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IN THE UNITED STATES DISTRICT COURT FOR THE CENTRAL
DIVISION OF THE WESTERN JUDICIAL DISTRICT
OF MISSOURI

LUCILE BLUFORD,)	
)	
Plaintiff,)	
)	
VS.)	CIVIL ACTION NO.
)	
S. W. CANADA,)	
)	
Defendant.)	

ANSWER.

COUNT I.

Comes now defendant, and, for answer to Count I of plaintiff's complaint, states:

FIRST DEFENSE

Count I of plaintiff's complaint fails to state a claim against defendant, upon which relief can be granted.

SECOND DEFENSE

1. Defendant admits all of the allegations of the first paragraph of said count, except that defendant denies the allegation that he is the officer of the University of Missouri responsible for registration and admission of students to the Graduate School of the University for graduate work in journalism, and denies that graduate work in journalism is offered or is available to any student in said University.
2. Defendant denies the allegations of Paragraph 2.
3. Defendant denies that on and prior to August 21, 1941, and ever since, plaintiff was and is fully qualified other than scholastically, for registration and admission to the University of Missouri for graduate work in journalism.

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Defendant admits that plaintiff is a graduate of the University of Kansas with the degree of Bachelor of Arts, with major in journalism, and has been, and still is, in active newspaper work in the State of Missouri, on the staff of the Kansas City Call, a Missouri weekly newspaper.

Defendant denies that at all times mentioned in said complaint plaintiff needed and still needs, desired and still desires, graduate work in journalism, or the substantial equivalent

thereof, for the purpose of increasing her proficiency in newspaper work, or her service to the people of this State, and her earnings.

4. Defendant admits that the State of Missouri maintains, at Jefferson City, Lincoln University, as alleged by plaintiff, but denies that the Curators of Lincoln University are under a duty to provide equal facilities for negro citizens, said duty being only to furnish facilities substantially equal to those offered to other citizens of the State, not negroes, at the University of Missouri.

Defendant denies that there was any duty on the Curators of Lincoln University, at the time and in the circumstances alleged by plaintiff, to offer graduate work in journalism at Lincoln University to plaintiff.

5. Defendant admits that on July 17, 1941 and September 18, 1941, plaintiff made demand on Lincoln University for graduate work in journalism, and denies all the other allegations in Paragraph 5. And defendant denies that there was any duty on the part of Lincoln University to offer to plaintiff graduate work in journalism at the times plaintiff made demand therefor.

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6. Defendant denies that he was under duty to issue to plaintiff a permit to register at the University of Missouri for graduate work in Journalism, at the time and in the circumstances alleged by plaintiff in paragraph 6; and denies that she was in all lawful respects qualified to receive a permit so to register at the University of Missouri, and denies that he wilfully, maliciously and illegally refused her a permit so to register. Defendant admits the other allegations of Paragraph 6.
7. Defendant admits the allegation in Paragraph 7 that plaintiff did personally present herself at Lincoln University, on or about September 18, 1941, but denies that she is willing to or could meet, or had met, all lawful requirements with reference to such application. Defendant admits that Lincoln University failed to offer such instruction on September 18, 1941.

Defendant admits that on September 18, 1941, plaintiff personally presented herself to defendant, at the University of Missouri, and requested defendant to issue her a permit to register as a student for graduate work in journalism, but defendant denies that plaintiff was ready and willing to and could meet the lawful requirements with reference to such application, and denies that he was in duty bound to issue to her a permit so to register, and denies that he wilfully, maliciously and illegally refused to issue such a permit to her. Defendant denies the remaining allegations of Paragraph 7.

8. Defendant denies that plaintiff had the legal right to registration and admission to the University of Missouri for graduate work in journalism, and denies that he was, or is,

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under legal duty to register and admit plaintiff, as alleged, and denies that he did violate

the equal protection clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States, and denies that he is liable to plaintiff under Title 8, Section 41 and Section 43 of the United States Code, or otherwise.

9. Defendant denies the allegations of Paragraph 9.

THIRD DEFENSE

At all times referred to in the complaint, defendant did not, and does not now, owe to plaintiff any duty to issue her a permit to register in the University of Missouri, or to admit and register plaintiff as a student in the University of Missouri. Under the applicable and controlling laws of Missouri, the plaintiff had and has no right to be registered or admitted as a student in the University of Missouri, and has no right of action against defendant for any refusal to register her therein.

The Board of Curators of Lincoln University is a State agency, solely and exclusively charged with any duty to furnish graduate work in journalism to qualified negro residents of Missouri, if and when such work is available to students at the University of Missouri. At the time when plaintiff requested of defendant a permit to register in the University of Missouri, the laws of Missouri imposed a mandatory duty upon the Board of Curators of Lincoln University to furnish graduate work in journalism in Lincoln University, up to the standard available at the University of Missouri, upon proper and timely request therefor by any qualified negro resident of Missouri. The duty to furnish negroes with graduate work in journalism, absent proper and timely request therefor, was not, and could not be shifted to the University of Missouri. By the creation and maintenance

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of Lincoln University, by the mandatory duties imposed upon the Board of Curators of Lincoln University by law as aforesaid, and by ample appropriations of money which the General Assembly had made to enable said Curators to perform their duties under said law, the State of Missouri had and has made other and proper provision for the higher education within the State of negro residents of the State elsewhere than at the University of Missouri, and all qualified negro residents of the State of Missouri, including plaintiff if she was or is in fact qualified, and was at the time alleged in Count I of her complaint, were and are afforded equal protection of the law and equal opportunity with that accorded to white residents of the State at the University of Missouri. Therefore, defendant's refusal to issue to plaintiff a permit to register in the University of Missouri, in the circumstances alleged in plaintiff's complaint, and in view of the time when she made her demands upon Lincoln University and the University of Missouri, constituted no violation of the equal protection clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States, and no violation of Section 41 or Section 43 of Title 8 of the United States Code; and that in the circumstances which existed and which are alleged in plaintiff's complaint, plaintiff's rights, privileges and immunities secured by the Constitution and the laws of the United States did not include the right to register or to be admitted as a student in the University of Missouri. Therefore, defendant, by refusing to issue

to plaintiff a permit to register as a student in the University of Missouri, at the time alleged in plaintiff's complaint, and in the circumstances then existing, did not subject her to the deprivation of any rights, privileges

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or immunities secured by the Constitution and laws of the United States.

FOURTH DEFENSE

To subject defendant to pecuniary liability herein would be opposed to public policy. In refusing plaintiff a permit to register, defendant acted in good faith, in accordance with his duty and authority under the law, and as an employe of the Board of Curators of the University of Missouri. Defendant is, accordingly, immune from the alleged liability herein as a matter of public policy under the law.

FIFTH DEFENSE

