules and regulations of the Faculty of Law and the Board of Regents, made and filed in proper form with the respondent W. M. Hillegeist, Registrar aforesaid, an application on a blank provided by the Respondents, copy of which is attached hereto as "Exhibit A" and prayed to be read in full as a part hereof. With said application Petitioner also forwarded to said Registrar the prescribed Two Dollars for investigation fee, by United States Post Office money order, which is attached hereto as Exhibit "B" and prayed to be read in full as a part hereof.

Twelfth: The Respondents however wrongfully and arbitrarily refused to receive said application and said investigation fee, and by letter dated February 9, 1935, the Respondents Pearson and Hillegeist returned said application and investigation fee to Petitioner, and refused to consider his application and/or investigate Petitioner's qualifications. Thereupon the Petitioner, by

registered letter forwarded the same application blank and investigation fee to the Respondents, the Board of Regents (except the Respondent J. Milton Patterson who was then not a member of said Board), and appealed to said Board of Regents to accept and consider his application. Nevertheless, the Respondent Pearson, before the Board of Regents next had a meeting, wrongfully and arbitrarily returned the said investigation fee, although *he retained Petitioner's said application blank, and again* notified Petitioner that his application would not be considered as received and that his qualifications would not be investigated.

Thirteenth: The Board of Regents aforesaid has had ample time and adequate opportunity to consider and act upon Petitioner's appeal aforesaid; but Petitioner is *informed and believes, and therefore avers, that said ap*peal has been ignored and that the Board of Regents has not and does not intend to act thereon.

Fourteenth: The petitioner is ready, willing and able to perform any lawful requirements and pay all proper fees and provide himself with all the necessary facilities for admission as a first year student of the Day School *of the School of Law of the University of Maryland.* Petitioner hereby again tenders his application and investigation fee to the Respondents, and is ready, willing and able to do so in open Court.

Fifteenth: The actions of the Respondents in refusing to accept and consider the application of the Petitioner and said investigation fee were unauthorized by act of the Legislature of the State of Maryland, or other law in force therein, and were wrong, unlawful and arbitrary.

Sixteenth: The said actions of the Respondents violated the Fourteenth Amendment to the Constitution of the United States, in that they amounted to a denial to Petitioner, a citizen of the United States and of the State of Maryland, by the State of Maryland or an administrative department thereof, of the equal protection and benefit of the laws, as secured to him by the said Fourteenth Amendment and the law of the land; and in that such acts were unequal, oppressive and discriminatory and deprived the said Donald G. Murray, Petitioner, of

UNIVERSITY OF MARYLAND

Baltimore

(Give all the data requested)

Date January 24, 1935

*Application for Admission to the School of—Dentistry ☐ ; Law { Day ☒ / Evening ☐ } ; Medicine ☐ ; Nursing ☐ ; Pharmacy ☐

(If applying for advanced standing, name the class .....)

Full name (print in ink) Donald (first name) Gaines (middle name) Murray (last name)

Home (permanent) address 1520 McCulloh St (street and number) Baltimore (city or post office) Baltimore (county) Maryland (state)

Present (temporary) address Same as permanent (street and number) (city or post office) (county) (state)

Educational institutions attended: secondary school(s), college(s), university(ies), professional school(s).
(List in order of attendance. Do not omit the name of any institution where you have been a student.)

Douglass High School, Baltimore (full name and location of institution) — 4 years - 1925 - 1929 (number of years in attendance—dates of attendance)

Lincoln University, Lincoln, Pa. (full name and location of institution) — 1929-30 - 1 year (number of years in attendance—dates of attendance)

Amherst College, Amherst, Mass. (full name and location of institution) — 4 years - 1930-34 (number of years in attendance—dates of attendance)

..... (full name and location of institution) ..... (number of years in attendance—dates of attendance)

Date of graduation from secondary school June 1929 (month — year) Date of graduation from college June 1934 (month — year) Degree A.B.

Not to be filled out by applicant			
Paid $2.00.	M. O.,	Ch.,	Cash,
Rec'd	Ack'd	Posted	
App. No.		Cert. No.	

Donald Gaines Murray (signature of applicant)*

(If applicant is a minor (under 21 years of age) signature of parent or guardian, also)

* Return this application blank, together with an investigation fee of two dollars ($2.00, preferably a money order made out to the University of Maryland), to the Office of the Registrar, University of Maryland, Baltimore. Do not include the fee if you have applied previously for admission, or have been registered in another division of the University of Maryland.

(OVER)

(OVER)

Philadelphia, Pa (place of birth of applicant) May 2, 1913 (date of birth—month, day, year) American (nationality) Negro (race) Yes (citizen of the United States?)

Male (sex) Ai, M. E. (church membership) (if not a member, church preference) Single (married or single)

(if applicant is an adult and married, give full name of wife) (if applicant is an adult and not married, give full name and home address of nearest relative) Minnie Lillian Gaines 1520 McCulloh St

Grandmother (relationship to applicant) Widow (occupation) American (nationality) Negro (race) Yes (citizen of the United States?)

(if applicant is a minor, give full name of parent or guardian) (home address of parent or guardian)

(relationship to applicant) (occupation) (nationality) (race) (citizen of the United States?)

Important Notes

If applicant has attended another college or university, and is not eligible (scholastically) to return to that institution, this application should not be filed. It will not be considered.

Before this application is filed, consult the proper school bulletin for the details of admission requirements.

Do not send in any educational records unless requested to do so by the office of the Registrar, University of Maryland. This office will write for all records after the application has been received.

~~Each applicant for admission must submit with the application two small, unmounted personal photographs (not larger than 2" x 2½") taken recently. Do not send snapshots.~~

Each applicant for admission to the School of Medicine must have sent to the Office of the Registrar, University of Maryland, Baltimore, a letter of recommendation from the premedical committee, or letters from one instructor in each of the departments of biology, chemistry, and physics, of the institution where the premedical courses were taken.

An applicant who lives in or who expects to practise medicine in New York, New Jersey, or Pennsylvania, or dentistry in New Jersey, Pennsylvania, or Connecticut, and *who is accepted as a student by the University of Maryland*, must obtain from his respective state board of education the appropriate professional student qualifying certificate or general statement of state approval. *This document must be filed in the Office of the Registrar, University of Maryland, Baltimore.*

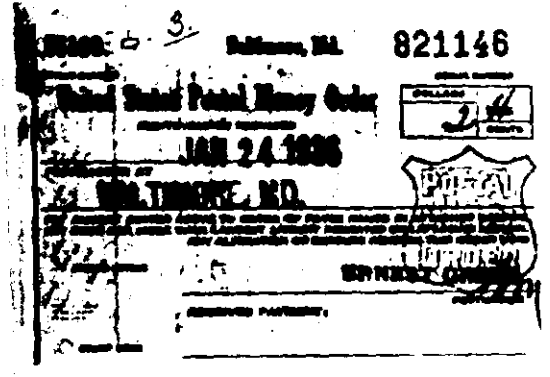
~~If there has been an interim since you attended school or college, please indicate on a separate sheet what has been your employment (give name and address of employer or employers) or other activity (give name and address of an acceptable reference).~~

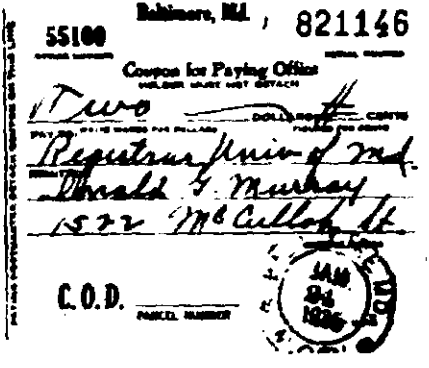
10-A

(OVER)

Petitioner's Exhibit B filed with the Petition for a

Writ of Mandamus:





PAYEE

TO THE POSTMASTER [illegible] THIS DRAFT IN ORDER TO OBTAIN THE AMOUNT OF MONEY SHOWN ON ABOVE LINE.

[illegible] PROHIBITED BY LAW.

UPON PAYMENT [illegible] THE SAME AMOUNT AS THAT CHARGED FOR THIS MONEY ORDER THE POSTMASTER AT ANY MONEY-ORDER POST OFFICE IN THE CONTINENTAL UNITED STATES, EXCEPT ALASKA, WILL PAY THIS DRAFT IF PRESENTED WITHIN THIRTY DAYS FROM DATE OF ISSUE, ALTHOUGH DRAWN UPON ANOTHER POST OFFICE, PROVIDED THE ORDER WAS ISSUED AT AND DRAWN UPON A POST OFFICE IN THE CONTINENTAL UNITED STATES, EXCLUSIVE OF ALASKA.

IF NOT PRESENTED FOR PAYMENT BEFORE THE EXPIRATION OF ONE YEAR FROM THE LAST DAY OF THE MONTH IN WHICH ISSUED, AN ORDER BECOMES INVALID BY LAW, AND THE OWNER SHOULD PRESENT IT TO THE POSTMASTER AT A MONEY-ORDER OFFICE WHO WILL PROMPTLY FORWARD IT TO THE DEPARTMENT WITH AN APPLICATION FOR A WARRANT TO BE ISSUED IN LIEU THEREOF FREE OF CHARGE.

SEND THE ORDER AND COUPON TO THE PERSON TO WHOM THE MONEY IS TO BE SENT.

DO NOT MUTILATE THE ORDER OR COUPON, DETACH THEM FROM EACH OTHER, OR ALTER THEM IN ANY WAY.

BANK STAMPS ARE NOT REGARDED AS ENDORSEMENTS

BANK STAMPS

Order of Court annexed to the aforegoing Petition:

ORDER.

Upon the aforegoing Petition for Writ of Mandamus and affidavit, it is this eighteenth day of April, 1935, by the Baltimore City Court, ORDERED that the Mandamus prayed for in the said Petition be granted and issued forthwith unless cause to the contrary be shown by the defendants, Raymond A. Pearson, W. M. Hillegeist, George M. Shriver, John M. Dennis, William P. Cole, Henry Holzapfel, John E. Raine, Dr. W. W. Skinner, Mrs. John L. Whitehurst and J. Milton Patterson, on or before the 6th day of May, 1935, provided a copy of this petition and order be served upon the said Defendants on or before the 25th day of April, 1935.

CHARLES F. STEIN.

Rule Answer.

Answer of the Defendants to the Petition for a Writ of Mandamus filed the 6th day of May, 1935:

ANSWER.

Now come the defendants, by Herbert R. O'Conor, Attorney General, and Charles T. LeViness, Assistant Attorney General, their attorneys, and for answer to the petition for a writ of mandamus herein filed against them say:

1. They admit the allegations of fact contained in the first paragraph of said petition.

2. They admit the allegations of fact contained in the second paragraph of said petition.

3. They admit the allegations of fact contained in the third paragraph of said petition, with this qualification that the Baltimore Schools of the University of Maryland, of which the Law School is a part, do not derive their maintenance funds principally from the general treasury of the State but are supported principally by tuition fees paid by students in said schools.

4. They admit the allegations of fact contained in the fourth paragraph of said petition.

5. They admit the allegations of fact contained in the fifth paragraph of said petition.

6. They admit the allegations of fact contained in the sixth paragraph of said petition.

7. They admit the allegations of fact contained in the seventh paragraph of said petition.

8. They admit the allegations of fact contained in the eighth paragraph of said petition.

9. They admit the allegations of fact contained in the ninth paragraph of said petition.

10. The defendants have no personal knowledge of the matters and facts alleged in the tenth paragraph of said petition, and, therefore, can neither admit nor deny the same; however, they demand strict proof of such as may be pertinent to this case.

11. The defendants admit that the petitioner has applied in due form for admission to the Law School of the University of Maryland, as alleged in the eleventh paragraph of said petition.

12. The defendants admit that the petitioner has been denied admittance to the Law School of the University of Maryland, but deny that they have wrongfully or arbitrarily done so, as alleged in the twelfth paragraph of said petition, their reasons for such denial being hereinafter set out.

13. The defendants comprising the Board of Regents aforesaid admit that they have had ample time and adequate opportunity to consider and act upon the petitioner's appeal to them; further they aver that they have acted thereon and that President Pearson's letter to the Petitioner, dated March 8th, 1935, referring him to Howard University in Washington, constituted an answer for the said Board of Regents; the defendants specifically deny that Petitioner's appeal has been ignored, and that the said Board of Regents does not intend to act thereon.

14. The defendants have no personal knowledge of

the matters and facts alleged in the fourteenth paragraph of said petition, and hence can neither admit nor deny the same.

15. The defendants specifically deny the matters and facts alleged in the fifteenth paragraph of said petition.

16. The defendants specifically deny the matters and facts alleged in the sixteenth paragraph of said petition.

17. The defendants specifically deny the matters and facts alleged in the seventeenth paragraph of said petition.

And for a further answer to the said petition the defendants say:

1. That the State of Maryland, in order to afford adequate educational facilities to colored persons of the State, has provided separate and satisfactory institutions of learning for the exclusive use and benefit of such colored persons, or otherwise has supplied equal opportunities for education to colored persons, and that the petitioner is a negro or a member of the colored race, and is entitled to the benefits of the special provisions made for members of his race.

2. That the General Assembly of this State has set up and the State now maintains an elaborate system of free public education for negro children, provided in Article 77, Sections 200 et seq. of the Code of Public General Laws; that the State further offers industrial schools for negro students, provided by Article 77, Sec. 211 et. seq. of the Code; that the State further offers normal school education to instruct colored teachers in the science of education, as provided in Article 77, Section 256 of the Code; that the State has for many years conducted for negro students an institution of higher learning known as Princess Anne Academy, at Princess Anne, Maryland; and that the Legislature of 1933 passed an act providing funds to establish partial scholarships at Morgan College or at institutions outside the State of Maryland, for negro students desiring to take professional courses or such other work as is not offered at Princess Anne Academy, said Act being known as Chapter 234 of the Acts of 1933 and reading as follows:

NEGRO EDUCATION UNDER THE MORRILL ACT 214A. "That the funds for residence education now received by the University of Maryland from the Government of the United States under the Morrill Act, now amounting to $50,000 per year, shall be divided on the basis of the population of the State of Maryland as shown by the latest census, so that a percentum of these funds equal to the percentum of the negro population to the whole population of the State, shall be expended by the Comptroller of the State, upon recommendation of the Regents of the University of Maryland, for the benefit and in the interests of the Princess Anne Academy.

"The Board of Regents of the University of Maryland may allocate such part of the state appropriation for Princess Anne Academy or other funds of the Academy as may be by it deemed advisable to establish partial scholarships at Morgan College or at institutions outside of the State of Maryland, for negro students who may apply for such privileges, and who may, by adequate tests, be proved worthy to take professional courses or such other work as is not offered in the said Princess Anne Academy, but which is offered for white students in the University of Maryland; and the Board of Regents of the University of Maryland shall have authority to name a Board which shall prepare and conduct such tests as it may deem necessary and advisable in order to determine which applicants for scholarships may be worthy of such awards".

That the 1935 Legislature, by Chapter 577, of the Acts of 1935, approved April 29, 1935, created a commission on Higher Education of Negroes to administer the sum of $10,000 for scholarships to negroes to attend college out of the State; and it is expressly provided by said Act that these scholarships are for "college, medical, law or other professional courses", for the "colored youth of the State who do not have facilities in the State for such courses".

3. That the State, therefore, offers substantially the same educational advantages to negro students, not only in school and college work but also in professional work, as it offers to white students.

4. That on the eighth day of December, 1934, the

petitioner made application in writing to the Dean of the Law School of the University of Maryland for a formal application blank and bulletin of the Law School; that on the fourteenth day of December, 1934, the defendant Pearson replied to the Petitioner, calling his attention to the passage by the 1933 Legislature of the above mentioned Act of the Assembly, "creating partial scholarships at Morgan College or institutions outside of the State for negro students who may desire to take professional courses or other work not given at the Princess Anne Academy"; that the defendant Pearson in said letter further informed Petitioner that if he desired to make application for such scholarship, he would see that such application was duly filed; that on the sixth day of March, 1935, the Petitioner thereupon addressed a letter to the Board of Regents of the University of Maryland, in which he stated that he had made application to be admitted to the Law School of the University of Maryland, and that the officials of the University had refused to consider his application and had returned to him the application and money order for a $2.00 fee; that petitioner in said letter further stated that he was qualified for admission to the Law School and appealed to the said Board to accept his application; on the eighth day of March, 1935, the defendant Pearson thereupon answered the aforementioned letter to the Board of Regents of the University of Maryland, calling to Petitioner's attention the exceptional facilities open to him for the study of law in Howard University in Washington at a lower cost to a student than the tuition and fees in the University of Maryland Law School.

5. That it has been the policy of this State to provide adequate educational facilities for negro students in proportion to the demand for same; and that there has never been a demand in this State, except in isolated instances such as in the present case, for legal education for negro students; that the State maintains an elaborate system of free education for negroes in this State which cares for substantially all the educational requirements of its negro citizens, insofar as it is able so to do and in substantially the same proportion, according to their numbers, as for white students; and that for those few negro citizens who desire professional study not otherwise

provided for in the State, scholarships out of the State are provided as aforesaid.

6. That the petitioner may suffer no damage by the denial of his application for the reason that the tuition and charges at Howard University, which offers facilities for legal study of high standards, which standards compare favorably with those of the University of Maryland School of Law, are lower than those charged to citizens of Maryland here at the said University of Maryland School of Law.

And now having fully answered the said petition for a writ of mandamus, the defendants pray that they may be hence dismissed with their costs.

And as in duty bound, etc.

HERBERT R. O'CONOR,
Attorney General.

CHARLES T. LeVINESS, 3rd,
Assistant Attorney General.
Attorneys for Defendants.

State of Maryland, City of Baltimore, to wit:

I Hereby Certify that on this 4th day of May, 1935, before me the subscriber, a Notary Public of the State of Maryland, in and for Baltimore City aforesaid, personally appeared Raymond A. Pearson, President of the University of Maryland, on his own behalf and on behalf of the other defendants in this case, and made oath in due form of law that the matters and facts contained in the foregoing answer are true to the best of his knowledge and belief.

Witness my hand and Notarial Seal.

HATTIE F. FUXMAN,
Notary Public.

(Seal)

system of education for Negroes in Maryland, free or otherwise. He avers that the State through its General Assembly, in violation of the 14th Amendment of the Constitution of the United States, has established a system of education for Negroes in Maryland unequal, inferior and inadequate in every respect; that in the matter of school terms, teachers' salary schedules, transportation, physical plant, number and distribution of schools, curriculum offerings, enforcement of school attendance laws, and other respects, the State both by law and official administrative policy discriminates directly itself and/or through its subordinate governmental subdivisions having jurisdiction in its premises, against its Negro citizens and the Negro population of the State. Further he denies that the State maintains or provides any institution of higher learning for Negroes, except a State Normal School. He denies that the Princess Anne Academy is an institution of higher learning, and avers that the defendants, the Board of Regents, and their predecessors in office, have deliberately maintained the said Princess Anne Academy as an inferior, ill-equipped, underfinanced and poorly staffed institution of less than true collegiate or junior collegiate rating, under the guise of an institution for higher learning and labelled the Eastern Branch of the University of Maryland, and that the same constitutes a fraud upon the rights of the Negro citizens of the State of Maryland and a denial to them of the equal protection of the laws guaranteed them under the 14th Amendment to the Constitution of the United States. He admits the existence of the acts of 1933 and 1935 alleged in said paragraph 2 of defendants' "further answer," but denies that the same offer or provide equal or satisfactory educational opportunity to Negroes in the premises; and avers that although many Negro students have made applications for scholarships under said Act of 1933, no Negro student has received any substantial money grant. He avers that said legislation subjects Negro students to tests and other conditions not imposed or required of white students of Maryland seeking the same educational courses, in violation of the equal protection clause of the 14th Amendment of the Constitution of the United States. Further as to said Act of 1933 he avers that said Act does not grant any increased bounty

to Negroes for educational opportunity, but in reality decreases the resident opportunities to Negroes for education within the State by pinching off money out of the budget of the Princess Anne Academy, which both before and after the passage of said Act was inadequate, penurious, and unable to support an institution of higher learning conducted upon any standard maintained by the State for the higher education of white students in Maryland. Petitioner is without information as to the operation of said Act of 1935 and can neither affirm nor deny, but calls for strict proof of any matters relevant thereto.

3. He denies each and every allegation in paragraph three of defendants "further answer."

4. He admits that he applied for admission to the School of Law of the University of Maryland, and the correspondence with the defendant Pearson as alleged. The further steps taken by petitioner to be admitted to the said School of Law appear in his petition heretofore filed in this cause. He admits defendant Pearson called his attention to the School of Law of the Howard University but denies that the defendant did so in a true interest in petitioner's legal education; and assets that the real reason of the defendant was to try to dissuade petitioner from insisting upon his legal rights under the 14th Amendment of the Constitution of the United States and the laws enacted in conformity therewith, under the Constitution and Laws of the State of Maryland, and the charter and regulations of the University of Maryland and the School of Law thereof, to matriculate in said school. Further petitioner avers that in spite of the defendant Pearson's opinion that the School of Law of Howard University offers exceptional facilities for the study of law with tuition and fees lower than those charged in the School of Law of the University of Maryland, nevertheless neither the defendant Pearson nor any of the other defendants recommend to white students applicants for admission to the School of Law of the University of Maryland that they matriculate in the School of Law of Howard University rather than in the School of Law of the University of Maryland; but said recommendation to petitioner was in execution of the official policy of the State, and the defendant Pearson acted in

the premises as the official agent of the State, to deny petitioner the equal protection of the laws as guaranteed to him by the Fourteenth Amendment to the Constitution of the United States, solely on account of his race or color.

5. He denies that it is now, or ever has been the policy of the State of Maryland to provide educational facilities for Negroes in proportion to their true needs, and denies that the educational facilities furnished or maintained by the State for Negroes are adequate, or equal, or elaborate, or cares for substantially all the educational requirements of its Negro citizens. He avers that the educational opportunities and facilities provided by the State for Negroes have lagged far behind the demands and requirements of the Negro population of the State, and denies that said educational opportunities and facilities are equal to those provided by the State for white people, within the meaning of the Fourteenth Amendment of the Constitution of the United States. He avers it is immaterial as to the numbers of Negroes in Maryland who have applied for a legal education; but if said numbers be material, then the State is estopped to assert any paucity of numbers because both by law and official administrative policy it has made it difficult—if not impossible—for a Negro citizen of Maryland to qualify to study law because of the inferior, inadequate and discriminatory prelegal education offered by the State to its Negro citizens in violation of the equal protection of the laws guaranteed by the 14th Amendment of the Constitution of the United States. Further he denies that the scholarships offered in form by the State to Negroes for professional study outside the State are adequate, or offer them equal or equivalent educational opportunity to that offered to white students of Maryland within the State, under the meaning of the provisions of the 14th Amendment to the Constitution of the United States.

6. He denies that he will suffer no damage if refused admission to the School of Law of the University of Maryland, and avers that he will suffer irreparable damage if his application is not received and acted upon in good faith in due course, and if he is not admitted to said school. He denies that the Howard University School of Law offers him an equivalent legal education for the following reasons. The Howard University School of Law

is essentially a national law school with students coming from all sections of the country, and often from foreign countries. Being such it does not pretend to pay particular attention to the law and procedure of the State of Maryland. On the other hand the School of Law of the University of Maryland is essentially a State school serving the citizens of the State of Maryland and making a specialty of the law and procedure of Maryland along with instruction in the general substance and procedure of our Anglo-American legal system. Petitioner, a citizen of Maryland and resident of the City of Baltimore, expects to practice law in the State of Maryland, and will be immeasurably handicapped in competition with members of the Maryland Bar, a large number of whom are graduates of the School of Law of the University of Maryland, who will have received the special instruction in Maryland law and procedure at the School of Law of the University of Maryland as aforesaid. Further petitioner avers that while attending the School of Law of the University of Maryland, located in the City of Baltimore, he could live at home in said City of Baltimore, and have no extra expense for room and board; that if he attended the Howard University School of Law in Washington, D. C., he would have to expend large sums of money for separate board, lodging and maintenance which he would not have to spend while attending the School of Law of the University of Maryland in Baltimore; that the large sums which he would have to spend attending the Howard University School of Law as aforesaid would more than offset the small difference the fees and tuition at Howard University School of Law are lower than similar fees and tuitions at the School of Law of the University of Maryland; and that it would be more expensive for him to attend the Howard University School of Law than the School of Law of the University of Maryland.

7. And by way of further reply to the answer and "further answer" of the defendants herein filed as aforesaid, petitioner avers that the defendants and each of them, as agents of the State of Maryland, and the said State of Maryland, unlawfully and arbitrarily have denied and refused, and still deny and refuse, to receive and consider his application for admission to the School of Law of the University of Maryland, solely on account of the fact he is a Negro, in violation of the rights guar-

anteed to him by the Fourteenth Amendment of the United States and the law of the land.

As to paragraphs one to seventeen of the answer filed by the defendants the petitioner says that insofar as the allegations contained therein deny the allegations of the corresponding paragraphs of the petition filed herein, your petitioner joins issue with such allegations of the answer.

And as in duty bound, etc.

DONALD GAINES MURRAY.

CHARLES H. HOUSTON,
THURGOOD MARSHALL,
WILLIAM I. GOSNELL,
Attorneys for Petitioner.

State of Maryland, City of Baltimore, ss.:

I hereby certify, that on this twenty-first day of May, 1935, before me the subscriber, a Notary Public of the State of Maryland in and for the City of Baltimore, personally appeared Donald G. Murray, petitioner herein, and made oath in due form of law that the matters and things contained in the within replication are true to the best of his knowledge and belief.

SARAH J. AMBERS,
(Seal.) Notary Public.

Agreement of Parties that this case shall be tried by the Court without a jury filed the 18th day of June, 1935:

Mr. Clerk:

By agreement of parties please mark the above entitled case "Trial by the Court without a jury."

THURGOOD MARSHALL,
Counsel for Petitioner.

CHAS. T. LEVINESS, 3RD,
Counsel for Respondents.

DOCKET ENTRIES.

18th June, 1935—Submitted to the Court (Hon. Eugene O'Dunne) for determination, without the intervention of a Jury.

18th June, 1935—Let the Writ of Mandamus issue per verbal order of the Court (Judge O'Dunne).

Plaintiff's Exhibits Nos. 1, 2, 4, 5, 6, 7½, 8, 9 and 10 filed the 18th day of June, 1935:

PLAINTIFF'S EXHIBIT NO. 1.

1522 McCulloh Street
Baltimore, Maryland
December 8, 1934

Dean of the Law School
University of Maryland
Lombard and Greene Streets
Baltimore, Md.

Dear Sir:

I am writing to you so that I may secure admittance to the Law School of the University of Maryland. I am a graduate of Amherst College of the Class of 1934. Such transcripts of records as are necessary will be immediately forthcoming when asked for.

I also should like to secure a formal application blank and bulletin of the Law School. If high school records are necessary, I am able to secure this from Douglass High School, the only Negro high school in this city. Thanking you in advance, I am,

Respectfully yours,

DONALD G. MURRAY.

PLAINTIFF'S EXHIBIT NO. 2.

UNIVERSITY OF MARYLAND

College Park

Office of the President

December 14, 1934

Mr. Donald G. Murray

1522 McCulloh Street

Baltimore, Maryland

Dear Sir:

I am in receipt of your request of December 8 for information concerning our School of Law.

Under the general laws of this State the University maintains the Princess Anne Academy as a separate institution of higher learning for the education of Negroes. In order to insure equality of opportunity for all citizens of this State, the 1933 Legislature passed Chapter 234, creating partial scholarships at Morgan College or institutions outside of the State for Negro students who may desire to take professional courses or other work not given at the Princess Anne Academy.

Should you desire to make application for such scholarship notify me, and I will see that such application is duly filed.

Very truly yours,

R. A. PEARSON,

R. A. PEARSON,

S President.

PLAINTIFF'S EXHIBIT NO. 4.

UNIVERSITY OF MARYLAND

Baltimore.

Office of the Registrar
Lombard and Greene Streets

February 9, 1935

Mr. Donald G. Murray
1522 McCulloh Street
Baltimore, Maryland.

Dear Sir:

On December 14, 1934, President Pearson wrote to you as follows:

"December 14, 1934

Mr. Donald G. Murray
1522 McCulloh Street
Baltimore, Maryland

Dear Sir:

I am in receipt of your request of December 8 for information concerning our School of Law.

Under the general laws of this State the University maintains the Princess Anne Academy as a separate institution of higher learning for the education of Negroes. In order to insure equality of opportunity for all citizens of this State, the 1933 Legislature passed Chapter 234, creating special scholarships at Morgan College or institutions outside of the State for Negro students who may desire to take professional courses or other work not given at the Princess Anne Academy.

Should you desire to make application for such scholarship notify me, and I will see that such application is duly filed.

Very truly yours,

R. A. PEARSON,

President."

Later you filed a formal application for admission to our School of Law, and enclosed a money order for two dollars. President Pearson instructed me today to return to you the application form and the money order, as the University does not accept Negro students, except at the Princess Anne Academy.

Truly yours,

W. M. HILLEGEIST,

WMH/MB
Enc.

W. M. HILLEGEIST,
Registrar.

PLAINTIFF'S EXHIBIT NO. 5.

(COPY)

1522 McCulloh Street
Baltimore, Maryland
March 5, 1935.

The Board of Regents
University of Maryland
Fidelity Building
Baltimore, Maryland

Madam and Gentlemen:

On January 24, 1935, pursuant to and in accordance with the rules and regulations set out in "The Catalogue and Announcement of the School of Law" (1934), I made application to be admitted as a student in the University of Maryland Law School September—1935 and forwarded the prescribed two dollars ($2.00) by a P. O. money order for investigation fee. By letter dated February 9, 1935, the officials of the University refused to consider the application and returned the application and money order.

I am a citizen of the State of Maryland and fully qualified to become a student of the University of Maryland Law School. No other State institution affords a legal education. The arbitrary actions of the officials of the University of Maryland in returning my application was unjust and unreasonable and contrary to the Constitution of the United States and the Constitution and laws of this State. I therefore, appeal to you as the governing body

of the University to accept the enclosed application and money order and have my qualifications investigated within a reasonable time. After finding that I am qualified you are further requested to admit me as a regular student of the University of Maryland Law School. I am ready, willing and able to meet all requirements as a student, to pay whatever dues are required of residents of the State and to apply myself diligently to my work.

Will you please advise me at your earliest convenience of the action taken on this appeal, and upon my application.

Very truly yours,

DONALD G. MURRAY.

PLAINTIFF'S EXHIBIT NO. 6.

UNIVERSITY OF MARYLAND

College Park

Office of the President

March 8, 1935

Mr. Donald G. Murray
1522 McCulloh Street
Baltimore, Maryland

My dear Mr. Murray:

Your registered letter received.

I think I can best answer your letter by referring you to my letter of December 14, 1934, copy of which is enclosed. I am returning the money order for $2.00 herewith.

May I bring to your attention the exceptional facilities open to you for the study of law in Howard University in Washington. This institution is supported largely, if not entirely, by the Federal Government. It has one of the best plants in the country. It's School of Law is rated as Class "A." It is fully approved by the American Bar Association and it is a member of the Association of American Law Schools. I understand the cost of at-

tending the Howard University School of Law is only about $135.00 per year, plus a nominal matriculation fee when first entering and a nominal diploma fee on graduation. This is considerably less than is paid by students in the School of Law in the University of Maryland. Their payments in the Day School are approximately $203 per year and in the Night School, $153 per year, plus somewhat larger charges than Howard University for investigation, matriculation and diploma.

Very truly yours,

R. A. PEARSON,
R. A. PEARSON,
President.

H

PLAINTIFF'S EXHIBIT NO. 7½.

UNIVERSITY OF MARYLAND

College Park

Office of the President

September 25, 1934

Mr. Olin T. Thompson
Rural Route Two, Box 88
Chestertown, Maryland

Dear Mr. Thompson:

Your letter of September 19th is received. Also Dr. Cotterman has sent to me copy of his letter of September 11 to you.

There is little I can add to what Dr. Cotterman has already told you. It is unfortunate that the Legislature which passed the law authorizing the partial scholarships for Negro students did not provide special funds to care for them.

I greatly regret that your application to the Law School of the University of Maryland can not be accepted.

Very truly yours,

R. A. PEARSON,
R. A. PEARSON,
President.

S

PLAINTIFF'S EXHIBIT NO. 8.

UNIVERSITY OF MARYLAND

College Park

Office of the President

August 4, 1933

Mr. Reginald F. Jefferson
607 Pitcher Street
Baltimore, Maryland

My dear Sir:

Your letter is just received and I am referring it to Dr. T. H. Kiah, Principal of Princess Anne Academy, Princess Anne, Maryland, who is receiving all applications. Just now nothing can be done because it is not known what funds will be available for a limited number of scholarships and the committee authorized by law has not been appointed as yet.

Very truly yours,

R. A. PEARSON,

R. A. PEARSON,

President.

PLAINTIFF'S EXHIBIT NO. 9.

UNIVERSITY OF MARYLAND

College Park

College of Education.

September 11, 1934.

Mr. Olin Thaddeus Thompson
Rural Route 2, Box 88
Chestertown, Maryland

Dear Sir:

President Pearson has referred your letter of September 4 to my office, as I am chairman of the committee appointed to handle partial scholarships for Negro students.

I am placing your letter on file as an application for a partial scholarship, should money become available. Just at this time I do not know whether there will be any money available for these partial scholarships. Unfortunately when the Legislature passed the law it did not make a special appropriation to take care of them, but merely gave the University permission to squeeze funds from the Princess Anne Academy budget if the Board of Regents of the University saw fit to do so.

In the meantime I would be glad if you would inform me of the law school which you propose to attend. It is my understanding that you could attend the law school of Howard University at a figure considerably below the cost of attending the University of Maryland to white students.

If I find that there will be money available for partial scholarships this year, I will send you an application blank calling for more details in regard to your case, and will be glad to lay the whole matter before the University's Partial Scholarship Committee which is composed of Dr. J. O. Spencer, President of Morgan College, Mr. J. Walter Huffington, Professor J. E. Metzger, Dean Marie Mount, and myself.

Very truly yours,

H. F. COTTERMAN,

H. F. COTTERMAN,

Chairman, Committee on Partial Scholarships.

PLAINTIFF'S EXHIBIT NO. 10.

Pltff's Ex No 10

MINIMUM SALARY SCHEDULE IN MARYLAND COUNTIES IN EFFECT SINCE SEPTEMBER, 1922

Reduced Salaries for the Period August 1, 1933, to July 31, 1935, Are Shown in Bold Face

ANNUAL SALARIES OF ELEMENTARY SCHOOL TEACHERS

Grade of Certificate	WHITE				COLORED†			
	Years of Experience				Years of Experience			
	1-3	4-5	6-8	9+	1-3	4-5	6-8	9+
Third	$ 600 540	$ 650 585			$ 220 200	$ 300 324		
Second	750 675	800 720	$ 850 765		300 300	440 396	$ 600 432	
First	950 855	1050 945	1100 990	$1150 1035	520 468	580 504	600 540	$ 600 612
First in Charge of One- or Two-Teacher School	1050 945	1150 1035	1200 1080	1250 1125.00				
Principal with 3 Assistants	1150 1035	1250 1125.00	1300 1157	1350 1201.50				
6 Assistants, 200 A. D. A.*	1350 1201.50	1450 1290.50	1500 1335	1550 1379.50				
9 Assistants, 300 A. D. A.*	1550 1379.50	1650 1468.50	1700 1513	1750 1557.50				

ANNUAL SALARIES OF HIGH SCHOOL TEACHERS

Grade of Certificate	WHITE					COLORED†		
	Years of Experience					Years of Experience		
	0-1	2-3	4-5	6-7	8	1-3	4-5	6+
Assistant	$1150 1035	$1200 1068	$1250 1112.50	$1300 1157	$1350 1201.50	$720 648	$810 729	$855 760.80
Principal 2nd Group School	1250 1112.50	1300 1157	1350 1201.50	1400 1246	1450 1290.50			
1st Group School	1550 1379.50	1600 1468.50	1750 1557.50	1850 1624	1950 1716	855 770	990 891	1080 972
5 Assistants, 100 A. D. A.*	1750 1557.50	1850 1625	1950 1716	2050 1804	2150 1892	945 850.50	1080 972	1170 1053
9 Assistants, 200 A. D. A.*	1950 1716	2050 1804	2150 1902	2250 1980	2350 2068			

† Annual salaries shown for colored teachers are based on the minimum school year of eight months required.

* A. D. A. Average daily attendance.

Provisional teachers in schools for white children receive from $100($90) to $200 ($180) less than the above figures, while in schools for colored elementary pupils $40($36) and for colored high school pupils $90($81) less than the amounts above are paid provisional teachers.

MINIMUM SALARIES OF ADMINISTRATIVE AND SUPERVISORY STAFF IN EFFECT SINCE SEPTEMBER, 1922

Reduced Salaries for the Period August 1, 1933, to July 31, 1935, Are Shown in Bold Face

Type of Position	Years of Experience 1-4	5-7	8+
County Superintendent			
Less than 150 Teachers	$2500—$2940 2175 — 2557.80		
150-199 Teachers	2940 2557.80	3240 2766.60	$3540 3044.40
200 or More Teachers	3540 3044.40	3840 3264	4140 3519
Supervising Teacher	2040 1795.20	2340 2050.20	2640 2296.80
Helping Teacher	1440 1281.60	1740 1548.60	2040 1795.20
Attendance Officer	1200 1068		

Number of Supervising or Helping Teachers in Maryland Counties for Varying Numbers of White Elementary Teachers
October, 1933

No. of White Elementary Teachers	Number of Supervisors Allowed By Law	Number of Counties	Names of Counties
Less than 80	1	10	Calvert, Caroline, Charles, Howard, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Worcester
80 to 119	2	4	Cecil (1), Dorchester, Garrett, Wicomico
120 to 185	3	3	Anne Arundel (2), Carroll (1), Harford (2)
186 to 235	4	3	Frederick (3), Montgomery (3), Prince George's (3)
236 to 285	5	1	Washington (4), Allegany (4)
286 to 335	6	1	
336 to 385	7	1	Baltimore (6)

( ) The number of supervising or helping teachers actually employed in October, 1933, is shown in parentheses for counties which employed fewer than the minimum number required by the law as in effect prior to September, 1933. For the two-year period from September, 1933, to August, 1935, the employment of more than one supervisor in a county is optional with the County Board of Education and is conditional upon the provision of funds for their employment by the County Commissioners.

Order of Court (Judge O'Dunne) filed the 25th day of June, 1935:

ORDER.

The above entitled case coming on for hearing, after full consideration of all the pleadings, stipulations of record, evidence, and the arguments of counsel, for the respective parties, it is hereby ORDERED by the Baltimore City Court this 25 day of June, 1935, that the writ of mandamus be issued forthwith requiring the defendants Raymond A. Pearson, President, W. M. Hillegeist, Registrar, and George M. Shriver, John M. Dennis, William P. Cole, Henry Holzapfel, John E. Raine, Dr. W. W. Skinner, Mrs. John L. Whitehurst, and J. Milton Patterson, members of the Board of Regents of the University of Maryland, to admit the said Donald G. Murray, Petitioner, as a first year student in the Day School of the School of Law of the University of Maryland for the academic year beginning September 25, 1935, upon payment by Donald G. Murray of the necessary fee charged first year students to the Day School of the Law School of the University of Maryland and complete his registration in the manner required of qualified and accepted students to the first year class of the Day School of the School of Law of the University of Maryland, to wit, that he be not excluded on ground of race or color. It is further ORDERED that the said Donald G. Murray be admitted and permitted to pursue his studies as a regular first year student of the School of Law of the University of Maryland pending an appeal from this order if the said appeal is perfected.

EUGENE O'DUNNE.

Writ of Mandamus filed the 25th day of June, 1935:

WRIT OF MANDAMUS.

State of Maryland, City of Baltimore, to wit:

To Raymond A. Pearson, President, W. M. Hillegeist, Registrar, George M. Shriver, John M. Dennis, William P. Cole, Henry Holzapfel, John E. Raine, Dr. W. W. Skinner, Mrs. John L. Whitehurst, and J. Milton Patter-

son, members of the Board of Regents of the University of Maryland.

Under an order of Mandamus in the above entitled case, passed by the Baltimore City Court on the eighteenth day of June 1935, you are ordered to admit the said Donald G. Murray, Petitioner, as a first year student in the Day School of the School of Law of the University of Maryland for the academic year beginning September 25, 1935, provided said Donald G. Murray tender the necessary fees charged first year students to the Day School of the Law School of the University of Maryland and complete his registration in the manner required of qualified and accepted students to the first year class of the Day School of the School of Law of the University of Maryland. You are further ordered that the said Donald G. Murray be admitted and permitted to pursue his studies as a regular first year student of the School of Law of the University of Maryland pending appeal if said appeal is perfected.

JAMES B. BLAKE,
(Seal.) Clerk of the Baltimore City Court.

Appeal to the Court of Appeals of Maryland on behalf of the Defendants filed the 25th day of June, 1935:

ORDER OF APPEAL.

Mr. Clerk:

Enter an appeal from the judgment in this case to the Court of Appeals of Maryland.

HERBERT R. O'CONOR,
Attorney General.

CHARLES T. LeVINESS, III,
Asst. Attorney General.

State of Maryland, City of Baltimore, to wit:

I hereby certify that on this 24th day of June, in the year 1935, before the subscriber, a Notary Public of the City of Baltimore, personally appeared Raymond A.

Pearson, President of the University of Maryland the respondent in the above entitled cause and made oath in due form of law that the appeal taken is not taken for delay.

Witness my hand and notarial seal.

HATTIE F. FUXMAN,

(Seal.) Notary Public.

Defendants' Bill of Exceptions filed the 26th day of June, 1935:

In the Baltimore City Court, Part III.

Donald G. Murray

vs.

Raymond A. Pearson, President; W. M. Hillegeist, Registrar; George M. Shriver, John M. Dennis, William P. Cole, Henry Holzapfel, John E. Raine, Dr. William Skinner, Mrs. John L. Whitehurst and J. Milton Patterson.

Before Hon. Eugene O'Dunne, Judge.

Baltimore, Md., June 18, 1935.

Counsel Present:

Thurgood Marshall, Esq., William I. Gosnell, Esq., and Charles H. Houston, Esq., on behalf of the Plaintiff.

Charles T. LeViness, 3rd., Esq., on behalf of the Defendants.

(Opening statement on behalf of Plaintiff made by Mr. Houston, and opening statement on behalf of the Defendant made by Mr. LeViness.)

(The Court) Make a note that there is now filed an amended Answer, based on supplemental information not in the breast of the Attorney General at the time he filed his answer.

(Mr. LeViness) The respondents have had submitted to them a photostatic copy of the transcript of record of the petitioner, while a student at Amherst College, Amherst, Massachusetts; that such certificate has been submitted to the registrar of the University of Maryland, who advised us that the applicant is qualified from an educational standpoint to be admitted into the Law *School, and therefore, the respondents do not call* for strict proof of that matter as claimed in the Answer.

(The Court) The Court has heard opening statements of counsel for each side, and now is prepared to proceed to hear testimony from either side that they desire to produce.

(Mr. Houston) It is stipulated between counsel for plaintiff and for the defendants that the application of Donald G. Murray is broad enough to cover his admission, not only for the school term beginning September *25, 1935, but for any succeeding school* term at which he might be found eligible and qualified for admission to a school of law. The petition is so amended so as to make it a continuing application, and is to be passed upon as such.

DONALD G. MURRAY,

produced on behalf of the plaintiff, being duly sworn according to law, testified as follows:

DIRECT EXAMINATION.

Q. (Mr. Marshall) Your full name? A. Donald Gaines Murray.

Q. And your address? A. 1522 McCulloh street, Baltimore.

Q. Are you the petitioner in this case—did you file this Writ of Mandamus? A. Yes, sir.

Q. How old are you? A. 22.

Q. Are you a registered voter? A. Yes, sir.

Q. Are you married or single? A. Single.

Q. What is your occupation at the present time? A. Unemployed.

Q. Now, Mr. Murray, when did you first get the idea of studying law, or wanting to study law? A. When I entered Amherst, I intended to study law.

(The Court) You will have to speak louder, there is so much noise outside.

(Witness) When I entered Amherst, I intended to study law.

Q. (Mr. Marshall) You took up the idea of studying law? A. Yes, sir.

Q. Did you choose your subjects at Amherst to fit you to study law, so far as you knew? A. Yes.

Q. Did you talk with your advisor at Amherst what you should take to study law? A. Yes.

Q. Did you have any particular place in mind you would like to practice law, if you were afforded an opportunity to do so? A. I would like to practice here in Maryland.

Q. At what particular location in Maryland? A. Baltimore, Maryland.

Q. Is there any particular school you want to take your study of law in? A. I would like to take it in the University of Maryland.

Q. Do you have any reason for wanting to take law at the University of Maryland, rather than any other school? A. Yes, first, because it is convenient, I live here, it is less expensive, and if I went to the University of Maryland, I would have a chance to observe the Courts in Maryland, and also be able to get acquainted with other practitioners, if I was at the University of Maryland. I am a citizen of the State, and I think I should have a right to go there.

Q. Are you able to meet the financial obligations to attend the University of Maryland? A. Yes, sir.

Q. Are you aware of the fees charged at the University of Maryland? A. Yes, sir.

Q. Have you gone over the catalogue of the University of Maryland? A. Yes.

Q. How much time would you be able to devote to studies if you were admitted to the University of Maryland? A. Substantially all.

Q. Have you made any effort to matriculate in the law at the school of the University of Maryland? A. Yes, sir.

Q. Mr. Murray, look at that (indicating), and see if that is a letter you sent? A. Yes, sir.

Q. What is the date? A. December 8th.

(Mr. Marshall) I offer that in evidence.

(Letter referred to was then filed marked Plaintiff's Exhibit No. 1).

Q. I show you this letter dated December 14th, and ask you if you have seen it before? A. Yes, sir.

Q. Did you receive that letter? A. Yes, sir.

(Mr. Marshall) I offer that letter in evidence.

(Letter referred to was then filed marked Plaintiff's Exhibit No. 2).

Q. I show you this, and ask you if you have seen it before? A. Yes, sir.

Q. What is that? A. An application.

Q. Did you sign this application yourself? A. Yes, sir.

Q. And mailed it to the registrar? A. Yes, sir.

(Mr. Marshall) I offer that in evidence.

(Application referred to was then filed marked Plaintiff's Exhibit No. 3).

Q. I show you this letter, dated February 9th, have you seen it before? A. Yes, sir.

Q. Did you receive this letter? A. Yes, sir.

(Mr. Marshall) I offer that in evidence.

(Letter referred to was then filed marked Plaintiff's Exhibit No. 4).

(The Court) On Exhibit 4, the last page here, Mr. LeViness, I call your attention to the postscript of that letter, which otherwise seems to be a duplicate of the previous exhibit. I will read you the part I want to inquire about. "President Pearson instructed me today to return to you the application form and money order, as the University does not accept negro students, except at Princess Anne Academy." Now, is it contended, or is it admitted that there is no law school department of any character at Princess Anne Academy?

(Mr. LeViness) It is admitted.

(Mr. Marshall) I show you a copy of a letter of March 5th, 1935, and ask you if you have seen that before? A. Yes.

Q. Explain what that letter is? A. That is a registered letter to each of the members of the Board of Regents, asking that my application might be considered by the Board of Regents.

(Mr. Marshall) I offer that in evidence.

(Letter referred to was then filed marked Plaintiff's Exhibit No. 5).

Q. I am showing you a letter dated March 8th, signed R. A. Pearson, and ask you if you saw that before? A. Yes, sir.

Q. Did you receive that letter? A. Yes.

(Mr. Marshall) I offer that in evidence.

(Letter referred to was then filed marked Plaintiff's Exhibit No. 7).

Q. (Mr. Marshall) Mr. Murray, do you want the out

of state scholarship as mentioned by the Assistant Attorney General here? A. No.

Q. Is there any recognized law school in the State of Maryland, to your knowledge, where you can go to get a law course outside of the University of Maryland? A. No.

Q. If you are not admitted by September, 1935, do you still want to go there, if possible? A. Yes.

CROSS-EXAMINATION.

Q. (Mr. LeViness) Did you go to school in Baltimore before you went to college? A. Yes.

Q. What school did you attend? A. Douglas High School.

Q. The Douglas High School is a school maintained for what type of students; what color or race? A. Negroes.

Q. There are all colored boys and girls at that school, are there not? A. Yes.

Q. Where did you go before you went to Douglas High School? A. Public School number 103.

Q. Number 103. Where is that located? A. On Division Street.

Q. And that is an all colored school? A. Yes.

Q. There were no white boys and girls at all in either of those schools which you mentioned, are there? A. No, sir.

Q. Have you attended any other schools in Baltimore or the State of Maryland? A. No.

Q. Just those two? A. Yes.

Q. Both of the schools you attended were attended by the members of the colored race? A. Yes.

Q. Do you also know as a matter of fact, of general knowledge, that in Baltimore, and generally throughout the State, that colored boys and white boys do not attend the same school? A. Yes.

Q. That is true, isn't it. I understand you to say that if you are admitted to the University of Maryland you can pay? A. Yes.

Q. Do you know how much it is? A. Two hundred dollars.

Q. Do you know how much the tuition at Howard University School of law——

(The Court) It is stated in the exhibits that he put in himself; one hundred and thirty-five dollars, the last exhibit says, I think.

Q. (Mr. LeViness) If you were to attend some other institution outside of the state, such as Howard University, you would be able to go back and forth every day on the train from here to Washington, would you not? A. I would be able to, but I wouldn't want to.

Q. But you could do so. There are facilities for commuting between those cities?

(The Court) Do you think it is necessary to ask that. It is public knowledge that there are trains on the hour and every hour. The Court takes judicial acquiescence of the fact that communication between Baltimore and the national capital is adequate to get you there and bring you back either by train, bus or airplane.

(Mr. LeViness) And you can get from here to Washington in one hour.

(The Court) The only place you cannot go conveniently by railroad is the State Capitol.

(Mr. LeViness) Also, may I ask you, if you know what it costs to buy a monthly commutation ticket from here to Washington and return? A. I don't know.

Q. Isn't it $15.00 a month? A. I don't know.

(Discussion off the record.)

Q. (Mr. LeViness) By a letter which has been introduced in the evidence, which was written to you by Doctor Pearson under date of March 8th, I believe he refers you to the scholarship provision of our Maryland Law

and asks you if you would be interested in applying for a scholarship. His Honor has the exact wording.

(The Court) He says he got that and he did not want it.

(Mr. LeViness) Strike out the last question.

Q. By letter of December 14, 1934, which was written to you by Doctor Pearson, the President of the University of Maryland, he calls to your attention certain partial scholarships at Morgan College or institutions outside of the state for negro students who may desire to take professional courses or other work not given at the Princess Anne Academy and if you desire to make application for such scholarship to notify him. Pursuant to that letter, did you take any action for that scholarship? A. No.

Q. You did not take any action in pursuance of the Act of 1933, Chapter 234? A. No.

(The Court) Mr. LeViness, to get the record clear, ask him the same question as applying to Morgan College. Is there or is there not any claim that there is any law school attached to Morgan College?

(Mr. LeViness) No, there is not.

Q. Let me ask you this, Mr. Murray, if there were a State Law School for members of the colored race provided in connection with the Princess Anne Academy——

(The Court) What is the use of asking any questions —if there were any institutions?

(Mr. LeViness) That is all.

RE-DIRECT EXAMINATION.

Q. (Mr. Houston) Mr. Murray, if you attended the University of Maryland Law School, how much would you have to pay for your room and board? A. Nothing.

Q. Have you any idea how much you would have to pay for room and board in Washington, if you stayed there. Would you have to pay any room and board if you went to Washington? A. Yes.

Q. Mr. Murray, how long has your family been paying taxes in Baltimore? A. I don't know exactly, but they have been here for about 33 years.

(Examination concluded.)

DOCTOR RAYMOND A. PEARSON,

produced on behalf of the Plaintiff, being duly sworn according to law, testified as follows:

DIRECT EXAMINATION.

(Mr. Houston) If your Honor please, since Doctor Pearson is an adverse party and also, very obviously, from the letters here, a hostile witness, in the legal sense of the term; I ask the privilege of proceeding with leading questions.

(The Court) All right, go ahead.

Q. (Mr. Houston) Will you state your full name? A. Raymond A. Pearson.

Q. You are the President and Executive Head of the University of Maryland? A. Yes.

Q. How long have you been there, sir? A. Nine years.

Q. And I understand you are a graduate of Cornell, is that right? A. Yes.

Q. The University of Maryland, is that an accredited University in all departments? A. Yes.

Q. Is it not accredited so far as its Eastern branch is concerned? A. So far as the lines of work conducted there; it is a junior college.

Q. You said it was a junior college, the Princess Anne Academy is your Eastern branch; you said it was a junior college, by what accrediting agency is it accredited? A. We get that by the rating given to our students who finish at Princess Anne and go to other schools. They take two years and are accredited a junior rating in other schools.

Q. What schools do you know of that they go to from

Princess Anne? A. I would have to look up the record. A good many have gone to Petersburg, Virginia, which is an institution for colored people in the State of Virginia. I understand they are credited with two years of work and are given a junior rating.

Q. This particular district is under The Middle Atlantic States and Maryland Association of Colleges and Secondary Schools, is it not? A. Yes.

Q. Was Princess Anne Academy accredited by that Association before it became the Eastern branch of the University of Maryland? A. I think not; that is a long time ago.

Q. When did it become the Eastern branch of the University of Maryland? A. I can't give you the year, but it has been known in that way for the last 9 or 10 years.

Q. Has it been separately accredited since that time? A. Not to my knowledge.

Q. So that the only accrediting of Princess Anne as the Eastern branch of the University of Maryland is the accrediting it gets as being a part of the University of Maryland? A. That is not what I stated.

Q. Will you explain it please? A. We get the rating indirectly by those who finish two years work at Princess Anne and go to other schools and get a junior rating at those schools.

Q. Is the faculty at Princess Anne Academy on a level with the faculty at the University of Maryland? A. Undoubtedly yes, in some instances; not in all.

Q. By that you mean what?

(The Witness) Do you mean individuals?

(Mr. Houston) You said in some instances, not in all —in what instances and what persons would you consider the equal of your faculty at the University of Maryland? A. I think the instruction given in the first two years of college work is of the same grade.

Q. My question is about your faculty. What members of your faculty at Princess Anne would you consider

equal to your faculty at the University of Maryland? A. Well, Mr. Marshall, undoubtedly is one. He has his Bachelor's and Master's degrees.

Q. Any more? A. The Principal of the School is another with a Doctor's Degree.

Q. Do you know whether that is an honorary degree or an earned degree? A. I am not sure. If it is not an earned degree he has made considerable advance towords the advanced degree. I cannot tell how far he has gone.

Q. As a matter of fact, you are not very familiar with the qualifications of the Princess Anne Faculty members, are you, Doctor? A. Yes, I am.

Q. I show you the 1934-1935 catalogue——

(The Court) Of the Princess Anne Academy?

(Mr. Houston) Of the Princess Anne Academy yes. There is only one, assuming for the moment that the Doctor's Degree of the Principal is an honorary doctorate, there appears to be only one person on the Princess Anne Faculty who has an earned degree. A. I think at the present moment there are two.

Q. Is that condition the same at the University of Maryland? A. You are asking me a question that I should have some time to answer. I'll give you my impression; I think that as much of a proportion of the teachers at Princess Anne have advanced work or have taken advanced work and are qualified on that basis for teaching as you would find in the University of Maryland in the corresponding subject.

Q. Let me ask you on the subject about the advanced degree, what about that question; is the proportion between the Faculty of Princess Anne the same with advanced degrees as at the University of Maryland?

(The Witness) May I give a brief explanation?

(Mr. Houston) You haven't answered my question.

(The Witness) Will you repeat it please?

(Question referred to was then read by the stenographer.)

A. The proportion is not as high. You would like to hear an explanation?

Q. Certainly sir. A. Owing to the general situation, the lack of school facilities for negro boys and girls throughout the state and especially owing to the very small demand for collegiate instruction, Princess Anne was below the collegiate grade until the past few years. During these past few years, six or seven or eight continuous efforts have been made to bring the faculty up to the level of the faculty at College Park and every year for the past few years some of these teachers have accomplished a little more towards the accomplishment of a Master's Degree. One, I understand, finished those requirements last month and two are going this year. There has been a great advance along those lines during the past six or seven years.

Q. But, at the present time they haven't reached the classification? A. That is right.

Q. In your Extension Department, are negro students admitted to extension work? A. We admit no negroes to our extension work.

Q. Do you do extension work at the University of Maryland? A. We do.

Q. Do you do it among negroes? A. We do.

Q. Do you have any negro workers on your Staff or employ any? A. We do.

Q. The University of Maryland Law School is a part of the University, is it not? A. It is.

Q. And it is a Member of the Association of American Law Schools and accredited on the list of law schools? A. It is.

Q. And is it also accredited by the American Bar Association? A. It is.

Q. Is there any other law school in the State of Maryland which so far as you know is on the accredited list of the American Bar Association? A. No.

(Mr. Houston) Now, we have—your Honor, here are some certified statistics of the State of Maryland. I think under the rules your Honor takes judicial notice.

(The Court) They will not object to it, I assume.

(The above referred to statistics were then filed marked Plaintiff's Exhibit No. 7.)

(The Witness) There is a year later catalogue out that might serve your purpose better.

(Mr. Houston) Do you have it, sir?

(The Witness) I could get it to you quickly.

Q. According to the United States Decennial Census of 1930 the races making up the population of the State of Maryland are White, Negro, Mexican, Indian, Chinese, Japanese, Filipino and certain others. Knowing that you admit the qualified white to the University, Mexicans, would you admit them, sir? A. I would take it under consideration.

Q. Assuming that the Mexicans were otherwise qualified, had the same equal qualification with the white applicant, assuming that you had been satisfied as to their qualifications being equal with the white applicants, what would there be about it to cause you to pause? A. I would simply take it up with the Entrance Committee and ask them to advise me.

Q. Is that procedure followed with whites also? A. Frequently.

Q. (The Court) I don't understand that, why frequently? A. Because in many cases it is perfectly clear to the Registrar and Dean that there is no question whatever about any feature of the case, but if there is any doubt it will be considered.

Q. Any doubt about what? A. About whether anyone should be admitted to the University.

Q. On what ground? A. Any ground.

Q. (Mr. Houston) Leaving the question of negroes for the moment and discussing only the question of whites,

and recognizing the fact that the University of Maryland is a public institution, you wouldn't contend that you had a right to refuse a qualified white applicant if you had the facilities——

(Mr. LeViness) My brother has the privilege of asking leading questions but he is arguing and cross examining and I think he should remember that he is his witness.

(The Court) He is trying to get a clear cut view of the case, whether the discrimination is against the colored race or not.

(Mr. Houston) I certainly want to get the basis on what he testified he would some time act on the white students.

(The Witness) Well, your Honor, I would like to answer that question in detail. When students come to the University of Maryland, they bring records from other schools and sometimes they are very good and sometimes very poor and sometimes they are in the middle ground. There are many questions that might arise. Possibly the applicant will have a very high record on one subject and very low on the other and perhaps on that high record in the one subject the Committee may feel they can go on with their work.

Q. (The Court) The question is can they do this assuming it is a Mexican from Mexico City and he has the proper grades and is of good moral character, would you have to take it up with your Board of Regents. Would you take it up? A. No, I think such students have been admitted.

Q. That isn't the question. Would you have any hesitation about it, would you? A. No, unless the Admitting Officer felt that there was some question that should be asked.

Q. In other words, the fact that he was a Mexican, if he was otherwise duly qualified on paper wouldn't cause you to hesitate about taking him, if I understand you correctly. The hesitation would be based on marks or the character of his work. Is that so or not? A. It doesn't affect my personal judgment at all. If he asked me per-

sonally, I would be guided by the report of the Admitting Committee. I am under the impression they have been admitted.

Q. You have had quite a number from Porto Rico and South America have you not? A. Yes.

Q. Where their marks were satisfactory did you have any hesitancy about admitting them? A. We have not.

Q. (Mr. Houston) The census shows Indians as part of the population of the State of Maryland. If an Indian, otherwise qualified, and by that I mean to assume that all personal qualifications are complied with, if he applies for admission, would you admit him?

(Mr. LeViness) I object to the question, he may never have acted on such an application.

Q. (The Court) Have you ever had any original Americans apply? A. I don't recall it.

(Mr. LeViness) I don't think he should be required to speculate on what they would do.

(Mr. Houston) We are asking about official policy.

(At this point the question was repeated by the stenographer.)

(Mr. LeViness) I object to the question.

(Objection overruled.)

A. I think he would be admitted. It would go before the Committee on Admissions if there was any doubt in the mind of the Admitting Officer.

Q. (Mr. Houston) What would cause the doubt, the fact that he was an Indian? A. If the Admitting Officer thought there was a doubt, it would be referred to the Committee; it would not come to me.

Q. Would you have any doubt about it? A. I would not.

Q. There are Chinese in the State of Maryland; if one of these Maryland Chinese with all the personal qualifications applied for admission, would you admit him? A. I think we would.

(Mr. LeViness) *Objected to on the same grounds.*

(Objection overruled.)

Q. Japanese appear to be—and the same question—would you admit them? A. I think we would.

Q. Filipinos? A. I think we would.

Q. If any of those racial elements that I mentioned, Mexicans, Indians, Chinese, Japanese or Filipinos, not residents of the State of Maryland, but otherwise properly qualified, should apply and you had room to accommodate persons outside of the State and it wasn't a case of having to choose between a resident of the State of Maryland and a resident of a foreign state; in other words, if foreigners from other states should apply such as Mexican, Indian or Chinese and if you were able to accommodate them, should they apply to the University of Maryland, would they not be admitted? A. Our policy there would be governed in part by the policy of other Southern institutions.

Q. What would be the difference between a Chinese resident of the State of Maryland and a Chinese resident of the State of New York? A. I can't tell you.

Q. I understand you would admit a Chinese if he was a resident of the State of Maryland? A. I said I think we would.

Q. And your answer is you wouldn't do so if a resident of New York? A. I didn't say that. I wouldn't expect the State of Maryland to open its Institution to any students at any time.

Q. Do you know whether Mexicans are accepted in all Southern Institutions? A. I do not.

Q. So far as Maryland students are concerned she follows her own policy in accepting them and so far as non-residents are concerned it is a policy of reciprocity, is that correct? A. I said our University would be governed largely by the policy in other Southern Institutions.

Q. But the point is the question between the resident and the non-resident; as to the resident, Maryland would follow her own policy, am I correct? A. Yes.

Q. So, in the population, so far as you know, the only element that would be excluded would be the qualified Negro? A. You have enumerated a number of them and I think you are right.

Q. Let us say that of the enumerated racial groups, the only group that would be excluded would be the Negro group, is that correct? A. I think that is right.

Q. And they would not be admitted even though qualified Whites of other states would be admitted, is that correct? A. I do not understand your question.

(Question was then read by the stenographer.)

Q. (Mr. Houston) I mean by that that the qualified Negro would be excluded even though qualified Whites of other states would be admitted? A. They are.

Q. On what basis do you exclude Negroes from the University of Maryland?

(Objected to.)

(The Court) That is what we are here to find out.

Q. (Mr. Houston) Is there any expressed regulation of the University of Maryland which excludes Negroes from admission?

(The Court) A By-Law you mean?

(Mr. Houston) Yes, sir.

(The Court) He already said it was the policy.

(Mr. Houston) I mean expressed.

Q. (The Court) Is there any expressed provision? A. No, sir.

Q. Or resolution of the Board? A. An action by the Board of Regents.

Q. In written form? A. Yes, sir.

Q. Where is it? A. In the Minutes.

Q. Let us see it.

(The Witness) Shall I read the Minutes?

(The Court) Yes, the date and what they are, so as to get it in the Record. State: I read now from whatever it is.

(The Witness) I read now from the Minutes of the Board of Regents held on Monday, April 22, 1935, Item number 15 (reading) "Application from Negro to enter the School of Law: The President brought to the attention of the Board an application from Donald Murray, Negro, addressed to the Board of Regents to enter the School of Law. Correspondence between Mr. Murray and the Dean of the Law School; and between Mr. Murray and President Pearson and between Mr. Murray and the Board of Regents was produced, read and carefully considered. The action of President Pearson, by his letters of December 14th, 1934, March 8th, 1935, and March 20th, 1935, in refusing the application of Mr. Murray was thoroughly discussed. President Pearson had called Mr. Murray's attention to the State's maintenance of Princess Anne Academy as a separate institution of higher learning for negro students in the State of Maryland, and also to Chapter 234 of the Acts of 1933, creating partial scholarships at Morgan College or institutions outside of the State for negro students who may desire to take professional courses or other work not given at the Princess Anne Academy. President Pearson further informed Mr. Murray that if he cared to apply for such scholarship, he would see that such application was duly filed. On March 8th, President Pearson, in reply to Mr. Murray's written appeal to this Board from the action of the officials who returned his application, called Mr. Murray's attention to the facilities at Howard University for the study of law, and pointed out that the cost of attending Howard Universiy is less than the cost of attending the University of Maryland.

This interchange of correspondence was fully considered by the Board. It was the unanimous decision of the Board that the application of Mr. Murray for admission to the Law School of the University of Maryland be denied.

Further it was the decision of the Board that Mr. Murray, because of his educational qualifications, was eli-

gible for assistance under Chapter 234 of the Acts of 1933, and under Chapter 577 of the Acts of 1935."

Q. (Mr. Houston) Will you turn now to the Minutes of the Board of Regents of September 9, 1932? A. I have it.

Q. Is there an item there about scholarships at Princess Anne? A. There is.

Q. Will you read that to the Court please. I think it starts, The Committee on Princess Anne recommends *that authority, and so forth.* A. (*Reading*). "*Princess* Anne—Chairman Gelder. The Chairman presented the following report relating to Scholarships:

'The Committee on Princess Anne recommends that authority be given for the use of not to exceed $600, payable from available funds in the Princess Anne budget, as scholarships for students who have completed the Freshman and Sophomore college work now offered at Princess Anne and who desire to take Junior and Senior years of college work. In view of the fact that Junior and Senior work is not given at Princess Anne it will be necessary for the higher work in agriculture to be obtained in some other state. These scholarships would be used to assist such students.

These scholarships would represent a smaller expenditure of State funds than would be required to provide the additional education facilities at Princess Anne. A precedent for such scholarships has been provided by other states and the scholarships are recommended by the Federal Office of Education. The institution of a few of these scholarships would make it impossible for anyone to claim that Negroes are not given a fair opportunity in Maryland under the terms of the Land Grant legislation.

The above would be subject to approval by the Attorney General of the State.

On motion it was voted that the Committee be authorized to expend not to exceed $600 for the purpose of creating scholarships at Princess Anne for advanced students who desire to study elsewhere." That is what I think you want.

Q. Dr. Pearson, as of September 9, 1932, the Board of Regents recognized it could not take public money for white education without making provision for negro education? A. In no way does this act give that recognition. This act relates to the Federal fund known as the Land Grant Fund, and that is probably what was in the mind of the Board.

Q. So far as this specific amount was concerned, it had that difference that was recognized in 1932? A. Yes, sir.

Q. Did you have anything to do with the Scholarship Law of 1933 that was read this morning, Chapter 234, of the Acts of 1933, before its enactment? A. No.

Q. Were any funds provided in 1933 for any scholarship to be appropriated under that Act? A. At that time it was hoped there would be some balance in the Princess Anne budget that could be used in a small way under the terms of this Act.

Q. Was there such a balance? A. No, the appropriations were cut.

Q. As a matter of fact, that portion of the 1933 Scholarship Act was merely some writing on a piece of paper? A. It represented an honest purpose.

Q. As far as any actual benefit? A. I think there was no scholarship given because the appropriations were cut forty percent.

Q. Prior to the Act of 1935, was there any money available for those scholarships? A. I think not.

Q. Did you write to Mr. Murray before the Act of 1935 was passed? A. Probably I did.

Q. Then, Doctor, what did you mean when you referred Mr. Murray to this scholarship when there was no money available? A. I did not know the details. I referred this request to the committee in charge of the scholarship at Princess Anne, and they were at liberty to recommend the use of any funds that might be available. It easily could have been there would have been funds available.

Q. Doctor, I show you two letters, and ask you if those are your signatures? A. They are.

Q. Do you remember those letters? A. I will have to read them.

Q. Of course. A. (After reading letters) I recall the letters.

(Mr. Houston) We ask that they be marked as Plaintiff's exhibits.

(Letters referred to were then filed marked Plaintiff's Exhibits Nos. 7½ and 8.)

(Letters read).

Q. May I ask you if you recognize that as a copy of the letter that was sent to you?

(Mr. LeViness) We want to give the greatest latitude to the Plaintiff, but we do not think that is admissible.

(Mr. Houston) Were there any other funds except the funds under the Act of 1933, when this boy applied? A. There may have been.

(Mr. Houston) I am asking counsel.

(Mr. LeViness) Ask the witness.

(Witness) I would answer there might have been; we rather expected there would be and hoped there would be.

(The Court) Do you know of any? A. At that time, it was a little early to find it out, as it was not in the budget balance.

(The Court) Did you make a discovery of any? A. No.

Q. (Mr. Houston) Did Princess Anne Academy ever turn back any budget surplus out of the $9000—— A. They turned back an item which was requested to be turned back by the Governor.

Q. Do you know what year that was? A. I think it must have been two years to three years ago.

Q. The point is, it was not available for scholarship? A. If it had not been turned back, it would have been.

Q. But it was not available for scholarship?

(The Court) It was called back.

(Witness) I have now read this letter.

Q. (Mr. Houston) This is a copy of the letter—this is a copy of the letter that was sent? A. Yes, sir.

(Mr. Houston) We offer that in evidence.

(Letter referred to was then filed marked Plaintiff's Exhibit No. 9).

(Mr. LeViness) We don't think it is at all relevant to this case. It is concerning another party, not this applicant.

(Letter read).

Q. (Mr. Houston) As I understand you, Dr. Pearson, there was no money available, so far as you knew, at the time you wrote Mr. Murray, and referred him to this partial scholarship? A. I fully expected there would be some.

Q. May I have a direct answer to the question? A. I will have to hear the question again.

(The question was repeated by the stenographer).

A. It cannot be answered yes or no, as their budget had not then been brought into balance.

Q. As far as you know, did you know of any money then? A. No, I knew of nothing definite.

Q. Then all you were tendering to Mr. Murray was a hope, is that correct? A. It was a confident hope, the same as we tendered a great many people.

Q. Do you tender a great deal more than that to qualified white students that apply t othe University of Maryland? A. To many of them, no more than that.

Q. Are there any of them to whom you tender more than that? A. Yes, sir.

Q. Could there have been anything more than hope at the time Mr. Murray made his application? A. Any scholarship, so far as we were concerned, would have to come from that fund, and I did not and could not then know what would be available, and all I could extend was hope.

Q. Outside of this money, which is to come, or which has come from the Act of 1935, has any money ever become available, except this money under the Act of 1935, for these partial scholarships? A. Not as I know of; the budget was made at that time.

Q. So that leaving out the Act of 1935, you have nothing to offer Mr. Murray?

(Witness) Now?

(Mr. Houston) Yes, leaving out the Act of 1935, the money available under the Act of 1935? A. We are expecting and hoping that this $10,000 fund will be used to assist Mr. Murray, as many others.

Q. That is the Act of 1935—leaving that out, there is nothing you have to offer Mr. Murray? A. Leaving that out, we fall back on the 1935 fund and we do expect and hope there will be something in that fund for Mr. Murray.

Q. I thought the $10,000 fund was created by the Act of 1935? A. I beg your pardon—I had 1933 in my mind.

Q. Leaving out the 1935 money, the money provided under the Act of 1935, you have and never have had any money available to apply to a scholarship such as Mr. Murray has—— A. No.

Q. Such as you wish Mr. Murray to make? A. That is right.

Q. What investigation did you make before you wrote Mr. Murray as to money available or not available, Doctor? A. No special investigation, but as much as could be made, however.

Q. That means what? A. That the budget had not been completed, and unable to foresee what would be available, could not go further than that at that time.

Q. You made no such investigation to find out how the funds were running, and whether it looked as if there was going to be a surplus, or anything of the kind? A. Not at the time.

Q. Did you make any such investigation at any time before you wrote any of the letters on that subject? A. As

I recall, I felt very confident there would be some money available; later, we were directed to return a considerable amount to the State treasury, that they needed it; I cannot give you the date.

Q. Has the question ever been submitted to the student body of the school if colored students were admitted—— A. It would be better to ask the dean to answer that question.

Q. Do you know anything about it? A. I do not.

Q. Has the question ever been submitted to any portion of the student body of the University of Maryland, as to such a question—— A. I do not know.

Q. Doctor, as a member of the Board of Regents, you were present at the meeting and explained what action had been taken in Murray's application on April 22nd or 29th? A. April 22nd meeting——

Q. I take it you concurred in the decision of the Board, generally, and I would like to ask you just what harm, in your opinion, would arise from the fact that a negro boy might want to occupy a seat at the law school of the University of Maryland, the same as any other student, minding his own business—— A. I did not go into that question. I felt I knew the policy, the well-established policy in this State, the District of Columbia and different States, and personally, I was influenced by that policy.

Q. General considerations, only? A. If you wish to call it that.

Q. I am not trying to trap you—it is not a question of any harm coming to this particular school, but it is a general resentment or public policy—— A. It was the accepted policy, as I understoood it.

Q. Do you subscribe to the principle that a qualified negro citizen should have the same education as a qualified white citizen? A. As a principle, in general, certainly, but there must be some exception when the funds are very limited.

Q. If the funds are very limited, and not enough to go

around, you would cut the negro? A. Will you let me answer that further—the University of Maryland is spending more money for the negro students at Princess Anne than they are on the average white student at College Park, or in Baltimore, and if that shows an expression of our feeling, it certainly shows no desire to discriminate.

Q. What is the comparison between the total expenditures, between the expenditure on the University of Maryland, exclusive of the Easton branch, and the expenditures at the Eastern branch? A. Greatly to the advantage of the negro, based on total enrollment.

Q. I asked you, as to the total expenditures—if you don't know off-hand—— A. The State expenditure at Princess Anne is $15,000 a year for about 30, 32 or 33, and at College Park it is $230,000, about seven times as much, for 1500 students—about forty-five times as many students—that is off-hand.

Q. Do you know—of course, you don't know if real educational facilities would ever at Princess Anne equal those at the University of Maryland, there would not be an increase in the enrollment? A. I know there would not be; we tried very hard to accomplish that purpose and I know we could not do it.

Q. Do you know the enrollment at Morgan College? A. No—the President is here.

(Mr. Houston) Is it all right to ask him at this time?

(Mr. LeViness) That would be all right.

(Mr. Spencer) 626.

Q. (Mr. Houston) Do you know why Princess Anne should have 30 students and Morgan College, which is a private school, has over 600? A. I do.

Q. What is the reason? A. It is a mistaken notion very largely among the leaders, in the negro race, that they should get education in the liberal arts, white-collar work, instead of one of the vocations like agriculture, and I am contending against it constantly.

Q. Does the agricultural department at Princess Anne

equal the one at College Park, or the University of Maryland? A. I believe they are giving as good instructions there as at College Park. I know that two of our agricultural professors at College Park visited Princess Anne some time ago and returned and told me. The man at the head of the work there was fully the equal of the men that were in charge at College Park.

Q. Let me ask you this: You said that Princess Anne has a junior college? A. It is a junior college.

Q. Is it a junior liberal arts college or—— A. Junior agriculture and home economics.

Q. So you don't give liberal arts at Princess Anne? A. Only the minimum amount which was necessary in covering the education for prospective farmers and home economics.

Q. And therefore, all of the costs at Princess Anne is saddled upon home economics and agriculture? A. That is correct; that is all we have there.

Q. Is it not a matter of fact, so far as your capital outlay is concerned, the fact that you have several departments at the University of Maryland, enables you to carry on the agricultural and home economics cheaper than you would if you had to put up—— A. Liberal arts is less expensive than agriculture and economics.

Q. Do you know anything about the chemical laboratory at Princess Anne, having just one table, a few tubes and a number of fruit jars, are you familiar with that? A. Yes, sir.

Q. Do you consider that an adequate and complete laboratory for a junior college? A. I think they can do the work.

Q. Do you think it could be improved? A. It could be improved.

Q. Are you acquainted with the laboratory facilities when they only have a few cases of butterflies, would you consider that ample facilities for the keeping of zoology? A. I would say this, they can get as much education there as they can at College Park.

Q. Why spend all the extra money at College Park —if you can give just as good instructions as Princess Anne, with only the one table, a few test tubes and some old fruit jars, a room not equipped, and if you can teach zoology in a junior college and teach home economics, and have just a few cases of butterflies, and can give the instructions as well as you can at the University of Maryland with all its laboratory equipment, why do you spend all the money you spend on the laboratory in the college building at the University of Maryland? A. You referred to one table as being inadequate equipment. A student only occupies about four feet; if the table is 12 feet long, there is room for three students on each side, and if there are only six students, it is just as good as if we had seven or eight tables.

Q. Would you consider the equipment as a standard equipment? A. I state whether it is an old fruit jar or a $10 bottle, it makes no difference, if it holds the solution.

Q. Is the Princess Anne Academy's laboratory up to the standard for a junior college on home economics—— A. It is not as well equiped as our laboratory at College Park, and it ought to be improved.

Q. Then you really do not know what would be the situation if you had a real first-class equipment and course at Princess Anne, equal to the course at the University of Maryland, do you think? A. I think it would attract some more students.

Q. And that would lower the per capita tax of the institution? A. Yes, we have been trying to get that for six years.

Q. But you do not have those same conditions at the Princess Anne Academy as you do at the University of Maryland, do you? A. No, sir.

Q. In this 1933 law, it is provided that there shall be certain tests given negro students before they become eligible to scholarship for the higher education. Indeed, using the language of the Act, it states: (reading extract from Act). Were you a member of the Board of Regents that set up the Scholarship Act? A. I am not a member of the Board of Regents.

Q. Are you familiar with the work of the Board of Regents in establishing the scholarship? A. Yes, sir.

Q. Do you happen to know what tests were established, if any, as the pre-requisite for those scholarships? A. I know.

Q. What? A. The previous records made by the person concerned.

Q. What kind of previous record? A. At Princess Anne, I read the Minutes a little while ago, there is $600 for scholarships; the students who have made the best record were given the preference in awarding those scholarships. Does that answer the question?

Q. To this point, suppose a white student wanted to apply to the University of Maryland after finishing two years in a private academy on home economics, you do have a four-year course—— A. Yes, sir.

Q. You would admit them, provided he or she came up to the scholarship requirements? A. Yes, sir.

Q. Without regard to the relative standing in the class, is that true? A. If they had a better standing, they would be at the top, relatively.

Q. But they would not be excluded? A. No, sir.

Q. But on the other hand, so far as the opportunities of the negro student is concerned, he is limited by the $600, is that a fact? A. The white student don't have that; the negroes are the only ones that have it.

Q. But the white students can go inside the State? A. Yes, and that is why I say his opportunity is equal to the other.

Q. Do you know how much per scholarship was given out of this $600—— A. Yes—when this started, we said to the student, You pick the institution you want to go to, and we will pay you, as a scholarship, the difference in cost between going there and what it was this year at Princess Anne—most of them liked to go to Petersburg, and we send them for the difference, and if they wanted to go further, in New Jersey, he would be allowed a

larger fee. We tried to equalize it, so it is just as cheap to go outside of the State as stay in the State.

Q. Did that include room and board? A. Everything.

Q. Would the scholarship, so far as you know, of 1933, the 1933 scholarship, for professional education, would that also include room and board? A. We did not get to that; our money was cut off.

Q. What scheme do you have established? A. We had the same thing in mind, if the student would apply for a scholarship, wanted to take law, we would say to the student, It will cost you $200 to go to our law school. Now, if you can go to the other school of law, select another one, which might be the Columbia, the Virginia, or some other institution, and their tuition would be $250, we will give him $50, the difference.

Q. If the Maryland student applied to you under the 1933 Act, and you told him he could not go to the University of Maryland School of Law, and he happened to go to a school of law that had a lower tuition, than the University of Maryland, you would not give him anything? A. No.

Q. What did you mean when you referred to Morgan and Howard? A. I explained it by saying it would be less.

Q. Then you did not expect to give him any scholarship? A. Not if he went to Howard or Morgan.

(Mr. Houston) That is all.

(Witness) I would like to explain that this last Act of 1935—I am confused on that—the last Act, the one of 1935——

Q. At the time you wrote him, the Act of 1935 had not been passed? A. I think not.

CROSS-EXAMINATION.

Q. (Mr. LeViness) If he had wished to go to some other institution than Howard, perhaps Columbia, or some other institution, would there have been any scholarship available for him? A. That matter is in the

hands of the committee; I understood the attorney to ask my opinion, and I think my opinion would have carried some weight.

Q. They would have allowed the man you referred to a scholarship? A. The difference in cost between the two institutions.

Q. If he had elected some place to go where the tuition was higher than the Maryland Law School, he would have been entitled to a scholarship? A. Yes, sir.

Q. The new law has been passed which will be in effect at the time this applicant wants to go to school, and he is eligible for a $200 scholarship? A. Yes, sir.

Q. There has been quite a good deal said this morning about the Princess Anne Academy—Princess Anne was formerly a high school, was it not? A. It was not even that nine or ten years ago.

Q. When you first came to Maryland, what was Princess Anne Academy? A. Just a school for negro children, and some of them were still in the lower grades, some in the high school.

Q. Was it public or private? A. When I came here it was a public institution.

Q. You have been here—— A. Nine years.

Q. During the last nine years, tell us just when and what changes were made in Princess Anne? A. The changes were made just about the time that Superintendent Cook and his staff succeeded in bringing it up to a high school, and the State established them in all the counties of the State. Then it was recognized among the leaders of the negro race, as well as others, that the necessity for that lower type of instruction did not exist, and that we should have a high school for everyone. About that time, a demand was seen for a little higher education, and we were urged by the Federal authorities, in accordance with the Land Act, to bring up Princess Anne to a higher level. That movement began about seven years ago, maybe eight years ago, and that was one of the first things I got into.

Q. Back in 1929 to 1930, take that scholastic year. A. At that time, there was a high school course at Princess Anne.

Q. A four year high school course? A. I think it was four years—first, cut off one year, and then later, another—I think the year you mentioned, it was a four year high school course.

Q. Do you know how many students there were at Princess Anne, when it was a high school? A. It might have been about 100 or more, sometimes more.

Q. 100 or more? A. Yes, sir.

Q. And then in 1929 or '30, you started with your junior college, in addition to your high school course? A. Yes, just about that time.

Q. Do you remember about how many junior college students you had at the time? A. It was very few; you could count them on the fingers of your hand.

Q. According to the figures here, 33 sophomore and freshmen, in addition to the high school students? Year by year, you dropped the high school course? A. Yes, sir.

Q. In September, 1930, you dropped the first year high school, and the following year, you dropped the second year high school—1932 you only had two years of high school, and 1933—this past year, there were no high school students? A. Last year, I think there were two seniors. There were a few that were not finished, and they were allowed to finish.

Q. From the time when you had over 100 students in your high school at Princess Anne, down to the present time, you only have 30 or more in the junior college, and the drop has been due, has it not, to the abandonment of the high school students? A. Yes, sir.

Q. And the drop in enrollment is due to the fact the lower students have been dropped, or have been referred to other schools in the neighborhood? A. To the graded schools.

Q. Do you know about how many students Princess

Anne can take care of? A. We very nicely could take care of 100 to some more, than we have.

Q. Do you know what sleeping accommodations there are at Princess Anne, what dormitory accommodations? A. I am familiar with that, but don't know the number of beds in the rooms.

Q. It it not true you could accommodate as many as 175 men and women in the dormitories? A. I think so.

Q. There are that many beds available? A. I think there must be.

Q. Is it not true you could handle in your classes as many students as you could handle in the dormitory? A. Yes.

Q. The facilities for the class-rooms are unlimited almost? A. That is right.

Q. You have plenty of space there? A. We could take care of them.

Q. If you had more students, all you would need would be more teachers and more equipment? A. It would be very crowded, but we could take care of them.

Q. When a person graduates from the Junior college at Princess Anne, he is eligible and qualified to go to any other college and enter the third grade—— A. Yes, sir.

Q. Is it not true that after graduating from Princess Anne Academy, which is a two-year college, a student can go into any college and get a B. S. in education in two years after graduating from Princess Anne? A. Altogether, four years of college instruction.

Q. Is it not true that a number of graduates from Princess Anne go into Morgan College, enter the third year there, and finish in two more years? A. Yes, sir.

Q. Making it four altogether? A. Yes, sir.

Q. So that compared to other institutions offering the same facilities, which is a junior college, the students at Princess Anne get substantially the same education as others, is that not true? A. That is right.

Q. Is it not also true that some of your graduates from Princess Anne Academy go into institutions in other States, such as the Virginia State College at Petersburg, and the Hampton Institute, and other institutions and rank high in their courses at the other colleges. A. I hear some very fine reports of them.

Q. Do you remember what is the cost of tuition at Princess Anne Academy—it is in the catalogue——A. It is $10 less for girls than boys.

Q. Is it not $197 a year for the boys, and the girls $192? A. I thought it was $10 difference—that includes room and meals.

(The Court) Does that mean a girl eats less than a boy? A. They don't destroy the property quite as much as a boy. The cost of their maintenance is lower, they do eat less.

Q. (Mr. LeViness) The girls eat less? A. They actually do.

Q. Who pays the salary of the teachers at Princess Anne—what fund does it come from? A. Most of it comes from the State fund; there is some Federal money, and there is a small amount collected from fees. About $4000 from fees, $8000 from the Federal fund, and $15,000 from the State's money.

Q. I believe you testified on direct examination that there is about $15,000 spent in Princess Anne Academy each year? A. Yes, sir.

Q. For some thirty students? A. Thirty, year befor last—it may be thirty-two or thirty-thre last year.

Q. The graduating class this year was eleven? A. Yes, sir.

Q. So you are spending something like $500 apiece per year of State money at Princess Anne? A. Almost $500 per student.

Q. Princess Anne can accommodate a much larger number of colored boys and girls—what reason do you know of, if any, why the school is not better attended? A. There are a number of reasons. First, and chief one,

is that the importance and the attractiveness and value of that type of education is not well understood by the leaders in the negro race. There are, undoubtedly, some exceptions, but when I talk to ministers and lawyers, they do not seem favorable to that type of education.

Q. You mean farming? A. Yes, and home economics.

Q. You think they would rather be lawyers than farmers? A. Yes, sir.

(The Court) Not only colored boys, from our observation.

(The Witness) Another reason is the one brought out a few minutes ago. While we can give and do give a high type of instruction with the facilities we have in some departments, it is not as attractive department as it is in the older institutions, where they have more years to accumulate it, and more money to spend.

Q. Princess Anne is a brick building—the main building is a brick building? A. Yes, sir.

Q. The administration building is a brick building? A. Yes, sir.

Q. Beautiful shaded lawn in front with trees all around? A. Yes, sir.

Q. Does it not compare more or less favorably with other institutions of the size? A. It certainly does.

Q. Now, let us just leave Princess Anne for the moment. You have already testified that the graduates of Princess Anne go to Morgan College, if they choose, if they can get the scholarship, if they want to, and there they are able to graduate in two years—that is true, is it not? A. Yes, sir.

Q. Making a four year course for colored people in the State, the same as for whites? A. Yes, sir, that is right.

Q. I don't know how far you can go in testifying as to Morgan College, and if I should not leave my question for a later witness. Do you happen to know this, from your own knowledge, how much of State money is appropriated for the use of Morgan College—if you

don't know of your own knowledge, I will reserve that until later? A. I cannot remember the exact amount, but I know it is much more per student from the State at Morgan College than it is in College Park for a white student.

Q. How many students do you have at College Park? A. Almost 2000.

Q. How many are taking home economics and vocational work, farm work? A. A little more than half are in the vocational course—only 900 are in the liberal arts.

Q. Would you say that about one-half of the students at College Park at preparing to be farmers? A. They are preparing for vocational work—I should say more than one-half are—some of the arts and sciences——

(The Court) Farming is very attractive right now. A. Temporarily — I don't think that has increased the number of students to study agriculture.

Q. (Mr. LeViness) At Morgan College, what do they teach? A. Liberal arts, principally.

Q. There are some 600 colored boys and girls there? A. They have a course of home economics also there.

Q. At Princess Anne, you specialize in home economics and vocational——A. Home economics and agriculture—they are both vocations.

RE-DIRECT EXAMINATION

Q. (Mr. Houston) Let us examine the matter of comparative expenses a little. As President of College Park and Princess Anne, you would not tolerate the squandering of State's money, would you? A. No.

Q. Now, tell me just what is the reason why—let me ask you this question, you say it costs more to the State for a student at Morgan than it does for a student at College Park? A. I did not say it just that way, I said per student enrollment.

Q. Does it cost the State for student enrollment, more at Morgan than at College Park? A. Considerably more.

Q. Do you have the figures? A. College Park I have them.

Q. Do you have the figures for Morgan? A. I am subject to correction—College Park—the State is contributing one hundred and twelve for each student enrollment—I think it is near a hundred and forty, it may be higher than that.

Q. You mean the State is giving Morgan College $140,000?

(The Court) One hundred and forty per student enrollment.

(The Witness) That is subject to correction.

Q. (Mr. Houston) You mean the State is giving Morgan College eighty-four thousand—— A. The President of Morgan College is here.

Q. You are making the statement—— A. My statement was that the State was contributing more, considerably more per student to Morgan College than it is at College Park.

Q. To the best of your recollection, what does the State contribute to Morgan? A. I would not attempt to recollect that.

Q. (Mr. LeViness) What is the official connection between Morgan College and the University of Maryland? A. Official relationship—it is not part of the University.

Q. The University is in joint control with Princess Anne—Morgan College has nothing to do with it. A. I cannot remember the figures off-hand used in computing these facts——

Q. Let me ask you this, have you ever made a recommendation—the State has no control over Morgan College, has it? A. The University of Maryland has not; I don't know what control the State may have.

Q. Has there ever been a recommendation from you that the money that is now going to Morgan College be appropriated to Princess Anne, in order to bring up the standard at Princess Anne? A. Certainly not.

Q. When you gave the figures of $239,000 per student at College Park——

(The Witness) Did I give that figure?

(Mr. Houston) That is what I understood. A. That is wrong.

Q. What is the figure? A. The State this year is appropriating about two hundred and twenty-two, or a trifle more, for the student education at College Park.

Q. When you say student education, what does that include? A. It means the tuition and the expenses——

Q. Is that the amount the State contributed to College Park or the University of Maryland? A. No.

Q. How much more money do they get? A. If you want the figures correctly, I would like to refer to my documents, and I will give them to you.

(Examination suspended.)

(At this point a recess was taken until 1:15 p. m.)

(After recess.)

Doctor Raymond A. Pearson, a witness previously produced and sworn, resumed the stand for further examination.

Q. (Mr. Houston) Doctor Pearson, when you were giving the figures as to Princess Anne, were you giving the complete State expenditures as to Princess Anne as to breaking it down to student cost; when you were giving your figures as to students' costs per student, were you using the total amount of money given or a particular amount? A. No, the total amount given by the State this year was $15,672.

Q. And that is where you get your $500 approximate cost? A. Yes, just a little below.

Q. Now, as to the University of Maryland, will you take your figures for the University of Maryland? A. Here they are, $222,618.

Q. Does that include all of the money the State gave

the University of Maryland? A. For educational purposes at College Park.

Q. Well now, let me understand that, does that include building? A. Oh no, that is the maintenance fund.

Q. Now, this money given Princess Anne, does that include buildings? A. No, that is separate; this is our annual budget that I have here, the maintenance budget.

Q. Now, what is the total cost so far as all of the schools of the University of Maryland are concerned? A. By the State, $403,892.

Q. To how many students, total? A. About 3600.

Q. So that the total expense, including all of the Baltimore Schools per capita cost, is just a little higher than just that at College Park? A. Lower.

Q. Will you just give us again the per capita cost per student at College Park? A. $112.

Q. What is the total per capita cost, per student, at College Park, including all receipts, student's fees and everything else. I am trying to get what it costs to give a student a year's education at College Park? A. I happen to remember it, $391.

Q. And the cost of giving all instruction to students at Princess Anne, is approximately what? A. It's about between seven and eight hundred dollars.

Q. Is it nearer seven or eight? A. Divide thirty-two into $28,000 and you'll have it.

Q. Isn't it true that it costs more per capita when you are putting in a system than when it is running? A. Oh yes.

Q. So that just the flat comparison of figures at Princess Anne and College Park, it is not actually representative without anything being taken into consideration of the cost of putting in the system? A. I think it is fairly representative, except for the attendance.

Q. That is if you had a larger attendance at Princess Anne you would cut down the per capita cost considerably? A. Yes.

Q. You had one hundred students or more, at the time you had the grade school and high school at Princess Anne, is that correct? A. Yes.

Q. It is also true, that is, the necessity for a grade school was the lack of facilities, was it not? A. Yes.

Q. And when the State began putting on improvements on the grade schools and high schools the necessity for that same instruction at Princess Anne became less and less? A. Yes.

Q. But you would not say that the rural instruction in Maryland is equal to the same instruction given whites, would you? A. I am not prepared to say, they have made wonderful progress.

Q. But you would not say they are equal to white? A. I don't know, I always thought Douglas High here was equal.

Q. I said the rural schools? A. I don't know, I am not familiar with that.

Q. As you dropped the grade school and high school at Princess Anne, you did not put on a Junior Liberal Arts College, did you? A. No.

Q. And you testified on Direct Examination that you gave just a minimum of Liberal Arts work, is that correct? A. Right.

Q. So it is not true that the students from Princess Anne could transfer to any other college, they could only transfer——A. I think they could if they wanted to.

Q. You don't mean to say with the minimum amount of Arts work—the students at Princess Anne don't get in the first and second year as much work as you offer at College Park, do they? A. No.

Q. And if they were white, leaving out that they are colored, you would not accept Princess Anne students in the third year, would you? A. We might, they get the full two years and when one takes a four year's Liberal Arts course he will eliminate a great deal of work in the Home Economic's College and students from vocational or technical schools might easily go into a

Liberal Art's course and get credit for what he had in vocational subjects.

Q. But he would be handicapped and he wouldn't be up to the level of the student who had been, assuming they are all white, the students who had been in the first and second years of Liberal Arts? A. In four years, he would.

Q. I am talking of the third year, at the point of his admission? A. No, he would not.

Q. Now, when you speak of the fact that you have room for 175 students at Princess Anne, do you mean that you have room for 175 according to the best educational standards, considering the equipment in the school?

(Mr. LeViness) He said they would be crowded.

(The Court) Let him answer; he can take care of himself. A. I stated that 175 would crowd it.

Q. (Mr. Houston) That would not be according to the best educational proceedure? A. No.

Q. How many do you estimate you could take care of according to the best educational practice? A. Something over a hundred.

Q. Approximately how much would that increase the per capita cost of instruction to take care of those students you could accommodate according to the best educational practice? A. That would decrease the per capita cost.

Q. Would it decrease it substantially? A. Quite materially.

Q. (Mr. LeViness) You just read the figure of $403,892 as the appropriation for all of the University of Maryland schools, both graduate and under-graduate, for which year is that? A. The present year, and that includes Princess Anne.

Q. Does that also include the appropriation for the hospital? A. I'll look that up and tell you—yes, that includes the appropriation for the hospital.

Q. So the figure of $403,892 which you read also includes the State's contribution to the University of Maryland hospital? A. Yes.

Q. Can you tell us how much of that figure is the appropriation for the University of Maryland Hospital? A. $85,000.

Q. That brings it down to $318,000——A. No, it was $185,000 including the hospital, and taking the $85,000 out of ——

Q. The figure you gave us was $403,892? A. Oh yes, that is right.

Q. Therefore, there is three hundred and eighteen some odd thousands for the other schools? A. That is right.

Q. That is for all the schools? A. That is right.

Q. On the basis of that wouldn't you have to reduce your figures for the per capita cost? A. Yes, by eliminating the hospital it would reduce the per capita cost.

Q. How many students did you say were in all the schools together?

(The Court) He said 3600.

A. 3600.

Q. So the appropriation is $318,000 for 3600 students? A. Yes.

Q. Now, going back to Princess Anne for a last question or two, isn't it true that graduates of Princess Anne can go into Morgan College or some other college and take a B. S. course and graduate in two years? A. Yes.

Q. Have they done so? A. I think so.

Q. The figures you read us are the appropriations for the current year, do you have the figures for the next year, starting in October? A. No, we do not yet know what we will have next year.

Q. The one I am talking about is the appropriation made by the last legislature. A. We know what that is, but it is so far below our needs that we are hoping that

it will be supplemented by an additional item before school opens.

Q. Is it lower or higher than the appropriation for the current year? A. Lower.

Q. Do you know how much lower? A. It is about thirty or forty thousand dollars lower.

Q. In other words, it took away practically all of the State's support for the professional schools here? A. Yes, we are hoping some of that will come back.

Q. Has your attendance dropped off any; you had 3600 students this year, do you anticipate more or less next year?

(The Court) He cannot tell you that.

A. No, we are assuming it will be the same as this year.

Q. And the appropriations will be less? A. Down to date, they are less.

Q. (Mr. Houston) The $85,000 that is included in the appropriation for the hospital, that hospital is used as a clinical laboratory for the students, is it not? A. Yes.

(Examination concluded.)

ROGER HOWELL,

produced on behalf of the Plaintiff, being duly sworn according to law, testified as follows:

DIRECT EXAMINATION

Q. (Mr. Houston) Have you stated the fact to the stenographer that you are the Dean of the Law School of the University of Maryland? A. I am the Dean of the Law School of the University of Maryland.

Q. I want to ask you, first, what percentage of your students come from the State of Maryland? A. About ninety-five percent.

Q. And your enrollment is what, last year's enrollment? A. Last year's, slightly over 200.

Q. In view of the fact that ninety-five percent of the students come from the State of Maryland, do you pay considerable attention to Maryland law? A. Yes, we pay attention to it where there is anything special about the Maryland law.

Q. That is to say you pay more attention to Maryland law than in a national school where the students may be only five percent Maryland students? A. Yes, I think so.

Q. How many of the persons on your faculty are judges in the Courts of Maryland, including the Federal Courts, if any, or in general law practice in Maryland? A. twelve.

Q. Out of a faculty of how many? A. Eighteen.

Q. Have you any idea as to how many of the judges in the State Courts or any Courts sitting in Maryland are graduates of the Law School of the University of Maryland? A. I was trying to figure it up. I think in the City Courts here all except one, I think are graduates of our school; two of the Federal Judges are graduates of our school; I am not so well up on the judges in the counties but I imagine a considerable percentage are graduates of our school.

Q. Would you say that the Law School of the University of Maryland is the greatest feeder to the Maryland Bar? A. It has been, but at the present time there is a larger school here that graduates more.

Q. But even at the present time, would you say it feeds at least fifty-one percent? A. At the present time, no; I would say we graduate about forty men a year and the other about a hundred.

Q. About how many men come to the Bar a year? A. As to the other school, I don't know; most of mine come to the Bar or pass their examination successfully.

Q. But the University of Maryland Law School is a substantial feeder? A. Yes.

CROSS EXAMINATION

Q. (Mr. LeViness) Are there any colored men and women in the Law School at the present time? A. No.

Q. Have there ever been since you were connected with the school? A. No.

Q. How long have you been connected with the school? A. Since 1927.

Q. What was the antecedent of the School of Law at the University of Maryland, what was it before it was part of the University? A. Of course, it has always been called the University of Maryland Law School but it has not been part of the State Government until after 1920. It was sort of a private school.

Q. Was it administratively connected with the University of Maryland? A. I think in a nominal way it was.

Q. Do you know whether or not in the '90's there were any negroes who matriculated in the school? A. I don't know except by hearsay, I can give you that.

(Mr. LeViness) We would object to that.

(The Court) Let him state it anyhow.

(The Witness) All I heard about it was what Judge Harlan told me back in 1890 somewhere——

(Mr. LeViness) Can't we get Judge Harlan over here?

(The Court) Anything Judge Harlan told him, he can tell us.

(The Witness) There were two negroes admitted who graduated from the school and subsequently, I think they were admitted at the instance of Major Venable, subsequently they continued, it was an experiment on their part with some other negro students and they discontinued the practice thereafter. This is what I was told by Judge Harlan.

(The Court) If you want Judge Harlan, you can get him.

(Mr. LeViness) We may call him later on.

(*Examination concluded.*)

(Mr. *Houston*) Now, at this time, again, we should like to make a tender of the application and the examination fee.

(The Court) All right, pay them in Court; they will not take it. Treat it as paid. Let the record show it is paid in open Court, tendered with application and you decline to accept.

(Mr. LeViness) Yes, sir, I decline to accept.

(The Court) Well, the Plaintiff rests.

J. WALTER HUFFINGTON,

produced on behalf of the Defendants, being duly sworn according to law, testified as follows:

DIRECT EXAMINATION

Q. (Mr. LeViness) Mr. Huffington, you are the State Supervisor of Negro Education in the State of Maryland, are you not? A. Yes, sir.

Q. How long have you had such an office? A. Since May, 1917.

Q. Suppose you outline very briefly the general nature of your duties? A. I am expected, sir, to take care of the instructional side of the—the class room side of the education in the Public Schools of the colored boys and girls; that's item number one. That comes specifically under what we would speak of as supervisory duties. In addition to that, I am expected to counsel and to advise and to visit schools in the counties in a supervisory nature to help them in their respective county to take care of the class room end.

(The Court) It may take a long time for him to name his duties. Ask him what you wanted to find out.

Q. Mr. LeViness) Mr. Huffington, do you have figures available either in your head or at hand, to show the number of negro schools in Maryland, dividing it into high schools and primary schools? A. Approximately, sir, there are 28 colored high schools.

Q. In the State? A. That is the counties of the State; and among the elementary schools there are approximately 510.

Q. Start with the elementary schools, you are also familiar with the general set-up of the white schools throughout the counties, are you not? A. Fairly familiar, because I work in the same office as the supervisor of the white schools.

Q. Speaking very broadly, how do the colored schools in the counties compare with the white schools in proportion to the numbers, that is the proportion of the population of the students as to the teaching staff? A. They compare very favorably. To make my answer specific, you raised the question as to the course in the elementary schools; they are identical with the courses in the white schools. In the high schools, for the same size school, the courses are identical. If I might enlarge that statement, what I mean by the same size is this; a small high school, say a two teacher high school, naturally, can't have such a large curriculum offering as the larger high school, because the number of people in the county are small; but the curriculum offering in the small colored high school is the same as in the small white high school.

Q. So that the graduate of the school in the county, the colored school, would have the same background as the graduate of the white school? A. Yes, sir, they have the same number of units; that is, the State of Maryland requires 16 units. The standard, I understand, is 15 units but the State of Maryland requires 16 units for graduation and the students in the colored high schools, even the small high schools, do have the 16 units and are admitted to such colleges as Morgan College, and Howard University and Lincoln University. You asked me about the teaching staff; every single high school teacher of the State of Maryland save one, holds a Bachelor of Arts degree from a reputable college, or the equivalent. I'll explain what I mean by that; so far as I know, all but two actually have the degree but by the equivalent we mean they have done by summer school process four years beyond the high school work. In the City of Salisbury there is one who has the equivalent

of that and the principal at the Pocomoke City High school has done four years of work but does not hold the Bachelor's degree. As to the elementary teachers, the State of Maryland requires by law a first grade certificate. The requirements are four years of high school work and in addition, two years of normal or equivalent work. In the colored schools, ninety-eight percent hold a first grade certificate and I am informed by the report of the State Board of Education that not over ninety-eight percent of the white hold a first grade certificate.

Q. (Mr. Houston) Will you repeat those qualifications again, please? A. The qualifications for a first grade certificate, which certificate is required to teach in the elementary schools—the State of Maryland issues two kinds of certificates; one to teach in the high schools and one to teach in the elementary schools. Now, the requirements that are required for a certificate to teach in the elementary schools in the State calls for a first grade certificate. The first grade certificate requires four years of high school work and in addition, two years of normal or the equivalent work.

Q. (Mr. LeViness) Coming into Baltimore City, how many high schools are there here for colored people? A. There is one—I can confess Mr. Assistant Attorney General, I don't know so much about the City of Baltimore except from the report as to their schools. There is, sir, one senior high school in the City and I think about three or four junior high schools; I am not certain about the junior high schools.

Q. Is there someone else than yourself who is more familiar with the City? A. I think the statistician in the State Department of Education, Miss Stern, could give you that.

Q. Just one question as to the distribution of these county schools. You testified there were how many? A. Approximately 540.

Q. And are they distributed throughout the State? A. They are in all of the counties of the State except in Garrett where the negro population is sparse; and Allegheny County the negro population is sparse and there

are two schools and in Washington County the population is also sparse and there are only five in that county.

Q. Where is the population denser? A. There are more schools in Prince George's County than any other and close on the heels of Prince George's County is Anne Arundel, Dorchester and Baltimore County.

Q. Take a County like Prince George's where you say the population is denser do you recall how many elementary schools are in that county? A. I think about 44, they have about 70 elementary teachers.

Q. Can you tell us how far apart those schools are? A. So far as I am informed, I cannot say definitely, so far as I am informed, no child has more than one and a half miles to go to school. I do know we find the schools rather close together; to illustrate, on the W B & A line between here and Washington, you'll find one, two, three, four, five, six right on that line after you enter Prince George's County and before you reach the D. C. line.

Q. In other schools of the State, is the distance a little greater that they have to go to school? A. Not generally.

Q. Can you strike an average and tell us the approximate distance a colored boy or girl has to walk to school in the county? A. Yes, an average, I should say an average is three-quarters of a mile; I cannot give that with definiteness.

Q. Now, taking up the question of the length of the school term; in some of the county colored schools they close a little earlier than white schools, is that correct? A. Yes, sir.

Q. Why is that? A. Because the State law provices, the legislature has so decreed, that the minimum school year for negroes shall be eight months and the minimum school year for whites, nine months. Now, while a number of counties keep their schools open the same length of time, in certain counties on the Eastern Shore where there is trucking, the strawberries get ripe and the schools are kept open only eight months.

Q. Why is it they keep schools open only eight months? A. It's largely an economic proposition.

Q. That is because the children who go to school want to stop and pick strawberries? A. Exactly.

Q. How about in other sections of the State, do you let schools go along a little longer? A. All along the Pennsylvania line where trucking isn't carried on to any great extent the schools, for example, Cecil, Baltimore, Washington County and Allegheny County, in those four counties as well as Carroll County also, no distinction is made in the length of time and a very slight distinction is made in Harford County, maybe three or four days.

Q. In some sections of the State you say that for colored children the schools are only open eight months, speaking generally, is there any appreciable difference between the curriculum offering? A. No, sir.

Q. In other words, you teach the same thing whether the school is open eight or nine months? A. Yes, sir.

Q. You give them the same number of credits and when they get through they are prepared to go as far as anybody else? A. Yes.

Q. They enter as easily from the Eastern Shore with only eight months of schooling as they do from Western Maryland with nine months? A. So far as I know, there has never been one turned down, so far as I know.

Q. Taking up the question of school attendance, I understand you have a little more trouble getting colored boys and girls to come to school than with white boys and girls? A. Yes, sir, I think it is generally true.

Q. That comes under your department, does it not? A. Whatever has to do with colored schools, I am interested in. There is, of course, an attendance officer in all of the Counties of the State who is charged directly with getting the children in.

Q. Do you happen to know of your own knowledge, or from any figures you may have in the Court Room, what is the record for school attendance for whites as

compared with colored children? A. Slightly less for negroes than white, not very much less.

Q. What provision is made by your department to obtain a higher grade of school attendance? A. The attendance officer of the county for which the State provides.

Q. The State provides a separate one for colored children? A. No, one attendance officer per county. That attendance officer does visit the parents and tries to persuade them to send their children to school; that attendance officer does work with the colored teacher and encourages the colored teachers to cooperate with the attendance officer to find out why the children are out of school and whether or not it's a prosecutable case and the attendance officer does make some arrests in certain cases where it seems to be wise.

Q. There has been some reference made here, I believe it is in one of the pleadings filed by the other side, that there is an inequality of transportation for colored children, do you have any knowledge of that? A. There are more white children transported, but since you have been courteous enough as to frame your question as to what I have to say, I may say this. There is a gradual increase of the colored children transported, a gradual increase, and I understand there will be for next year about ten one room schools closed and the children will be transported to other schools. Yes, it is a fact there is more transportation for whites.

Q. Even if there were not any transportation, the average child in the State would only have to walk three-quarters of a mile to school? A. That's an average.

Q. And some you say as far as one and a half mile? A. I was speaking of the average. In the case of the colored children, just as in the case of the white children, if here is an isolated family living four or five miles from the school, if that's the nearest school, the children of that particular family, perhaps one or two, have to walk over one and a half miles, but those cases are very few in the State.

Q. Aside from the question of money, what governs the School Board in picking sites for colored schools?

A. I think I would say—the question that the money governs it, you mean in selecting the site?

Q. As far as my other question, whether you can afford it doesn't enter into it, what governs the School Board in selecting the site? A. Whenever it seems there are sufficient number of children to run a school, that is, if there is a sufficient group to employ a teacher.

Q. What would you consider a sufficient number of colored children in a district to require a school? A. I confess I have forgotten, I think there is a question of law on that.

Q. Aside from that? A. May I give you what has been done. There are a few cases in the State where schools are run for seven children.

Q. Colored or white? A. Colored, just because there are two or three families and a child in each family. That is in Anne Arundel County. There is a case in Dorchester County where the school is run for fewer than ten children. It is generally agreed, I think, that from ten to fifteen children, that is just an opinion, I think the law makes a statement on that, from ten to fifteen children.

CROSS EXAMINATION

Q. (Mr. Houston) Mr. Huffington, you don't contend that the County Education for negroes is equal to the education for whites, do you, all in all? A. That depends, sir, upon what you mean by equal.

Q. Just as good. A. That depends on what you include in that term.

Q. Take it in the totality of things.

(The Witness) May I analyze it for you?

(The Court) Tell him whether you contend that or not.

(The Witness) I should say, substantially, there are some items where it is not.

Q. (Mr. Houston) What are those items? A. Well,

the one item that makes a difference is the length of the school year, that's the one item.

Q. As a matter of fact, if you multiply eight by one hundred and eighty it's the same thing as multiplying nine by one hundred and sixty isn't that right? A. Perhaps so.

Q. If that is right, that would mean on the basis of the school terms, it would take a negro child nine years to get the same education as a white child in eight? A. If you take just the same number of months, but there's a difference there, if you recall, you can't take, say, where a child is going to use eight months in succession and shift it backwards and forwards; that is, a child can do work intensively in eight months, but you can't shift around and say that's exactly the same.

Q. But you don't mean to say a negro child gets the same education in eight months as a white child in nine, do you? A. I admitted there was a distinction.

Q. On the question of consolidation of schools, that depends on transportation in the rural communities, does it not? A. Not altogether, it depends, included in that, is a suitable building to take those children to.

Q. There isn't any use of having a building without some way to transport the children? A. To answer that——

Q. The necessary factor is transportation? A. Yes.

Q. Take the case of those schools for seven negro children, was any transportation available? A. No, sir.

Q. How many counties in the State provide transportation for negro children at public expense? A. All that is provided, I think, it is either by public expense or aided by the public. I can call the roll of the counties, I don't remember the exact number. Children are transported in Wicomico County, in Dorchester County, in Caroline County, in Queen Anne County, in Kent County, in Cecil County, in Baltimore County, in Carroll County, in Frederick County, in Washington County, in Allegheny County, in Montgomery County, in Calvert County, in Charles County, in St. Mary's County; I think I have gone over the list.

Q. In how many of those counties are negroes required to contribute to the transportation? A. They are required to contribute something in Kent, nothing in Caroline——

(Mr. Houston) Maybe it will be easier if we read back.

(The Witness) I cannot give this absolutely, I am giving it purely from memory.

(Mr. Houston) Let me read it back to you.

Q. Wicomico? A. Entirely public expense.

Q. Cecil? A. Entirely public expense.

Q. Allegheny? A. Entirely public expense.

Q. St. Mary's? A. Entirely public expense.

Q. Dorchester? A. Entirely public expense.

Q. Baltimore? A. Entirely public expense.

Q. Montgomery? A. Entirely public expense.

Q. Caroline? A. Entirely public expense.

Q. Carroll? A. Entirely public expense.

Q. Calvert? A. Entirely public expense.

Q. Charles? A. Partially.

Q. Frederick? A. Entirely public expense.

Q. Queen Anne? A. Entirely public expense.

Q. Kent? A. Partially.

Q. Washington? A. Public expense

Q. Do you know—how many counties are there in the State, do you happen to know? A. Yes, sir, twenty-three.

Q. Then, in fifteen out of twenty-three counties, there is transportation for negro children and in thirteen of them it is provided by public expense? A. According to my recollection, I know there is transportation provided, as to the expense, I am not sure.

Q. Are these children who are transported, elementary, or high school or both? A. Both.

Q. In all the counties? A. No, sir, not in all; in some, high school; in some elementary; and in some, both.

Q. Let's take the roll again, Wicomico? A. All high school.

Q. Cecil? A. Both.

Q. Allegheny? A. Elementary, so far as I know; I am not just safe on that point, for this reason; the children are transported only from the town of Frostburg to Cumberland. I know they pay the transportation of the elementary children, I am not sure of the high.

Q. St. Mary's? A. Both.

Q. Dorchester? A. Both.

Q. Baltimore? A. Elementary.

Q. Montgomery? A. Both.

Q. Caroline? A. Both.

Q. Carroll? A. Both.

Q. Calvert? A. Both.

Q. Queen Anne's? A. Both.

Q. Frederick? A. Both. I'll retract that statement; they have been transporting only the elementary school and the School Board has decided to transport all of the high school next year.

Q. Charles County? A. Both.

Q. Kent? A. Both.

Q. Washington? A. Both.

Q. Do you know whether there is transportation provided for white children in all of the counties of the State? A. I couldn't say about that, I really do not know.

Q. Now, going to the matter — but you would say, would you not, that other things being equal a consolidated rural school is able to do a better job than a one room or a one teacher school? A. I think that it is generally considered that it ought to do better, but I might add that in some tests given some nine or ten years

ago it didn't prove that statement, that the one room, red school house, the children there showed up as well on the test.

Q. Do you happen to know what the percentage is between white and colored one teacher schools? A. No, sir, I do not.

Q. But if there was more transportation furnished in the rural districts for white school children than there would be for the number of colored children, then the educational facilities wouldn't be equal in the matter of transportation, isn't that true? A. I said, everything else being equal it is considered that in a consolidated school the children have a better chance.

Q. In your report, or the report of the Department of Education the 67th annual report, for the year ending July 31, 1933, did your office prepare that part dealing with the negro children?

(The Witness) What phase?

(Mr. Houston) The attendance. A. It was compiled in our office, yes, sir.

Q. Is the compulsory school attendance law enforced so far as negro chldren are concerned? A. Yes, sir.

Q. What does this statement mean on pages 150 and 151, "This means that 42% of the colored county children not attending school could legally be excused, but that 826, or 26%, who were between the ages of seven and thirteen years inclusive and 990, or 32% who were fourteen and fifteen years old who were not employed should be provided with schooling, if the compulsory school attendance law were enforced"? A. By implication, certainly, the word rigidly should be there. I understood you to say was the law enforced.

Q. It is not rigidly enforced? A. Well, yes, I know upon the whole it has been as rigidly enforced as on the white children. Now, if you mean this, sir, if we are going to drive, say colored or white children, either one, or attempt to drive them, into school when they have no shoes or clothes to wear, I have to say no to that, because it can't be done.

Q. Now, let me ask you this; the State of Maryland in its school code provides for physical education work in its schools, does it not? A. It states some physical education work must be carried on. As I recall the law, it states an hour a week. I can be corrected on that by other members of the state department. I think it is an hour a week outside of regular academic work, I cannot say that definitely.

Q. How is that physical education law enforced as regards to negro children? A. Just as it is in the white schools; there are practically no special physical education teachers employed in the schools in the State. The summing up of this physical education, rather the graduation of it all, is a county field meet by that county. The field meet is held in the colored schools as regularly and is of the same type and the medals are the same and the officials and the meet is the same as the meet that is held among the white children.

Q. I show you a table in the 1933 report called Table—

(The Witness) I'll have to ask you to excuse me from interpreting Tables; the State's Statistician whom you have summoned is more of an authority on them. I do not know so much about them.

(The Court) But you are on everything else?

(The Witness) No, sir, your Honor.

Q. (Mr. Houston) Were there any colored schools which were opened for less than the minimum school term of 160 days? A. There have been among the counties, right along, if my recollection serves me correctly. The report will show that; the year before last was perhaps the first year that not a single school in a single county was opened fewer than 160 days. The report shows that, to answer your question directly.

(The Court) Do that; answer his questions direct and stop.

Q. (Mr. Houston) Well now, if for the year 1933 the report shows there were 32 colored schools open for less than 160 days would that report be correct? A. The report would be correct; there is nothing wrong with the report.

Q. The report would reflect actual conditions, would it not? A. No, because the implication is the State has purposely kept those schools open less time.

Q. But it would be true that 32 schools were not open 160 days? A. Yes, perfectly true.

Q. Now, in the counties, does the State pay the same salaries for the same services of colored and white teachers? A. No.

Q. Would you consider that equality of education? A. I would not say that it interferes with the equality of education.

Q. That is to say — let me ask you, what is the differential primarily? A. I don't recall; I can give you what is paid negro teachers; I don't recall what is paid the white.

Q. Let me put it this way; do you mean to say that you can get just as good educational teachers out of negro teachers for less money than you can out of white teachers for more money? A. I would say that a negro teacher, with the same qualifications, and they have the same qualifications as the white, practically, would certainly teach the members of his own group and would not slight the members of his own group because he was not paid as much as the white teacher.

Q. Now, on the question of study, after the teacher gets his position, summer school study, things like that, involving advanced educational work; the negro teacher is paid less and it would make it harder for the negro teacher to pay for this extra study, would it not? A. It would make it some harder.

Q. And that in a sense may come back to the inequality? A. Over the period of a number of years, yes; but there's a difference also in the living expenses of the negro teacher and the white teacher.

Q. Does it cost the negro teacher more or less to buy a sack of flour than the white teacher? A. No, but it costs the negro teacher less for her board.

Q. Is that any more than the reflection that the negro

teacher doesn't have any more money to pay for her board? A. I don't know, I am just stating the fact.

Q. Outside of the one item of room and board, what else is there as far as other expenses being less? A. It depends, of course, by what you mean by other expenses.

Q. I mean clothing, travel and summer school education.

(The Court) Aren't we going far afield in this case?

(Mr. Houston) As a matter of fact, I think that the question of inequality of education is really not concerning so much the level of the primary and secondary schools——

(The Court) I do not either; we are interested in the question of the Law School.

(Mr. Houston) No further questions.

(Examination concluded.)

DR. ALBERT S. COOK,

produced on behalf of the Defendants, being duly sworn according to law, testified as follows:

DIRECT EXAMINATION

Q. (Mr. LeViness) You are the State Superintendent of Instructions in Maryland? A. Yes, sir.

Q. And as such, you have general supervision over the white and colored schools? A. Yes, sir.

Q. Up to what level? A. Through the high schools.

Q. Up to and including the high schools. Now, the pleadings filed in this case, in the pleadings, there is a charge made by the petitioner that the colored schools are not the equal in a certain number of different characteristics to those of the white schools. I want to ask you one or two very brief questions along that line. In the first place, Mr. Houston has taken those in the counties—— A. We do not have supervision and control

of the schools of the City; that is a separate division; they are controlled by the Board of School Commissioners. I distribute the money to them on the basis set up in the law.

Q. You are familiar with the general set-up, are you not, sir? A. Yes, I am.

Q. Can you tell from your knowledge of the white schools and colored schools——

(The Court) What schools are you talking about?

(Mr. LeViness) The high schools, white and colored.

(The Court) Nobody in this case is asking to go to a high school.

(Mr. LeViness) If we pass that stage we would not have any testimony.

(The Court) I did not think it was germaine to the case.

(After argument.)

(The Court) If you want it in the record, all right, I will sit here, but I don't think it is germaine, and I won't even be awake while it is going on.

Q. (Mr. LeViness) It will be very brief. From your knowledge and observation of the colored and white schools, up to and including the high school level, confining your answer to Baltimore City, what have you to say as to the relative standard of the two races, colored and white—— A. I would not like to reply to that, because I say I don't know anything about the professional end of the Baltimore City situation, except what I get by my contact with professional people. I don't visit those schools, but I do know in general, that the Douglass High School is as good as any we have in Baltimore City—that is the general reputation.

Q. The general reputation is that the Douglass High School is as good as any in Baltimore? A. Yes, sir.

Q. What about the counties? A. Mr. Huffington made a very good statement on that, and I agree with him. The high schools are mostly small high schools, both

white and colored. I made a statement in the annual report, with reference to this subject, and as was pointed out by Mr. Huffington, 98 percent met the qualifications for the elementary schools.

(Mr. LeViness) We would like to pursue the examination for the purpose of having it in the record.

(The Court) If you want to make up the record for the Supreme Court, or anywhere you want to take it, I will sit here and listen to it, if you desire to pursue it.

(After argument.)

CROSS EXAMINATION

Q. (Mr. Marshall) Doctor Cook, it has been testified that the salary differs in the colleges as between the whites and colored? A. Correct.

Q. What is that difference? A. In the salary schedule, it is——

(The Court) Why do you need to go into this — he said he endorses what the last witness said, and that carried with it the cross examination.

(Mr. Marshall) One of the facts that I think the other witness did not know was the difference between the salaries.

(The Court) Do you know it? A. I have a salary schedule here; I don't carry it in mind; it is on a little printed sheet. If you want that, we will get it for you.

(Mr. Marshall) We would like to have it introduced.

(The Court) You can file it as an exhibit.

(The Witness) This is it (producing same).

(The Court) Instead of calling it off, just introduce it into the record.

(Mr. Marshall) We offer that in evidence as Plaintiff's Exhibit No. 10.

(Paper referred to was then filed marked Plaintiff's Exhibit No. 10.)

Q. I show you this book, the Sixty-Seventh Annual Report, and ask you if that is a report of the State Board of Education? A. Yes.

(Mr. Marshall) We offer that in evidence as Plaintiff's Exhibit No. 11, reserving the right to read from it some time later.

(Book referred to was then filed marked Plaintiff's Exhibit No. 11.)

(Examination concluded.)

DR. JOHN O. SPENCER,

produced on behalf of the Defendants, being duly sworn according to law, testified as follows:

DIRECT EXAMINATION

Q. (Mr. LeViness) You are the President of the Morgan College, are you not, sir? A. Yes, sir.

Q. That is a private institution, is it not, aided by State funds? A. Yes, sir.

Q. And it is an institution for higher learning above the high school level, is it not? A. Yes, sir.

Q. What character of students attend that school, colored or white? A. Colored.

Q. How many colored students do you have at Morgan College? A. In all departments, upward of 600, that includes the Summer School.

(The Court) Men and women?

A. Yes, sir.

(Mr. LeViness) Co-educational? A. Yes, sir.

Q. Where is it located? A. At Hillen road and Arlington avenue.

(The Court) Baltimore City? A. Yes, sir.

Q. (Mr. LeViness) It is inside the City limits? A. Yes, sir.

Q. Now, generally speaking, what courses do you have? A. Liberal Arts and courses in education, particularly for high school teachers.

(The Court) Not a law school? A. Not a professional school.

Q. Not a philosophical school? A. No, sir.

Q. (Mr. LeViness) What degrees do you have? A. Bachelor of Arts, Bachelor of Science and Education, Bachelor of Science and Home Economics.

Q. Do you offer Bachelor of Science and Home Economics to girls only? A. To anyone who cares to take them.

(The Court) Are there more girls attending that school than men? A. Yes.

Q. (Mr. LeViness) Now, you have had graduates from Princess Anne College in your college, have you not? A. Yes, sir.

Q. When they come as graduates of Princess Anne, in what class are they put in your college? A. At present, nearly equal to the freshmen and sophomore year, but not wholly — we do certain work that is not covered by the Princess Anne curriculum.

(The Court) Do you consider the Princess Anne curriculum better or—— A. It is different.

Q. (Mr. LeViness) They specialize in things you don't specialize in? A. Exactly. We specialize in farming, home economics, crafts, animal husbandry, and so on; *there* courses are good.

Q. At Princess Anne? A. Yes, sir.

Q. Is it not true that any of the graduates of Princess Anne Academy last year, 1934—or 1933—went into Morgan College and graduated with B. S. in education? A. I would have to ask the registrar.

Q. (Mr. LeViness) A graduate of Princess Anne can get a B. S. in your college in two years?

(The Court) Depending on the grade.

Q. And it has been done? A. I told you there might be some conditions that turn up, because he does not know the preliminary courses.

Q. During the past three or four years, do you recall any students who have come from Princess Anne Academy and gone into your college? A. Yes, I think we have two graduated recently.

Q. Are they in the senior year or junior year at your college? A. They enter the junior year.

Q. And are now seniors or juniors? A. They finished two years ago.

Q. Do you know how much the State appropriation is for colleges in the State of Maryland—— A. The State appropriation for this fiscal year ending the 30th of September is $23,300—$23,400.

Q. How does that compare, if you know, to State aid rendered to other institutions, other colleges like Hopkins and St. John's? A. They are very much lower.

Q. Morgan College gets a much higher appropriation?

(The Court) Proportionately.

(Mr. LeViness) Proportionate to the number? A. Oh, no—we get a lower appropriation.

(The Court) You say they are much lower? A. We are very much lower.

Q. You mean "we" instead of "they"? A. Yes, sir.

Q. Morgan College gets less than the other colleges, is that right? A. That is right.

Q. (Mr. LeViness) You have about 600 students? A. Yes, sir.

Q. And get $23,000 appropriation a year? A. Yes.

Q. How much is that per student? A. If you wish to know how the State's money is handled——

Q. How much is the tuition at Morgan College? A. Flat, $100 a year.

Q. So the tuition at Morgan College is $100 and Princess Anne is $197—what is the board and room at Morgan College? A. The total fee of Morgan College, everything included, board and room, heat, light, laundry, $339—I can give you the exact figures for the fees and other items.

Q. $339? A. $339.

Q. For a Baltimore student, who lives at home, and went to Morgan, it would be $100—— A. $100 for tuition and $31 for fees, and so on, depending on the course——

(The Court) In addition to the $100? A. Yes, sir.

Q. (Mr. LeViness) And $31 approximately? A. Yes, sir.

Q. Do you know the amount of the appropriation that Morgan College receives in the new budget that goes into effect the last of October? A. I did not understand you.

(The Court) The amount of the appropriation in the new budget that goes into effect in October, how much do you get? A. Beginning the 31st of October, we get $35,000 a year, instead of $23,000, plus.

Q. For the next year you get $12,000 more?

(The Court) He gets a raise and the Mayor gets a cut.

Q. (Mr. LeViness) Do you expect any increase next year in what you have had this year? A. We hope there will not be less—that is the best we can say. I might say since you have raised that question, there are $60,000 a year that——

(The Court) Tuition fees? A. Tuition and other fees, including everything.

CROSS-EXAMINATION.

Q. (Mr. Marshall) Doctor, this $35,000 appropriated, is that lower than appropriated other years, or equal, or how? A. Lower.

Q. Is the course over at Princess Anne equal to that given at Morgan College for the two years? A. They differ.

(The Court) In time, quality—— A. In time and quality, all right; but in subject matter, it is quite different, just as Greek, Latin or Hebrew—those that want to take a literature course will not be prepared for it, not because they don't know anything, but they don't know the right thing.

Q. Could a student from Princess Anne Academy, after two years, come to Morgan, and qualify in two more years as an A. B.? A. I tried to answer that question by saying on direct examination, that they might be required to make up some subjects.

(Examination concluded.)

WILLARD M. HILLEGEIST,

produced on behalf of the Defendants, being duly sworn according to law, testified as follows:

DIRECT EXAMINATION.

Q. (Mr. LeViness) You are the registrar of the University of Maryland school? A. I am.

Q. Your office is in Baltimore? A. Yes.

Q. How long have you been registrar of the school? A. Since 1918.

Q. During that time, have there been any colored students in the law school? A. No.

Q. None at all? A. No.

Q. Have there been any colored students at any of the professional schools? A. No.

Q. During your time, which goes back to 1918, can you tell us how many, if any, applications you have had from colored boys to enter the law school? A. Since 1933, there have been nine. I don't remember any before that.

Q. Since 1918 to 1933, you had none, as far as you remember? And since 1933, you have had nine. Tell us, apportioning that number over those years, how many in 1933, 1934, and this year? A. You can almost divide it equally between 1933 and 1934.

Q. What did you do with Mr. Murray's application? A. Referred it to President Pearson.

(The Court) Let me see if I understand it. Does the defense suggest by that, no colored people desired to practice law or is it because of the fact that it is the policy of the University of Maryland to not permit it, and it is so generally known, that they did not apply? A. The fact is, they have not applied.

Q. You don't know why? A. No.

(Examination concluded.)

(Mr. LeViness) We have exhausted all the witnesses we have today, but we have two other witnesses and if it goes over until tomorrow, we would like to have an opportunity to put them on.

(After argument).

(Mr. LeViness) If the case is still going on tomorrow, will you let us put them on?

(The Court) Yes, sir.

(Mr. Houston) We have some further testimony. We would like to call Mr. McGuinn, the executive secretary of the Commission on Higher Education for Negroes.

ROBERT P. McGUINN,

called by the Plaintiff in rebuttal, being duly sworn according to law, testified as follows:

DIRECT EXAMINATION.

Q. (Mr. Houston) Mr. McGuinn, what is your official position at the present time in Maryland educational

work? A. Executive Secretary of the Commission of Higher Education of Negroes.

Q. When did that Commission on the Higher Education for Negroes come into existence? A. June 1, 1935, officially.

Q. By what authority did it come into existence? A. By an Act of the Legislature.

Q. Was that Act passed in April, 1935? A. Yes, sir.

Q. How much money has been provided for the work of that Commission? A. $3000 for the year 1935-1936, and $3000 for 1936-1937.

Q. Is there a $10,000 scholarship fund? A. Yes, sir.

Q. Have any applications been made to you seeking benefit under that $10,000 scholarship fund? A. There have been.

Q. State how many, up to date, you have gotten? A. 380.

Q. How many of those applications, 380 applications, are for college work and undergraduate work? A. How many—I have not figured that out on that basis.

Q. What classification do you have it at the present time? A. I have it classified on the basis of graduate and undergraduate work, but I have not made up the totals—I can give it to you in a minute—I have 13 applications at the present time for graduate work, that is, that have come in.

Q. That is where the applicants are prepared to take that work? A. Yes, sir.

Q. You have had applicants who want to study law, who have not qualified? A. Yes, sir.

Q. How have you classified them? A. As undergraduates—instead of 13, there were 16—364 applications have been for undergraduate work—when I say 380 applications have come in, that is application forms—I have had returned to me filled out, to date, exactly 113 applications.

Q. How many of those are for law schools besides the Howard Law School?

(Witness) How many to the Howard Law School?

Q. Out of the 16, how many applied for law work? A. Only one.

Q. Where did he want to go—Howard? A. Howard.

(Mr. Houston) May I point out since the fund is administered as a unit, I think it is relevant what they would give as to all of those, regarding the particular work, provided the money had to come out of this $10,000 fund—what standards are required in the case of law—under what circumstance would you give a person wanting a legal education, a scholarship—of these 113, how many are for graduating work? A. 16.

Q. Do you happen to know at the present time—have you worked it out by scale to each that wanted to go, what you could give him, the approximate cost of tuition at these schools, how much it would cost, if all these 13 were graduated? A. I have not worked that out.

(Mr. Houston) Can we agree, your Honor, that can be worked out overnight and then filed?

(The Court) Yes, you can put it in the record.

Q. Have you the statistics there of the different schools that the applications are for? A. Yes, applications for graduate study, Oberlin, University of Chicago, University of Pennsylvania, Columbia, Atlanta School, University of Michigan, Howard, Meharry, Museum of Applied Arts, Philadelphia. The undergraduate schools are: Temple University, Morgan, Hunter, Lincoln, University of Illinois, Museum of Applied Arts, Howard, Hampton, Pennsylvania, Bowie, Shaw, Friedman Hospital, University of Maryland, Provident Nursing, Eckles School, St. Augustine, Livingstone.

Q. If they were eligible for entrance to the school that they wanted to enter, they would then be qualified to receive a scholarship? A. They would be qualified to receive a scholarship after that.

Q. Does that mean they would necessarily get a scholarship? A. No.

Q. Why? A. Because we only have $10,000 to dis-

tribute for the fiscal year 1935-6, and it would be absolutely impossible to satisfy all of the requests for scholarships.

Q. Let me ask you this question—has the time limit for making application expired? A. It has not.

Q. You have had 380 applicants, requests, and of that you have had 113 applications turned in, is there still time, first, for the balance of the 380 applications—that is 267 applications to be completed of the 380 requests you have? A. Absolutely.

(The Court) The law has only been in effect since the first of June.

Q. (Mr. Houston) Is there further time for new applications to come in? A. There is.

(The Court) Up to what date? A. The 30th of June.

CROSS-EXAMINATION.

Q. (Mr. LeViness) You are the Executive Secretary of the Committee? A. Yes, sir.

Q. When was the Committee organized? A. The Commission was organized in the early part of January.

Q. Before the Act was passed? A. They were named and delegated by Governor Nice, but of course he submitted their names to the Legislature for action.

Q. Who is Chairman? A. Judge Morris A. Soper.

Q. Have they worked out any scheme or plan by which you expect to divide up this money in appropriating scholarships? A. I think there is a plan in mind; the commission took into consideration, first, the spirit of the scholarship, knowing as it was originally intended, it was for professional scholarships, but later some objection was made on the ground that Maryland did not provide any college education for its negro boys and girls and therefore, it would be an injustice to them to make the total provision for scholarships for professional work and leave out the question of the undergraduate student, and on the basis of the Act, the awards will be made to both the graduates and the undergraduates.

tuition was less than $200, the maximum he would get would be his tuition charge?

(The Court) He would not be allowed for maintenance; it would only be for tuition.

(Examination concluded.)

(The Court) Now, let the record show that the testimony is closed, and if Mr. LeViness wants to get in testimony on behalf of the defendants, of two witnesses, one who is at College Park and has not gotten to this trial at 3:30 this afternoon, with the case set for trial for weeks, or for several days, and Mr. Houston sees fit to let him put that testimony in by stipulation, that will be all right. Tomorrow being practically the last day of opportunities for jury trials, I am not disposed to continue this case over, and throw out other litigants whose rights are just as important. The testimony is now closed, and I will hear argument.

We hereby agree that the aforegoing Bills of Exception are correct.

HERBERT R. O'CONOR,
Attorney General,

CHARLES T. LeVINESS, 3rd,
Asst. Attorney General,
Attorneys for Appellants.

CHARLES H. HOUSTON,
THURGOOD MARSHALL,
WILLIAM I. GOSNELL,
Attorneys for Appellees.

Q. I understand you to say roughly, one-half would go to the undergraduates and one-half to the graduates? A. I think so.

Q. You said 25 for the undergraduates and 25 for the others? A. I am using that for the purpose of illustration; I think that is perhaps what is in the minds of the Committee on Awards.

Q. Do you think that 25 scholarships for graduate work that will probably take care of the applications for graduate work, under the basis of the present year? A. I could not say.

(The Court) How could he say, with twelve more days to go.

A. I know this, that more have applied for professional work, graduate work than have filed their formal application.

Q. What do you mean, have applied? A. For the blanks.

(The Court) More applications are outstanding than have been returned?

(Mr. LeViness) You don't know if they will ever be returned.

(The Court) Of course not—he would have to guess what will happen in the next twelve days.

Q. (Mr. LeViness) If Mr. Murray, the applicant in this case, would apply for scholarship, he may be eligible? A. He would be eligible.

Q. He would be in this 16 or 17? A. He would be eligible.

REDIRECT EXAMINATION.

Q. (Mr. Houston) If you had $5,000 available for graduate scholarships, and there was only one applicant, it would be impossible for that applicant to get out of that $5,000, more than $200? A. That is true.

Q. If that one applicant, with $5,000 available for graduate scholarships, should go to a school where the

Q. With the language of the Act in mind, would you not be more apt to give the preference to the undergraduate than the graduate? A. If there is a question of awarding an applicant for scholarship to two applicants, both equally eligible,-one for the undergraduate and one for professional work, then the professional applicant would be given the preference.

Q. As I understand, there are only 16 applications on file for both classes of work? A. On file today, that have come into the office.

Q. And you only have ten days to go and out of the 16, only one is for law? A. That is my recollection—I would not say definitely, but as I recall—I can tell you very shortly, if you care to know.

(The Court) 380 application forms have been sent, out of which 116 have come back fully perfected and filed.

A. Yes, sir, but I might say they are coming in.

Q. The others might come in in the next twelve days? A. I had 16 come in this morning.

(Mr. LeViness) All for college work? A. I have not had a chance to go through them.

Q. How are you going to select the first 50?

(Mr. Houston) How do you get 50?

(Mr. LeViness) Through the wording of the Act.

(Witness) These scholarships will be given only to cover tuition, and in the case of the undergraduate student, it may be possible to give slightly over 25—the sum being divided $5,000 for graduates and $5,000 for undergraduates, it may be possible to give over 25 for the undergraduate work, due to the difference in the tuition fee.

Q. Is there any definite policy that has been adopted by the commission as to a division of the funds between the graduate and the undergraduate?

(Witness) As to the division?

Q. As to the division of the money? A. No, it has not, to my knowledge; that is left entirely to the discretion of the Committee on Awards.

The aforegoing bills of exceptions are hereby approved this 25th day of June, 1935.

EUGENE O'DUNNE,

Judge.

NOTE BY COURT: The Petitioner objects to the length of Bill of Exceptions as not prepared by Attorney General's office in narrative form as prescribed by Court Rule, but his objection is limited to the question of expense of record in the possible event of being liable for costs.

EUGENE O'DUNNE.

Appellant's Costs, $30.60.

Appellee's Costs, $39.15.

Test: JAMES B. BLAKE,

Clerk of the Baltimore City Court.

State of Maryland, City of Baltimore, Set.:

I, James B. Blake, Clerk of the Baltimore City Court, do hereby certify that the aforesaid is a full, true and entire transcript taken from the record and proceedings of the said Court in the therein entitled cause.

In Testimony Whereof, I hereunto set my hand and affix the seal of the Baltimore City
(Seal.) Court aforesaid, on this 16th day of July, Nineteen hundred and thirty-five.

JAMES B. BLAKE,

Clerk of the Baltimore City Court.

RAYMOND A. PEARSON, President, W. M. HILLEGEIST, Registrar, AND GEORGE M. SHRIVER, JOHN M. DENNIS, WILLIAM P. COLE, HENRY HOLZAPFEL, JOHN E. RAINE, DR. W. W. SKINNER, MRS. JOHN L. WHITEHURST AND J. MILTON PATTERSON, Members of the Board of Regents of the University of Maryland,

vs.

DONALD G. MURRAY.

IN THE

Court of Appeals

OF MARYLAND.

OCTOBER TERM, 1935.

GENERAL DOCKET No. 53.

APPELLANTS' BRIEF.

HERBERT R. O'CONOR,
Attorney General,

WM. L. HENDERSON,
Asst. Attorney General,

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Attorneys for Appellants.

The Daily Record Co. Print, Baltimore.

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APPELLANTS' BRIEF.

STATEMENT OF THE CASE.

This is an appeal from the Baltimore City Court in which the appellee (petitioner below), who is a colored man, sued for a writ of mandamus to require the defendants, the Regents of the University of Maryland, to admit him as a student in the law school of the University. The lower court granted the writ.

QUESTION ON APPEAL AND APPELLANTS' CONCLUSIONS THEREON.

Are the defendants compellable in mandamus to admit a negro to the law school? The lower court ruled they were so compellable.

The defendants contend that the trial court erred, for the following reasons:

I.

MANDAMUS IS NOT THE PROPER REMEDY IN THIS CASE.

1. Petitioner Has No Right to Sue in Mandamus to Compel the University Officials to Admit Him. His Remedy, If Any, Is by Appropriate Action to Require the Proper State Officials to Supply a Law School for Negroes.

II.

THE EXCLUSION OF THE APPELLEE DOES NOT VIOLATE HIS CONSTITUTIONAL RIGHTS.

1. Since education is exclusively a State matter, he has no right to admission merely because he is a citizen of the United States.

2. The equal protection of the laws does not prevent classification on the basis of race.

III.

THE LAW SCHOOL OF THE UNIVERSITY OF MARYLAND IS NOT AMENABLE TO CONSTITUTIONAL LIMITATIONS.

1. The University of Maryland Is in the Nature of a Private Corporation.

2. Private Institutions May Select Their Students Arbitrarily, Without Regard to the Fourteenth Amendment.

3. The Law School of the University Derives Its Maintenance Principally From Tuition Charges to Students.

IV.

EVEN IF THE LAW SCHOOL IS A PUBLIC INSTITUTION AMENABLE TO THE FOURTEENTH AMENDMENT, IT IS NOT REQUIRED TO ADMIT NEGROES BECAUSE THE STATE PROVIDES SCHOLARSHIPS FOR THEIR EXCLUSIVE USE.

1. The Policy of This State Is to Separate the Races.

(a) *In railway coaches*

(b) *In private and public educational institutions, at scholastic, collegiate and professional levels.*

2. Separation of the Races in Educational Institutions Has Been Upheld by the Highest Authority.

3. This State Affords Its Colored Citizens Substantially Equal Facilities for Public Education.

(a) *It has a dual and practically identical system of secondary education for the two races.*

(b) *It affords substantially equal opportunities at collegiate levels: at Princess Anne Academy, at Morgan College, and by scholarships.*

(c) *At professional levels it affords no colored schools because heretofore there has been no sufficient demand therefor; but the scholarship system offers its negro citizens opportunities and advantages substantially equal to those given its white citizens.*

STATEMENT OF THE FACTS.

The petitioner is a Negro (R. 23); he is twenty-two years old; has lived in Baltimore all his life; has attended colored Public School No. 103, on Division Street, Douglas High School and Amherst College, Amherst, Massachusetts (R. 45). He intends to practice law in the

City of Baltimore and desires to enter the Law School of the University of Maryland, because it is convenient and less expensive for him, and because he would be able to observe the Maryland courts and become acquainted with other practitioners. Also he is a citizen of this State and thinks he "should have a right to go there" (R. 45).

In December, 1934, he addressed a letter to the Dean of the Law School in which he stated that he was a graduate of Amherst College of the Class of 1934 and desired to secure admittance to the school. He also stated he could secure necessary high school records from Douglas High School "the only Negro High School in this City" (R. 29). He received a reply from Defendant Pearson, the President of the University, in which he was referred to Princess Anne Academy which is maintained as a separate institution of higher learning for the education of Negroes (R. 30). Later his application form and $2.00 money order for an entrance fee were returned to him (R. 32).

In March, 1935, petitioner addressed a letter to the Board of Regents of the University of Maryland. He asserted he was a citizen of the State and fully qualified to become a student of the University of Maryland Law School. He stated that there is no other State institution which offers a legal education. He said that the arbitrary action of the officials of the University of Maryland in returning his application was unjust and unreasonable and contrary to the Constitution of the United States and the Constitution and laws of this State. He appealed to the Regents to accept his application and, finding him qualified, to admit him to the school (R. 32). In reply to this letter he received another communication from President Pearson in which

he was referred to the exceptional facilities open to him for the study of law at Howard University, in Washington. President Pearson pointed out that Howard Law School was rated as "Class A" and was fully approved by the American Bar Association and is a member of the Association of American Law Schools. The President further stated that the tuition at Howard Law School was $135.00 per year, in contrast to $203.00 per year in the day school and $153.00 per year in the night school of the University of Maryland Law School (R. 34).

On April 18, 1935, petitioner filed in the Baltimore City Court his petition for a writ of mandamus, requiring the Board of Regents to accept his application and, upon finding him qualified, to admit him in the regular manner as a first-year student in the day school of the University of Maryland School of Law for the academic year 1935-1936. In his petition he asserted that the University of Maryland is an administrative department of the State and performs as essential governmental function, supported and maintained principally by funds from the General Treasury of the State. He further pointed out that the charter of the University provides that it shall be founded and maintained "upon the most liberal plan, for the benefit of students of every country and every foreign denomination, who shall be freely admitted to equal privileges and advantages of education, and to all the honors of the University, according to their merit, without requiring or enforcing any religious or civil test, upon any particular plan of religious worship or service" (R. 4). He further asserted that the action of the Regents in refusing him admittance violated the Fourteenth Amendment

of the United States Constitution in that it denied him the equal protection of the laws and deprived him of liberty and property without due process of law (R. 7, 8).

In their answer the Regents pointed out that the Baltimore Schools of the University of Maryland, of which the Law School is a part, do not derive their maintenance funds principally from the General Treasury of the State, but are supported principally by tuition fees paid by students in said schools (R. 17).

The Regents further pointed out that this State has provided separate institutions of learning for the exclusive use of colored persons, listing the acts of the Legislature setting up their separate system (R. 19); also they called attention to the scholarship statutes provided by the General Assembly at its 1933 and 1935 regular sessions which were open to the petitioner as a substitute for legal education in this State; and that under the 1935 Scholarship Act a commission on Higher Education of Negroes was established to administer the sum of $10,000 for scholarships to Negroes to attend college out of the State, expressly providing that the scholarships are for "college, medical, law or other professional courses * * * for the colored youth of the State who do not have facilities in the State for such courses" (R. 20).

However, petitioner did not desire one of these scholorships (R. 48) and took no action to obtain one (R. 50).

Up to June 18th, 1935 (the time of the trial below) three hundred and eighty (380) colored persons had obtained application blanks, and one hundred and thirteen

(113) had returned these forms properly filled out, for scholarships under this Act (R. 109).

Under the plan worked out for the issue of these scholarships it was decided by the Commission to award scholarships both to undergraduate students and to graduate or professional students. About one-half of the scholarships would go to undergraduates and one-half to graduates (R. 112-113). Of the number of application blanks requested three hundred and sixty four (364) were for undergraduate work and sixteen were for graduate work. Of these sixteen only one applied for law study (R. 109-110). Petitioner would have been eligible for one of these scholarships if he had applied (R. 113). The scholarships are to cover tuition only and, dividing the $10,000 per year equally between graduate study and undergraduate study, it may be possible to give more than twenty-five scholarships for each group (R. 112); no one applicant may receive more than $200.00 under one of these scholarships (R. 113).

If petitioner had applied for a scholarship for Howard University, in Washington, he would be able to commute daily from his home in Baltimore, but he "wouldn't want to". He can get from Baltimore to Washington in one hour (R. 49). He stated that if he attends Maryland Law School he will not have to pay for his room and board, whereas if he attended school in Washington and did not commute, he would have to pay for his room and board (R. 50).

Operating under statutory direction (Code, Article 77, Section 200, *et seq.*) this State has established a dual system of public education, one administered for its white and one administered for its colored citizens. The

two systems offer approximately equal, and in most cases identical, opportunities for learning.

In the counties of the State there are twenty-eight colored high schools and five hundred and ten colored elementary schools, all of which compare "very favorably" with the schools operated for white children. The courses offered students in each are identical and the curriculum offered in the small colored high school is the same as in the small white high school (R. 88). Maryland requires sixteen units of high school work for graduation and even the small colored high schools offer the full sixteen units; their graduates are admitted into such colleges as Morgan, in the State, and such universities as Howard and Lincoln out of the State (R. 88).

Ninety-eight per cent of the teachers in the colored elementary schools hold a first grade certificate, which is the same percentage as the white teachers in the white elementary schools (R. 89).

As to the distribution of these colored schools throughout the State they are found in every county except Garrett, where the population is sparse. In a county like Prince George's where the colored population is densest, there are forty-four colored schools in the county and seventy elementary teachers. No colored child is required to go more than one and a half miles to reach a school; and, on the average, colored children in the State live about three-fourths of a mile from a colored school house (R. 90).

In the majority of the counties of the State the school term for colored and white children is identical (R. 91); in certain counties on the Eastern Shore where there is

trucking, colored schools run eight months instead of nine. This is because of the strawberry season, the colored children being needed by their parents to pick strawberries (R. 90). In these schools which are open only eight months a year, the same subjects are taught as in the full-term schools, and upon completion the student receives the same number of credits and is as well prepared to go to college as the full-term students (R. 91).

As to the question of school attendance, the State provides one attendance officer for each county. However, the attendance records show a result "slightly less for Negroes than White, not very much less" (R. 92).

In regard to school transportation there are more white children transported to school than colored children, but there is a gradual increase in the number of colored children transported and for the scholastic year 1935-1936, about ten one-room schools will be closed and the colored children will be transported to other schools (R. 92). A school for colored children is opened in any community where it seems there are sufficient number of children to run a school and employ a teacher. In some cases in this State schools are operated for as few as seven colored children (Anne Arundel County); one school in Dorchester County is operated for fewer than ten children (R. 93).

Colored and white teachers do not receive the same salaries, but this does not "interfere with the equality of education". A Negro teacher having the same qualifications as a white teacher "would not slight the members of his own group because he was not paid as much as the white teacher (R. 99).

County education for Negroes, all in all, is substantially equal to the education for whites. There are some items where it is not (R. 93).

In Baltimore City the Douglas High School for Negroes is reputed to be as good as any white school in the City (R. 101).

At college levels there are available for Negroes in this State teachers training schools set up by the Public Education Law (R. 19); Morgan College, a private institution in Baltimore City for Negroes, and Princess Anne Academy, which is the Eastern Branch of the University of Maryland. Morgan College receives a substantial money grant from the State of Maryland and is exclusively a Negro liberal arts college. The present student body comprises about six hundred Negroes. For the scholastic year 1934-1935, the State appropriated the sum of $23,000 thereto, and for the scholastic year 1935-1936, it has appropriated the sum of $35,000 (R. 105, 106). It is a co-educational college specializing in liberal arts and courses in education, particularly for high school teachers. It awards degrees of Bachelor of Arts, Bachelor of Science and Education, Bachelor of Science and Home Economics. It does not maintain a law school or any other professional school (R. 104).

To Princess Anne Academy the State appropriated for the scholastic year 1934-1935 the sum of $15,000. There are about thirty-three colored students there who therefore cost the State approximately $468.00 each. Compared to the appropriation for white students at the University of Maryland and its several schools, the colored student at Princess Anne receives from the State almost three times as much. The appropriation for the

University of Maryland, college department, for the scholastic year 1934-1935 was $230,000 for fifteen hundred students, about $153.00 per student; for the entire University, including the college department and the professional schools, the appropriation was $318,000.00 for thirty-six hundred students, or about $88.00 per year per student (R. 67, 83). These figures do not include the appropriation to the University of Maryland Hospital (R. 82-83).

The appropriation for the present year is between $30,000 and $40,000 less than for the scholastic year 1934-1935 (R. 84).

The Princess Anne Academy seven or eight years ago was "just a school for Negro children, some of them were in the lower grade, some in the high school" (R. 72). During the last few years the lower grades and high school grades have been abandoned, and it is now operated as a Junior College (R. 51, 72). The rating as a Junior College is obtained by students who finish at Princess Anne Academy and enter other colleges, where they are given credit for two years of college work and are accredited as juniors, or third year students (R. 51). Graduates from Princess Anne Academy enter the third year of Morgan College, Virginia State College at Petersburg, or Hampton Institute in Virginia (R. 74, 75). Although there are but approximately thirty-three students at Princess Anne Academy, the school is equipped to take care of more than one hundred students. The dormitories for men and women can accomodate as many as one hundred and seventy-five persons and the same number can be handled in the class-room. Class-room facilities are almost unlimited (R. 74). The Princess Anne Academy offers a training especially de-

signed to prepare colored boys for country life. For this reason the school is not better attended, according to President Pearson, because "the importance and attractiveness and value of that type of education is not well understood by the leaders in the negro race." By that he meant farming and home economics (R. 75-76). Also the Academy is not as attractive as the older institutions with more years behind them and more money to spend, according to Dr. Pearson (R. 76). In addition to the facilities at Princess Anne Academy there has been made available money for scholarships for students to go elsewhere and finish their college education, the amount of the scholarship granted to any one student depending upon the difference between the cost of tuition at Princess Anne Academy and the cost of tuition at the college to which the student might desire to go. The policy was to equalize things so that "it is just as cheap to go outside the State as to stay in the State" (R. 71).

No colored students have been admitted to the Baltimore Schools of the University of Maryland since the early nineties when two negroes were admitted as an experiment. The practice was discontinued thereafter (R. 86, 107). Out of a faculty of eighteen instructors at the Law School, twelve are in general practice in Maryland or on the bench (R. 85).

ARGUMENT.

I.

MANDAMUS IS NOT THE PROPER REMEDY IN THIS CASE.

1. Petitioner Has No Right to Sue in Mandamus to Compel the University Officials to Admit Him. His Remedy, If Any, Is by Appropriate Action to Require the Proper State Officials to Supply a Law School for Negroes.

In *Cumming vs. County Board of Education,* 175 U. S. 528, 44 L. ed. 262, certain negroes sued a Georgia board of education to enjoin it from maintaining a high school for white children without providing a similar school for colored children which had existed and had been discontinued. The Supreme Court of Georgia upheld the denial of the writ. The Supreme Court of the United States affirmed this judgment. In discussing the remedy sought the Supreme Court said, at page 266, law edition:

> "If, in some appropriate proceeding instituted directly for that purpose, the plaintiffs had sought to compel the Board of Education, out of the funds in its hands or under its control, to establish and maintain a high school for colored children, and if it appeared that the Board's refusal to maintain such a school was in fact an abuse of its discretion and in hostility to the colored population because of their race, different questions might have arisen in the state court."

The basis of mandamus is a right in the petitioner and a corresponding duty in the defendant. No duty arises in the officials of the University of Maryland to admit a colored man to its law schools merely because the State has not provided a separate law school for colored persons. The duty, if any, is upon the proper state officials to provide such a separate institution; and not upon the law

school to admit a negro contrary to long established precedent and contrary to the public policy of this State founded in tradition and in statute law.

To require the University to admit a negro, in the absence of any legislative authority so to do, and contrary to the settled policy of this State, would be to enlarge the functions of the University by judicial mandate. The State has established an elaborate system of separate education for its colored citizens. If it be found that this system is not adequate in every respect, the remedy certainly is not to pick out the University of Maryland and to seek by judicial action to compel it to supply the missing link.

Suppose there were a men's college and a women's college as part of the University and suppose that fire destroyed the men's college. Is it conceivable that mandamus would lie to require the women's college to admit men students merely because the men thus were left without facilities for education? If the proper authorities did not rebuild the men's college their remedy, if any, doubtless would be against these authorities. Their remedy certainly would not be, by mandamus, to compel the women's college to take them in.

In *Martin vs. Board of Education,* 42 W. Va. 514, 26 S. E. 348 (1896) a negro citizen, resident of a district which provided white schools but no colored schools, sued to have his children admitted to a white school. The Court said, at page 349:

> "Petitioner's counsel insists that * * * because the legislature and the board of education had failed to make proper provision to afford equal facilities to

> colored children, that they are entitled to attend the school provided for white children, on equal terms. Such a determination would be, in effect, permitting the neglect of the legislature or board of education to abrogate the Constitution, while it is the paramount duty of this Court to see that they obey it. Therefore the circuit court could not do otherwise than refuse the prayer of the petition."

It is apparent that the courts cannot remedy the lack of school facilities by enlarging the powers of existing schools contrary to the public policy of a state as expressed in its laws and in its practice.

Also it is well settled that mandamus will not lie to compel the performance of a discretionary act. *Woods vs. Simpson,* 146 Md. 547. Petitioner cannot point to any statutory or charter provision requiring the University to admit colored persons. It is clear that the University's rights to determine what class or what individual may be admitted or barred from its cloisters is a matter within its discretion, to be exercised in its best judgment and in accordance with public policy. Therefore its exercise of this discretion is not within the control of the courts.

In *Clark vs. Board of Directors,* 24 Iowa 266 (1868) it was held that where a discretion is thus left to the board of directors it cannot be controlled by mandamus even though the discretion be unwisely exercised.

In *State vs. School District,* 154 Ark. 176 (1922) it was held that the action of a school board in classifying pupils on the basis of color is discretionary and no right of mandamus will issue unless it can be shown that the Board acted arbitrarily.

In *Guthrie vs. Board,* 86 Okl. 24 (1922) it was held in a similar case that mandamus will not lie where its issuance would work injustice or introduce confusion and disorder, citing 26 Cyc. 287.

Therefore it is urged that mandamus against the University is not open to the petitioner in this case.

II.

THE EXCLUSION OF THE APPELLEE DOES NOT VIOLATE HIS CONSTITUTIONAL RIGHTS.

1. Since education is exclusively a State matter, he has no right to admission merely because he is a citizen of the United States.

At the outset of a constitutional inquiry it is pertinent to consider the nature of the right claimed to be impaired and the protection of that right asserted to be given by the federal constitution. In the sixteenth paragraph of the complaint in this case it is asserted that the actions of the respondents "violate the Fourteenth Amendment to the Constitution of the United States in that they amount to a denial to Petitioner, a citizen of the United States and of the State of Maryland, by the State of Maryland or an administrative department thereof, of the equal protection and benefits of the laws, as secured to him by the said Fourteenth Amendment and the law of the land; and in that such acts were unequal, oppressive and discriminatory and deprived the said Donald G. Murray, Petitioner, of his liberty and property without due process of law as guaranteed him by the Fourteenth Amendment and the law of the land aforesaid." (R. 7, 8).

No violation of the Constitution of Maryland is alleged in this case.

It is submitted that education is purely a matter of State concern and does not affect a person *as a citizen of the United States.*

As was said by the Supreme Court in the *Slaughter House Cases,* 16 Wall. 36, 21 L. ed. 394 (1873), the privileges and immunities of citizens of the United States are those which arise out of the nature and character of the national government, the provisions of its constitution or its laws and treaties made in pursuance thereof; and it is those which are placed under the protection of Congress by this clause of the Fourteenth Amendment. Further it said:

> "The Fourteenth Amendment recognizes a distinction between citizenship of a state and citizenship of the United States * * * It is quite clear then that there is a citizenship of the United States and a citizenship of a State which are distinctive from each other and which depend upon different characteristics or circumstances in the individual."

This decision has been commonly regarded as having established a dual citizenship in an individual, a state citizenship and a United States citizenship. Education has been consistently held one of those matters pertaining to an individual as a citizen of a state and not as a citizen of the United States. As was said in *Lehew vs. Brummell,* 103 Mo. 546, 550, 15 S. W. 765 (1890):

> "The common-school sysem of this state is a creature of the state constitution and the laws passed pursuant to its command. The right of children to attend the public schools and of parents to send their children to them is not a privilege or immunity be-

longing to a citizen of the United States as such. It is a right created by the state, and a right belonging to citizens of this state, as such."

In *Piper vs. Big Pine,* 193 Cal. 664, 669 (1924), it was said:

"The privilege of receiving an education out of the expense of the state is not one belonging to those upon whom it is conferred as citizens of the United States. The federal constitution does not provide for any general system of education to be conducted or controlled by the national government. It is distinctly a state affair."

In *Cumming vs. County Board of Education, supra,* where there was under review a state court decision denying an injunction against the maintenance of a white high school while failing to maintain a colored one, the Supreme Court, in denying the right of negro petitioners, said:

"Under the circumstances disclosed, we cannot say that this action of the state court was, within the meaning of the Fourteenth Amendment, a denial by the state to the plaintiffs and to those associated with them of the equal protection of the laws or of any privileges belonging to them as citizens of the United States. We may add that while all admit that the benefits and burdens of public taxation must be shared by citizens without discrimination against any class on account of their race, the education of the people in schools maintained by state taxation is a matter belonging to the respective states, and any interference on the part of Federal authority with the management of such schools cannot be justified except in the case of a clear and unmistakable disregard of rights secured by the supreme law of the land. We have here no such case to be determined;

> and as this view disposes of the only question which this court has jurisdiction to review and decide, the judgment is affirmed."

In a Kentucky case it was held that the benefits of negroes in the school-fund of Kentucky must be received "as a citizen of this commonwealth and not as a citizen of the United States."

Marshall vs. Donovan, 73 Ky. 681 (1874).

Further, the Kentucky Court said, at p. 688:

> "These interests and benefits are privileges and immunities pertaining to the citizenship of the State owning the school fund and maintaining the school-system, and they must be secured and protected by the state government. They do not fall within that class of fundamental rights which, according to the opinion of the Supreme Court in the Slaughter House cases, are under the special care of the Federal government."

In *Cory vs. Carter,* 48 Ind. 327 (1874) a negro sued in mandamus on behalf of his children and grandchildren to compel admittance to a white school. It was held, in denying the right, that the legislature had not provided for the admission of colored children into the same schools as white children; and even if the Fourteenth Amendment required their admission the courts cannot, in the absence of legislative authority, confer the right upon them.

In *People vs. Gallagher,* 93 N. Y. 438 (1883) suit was brought on behalf of a colored girl to require her admission into a white school. The Court of Appeals of New York, through Chief Justice Ruger, held that the Four-

teenth Amendment does not operate on school classifications. Reviewing the history of this amendment and citing *the Slaughter House Cases, supra,* the Court said, at page 447:

> "It would seem to be a plain deduction from the rule in that case that the privilege of receiving an education at the expense of the state, being created and conferred solely by the laws of the state, and always subject to its discretionary regulation, might be granted or refused to any individual or class at the pleasure of the state. This view of the question is also taken in *State vs. McCann,* 21 Oh. St. 210, and *Cory vs. Carter* 48 Ind. 337. The judgment appealed from might, therefore, very well be affirmed upon the authority of these cases."

This case also distinguishes "social rights" from civil rights guaranteed by the Fourteenth Amendment.

In *Gong Lum vs. Rice,* 275 U. S. 78, 72 L. ed. 172 (1927) it was held that no right of a Chinese citizen of the United States under the Federal constitution is infringed by classifying her for purposes of education with colored children and denying her the right to attend schools established for the white race. The Court said:

> "The decision (to bar the Chinese person from its white schools) is within the discretion of the state in regulating its public schools and does not conflict with the Fourteenth Amendment."

In *Hamilton vs. University of California,* 79 L. ed. 159, (1934) where it was held that military training might be made compulsory for all students of the University, the Supreme Court said, at page 166:

> "The privileges and immunities protected are only those that belong to citizens of the United

States as distinguished from citizens of the state—those that arise from the constitution and laws of the United States as contrasted with those that spring from other sources."

As was held in *Gong Lum vs. Rice, supra,* classification of students on the basis of race and color is a matter exclusively of state policy and does not conflict with any provisions of the Federal constitution.

It is submitted that there is no violation of any Federal constitutional privilege or immunity in the action of the Regents in denying admission to petitioner on the grounds that he is a negro.

2. The equal protection of the laws does not prevent classification on the basis of race.

As pointed out above, classification of students is a matter of internal State policy. If it were unconstitutional to classify on the basis of race, it also would be improper to classify on the basis of studies, or on the basis of sex. Certainly it cannot be contended that if a state provided a law school for its citizens it also must provide a medical school, or an engineering school. The University of Maryland includes among its Baltimore Schools a law school and a medical school. It does not include an engineering school. And yet this is a discrimination in favor of those desiring to study law or medicine and against those desiring to study engineering. Similarly a state might provide, without encountering constitutional objections, a certain school for men without a corresponding school for women. Distinctions on the basis of sex uniformly have been upheld by the courts.

In *Quong Wing vs. Kirkendall,* 223 U. S. 59, 56 L. ed. 350, the Supreme Court, speaking through Mr. Justice Holmes, upheld such distinctions in these words:

> "If the State sees fit to encourage steam laundries and discourage hand laundries, that is its own affair. *And if, again, it finds a ground of distinction in sex,* that is not without precedent. It has been recognized with regard to hours of work. *Muller vs. Oregon,* 208 U. S. 412, 52 L. ed 551, 28 Sup. Ct. Rep. 324, 13 A. & E. Ann. Cas. 957. It is recognized in the respective rights of husband and wife in land during life, in the inheritance after the death of the spouse. *Often it is expressed in the time for the coming* of age. If Montana deems it advisable to put a lighter burden on women than upon men with regard to an employment that our people commonly regard as more appropriate for the former, the Fourteenth Amendment does not interfere by creating a fictitious equality where there is a real difference. The particular points at which that difference shall be emphasized by legislation are largely in the power of the state."

Certain discriminations, either against persons, or classes, or occupations are found in our tax laws, our license laws and even in the classification of what work may be performed on Sundays. *As this Court said in Ness vs. Supervisors,* 162 Md. 529, at page 537:

> "Discriminations in the ordinance between activities to be permitted and those not to be permitted on Sundays are objected to as unconstitutional because of the inequality of treatment of citizens engaged in the activities of the one group and the other, and because of supposed deprivation of the liberty and property of those whose activities are excluded, without due process of law. * * * And that there are discriminations which cannot be explained or justified

> by reasons is possibly true. But what is tolerable and what intolerable in Sunday observance seems to be a question which cannot be fully answered by a process of reason. * * * But the mere fact of inequality is not enough to invalidate a law, and the legislative body must be allowed a wide field of choice in determining what shall come within the class of permitted activities and what shall be excluded".

This Court found no such "obviously arbitrary and grievous discrimination" as would make the ordinance unconstitutional (page 538).

And again, in *Jones vs. Gordy,* 180 Atl. 272, this Court held that the Legislature had a wide discretion in framing excise laws.

> "And unless the distinctions it makes", the Court said, "are obviously without reasonable foundations in conditions to be dealt with, there is no departure from constitutional powers, and the courts have no function to fulfill." (page 277).

In *Great House vs. Board of School Commissioners,* 198 Ind. 95, 151 N. E. 411 (1926) it was held at page 105:

> "The classification of scholars on the basis of race or color, and their education in separate schools, involve questions of domestic policy which are within the legislative discretion and control, and do not amount to an exclusion of either class. The Legislature has the power to provide for either separate or mixed schools."

Also see *Hayman vs. Galveston,* 273 U. S. 414.

It is submitted that the "equal protection" clause does not require a State to build a school for Negroes, just because it builds one for whites. Appellees cannot point to

any decision of this Court, or any decision of the Supreme Court, which requires equality of treatment or which forbids classification on the basis of race or color.

III.

THE LAW SCHOOL OF THE UNIVERSITY OF MARYLAND IS NOT AMENABLE TO CONSTITUTIONAL LIMITATIONS.

1. The University of Maryland Is in the Nature of a Private Corporation.

In the third paragraph of the petition it is asserted that the University is an administrative department of the State of Maryland and that it performs "an essential governmental function", with funds derived principally from the general treasury of the State. The regents in their answer admitted the "allegation of fact" of this paragraph, denying however that the Baltimore Schools derive their maintenance funds principally from the general treasury (R. 4, 17).

The admissions of fact, of course, admit no conclusion of law; and it is submitted that whether the University of Maryland is a State Department or is in the nature of a private institution for the purposes of this case, is a question of law which by the pleadings is left open for the determination of this Court.

As pointed out by this Court in *University of Maryland vs. Coale,* 165 Md. 224, 231:

> "The present University of Maryland is a consolidation of the University of Maryland, as incorporated by the Acts of 1812, chapter 159, and the Maryland State College of Agriculture, incorporated under the Acts of 1916, Chapter 372. The act of consolidation was passed by the Legislature of 1920, chapter 480."

There is nothing in the consolidation Act which strips the University of Maryland, and its separate component schools, of its status as a private corporation. This Act (chapter 480, Acts of 1920) provides that the consolidated University should possess, in addition to the powers of the Maryland State College of Agriculture, "the powers, rights and privileges heretofore possessed by the Regents of the University of Maryland, under the charter of the University of Maryland, and may exercise such of them as they shall from time to time deem judicious".

The specific question as to whether or not the University of Maryland, as organized by the Acts of 1812, is a public or private corporation, was passed upon by this Court in 1838. There it was held that the University of Maryland was a *private corporation.* After a full discussion of the organization of the University, which itself was a consolidation of separate schools and colleges, this Court said:

> "The corporation of the University has none of the characteristics of a public corporation. It is not a municipal corporation. It was not created for political purposes, and is invested with no political powers. It is not an instrument of the government created for its own uses, nor are its members officers of the government or subject to its control in the due management of its affairs, and none of its property or funds belong to the government. The State was not the founder, in the sense of that term as applied to corporations. It was the creator only, by means of the act of incorporation, and may be called the incipient, not the perficient founder.
>
> "* * * It appears from the statement of the evidence, that it has been endowed to a small amount

by private donations, and no donations that it can derive from the bounty of the State would change its character, and convert it into a public corporation."

University of Maryland vs. Williams, 9 G. & J. 365, 397-400.

In the re-organization plan of the State Government in 1922 the University retained its corporate status and the power to determine policies under which it should operate to the best public interest.

It is true that the Attorney General has consistently taken the position that the University of Maryland is a department of the State Government, for certain purposes, such as immunity from suit.

Volume 16 of the Official Opinions of the Attorney General, page 386.

The property of the University is owned by the State, and for general administrative purposes, it is treated like any other department.

Volume 9 of the Official Opinions of the Attorney General, page 273.

The Attorney General advises and represents the University in legal matters, and its funds are disbursed through the State Comptroller.

However, in the matter of admitting students, the Board of Regents acts in the exercise of a charter power. The mere fact that it has been treated as a State Department for some purposes, does not affect the question. As was said in the *Williams* case, supra, page 398:

> "It is said there have been subsequent endowments by the State. If it be so, that cannot affect the character of this corporation. If eleemosynary and private at first, no subsequent endowment of it by the State, could change its character, and make it public."

It may also be noted that this question was not raised or discussed in the *Coale* case, *supra*. It may be significant, however, that the Supreme Court dismissed the appeal in that case, for want of a substantial Federal question, whereas in the *Hamilton* case, *supra*, it assumed jurisdiction, commenting on the fact that by express Constitutional provision and court decision, the University of California was part of the State Government.

2. Private Institutions May Select Their Students Arbitrarily, Without Regard to the Fourteenth Amendment.

It is well settled that the provisions of the Fourteenth Amendment refer to the action of the States exclusively and not to the action of individuals and private corporations.

In *Clark vs. Maryland Institute*, 87 Md. 643 (1898), there was under consideration a similar question raised by a colored citizen who was attempting to force his admittance into the Maryland Institute. This Court pointed out that the school is a private corporation, not created for political purposes nor endowed with political powers. It held:

> "It has none of the faculties, functions or features of a public corporation as they are designated in the Regents' case, 9 Gill & Johnson, 365, and the many other cases which have followed that celebrated decision." Page 658.

In the Maryland Institute case there was a precedent of four colored persons who had been admitted prior to the refusal of this applicant. Commenting upon this the Court said:

> "It (the Maryland Institute) was established for the benefit of white pupils, and has never admitted any other kind with the exception of the four instances already mentioned. When it found that the admission of these pupils had a very injurious effect on its interest, and seriously diminished its usefulness, it certainly had the right to refuse to continue such a disastrous departure from the scheme of administration on which it was organized. It would have been mere folly to persevere in the experiment under the existing circumstances. We suppose that it could hardly be maintained that the constituted authorities of the corporation did not have the right to conduct its affairs according to the plan and policy on which it was founded. * * *" Page 658.

Referring to the constitutional question the Court held that the Maryland Institute, in denying admittance to the negro, impaired no constitutional right. It said, at page 661:

> "* * * The Constitution of this State requires the General Assembly to establish and maintain a thorough and efficient system of free public schools. This means that the schools must be open to all without expense. The right is given to the whole body of the people. It is justly held by the authorities that 'to single out a certain portion of the people by the arbitrary standard of color, and say that these shall not have rights which are possessed by others, denies them the equal protection of the laws'. *Cooley on Torts*, page 287, where a large number of cases are cited. Such a course would be manifestly in violation of the Fourteenth Amendment, because it would deprive a class of persons of a right, which the

> Constitution of the State had declared that they should possess. Excellent public schools have been provided for the education of colored pupils in the city of Baltimore. But the Maryland Institute is not a part of the public school system. This has been solemnly adjudged by this Court. *St. Mary's School v. Brown,* 45 Maryland 310. The appellant has no natural, statutory or constitutional right to be received there as a pupil, either gratuitously or for compensation. He has the same rights, which he has in respect to any other private institution; and none other or greater. * * *"

Just as Maryland Institute is not a part of the public school system, neither is the University of Maryland.

In *Booker vs. Grand Rapids Medical College,* 156 Mich. 95 (1909), two negroes were taken into the school and the school attempted to bar them from returning the second year. It was held that the Medical College was a private institution which "may select those whom they will receive as students". The Court further said:

> "The arbitrary refusal to receive any student would not violate any privilege or immunity resting in the positive law, protected or granted by the Federal or State Constitution."

Also see note in 24 L. R. A. (N. S.) 447.

3. The Law School of the University Derives Its Maintenance Principally From Tuition Charges to Students.

As asserted by the Regents' in their answer, and uncontroverted in the testimony, "the Baltimore schools of the University of Maryland, of which the Law School is a part, do not derive their maintenance funds principally from the general treasury of the State but are supported principally by tuition fees paid by students in said school" (R. 17).

For all these reasons it is submitted that the University of Maryland and its school of law are not subject to the provisions of the Fourteenth Amendment, and that they may choose such students as they desire to admit.

IV.

EVEN IF THE LAW SCHOOL IS A PUBLIC INSTITUTION AMENABLE TO THE FOURTEENTH AMENDMENT, IT IS NOT REQUIRED TO ADMIT NEGROES BECAUSE THE STATE PROVIDES SCHOLARSHIPS FOR THEIR EXCLUSIVE USE.

1. The Policy of This State Is to Separate the Races.

(a) *In railway coaches.*

It has long been the policy of this State to provide separate facilities for the two races in railway coaches and on steamboats. *Article 27 of the Code,* Sections 432 to 448 inclusive, is statutory authority for the separation of white and colored passengers in these mediums of public transportation.

This segregation statute has been upheld by this Court, as to intra-state commerce, in *Hart vs. State,* 100 Md. 595, in which the Court of Appeals quoted with approval from *West Chester and Philadelphia Railroad Company vs. Miles,* 55 Pa. St. 209 (1867) where it was said, prior to a legislative Act prohibiting segregation, at page 212:

> "It is much easier to prevent difficulties among passengers by regulations for their proper separation, than it is to quell them. The danger to the peace engendered by the feeling of aversion between individuals of the different races cannot be denied. It is the fact with which the company must deal. If a negro takes his seat beside a white man or his wife or daughter, the law cannot repress the anger, or

conquer the aversion which some will feel. However unwise it may be to indulge the feeling, human infirmity is not always proof against it. It is much wiser to avert the consequences of this repulsion of race by separation than to punish afterwards the breach of peace it may have caused * * *."

The Pennsylvania Court likened the race classification to the separation of the sexes:

"The ladies' car is known upon every well-regulated railroad, implies no loss of equal right on the part of the excluded sex, and its propriety is doubted by none." Page 211.

The power of the State to separate the races in railway coaches has been upheld by the Supreme Court in *Plessy vs. Ferguson*, 163 U. S. 537 (1895).

Discussing the applicability of the Fourteenth Amendment the Supreme Court held that it was not intended to abolish distinctions based on color and pointed to the "most common instance" of separation in schools. It said, at page 544:

"The object of the amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political equality, or a commingling of the two races upon terms unsatisfactory to either. Laws permitting, and even requiring their separation in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power. The most common instance of this is connected with

the establishment of separate schools for white and colored children, which have been held to be a valid exercise of the legislative power even by courts of states where the political rights of the colored race have been longest and most earnestly enforced." (Italics supplied).

Commenting upon the *Plessy* case, *Freund* in his work on the *Police Power,* Sec. 699c, says

> "The following seems to be the strongest argument in favor of the legality of compulsory separation: it is legitimate for transportation companies to provide separate accommodations for the two races, just as it may provide ladies' waiting rooms or cars for smokers, as conducive to the comfort of the parties thus separately accommodated. Transportation companies may be subjected to public control in the interest of public convenience and comfort, and if separate accommodation is generally demanded, and not unreasonably burdensome it may be compelled by law. It then follows also that the failure to provide it or the failure to maintain it on the part of the railroad company, may be visited with penalties, and a passenger who intrudes himself into a compartment in which he is not wanted may likewise be punished. The facts in *Plessy vs. Ferguson* did not call for more than a recognition of these principles."

Also see *Article* 27, *Section* 365 of the Code, which forbids intermarriage of white and colored persons in Maryland. And also *Article* 27, *Section* 415.

(*b*) *In private and public educational institutions, at scholastic, collegiate and professional levels.*

It is a matter of general knowledge that there is no mixture of the races in educational institutions in the State of Maryland. As to private institutions the case of

Clark vs. Maryland Institute, 87 Md. 643, exemplifies the policy of this State on the question.

Public Schools.

In public education, the State has erected a dual system giving practically identical instruction to each race.

In 1872 by *Chapter* 377, *sub-chapter* 18 (*now codified as Section* 200 *of Article* 77 *of the Code of Public General Laws* 1924 *Edition*), the Legislature of Maryland established and provided a system of separate public schools for the exclusive use of the colored children of the State. This Section of the Code reads as follows:

> "200. It shall be the duty of the county board of education to establish one or more public schools in each election district for all colored youths, between six and twenty years of age, to which admission shall be free, and which shall be kept open not less than one hundred and sixty (160) actual school days or eight months in each year; provided, that the colored population of any such district shall, in the judgment of the county board of education, warrant the establishment of such a school or schools."

Furthering this policy of separate education, our Legislature has provided for the establishment of colored industrial schools in each county of the State where there is need of one, in which the colored youths of the State are given instruction in domestic science and the industrial arts. (*Code, article* 77, *section* 211).

The State also provides a State Normal School for the instruction and practice of colored teachers in the science of education. (*Code, Article* 77, *Section* 256).

As to the character of the public education furnished the colored children in public schools of the State, Doug-

las High School, an all-Negro institution, is reputed to be as good as any in Baltimore City (R. 101); whereas in the county schools the colored children study the same curriculum and the facilities of both races are substantially the same. (R. 87-100).

College Education.

At college levels the demand for education by the negro population of the State is much less, but the State has met this demand insofar as it exists by the creation of an "eastern branch" of the University of Maryland, known as Princess Anne Academy and situated at Princess Anne, Somerset County. This institution is devoted exclusively to the higher education of colored boys and girls of the State and has a rating of a junior college. (R. 51).

While this college has in the past accommodated more than one hundred students there are at the present time only thirty-three students at the school. Thus the *supply* is greater than the *demand* for this type of education, which is largely agriculture and home economics.

For those negro students who wish a four year liberal arts college, the State annually appropriates a sum of money to Morgan College (R. 105).

Post-Graduate Education.

Up to the present time there has been no demand for professional or postgraduate education. As far as the law school is concerned, there have been but nine negro applicants for admission for the years 1933, 1934 and 1935 and before that there were none (R. 107).

It is a settled policy of the University not to accept negroes except at its eastern branch at Princess Anne, as shown by the minutes of the Board of Regents (R. 60-61).

2. Separation of the Races in Educational Institutions Has Been Upheld by the Highest Authority.

There is no doubt of the power of a State to segregate the races in schools.

Gong Lum vs. Rice, Supra; 11 Corpus Juris, 806 (Civil Rights, Section 11) and cases there cited.

In the case of *Wall vs. Oyster,* 31 Appeals of D. C. 180 (1910) a federal court held that "Congress may constitutionally provide for the separation of white and colored children in the public schools of the District of Columbia."

In this State there is statutory authority for separation.

In Maryland we have not only a public policy of separation of the races in educational institutions but statutes authorizing and requiring it. At professional levels the *Acts of* 1933, *Chapter* 234 *and the Acts of* 1935, *Chapter* 577 clearly point out the State policy in this respect.

Even without statutory authority to separate the races it appears that the State, or any corporation organized under the State laws, has a right to separate the races. As this Court said in *Hart vs. State, supra,* speaking of segregation in railway coaches:

> "It seems to be well settled that a common carrier has the power, in the absence of statutory provision,

to adopt regulations providing separate accommodations for white and colored passengers, *provided, of* course, no discrimination is made." Page 601.

If common carriers may segregate the races without statutory authority it follows that private schools and public institutions *operating* under charter from the State may do likewise.

One of the earliest cases on segregation of white and colored children in schools is *Roberts vs. Boston,* 5 Cush. 198 (1849). A colored girl brought action against the school authorities of Boston because they excluded her from a white school and required her to attend a school maintained exclusively for colored children. The State of Massachusetts had neither authorized nor forbidden race segregation in the schools, but there was a State constitutional injunction of equal protection, the same as the Fourteenth Amendment (see *Gong Lum vs. Rice, supra* at page 87). It had been the public policy of Boston to segregate the races for at least fifty years. It was held by the Supreme Court of Massachusetts that the school board had the power to segregate the races without specific statutory authority upon the subject.

"'The great principle,'' said Chief Justice Shaw, "advanced by the learned and eloquent advocate of the plaintiff (Mr. Charles Sumner) is, that by the Constitution and laws of Massachusetts, all persons *without distinction of age or sex, birth* or color, origin or condition, are equal before the law. * * * But, when this great principle comes to be applied to the actual and various conditions of persons in society, it will not warrant the assertion that men and women are legally clothed *with the same civil* and political powers, and that children and adults are legally to have the same functions and be sub-

> ject to the same treatment; but only that the rights of all, as they are settled and regulated by law, are equally entitled to the paternal consideration and protection of the law for their maintenance and security."

It was held that the powers of the school board extended to the establishment of separate schools for children of difference ages, sexes, and colors, and that they might also establish special schools for poor and neglected children, who have become too old to attend the primary school, and yet have not acquired the rudiments of learning, to enable them to enter the ordinary schools.

The cases heretofore cited have concerned schools. One of the few college cases we have found is *Berea College vs. Kentucky,* 211 U. S. 45 (1908)—affirming 123 Ky. 209, 94 S. W. 623. In this case the State of Kentucky passed a law in 1904 prohibiting the teaching of white and negro pupils in the same institution. It was held that in this case the State statute, when applied to a corporation as to which the State has reserved the power to alter, amend or repeal its charter, does not deny due process of law or otherwise violate the Federal constitution.

Thus it is clear that separation of the races is not prohibited by the Fourteenth Amendment. While some cases from other states have held that, in order to justify separation, substantially equal facilities must be granted each race, it should be pointed out that neither the Supreme Court of the United States nor this Court has imposed the test of "substantial equality".

The segregation of the races, by statute or otherwise, long has been recognized by this Court. As was said by Judge Sloan, speaking for the Court in *Lee vs. State,* 164 Md. 550, at 553:

"White and colored alike are entitled to the equal protection of the laws, yet states have not been denied the right to pass and enforce many segregation statutes. Railways and other means of transportation have been required by states, and lawfully, to provide separate compartments for whites and colored. Innkeepers, in the conduct of their business, are not required to throw their houses open to whomsoever chooses to be their guests. *Hall v. De Cuir,* 95 U. S. 485, 24 L. ed. 547, 553; *Chiles v. C. & O. R. Co.,* 218 U. S. 71, 30 S. Ct. 667, 54 L. ed. 936. If the defendant's contention is sound or logical, then so long as this State has separate schools for white and colored children, he could not be brought to trial, for nowhere is the separation more marked than there. Yet it has been frequently held that separate schools do not violate the provisions of the Fourteenth Amendment. *Cumming v. Board of Education of Richmond County,* 175 U. S. 528, 20 S. Ct. 197, 44 L. ed. 262, and note. In all of the cases the right to make such regulations in public places and institutions is recognized, provided equal advantages and comforts are afforded both races, and there is no suggestion here that this has not been done."

3. This State Affords Its Colored Citizens Substantially Equal Facilities for Public Education.

(a) *It has a dual and practically identical system of secondary education for the two races.*

As pointed out above, this State maintains a dual system of public education in the lower schools, substantially equal and in most respects identical. Huffington, (R. 93; 87-100); Cook (R. 102). It not only furnishes an adequate system of separate education for its colored youth but it provides substantially more than other Southern states.

Maryland *spends more money on negro education per capita* in the lower schools than any other Southern State. In the scholastic year 1929-30 Maryland spent $43.16 on each colored child enrolled in its schools. In other states the figure ranged from $5.45 in Mississippi to $34.25 in Oklahoma. No Southern state spends as much on its colored education as it does on its white but in Maryland the ratio is more favorable to the negro than in the other states.

See *McCuistion's "Financing Schools in the South,"* published in 1930 by State Directors of Educational Research in the Southern States, 502 Cotton States Building, Nashville, Tenn.

In considering this publication it must be borne in mind that *money spent* is by no means an exact criterion of equality, since colored children get more for their school dollar than do whites. See testimony of Huffington (R. 99) where it is stated that colored teachers' salaries are lower than whites but this does not affect the equality of *education* received. In like manner, colored schoolhouses ordinarily do not cost as much as those of white children, but this would not affect the quality of education received. The above figures are cited merely to show that Maryland *spends more on colored education than any other Southern state.*

(b) *It affords substantially equal opportunities at collegiate levels at Princess Anne Academy, at Morgan College and by scholarships.*

As pointed out above, Maryland maintains the Princess Anne Academy as the eastern branch of the University of Maryland. Here the enrollment at the present

time is only thirty-three students, although more than one hundred may be accommodated (R. 74). Graduates of this institution, which is a junior college, may go into the third or junior year of Morgan College in the State, or of other colleges out of the State. The educational advantages afforded are approximately the same as at other junior colleges. The State appropriation for Princess Anne is $15,000 a year; on the present basis of the student enrollment it is $468. per student (R. 67).

On the basis of money spent by the State on white and colored college work, the following comparisons gleaned from the testimony are pertinent (R. 67, 83, 84, 105):

	Student enrollment	*State appropriation*	*Amt. spent per Student enrolled*
Colored			
Morgan			
1934-35	600	$23,400.	$39.
1935-36	600	$35,000.	$58.
Princess Anne			
1934-35	33	$15,000.	$468.
White			
Un. of Md.			
1934-35	3,600	$318,000.	$88.
1935-36	3,600	$288,000.	$80.

It will be noted from the above that the State appropriation for the year 1935-36 is greater than the preceding year in the case of Morgan College, the colored institution, and less than the preceding year in the case of the University of Maryland, the white institution.

(c) *At professional levels it affords no colored schools because heretofore there has been no sufficient demand therefor; but the scholarship system offers its negro citizens opportunities and advantages substantially equal to those given its white citizens.*

It is apparent at this early stage of the call for professional education for negroes that there are not enough students to form separate professional schools for each group, even if there were money with which to finance them. There were only nine colored persons who applied for admission to the School of Law in the years 1933, 1934 and 1935 and none before that (R. 108).

While preserving Maryland's traditional policy of separation of the races, the State has met the demand of the negroes for higher education by establishing a system of scholarships to institutions out of the State for the exclusive use and benefit of colored students. This scholarship policy was launched by the Legislature of 1933, which provided that the Board of Regents of the University of Maryland might set apart a portion of the State appropriation for Princess Anne Academy and establish scholarships for negro students who might wish to take professional courses or other work not offered in Princess Anne but which were offered white students at the University of Maryland. *Chapter* 234, *Acts of* 1933.

No special appropriation was made by the Legislature to finance these scholarships and since the University budget was severely cut there was no practical benefit to the colored race from this Act (R. 34-36, 61-64). The case before us is not affected by this circumstance, however, since Petitioner applied for admissioner to the Law School for the year 1935-36.

The General Assembly at its regular session in 1935 set up a new scholarship statute and appropriated the sum of $10,000. annually to be set aside for the higher education of negroes. This Act, after establishing a "Maryland Commission on Higher Education of Negroes," of which Judge Morris A. Soper was named chairman, provided:

> "Sec. 2. And Be It Further Enacted, That it shall be the duty of said Commission to administer the sum of Ten Thousand Dollars ($10,000) included in the Budget for the years 1935-36 and 1936-37 for scholarships to Negroes to attend college outside the State of Maryland, it being the main purpose of these scholarships to give the benefit of such college, medical, law, or other professional courses to the colored youth of the State who do not have facilities in the state for such courses, but the said commission may in its judgment award any of said scholarships to Morgan College. Each of said scholarships shall be of the value of not over Two Hundred Dollars ($200). Each candidate awarded such scholarship must be a bona fide resident of Maryland, must maintain a satisfactory standard in deportment, scholarship and health after the award is made, and must meet all additional charges beyond the amount of the scholarship to enable him to pursue his studies."
>
> *Chapter* 577, *Acts* of 1935.

This Act went into effect on June 1st, 1935. At the time of the trial below, on June 18th, 1935, three hundred and eighty colored persons had applied for application blanks for these scholarships and one hundred and thirteen completed applications had been turned in. There were twelve days left in which to file applications (R. 111).

Only sixteen of these completed applications were for graduate work; and, of these, only one was for law work (R. 109-110).

It will be noted that from the scholarship Act above quoted that the maximum available for any one student is $200 and that the scholarship covers tuition only. Since it is the policy of the scholarship commission to divide the appropriation about equally between undergraduate applicants and graduate applicants (R. 112-113), it will be seen that there will be at least twenty-five scholarships for graduate study (R. 112).

As only sixteen had applied for graduate scholarships, with but twelve days to go, it is a fair inference that there were enough scholarships to gratify all graduate or professional demands for the current year.

The petitioner in this case would have been eligible for one of these scholarships if he had applied (R. 113); and since he did not apply, he cannot be heard to deny the adequacy of the scholarship provision, assuming that he can be required to accept a fair substitute for consolidated instruction.

Howard University, in the City of Washington, maintains the nearest negro law school to Baltimore. There the tuition is $135.00 per year compared to $203.00 in the day school of the University of Maryland Law School (R. 34).

In effect the State, by paying petitioner's tuition at another school, relieves him from the payment of the $203.00 he would have to pay as tuition here, which sum he can apply to his transportation to Howard Law School or some other school of his choice.

A number of authorities have held that where the State furnishes or pays for transportation of colored persons to and from a school which is farther away from their homes than a white school, there is no discrimination or inequality.

In *Wright vs. Board of Education,* 129 Kan. 852, 284 Pac. 363 (1930) an injunction was sought to prevent the school board from removing the Wright girl from a white school to a colored school twenty blocks farther away. The State agreed to furnish transportation. In holding that there was no inequality here, the Court said:

> "Plaintiff lives within a few blocks of Randolph School (white) and it is convenient for her to attend school there. Buchanan school (colored) is some twenty blocks from plaintiff's residence and to attend school there would require her to cross numerous intersections, where there is much automobile traffic, in going to and from school. No contention is made that the Buchanan school is not as good a school and as well equipped in every way as is the Randolph school. The sole contention made by appellant here is that defendant's order that plaintiff attend school at the Buchanan school is unreasonable in view of distance she would have to go and the street intersections she would be compelled to cross. * * * This contention is taken out of the case when we examine the pleadings, for plaintiff alleged that defendant furnishes transportation by automobile bus for plaintiff to and from the Buchanan school without expense to her or to her parents, and the answer of defendant admitted that it does so. There is no contention that this transportation is not adequate, appropriate or sufficient."

In *Riecks vs. Danbury,* 257 N. W. 546, 219 Iowa— (1934) it was held that, under a statute, a school may

provide transportation *or* may make a money allowance to parents or children living two miles from the school.

In *Lehew vs. Brummell,* 103 Mo. 546 (1890), the question was whether a statute of segregation of the races in schools was unconstitutional because, in the individual case, certain colored children had to go three and one-half miles to reach a colored school whereas no white child lived farther away from the white school than two miles. Upon this question the Court said, at page 552:

> "It is true Brummell's children must go three and one-half miles to reach a colored school, while no white child in district is required to go further than two miles. The distance which these children must go to reach a colored school is a matter of inconvenience to them, but it is an inconvenience which must arise in any school system. The law does not undertake to establish a school within a given distance of anyone, white or black. The inequality in distances to be travelled by the children of different families is but an incident to any classification and furnishes no substantial ground of complaint".

To its negro citizens who desire to take up law work, Maryland says substantially this: "under our policy of separate schools for both races it is permissible and proper for the University of Maryland Law School to deny your admittance. If you were admitted you would have to pay the tuition fee of $203. a year. We cannot yet give you a separate law school in the State: there is no sufficient demand for it, nor sufficient money available to start it. However, to even things up, we will pay your tuition at some law school of your own selection out of the State. You will save the $203. tuition fee at Maryland and you may apply this money to your maintenance at the law school of your choice."

It cannot be too strongly urged that by this scholarship plan the colored youth of the State receive more real and practical benefit than if there were a law school for them in connection with the University of Maryland.

Obviously Petitioner would have no complaint whatsoever *if there were maintained a law school at Princess* Anne Academy; yet he, a resident of Baltimore City, would have to pay his maintenance charges, travelling expenses and tuition. He could not commute daily, since Princess Anne is three or four times farther from Baltimore than is Washington.

From Baltimore he could commute daily to Washington if he chose to go to Howard Law School; and it is stated as a matter of common knowledge that the $203. tuition fee he would save by accepting a scholarship is sufficient to cover his commutation charges. Or he could live in Washington, if he preferred not to commute, and the $203. thus saved would go far towards his maintenance. In either event he would be better off financially than if he were required to go to Princess Anne; and better off than a white boy from the Eastern Shore who comes to Baltimore to study law. The white boy must provide his own maintenance in Baltimore and *in addition* pay the tuition.

If a negro lives in Prince George's County where the colored population is densest (R. 90), he could commute to Washington at a negligible cost and save considerable money by the scholarship arrangement. If a negro lives on the Eastern Shore or in Southern Maryland, he would be just as close to Washington as to Baltimore and could live as reasonably in either City. *And he would save the* $203. *tuition at Maryland.*

Certainly a great advantage of the scholarship system is that the colored boy may choose his own school and no matter where he goes, whether it is Harvard, Howard, Columbia or some other school, the State of Maryland will pay his tuition charges.

It is earnestly suggested that these scholarships are eminently more practicable and more desirable from the point of view of the colored race itself than would be a separate law school established in the State.

No Demand for Negro Professional Study.

We urge upon this Court consideration of the fact that there has been no demand by the negro citizens of this State for the establishment of separate professional schools; and in the absence of a sufficient demand to justify the expenditure of the money involved, courts will not require such schools established.

In *Trustees vs. Board of Education,* 115 Miss. 117 (1917) it was held that trustees need not establish a separate school for colored persons if their numbers did not warrant it, even if there is no other school provided for them.

Also see

Black vs. Lenderman, 156 Ark. 476 (1923).

It has not been shown in this case that there is any demand for professional schools for negroes in this State. If the State were required to establish separate professional schools for negroes there is no doubt but that they would be far from satisfactory. A school set up for half a dozen persons either would be entirely inadequate to their needs or would require an appropri-

ation per student far in excess of the appropriation by the State for white professional students. Unlike an elementary school, a professional school requires expensive equipment: a law school requires an elaborate library, a pharmacy school requires a laboratory, a medical school requires both library and laboratory and, in addition, hospital facilities. Such courses are entirely unsuited to treatment in small groups and the tendency is to concentrate professional studies in large centers with adequate equipment and facilities. Thus it is far better for Maryland's negro citizens to be given scholarships to first-rate institutions out of the State than it would be for the State to supply separate schools in the State for the few colored persons who would patronize them.

Moreover, any allocation of funds to provide facilities for professional study for negroes probably would be made out of funds now available for the education of white and colored children in the lower schools. Certainly the colored race would not profit by establishing separate professional schools if this were done at the expense of the great mass of colored children who are now being educated at public expense; and neither would the white race. The only ones to profit by such a diversion of funds would be the few colored youths who would patronize such schools and these are *better* provided for by our scholarship system.

It is submitted that the negro education system of this State has been expanded by State authorities as rapidly as money will permit and as rapidly as the demand has been made. It is only within the last few years that Princess Anne Academy has given college studies; before that it was a negro high school. As time

goes on this institution doubtless will be expanded into a full four year college. In like manner, as the demand increases, suitable provision for professional education for negroes doubtless will be made in the State. In the meantime scholarships have been provided for them to institutions out of the State so that the colored youth of Maryland may have all the advantages offered by other States and offered white persons in the State.

We strongly are of opinion, and so contend, that this scholarship system established by the General Assembly at the 1933 and 1935 sessions adequately provides for the needs of colored citizens for college and professional work at the present time. It is a reasonable inference that subsequent sessions of the Legislature will amplify and expand this system as experience dictates, to the end that Maryland may continue adequately to care for the needs of its colored citizens.

CONCLUSION.

This State always has enjoyed the most amicable relationship between its white and colored citizen. This relationship has been characterized by the zealous safeguarding of the political and civil rights of the colored man. In every way open to it, the State has extended a fraternal hand to the Negro; in no way has this aid been more practically demonstrated than in public education.

At the time of the Emancipation it was generally conceded that illiteracy was the greatest drawback to the colored man in his rise to a position of civil and political equality with whites guaranteed him by the war amendments; and as far back as 1872 the General Assembly of Maryland provided for the establishment of one or more

public schools in each election district of the State for the education of colored youths between the ages of six and twenty years. This system has been continually expanded during the intervening years and it is now generally considered a model for other Southern States.

It may be said, without any prejudice to the colored race as a class, that the problem of educators in this State has been to get colored children to attend the schools provided for them (R. 92) and not so much to meet a demand for expansion. It is asserted without fear of contradiction that the State authorities are just as much interested, if not more so, in expanding Negro educational facilities and advantages in Maryland, as are the leaders of the colored race itself. The need for trained leadership among colored citizens has been thought to demand college training. For those who are fitted to receive it, this demand has been met in two ways: by appropriations to Princess Anne Academy, a junior college, and Morgan College, a four year liberal arts institution; and by the founding of scholarships to institutions out of the State.

There has never been any demand in this State for professional education for Negroes; and if there were, it is plain that the requirements of the race at school and college levels should come first. As appears in the testimony concerning the applications for scholarships under this new scholarship Act of 1935, out of 380 application blanks requested by colored youths only sixteen were interested in graduate or professional work, and only one of these was interested in law (R. 109-110). In other words, twenty-five colored youths are interested in college scholarships to every one who is interested in professional scholarships.

It is apparent that it would be absurd at this time to create separate professional schools for this small group, although conditions may change in the future and it may become less expensive and more beneficial to establish Negro medical and law schools in the State than to continue the scholarship system. This would be a great step forward, both for the colored race and for the State of Maryland, but at the present time it obviously is out of the question.

To allow petitioner to enter the University of Maryland Law School would be a departure from precedent for which there is no legislative or other authority. Public education being purely a matter of State concern, the Federal Constitution does not affect petitioner's rights therein; and if it did, there is no prejudice or inequality by which he could invoke the aid of the Fourteenth Amendment. In the absence of statute compelling mixture of the races at professional levels, it is submitted that the Regents are entirely within their rights in cleaving fast to Maryland's traditional policy of separation—a policy which for generations has proven most wise and beneficial to both races—and their adoption of this rule cannot be deemed an abuse of their discretion.

In closing we most strongly urge upon this Court that the case at bar is controlled by the decision of this Court in *Clark vs. Maryland Institute, supra,* where, in a situation closely parallel to the case at bar, it was held that the petitioner was not entitled to be received as a pupil and that there was no occasion for the application of the privilege clause of the Fourteenth Amendment. In both that case and this one the institution operated under a charter from the State; in both cases a substantial money grant was provided by a governmental agency.

For these reasons it is respectfully urged that petitioner is not entitled to the writ of mandamus in this case and the judgment of the lower Court should be reversed.

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OCTOBER TERM, 1935.

GENERAL DOCKET No. 53.

APPELLEE'S BRIEF.

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The Daily Record Co., Print, Baltimore.

TABLE OF AUTHORITIES

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STATEMENT OF THE NATURE OF THE CASE.

This is an appeal by Raymond A. Pearson, President of the University of Maryland; W. M. Hillegeist, Registrar of the Baltimore Schools of the University, and George M. Shriver et al., constituting the Board of Regents of the University, from an order of the Baltimore City Court entered the 25th day of June, 1935, granting a Writ of Mandamus, and ordering the above named appellants to admit Donald G. Murray, appellee, as a first year student in the Day School of the School of

Law of the University of Maryland for the academic year beginning September 25, 1935, upon his paying the necessary fee charged first year students in the Day School of the School of Law of the University of Maryland, and completing his registration in the manner required of qualified and accepted students in the first year class of the Day School of the School of Law of the University of Maryland, to wit, that he be not excluded on the ground of race or color (R. 41-42).

The trial Court rendered no formal opinion.

QUESTIONS FOR DECISION.

Question No. 1.

Whether the refusal of the appellants to admit appellee, a qualified student, to the first year class of the day school of the School of Law of the University of Maryland solely on account of his race or color was in violation of the Constitution and laws of the State of Maryland.

The trial court held that appellants had violated the Constitution and laws of the State of Maryland in refusing to admit appellee to the School of Law of the University of Maryland solely on account of his race or color.

Appellee contends that there is no statutory authority for excluding him from the School of Law of the University of Maryland solely on account of his race or color; that in the absence of statutory authority the attempted administrative regulation by the executive officers and agents of the University of Maryland and by the Board of Regents excluding appellee from the School of Law of the University of Maryland solely on account of his

race or color is void; and that appellants having conceded of record that appellee was qualified from an educational standpoint to be admitted into the Day School of the School of Law of the University of Maryland (R. 44), and basing their refusal to admit him solely on account of his race or color (R. 18-22), the trial court was correct in issuing the writ of mandamus herein.

QUESTION No. 2.

Whether appellants' attempt to exclude appellee, a qualified student, from the day school of the School of Law of the University of Maryland solely on account of race or color was a denial to him of the equal protection of the laws within the meaning of the Fourteenth Amendment to the Constitution of the United States.

The trial court held that appellants could not exclude appellee from the School of Law of the University of Maryland solely on account of his race or color.

Appellee contends that the acts of the executive officers and agents of the University of Maryland, and the Board of Regents, in attempting to exclude appellee, a qualified student, from the School of Law of the University of Maryland was state action within the meaning of the Fourteenth Amendment to the Constitution of the United States; that the State of Maryland having established a state university supported in part from public funds and under public control, appellee, if otherwise qualified, could not be excluded therefrom solely on account of his race or color; that the State of Maryland has provided appellee no equivalent in opportunities for legal education equal to the opportunities and advantages offered him in the School of Law of the University of Maryland;

and that the attempt by appellants to exclude him from the School of Law of the University of Maryland solely on account of his race or color in the absence of equal opportunities and advantages in legal education otherwise furnished him by the State of Maryland is a denial to him of the equal protection of the laws within the meaning of the Fourteenth Amendment to the Constitution of the United States.

STATEMENT OF FACTS.

Appellee, Donald G. Murray, a Negro citizen of the State of Maryland and a resident of the City of Baltimore, on January 24, 1935, made application in due form for admission as a first year student in the Day School of the School of Law of the University of Maryland (R. 6, 18). His application was rejected by the appellant President of the University and the appellant Registrar solely on account of his race (R. 30-32). He appealed from this ruling to the appellants, the Board of Regents of the University (R. 32-33), who ratified the rejection (R. 60-61).

Murray is a graduate of Amherst College with the degree of Bachelor of Arts conferred upon him in 1934 after successful completion of a four-year residence course (R. 6). Appellants stipulated that he was educationally qualified to enter the Day School of the School of Law of the University of Maryland (R. 44).

The University of Maryland is an administrative department of the State of Maryland, performing an essential governmental function and supported in part out of funds derived from taxes collected from the citizens of the State (R. 4, 17). The powers of governing the Uni-

versity are by law vested in the Board of Regents; the President and Registrar of the University act as agents of the Board. The charter of the University provides that it shall be maintained "upon the most liberal plan, for the benefit of students of every country and every foreign denomination" (R. 4).

Under its charter the University conducts in the City of Baltimore a School of Law as an integral component part of the University. The School operates in two divisions: a day school and an evening school, having the same entrance requirements, to wit, the completion of at least one-half of the work acceptable for a Bachelor's degree granted on the basis of a four-year period of study by the University of Maryland or a principal college or university in the State (R. 5). The School of Law of the University of Marlyand is the only State institution which affords a legal education to Maryland citizens, and is the only law school in Maryland approved by the American Bar Association and a member of the Association of American Law Schools (R. 5, 18, 54).

All racial groups except Negroes, if otherwise qualified, are admitted to the University. Resident Negro citizens are excluded; non-resident whites, Filipinos, Indians, Mexicans, Chinese, et al., are admitted (R. 54-59).

When Murray applied for admission to the School of Law he was advised that the University of Maryland did not accept Negro students except at Princess Anne Academy, the so-called Eastern Branch of the University of Maryland (R. 30-32). No instruction in law is offered at Princess Anne Academy (R. 47). Murray was further referred to Chapter 34 of the Acts of 1933 which pur-

ported to create scholarships for Negro students who desired to take professional courses or other work not given at Princess Anne Academy (R. 21, 31). No money was ever appropriated or allocated for scholarships under said Act of 1933, nor was any scholarship under it ever awarded (R. 62-65).

Ten thousand dollars were appropriated for Negro scholarships under Chapter 577 of the Acts of 1935, approved April 29, 1935 (R. 20, 109). The administration of the Act was placed in the hands of a specially created Maryland Commission on Higher Education of Negroes. The administrative interpretation of the Act was that the scholarships provided covered tuition only (R. 112); and there were so many applications for scholarships that the Commission was not in position to satisfy all qualified applicants (R. 110-111).

Murray does not want an out-of-state scholarship (R. 48). He desires to attend the School of Law of the University of Maryland in Baltimore where he is at home and room and board cost him nothing (R. 45, 50). The nearest out-of-state law school with a general standing comparable to that of the School of Law of the University of Maryland, which he could attend, is the Howard University School of Law in Washington, D. C. To attend this School Murray would be put to the expense of commuting daily from Baltimore to Washington and return, with attendant loss of time; or of paying for room and board in Washington (R. 49-50).

Murray further desires to attend the School of Law of the University of Maryland for profesisonal advantages. He is preparing himself to practice law in Baltimore, and attending law school in Baltimore would give

him the opportunity to observe the Maryland courts and to become acquainted with other Maryland practitioners (R. 45). Ninety-five per cent. of the enrollment in the School of Law of the University of Maryland comes from the State of Maryland (R. 84), and the School of Law lays emphasis on Maryland law (R. 85). A majority of its faculty is made up of judges and practicing attorneys of Maryland (R. 85).

Finally Murray desires to attend the School of Law of the University of Maryland in exercise of his rights as a citizen to share equally the advantages offered by a public tax supported state university (R. 45).

Murray renewed the tender of his application and examination fee in open Court (R. 87), and submitted himself to be fully able to meet all legitimate demands of the School of Law of the University of Maryland (R. 46). The tender was refused (R. 87).

ARGUMENT.

I.

THE REFUSAL OF THE APPELLANTS TO ADMIT APPELLEE, A QUALIFIED STUDENT, TO THE FIRST YEAR CLASS OF THE DAY SCHOOL OF THE SCHOOL OF LAW OF THE UNIVERSITY OF MARYLAND SOLELY ON ACCOUNT OF HIS RACE OR COLOR WAS IN VIOLATION OF THE CONSTITUTION AND LAWS OF THE STATE OF MARYLAND.

There is no statutory authority for excluding appellee from the School of Law of the University of Maryland solely on account of his race or color.

The declaration of Rights of the State of Maryland, Article 43, charges the legislature with the duty of en-

couraging "the diffusion of knowledge and virtue, the extension of a judicious system of general education, the promotion of literature, the arts, sciences, agriculture, commerce and manufactures, and the general amelioration of the condition of the people." The State Constitution, Article VIII, Section 1, provides:

> "The General Assembly, at its first session after the adoption of this Constitution, shall, by law, establish throughout the State a thorough and efficient system of free public schools; and shall provide by taxation or otherwise, for their maintenance."

Nothing in the Declaration of Rights or in the State Constitution requires or authorizes the separation of white and Negro students.

In execution of its trust the General Assembly set up a system of free public schools for the youth of the State, and has from time to time extended the system of free public education from the elementary, to the high school, to the normal school level.

> See Bagby, Annotated Code of Maryland, Article 77.

Separate, but patently unequal, provisions are made in the public school laws for colored elementary, industrial, high and normal schools; the salaries of the colored teachers therein, and the administrative officers thereof.

> For example, see:
> Code, Art. 77, Chap. 3A, sec. 35 (4); Chap. 18; Chap. 19, Sec. 204; Chap. 20, Secs. 211-214.

No collegiate education for either white or Negro students was provided as a part of the system of free public schools. Down to the year 1935 the collegiate and professional education which the State of Maryland offered to its citizens was provided by it at the University of Maryland, and through certain free scholarships to institutions *within* the State of Maryland attended exclusively by white students.

See Code, Art. 77, secs. 240-257;
See Acts of 1912, Chap. 90, scholarships at The Johns Hopkins University.

By chapter 234, Acts of 1933 (Code, Art. 77, sec. 214A) the Legislature attempted to establish certain out-of-state "partial scholarships" for Negro students as follows:

> "* * * The Board of Regents of the University of Maryland may allocate such part of the state appropriation for Princess Anne Academy or other funds of the Academy as may be by it deemed advisable, to establish partial scholarships at Morgan College or at institutions outside of the State of Maryland, for Negro students who may apply for such privileges, and who may, by adequate tests, be proved worthy to take professional courses or such other work as is not offered in the said Princess Anne Academy, but which is offered for white students in the University of Maryland; and the Board of Regents of the University of Maryland shall have authority to name a Board which shall prepare and conduct such tests as it may deem necessary and advisable in order to determine which applicants for scholarships may be worthy of such awards."

The record shows (R. 34-36, 62-65) that no money was ever appropriated or allocated for these "partial scholarships" under the Act of 1933, nor was any scholarship under it ever awarded.

The first State appropriation for collegiate and professional scholarships for Maryland Negro students was $10,000 provided by Chap. 577 of the Acts of 1935. This Act created a special Maryland Commission on Higher Education of Negroes, and assigned it the duty of administering the said $10,000 "for scholarships to Negroes to attend college *outside* the State of Maryland, it being the main purpose of these scholarships to give the benefit of such college, medical, law, or other professional courses to the colored youth of the state who do not have facilities in the state for such courses, but the said commission may in its judgment award any of said scholarships to Morgan College. Each of said scholarships shall be of the value of not over Two Hundred Dollars ($200) * * *." (Italics ours.)

There is nothing in the charter of the University of Maryland and the acts amendatory thereto, as confirmed and adopted by Chapter 480, Acts of 1920, (Code, Art. 77, sec. 240) restricting admission to the University of Maryland to white students only.

The College of Medicine of Maryland, which was the nucleus of the present University of Maryland, was incorporated by Chapter 53, Acts of 1807. It was therein provided that the College be established "upon the following fundamental principles, to wit: The said college shall be founded and maintained forever upon a most liberal plan, for the benefit of students of every country and every religious denomination, who shall freely be admitted to equal privileges and advantages of education, and to all the honors of the college, according to their merit, without requiring or enforcing any religious or civil test * * *."

In 1812 (Chap. 159, Acts of 1812) the legislature authorized the College of Medicine "to constitute, appoint and annex to itself, the other three colleges or faculties, viz., The Faculty of Divinity, the Faculty of Law, and the Faculty of the Arts and Sciences; and that the four faculties or colleges, thus united, shall be and they are hereby constituted an University, by the name and under the title of the University of Maryland." The charter provided (Sec. 2, Chap. 159 *supra*):

> "That the said University shall be founded and maintained upon the most liberal plan, for the benefit of students of every country and every foreign denomination, who shall be freely admitted to equal privileges and advantages of education, and to all the honors of the University, according to their merit, without requiring or enforcing any religious or civil test, upon any particular plan of religious worship or service * * *."

This statement of basic policy has never been modified or limited in any way. Negro students were actually admitted into the School of Law of the University of Maryland in the 1890's, and two graduated therefrom. (R. 86)

Until 1920 the University was a private institution within the meaning of the decision in *Clark vs. Maryland Institute,* 87 Md. 643 (1898). In 1920 by Chap. 480 *supra* the legislature took over the University of Maryland as a state institution, adopted and confirmed the former charters (R. 4, 17). The Act of 1920 gave the State of Maryland *one* state university offering collegiate and professional education. The Act makes no distinction between the races and there is no expression in it which could be interpreted as applying to the white race only. In the absence of equal facilities for colle-

giate and professional education for qualified Negro citizens otherwise, the Act if interpreted to benefit white students only would be unconstitutional.

> "* * * But the denial to children whose parents, as well as themselves, are citizens of the United States and of this State, admittance to the common schools solely because of color or racial difference without having made provision for their education equal in all respects to that afforded persons of any other race or color, is a violation of the provisions of the fourteenth amendment of the Constitution of the United States * * *" Piper v. Big Pine Schools District 193 Cal. 664 (1924) at p. 668-669.

See also:

Ward v. Flood, 48 Cal. 36, 17 Am. R. 405 (1874);
State v. Duffy, 7 Nev. 342, 8 Am. R. 713 (1872);
U. S. v. Buntin, 10 Fed. 730 (C. C. Ohio) (1882);
Corey v. Carter, 48 Ind. 327 (1874);
Williams v. Bradford, 158 N. C. 36, 73 S. E. 154 (1911);
5 *Ruling Case Law,* 596, sec. 20;
11 *C. J., Civil Rights,* sec. 10, p. 805;
Cooley on Torts (Perm. Ed.) sec. 236.

There were, and are, no other facilities for Negroes to study law in the State of Maryland (R. 5, 18), so that under the well established doctrine that a statute will not be declared unconstitutional so long as a constitutional interpretation is reasonably available, the Act of 1920 must be held to open the doors of the University of Mary-

land to qualified white and black citizens of Maryland alike.

> "We are not at liberty to declare a legislative act void, as being unconstitutional, unless it is clearly so, beyond any reasonable doubt. There is always a strong presumption in force of the validity of legislation, which must be overcome by some convincing reason to induce a court to declare it void. The act under consideration makes no distinction between the races and there is no expression in it which leads us to think that the school was intended for the exclusive benefit of one race or the other * * * " Whitford v. Board of Commissioners, 159 N. C. 160, 74 S. E. 1014 (1912) at p. 1015.

The sole question remaining under this sub-heading is whether any subsequent statute has legally modified the effect of the Act of 1920 so as to exclude Negroes from the School of Law of the University of Maryland. This depends upon the interpretation of the two so-called out-of-state scholarship acts of 1933 and 1935, *supra.*

There is no express provision in either act conditioning the scholarships upon a forfeit of the Negro student's right to attend the University of Maryland, any more than there is a condition of forfeiture upon the "Free Scholarships" established through state appropriation at St. Mary's Female Seminary, St. John's College, Western Maryland College, Maryland Institute, Washington College, Charlotte Hall School, The Johns Hopkins University, etc.

> See Code, Art. 77, secs. 241 et seq.; Acts of 1912, Chapter 90.

White students have the *option* of attending the University of Maryland or applying for "free scholarships" covering the same courses at the institutions mentioned; and in the case of The Johns Hopkins University "free scholarships", for courses not offered in the University of Maryland. The language of the act of 1933 is distinctly permissive only: "partial scholarships * * * for Negro students who may apply for such privileges".

Nothing in the 1933 Act says that Negro students who do not desire to apply for such privileges cannot attend the University of Maryland. The 1935 act is a limited enabling act good for two years only, creating scholarships *outside* the State without reference to the limitation of parallel courses at the University of Maryland. It is impossible to read into these acts of 1933 and 1935 any forfeiture of the rights of qualified Negro citizens of Maryland to attend the state University of Maryland without striking down the whole structure of public collegiate and professional education in the State of Maryland as unconstitutional because therein Negroes are denied the equal protection of the laws.

There is no statutory authority express or implied which excludes Negroes from the University of Maryland.

B. *In the absence of statutory authority the attempted administrative regulation by the executive officers and agents of the University of Maryland and by the Board of Regents excluding appellee from the School of Law of the University of Maryland solely on account of his race or color is void.*

The right of admission to a state university is a right which the trustees or other officers are not authorized to

abridge materially, and which they cannot as an abstract proposition rightfully deny.

Foltz v. Hoge, 54 Cal. 28 (1879);
State v. White, 82 Ind. 278 (1912);
Cornell v. Gray, 33 Okla. 591 (1912).

It has been uniformly held that in the absence of express authority by statute, a municipality, school district or board has no authority even to separate white and colored children for educational purposes.

> " * * * It must be remembered that unless some statute can be found authorizing the establishment of separate schools for colored children that no such authority exists; * * * " *Board of Education v. Tinnon,* 26 Kan. 1, 39 L. R. A. 1020 (1881).

Crawford v. District School Board, 68 Or. 388, 137 Pac. 217 (1913).

The administrative authority, in the absence of power delegated by statute, cannot exclude Negro students from schools established for white students, even though the educational facilities in the segregated Negro school are equal or superior to those of the white school.

People ex rel. Bibb v. Mayor, 193 Ill. 309, 61 N. E. 1077, 56 L. R. A. 95 (1901).

All youth stands equal before the law,

Clark v. Board, 24 Iowa 266, 277 (1868).

The question as to what the legislature might have done is beside the point; the administrative authority cannot arrogate to itself the legislative functions.

Tape v. Hurley, 66 Cal. 473, 6 P. 129 (1885).

It is noteworthy herein that appellants themselves do not claim any statuory authority for excluding appellee from the School of Law of the University of Maryland solely on account of his race or color. The only authority they rely on is a resolution of the Board of Regents April 22, 1935, recorded in the minutes of the Board and set out in the Record pp. 60-61.

While the Board of Regents of the University of Maryland has large and discretionary powers in regard to the management and control of the University, it has no power to make class distinctions or racial discrimination.

> See *Chase v. Stephenson,* 71 Ill. 383, 385 (1874).

The reason is obvious. A discrimination by the Board of Regents against Negroes today may well spread to a discrimination against Jews on the morrow; Catholics on the day following; red headed men the day after that.

> " * * * it is obvious that a board of directors can have no discretionary power to single out a part of the children by the arbitrary standard of color, and deprive them of the benefits of the school privilege. To hold otherwise would be to set the discretion of the directors above the law. If they may lawfully say to the one race you shall not have the privilege which the other enjoys they can abridge the privileges of either until the substantive right of one or both is destroyed." *Maddox v. Neal,* 45 Ark. 121, 124 (1885).

Most of the cases above cited have dealt with elementary education and neighborhood schools. If a board of education cannot of its own motion exclude Negro children from a neighborhood school, although more schools

are available within the same community, it follows with greater force that the administrative authority of the only state university within the territory of the State cannot, minus legislative authorization, exclude a qualified citizen of the State from the only instruction in law which the State offers to its citizens. Counsel has been unable to find a case with facts exactly paralleling the instant case. The most recent case involving an apparently allied problem is *State ex rel. Weaver v. Board of Trustees of Ohio State University,* 126 Ohio St. 290, 185 N. E. 196 (1933). In that case, however, no attempt was made to exclude the Negro student from the University, nor even from the course. The court took the position that the University was offering her its full facilities, exactly the same as it offered to the white students in the same courses.

Cf. *Patterson v. Board of Education,* 11 N. J. Misc. 179 (1933).

As distinguished from the Weaver case, the administrative authority of the University of Maryland, on its own responsibility, attempted to withhold all the facilities of the University from appellee solely on account of his race or color.

The school cases establish clearly that this attempted exclusion was void.

C. *Appellants having conceded of record that appellee was qualified from an educational standpoint to be admitted into the Day School of the School of Law of the University of Maryland, and basing their refusal to admit him solely on account of his race or color, the trial court was correct in issuing the writ of mandamus.*

While the State is under no compulsion to establish a state university, yet if a state university is established the rights of white and black are measured by the test of equality in privileges and opportunities. No arbitrary right to exclude qualified students from the University of Maryland is claimed by appellants except as to qualified Negroes, whom the administrative authority would reject on the sole ground of race or color. As to all other racial elements comprising the population of Maryland, the appellants concede that if the students were otherwise qualified they would be admitted as a matter of course. (R. 55-59.) White students from foreign states, if otherwise qualified, would be admitted as a matter of course. (R. 59.) In other words, assuming that a student is qualified his admission to the proper course in the University of Maryland, provided he is not a Negro, is a ministerial matter. If he is a qualified Negro, he is rejected automatically (R. 55-59).

Appellants stipulated of record that appellee was fully qualified from an educational standpoint to be admitted into the Day School of the School of Law of the University of Maryland (R. 44), to which he had applied for admission (R. 6, 10). They automatically and arbitrarily rejected him solely on account of his race or color. (R. 18-22, 30-34, 60-61.) No element of discretion was involved.

Under these circumstances the writ of mandamus was properly issued after full consideration of all the pleadings, stipulations of record and the evidence taken, to undo the arbitrary wrong inflicted by the appellants on the appellee, and to compel them to the proper performance of their ministerial duty to accept and register him

in the Day School of the School of Law of the University of Maryland upon the same terms as any other qualified applicant.

See

State v. Duffy, 7 Nev. 342 (1872).
Ward v. Flood, supra.
Piper v. Big Pine School District, supra.
Woolridge v. Board of Education, 157 Pac. 1184 (1916).
People ex rel. Bibb v. Mayor etc. City of Alton, supra.
Lowery v. Board of Trustees, 52 S. E. 267 (1906).
Clark v. Board of Trustees, 24 Iowa 266 (1868).
Smith v. Independent School District, 40 Iowa 518 (1875).

II.

APPELLANTS' ATTEMPT TO EXCLUDE APPELLEE, A QUALIFIED STUDENT, FROM THE DAY SCHOOL OF THE SCHOOL OF LAW OF THE UNIVERSITY OF MARYLAND SOLELY ON ACCOUNT OF RACE OR COLOR WAS A DENIAL TO HIM OF THE EQUAL PROTECTION OF THE LAWS WITHIN THE MEANING OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

A. *The acts of the executive officers and agents of the University of Maryland, and of the Board of Regents, in attempting to exclude appellee, a qualified student, from the School of Law of the University of Maryland was state action within the meaning of the Fourteenth Amendment to the Constitution of the United States.*

It being conceded of record that the University of Maryland is an administrative department of the State of Maryland, and a State institution performing an essential governmental function; that the funds for its support and maintenance in part are derived from the general Treasury of the State out of funds procured by taxes collected from the citizens of Maryland; that the appropriations for it are made by the Legislature as a part of the public school system; that the governing body of the University is the Board of Regents, who are appointed by the Governor, by and with the consent of the Senate; and that the appellant President of the University and the appellant Registrar function as agents of the Board of Regents under their supervision and control (R. 4, 17-18)—it follows that the action of the President, the Registrar and the Board of Regents in attempting to exclude appellee from the School of Law of the University of Maryland solely on account of his race or color was state action within the meaning of the Fourteenth Amendment to the Constitution of the United States.

> "Whoever, by virtue of public position under a State government, deprives another of property, life, or liberty, without due process of law, or denies or takes away the equal protection of the laws, violates the constitutional inhibition; and as he acts in the name and for the State, and is clothed with the State's power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning. Then the State has clothed one of its agents with power to annul or to evade it." *Ex parte Virginia*, 100 U. S. 339, 346 (1879).

B. *The State of Maryland having established a state university supported in part from public funds and under public control, appellee, if otherwise qualified,*

could not be excluded therefrom solely on account of his race or color.

The general proposition that a state cannot establish a single state university and exclude Negro citizens solely on account of race or color has already been argued *supra* under Section I-A. At the trial appellants did not seriously challenge this general proposition, but maintained that the State had provided appellee with equal facilities for the study of law otherwise than in the School of Law of the University of Maryland. The argument which follows will demonstrate that no such equal facilities have been afforded appellee.

C. *That the State of Maryland has provided appellee no equivalent in opportunities for legal education equal to the opportunities and advantages offered him in the School of Law of the University of Maryland.*

The question whether the State of Maryland has offered appellee any opportunities and facilities for the study of law otherwise than in the School of Law of the University of Maryland depends upon the two so-called scholarship acts of 1933 and 1935 *supra.*

The administration of the scholarship act of 1933 was committed to appellants, the Board of Regents. The record discloses that the interpretation of the act was that the Board of Regents was to give the Negro student the difference between the cost of his tuition in the foreign school and the cost of tuition for the same course in the University of Maryland. If the tuition in the foreign school happened to be lower than the tuition for the same course in the University of Maryland, the Negro student

was to receive nothing. (R. 71.) Appellant Pearson, President of the University of Maryland, in rejecting appellee's application solely on account of race or color referred him to the scholarship act of 1933 and suggested that he register in the Howard University School of Law. (R. 33-34.) On the witness stand appellant Pearson was forced to admit that if appellee had registered in Howard University School of Law, he would not have intended to give appellee a single cent under the scholarship act of 1933 (R. 71).

Appellee is reluctantly forced to charge the appellants with evasion throughout. The attitude of the Board of Regents of the University of Maryland toward Negro education in the State is illustrated in its attempt to avoid giving Princess Anne Academy its fair share of the money due it under the Federal Morrill Act. The Morrill Act of 1862 provided for Federal grants in aid of State land grant colleges. It was amended by Act of August 30, 1890, to prohibit expressly discrimination on account of race; but it was therein provided that if a State maintained separate educational institutions of like character for white and colored, and a just and equitable division of the fund received be divided by the State between the two institutions such division should be deemed a compliance with the Act. The State of Maryland regularly received Federal donations under the Morrill Act, and down to 1933 applied the same for the benefit of white students only. In 1933 the General Assembly provided (Acts of 1933, Chap. 34; Code, Art. 77, Sec. 214A *supra*) that the donations received under the Morrill Act, which amounted to $50,000 per year, should be "divided on the basis of the population of the State of Maryland as shown by the latest census, so that

a percentum of these funds equal to the percentum of the Negro population to the whole population of the State, *shall be expended by the Comptroller of the State, upon recommendation of the Regents of the University of Maryland,* for the benefit and in the interests of the Princess Anne Academy." (Italics ours.) The Census of 1930 established that Negroes constituted approximately 17% of the total population of Maryland, which would make the sum to be expended for the benefit of Princess Anne Academy under the Act approximately $8,500.00.

The minutes of the Board of Regents show that less than a year previously, to wit on September 9, 1932, (R. 61) the Board of Regents had attempted to avoid using any of the proceeds of the Morrill Act donations for Negro education by withdrawing $600.00 from the miserably small existing budget of Princess Anne Academy to create some Junior and Senior College scholarships:

> "The Committee on Princess Anne recommends that authority be given for the use of not to exceed $600, payable from available funds in the Princess Anne budget, as scholarships for students who have completed the Freshman and Sophomore college work now offered at Princess Anne and who desire to take Junior and Senior years of college work. In view of the fact that Junior and Senior work is not given at Princess Anne it will be necessary for the higher work in agriculture to be obtained in some other state. These scholarships would be used to assist such students.
>
> "These scholarships would represent a smaller expenditure of State funds than would be required to provide the additional education facilities at Princess Anne. A precedent for such scholarships had been provided by other states and the scholarships are recommended by the Federal Office of Education.

> *The institution of a few of these Scholarships would make it impossible for anyone to claim that Negroes are not given a fair opportunity in Maryland* under the terms of the Land Grant legislation * * *" (R. 61, italics ours).

A specious gesture on the part of the Board of Regents to delude the Negro population of Maryland and keep it quiet.

It is to be noted that the Board of Regents ratified in full the duplicity of the appellant President in dealing with the appellee; and that this ratification coming April 22, 1935 (R. 60) antedated the scholarship act of 1935, which was approved April 29, 1935. At that time the Board of Regents, agents of the State of Maryland, did not even have the semblance of an equivalent to offer appellee in exchange for excluding him from the School of Law of the University of Maryland solely on account of his race or color; but they affirmed the conduct of the President of the University in concealing that fact from him.

The dual and inferior standard which appellants apply to Negro education is evidenced by the pitiful attempt of the President of the University on the witness stand to assert that just as good a course was offered at Princess Anne as at College Park. (R. 51-53, 67-69, 72-76).

Not only on the part of the Board of Regents but in the official policy of the State as expressed in its school laws (See Code, Art. 77, *supra*), it is notorious that no real attempt is made to provide true equality between white and Negro public education in Maryland in a single particular: length of school term, teacher's salaries, bus

transportation, high school facilities, per capita cost of education per pupil, or otherwise. The scholarship act of 1935 (Acts of 1935, Chap. 577) is no exception.

This scholarship act of 1935 is a special experimental limited act providing $10,000 for the total of scholarships for Negro collegiate, graduate and professional education. The act was interpreted to provide scholarships for tuition only. (R. 112.)

No provision is made for the differential in maintenance between what it would cost the Negro student to maintain himself at the University of Maryland and what it would cost him to maintain himself at the foreign school. No differential in cost of travel is provided. The Negro student would have to bear the cost of maintenance and travel himself.

Appellee does not concede that it is constitutional for a State to exile one set of its citizens beyond its borders to obtain the same education which it is offering to citizens of different color at home. It is not without significance that all the "free scholarships" which the State provides for its white citizens are in Maryland colleges and universities. Only its Negro citizens are exiled.

But granting for the sake of argument, that the Act is not void for constitutional reasons regardless of its money provisions, it still does not furnish appellee the equivalent of a course in law at the School of Law of the University of Maryland.

1. Even though his tuition charges of $135.00 in the Howard University School of Law would be paid by the State of Maryland, and he himself would have to pay

$203.00 to attend the Day School of the School of Law of the University of Maryland (R. 33-34), appellee would still be the loser to attend the Howard University School of Law.

a. If he commuted from his home in Baltimore to Washington and return each school day, commutation would cost him approximately $15.00 per month for 9 months; he would have to buy at least one meal per school day in Washington; he would lose four hours per school day on the road from home to school and back again, or approximately 840 hours during the school year which he might otherwise use in relaxed, uninterrupted work on his courses. Then there would be the physical energy expended in the travel back and forth catching early and late trains.

b. If he lived in Washington he would have to pay for separate room and board, whereas attending the School of Law of the University of Maryland he could live at home with no maintenance expense. (R. 50.) The question whether he can be forced into exile has already been noted.

2. Since appellee desires to practice law in Baltimore, the $135.00 scholarship would be no equivalent for loss of the opportunity to observe the courts in Baltimore during his law school career which would be possible if he attended the School of Law of the University of Maryland; no equivalent for the familiarity and drill he would get in Maryland law through the special emphasis laid on it in the instruction given in the School of Law of the University of Maryland; no equivalent for the opportunity he would have to become acquainted with, to ap-

praise the strength and weaknesses of the Judges and practitioners of Maryland whom he would have to deal with later in his practice. It must be remembered that the law is a competitive profession, and this matter of equivalent must be judged in part on the basis of the handicap which appellee would have coming from a foreign law school in competitive practice with graduates of the School of Law of the University of Maryland.

3. The $135.00 scholarship is but a tempting mess of pottage held out to induce him to sell his citizenship rights to the same treatment which other citizens of Maryland receive, no more and no less. Equivalents must also be considered in terms of self-respect. Appellee is a citizen ready to pay the same rate of taxes as any other citizen, and to go as far as any other citizen in discharge of the duties of citizenship to state and nation. He does not want the scholarship or any other special treatment.

4. The School of Law of the University of Maryland is firmly established in the life of the State. Founded in 1813, the School of Law has been providing legal education to the citizens of Maryland without interruption since 1870. The scholarship act of 1935 is frankly a temporary experiment with only two years of life guaranteed it. The shortest day law course in a recognized law school is three years. The scholarship act by the wildest stretch of the imagination cannot be considered the equivalent of the School of Law of the University of Maryland.

It is plain that the State of Maryland has not offered appellee the equivalent of the opportunities and advantages which he would have in studying law in the School of Law of the University of Maryland.

D. *The attempt by appellants to exclude appellee from the School of Law of the University of Maryland solely on account of his race or color, in the absence of equal opportunities and advantages in legal education otherwise furnished him by the State of Maryland, was a denial to him of the equal protection of the laws within the meaning of the Fourteenth Amendment to the Constitution of the United States.*

The argument on this point has already been anticipated throughout the brief.

It is the further contention of the appellee that even if this Court should find that the General Assembly intended to exclude Negroes from the University of Maryland by the so-called scholarship acts of 1933 and/or 1935, nevertheless since said acts furnished Negroes no true equality they are unconstitutional and cannot be the legal predicate of an exclusion of Negroes from the University.

> "Had the petition alleged specifically that there was no colored school in Martha Lum's neighborhood to which she could conveniently go, a different question would have been presented, and this, without regard to the State Supreme Court's construction of the State Constitution as limiting the white schools provided for the education of children of the white or Caucasian race." *Gong Lum v. Rice,* 275 U. S. 78, 84 (1927).

In the principal case appellee has maintained from the beginning that the *only* law school in Maryland which he could attend is the School of Law of the state University of Maryland, and that the State has offered him no equivalent substitute therefor. Appellants' attempt to exclude

him from the School of Law under the circumstances, solely on account of his race or color, is a denial to him of the equal protection of the laws within the meaning of the Fourteenth Amendment to the Constitution of the United States.

Ward v. Flood, 48 Cal. 36 (1874).
Piper v. Big Pine School District, 193 Cal. 664 (1924).
United States v. Buntin, 10 Fed. 730 (1882).
People, ex rel. Bibb, v. Alton, 193 Ill. 309 (1901).

It remains to notice some of the argument advanced by the appellants at the trial in their attempt to defeat the application for the writ.

1. Appellants contended that there was no demand on the part of Maryland Negroes for collegiate and professional education (R. 21). The record however shows that the number of applications for scholarships under the Act of 1935 was so great that there would not be scholarship money enough to satisfy all qualified applications. (R. 110-111). 626 Negroes are registered in Morgan College in Baltimore. (R. 67). Further it does not sound well for the agents of the State to complain that there is no great demand on the part of Negroes for collegiate and professional education, when the State itself has made it difficult for Maryland Negroes to qualify for collegiate and professional education because of the inferior elementary schools which the State and counties maintain and the absence of adequate high school facilities for Negroes. Finally appellee is an individual. His years and days are numbered, and he cannot wait for his education until there is a mass demand to the satisfaction of

the appellants. A citizen's constitutional rights receive protection on an individual basis.

> "This argument with respect to volume of traffic seems to us to be without merit. It makes the Constitutional right depend upon the number of persons who may be discriminated against, whereas the essence of the constitutional right is a personal one." McCabe v. Atchison Topeka & Santa Fe Ry. Co., 235 U. S. 151, 160 (1914).

2. Appellants contended that public sentiment demanded the exclusion of appellee from the School of Law of the University of Maryland (R. 66), and dire predictions were made that there would be disorders, loss of enrollment and general friction if appellee were admitted to the School of Law. It is a notorious fact of public comment and general note in the public press of which this Court can take judicial notice and which appellants will not deny, that the School of Law opened for its Fall term September 25, 1935, that appellee registered and was admitted as a student, and there has been no disorder, no friction, no loss of enrollment, but on the contrary a substantial increase in enrollment both in the School of Law and in the total enrollment in the University.

Maryland has come a long way from the days of *Clark v. Maryland Institute*, 87 Md. 643 (1898), where the Superior Court of Baltimore City denied mandamus to compel the Maryland Institute to enroll a Negro student. This Court affirmed on the ground that the Maryland Institute was a private institution, but went on in its opinion to note:

> " * * * The effect of the admission of these four pupils was very disastrous. There was an immovable

> and deep settled objection on the part of the white pupils to an association of this kind. Notwithstanding earnest and zealous efforts on the part of the board of managers and the faculty of teachers to reconcile the white pupils, their parents and guardians to the innovation, it caused a great decrease in the number of pupils; and the bringing of this suit made it still greater" (p. 656).

It is the height of absurdity to say that appellee Murray cannot sit in the same room and recite and study without friction with the same men, who within the next few years will have to sit side by side with him within the bar of the Court and at the counsel table.

The question was asked the President of the University on the witness stand "just what harm, in your opinion, would arise from the fact that a Negro boy might want to occupy a seat at the law school of the University of Maryland, the same as any other student, minding his own business." The President replied: "I did not go into that question. I felt I knew the well-established policy in this State, the District of Columbia, and different States, and personally, I was influenced by that policy." He was asked whether the question had ever been submitted to the students of the School as to the admission of Negro students. He replied he did not know (R. 66). The students of the School of Law, however, have themselves given the answer by the absence of friction due to Murray's presence in the School and no loss in enrollment altho the order admitting him was entered and made public property June 25, 1935, three months prior to the opening of the autumn term.

Appellee does not concede that if public sentiment were hostile this Court would be entitled to uphold his exclu-

sion from the School of Law of the University on that ground in the absence of statute.

Clark v. Board of Directors, 24 Iowa, 266 (1868).

If the constitutional right exists, the test of sovereignty in a government is its ability to enforce and protect the same even in the face of a temporary manifestation of hostile public sentiment. But appellee is gratified that he can report in this case that there has been in the School no manifestation of a hostile public sentiment, and no evidence of harm done the institution or any of its members.

CONCLUSION.

For the aforegoing reasons it is respectfully submitted that the decision of the trial court be affirmed.

Respectfully submitted,

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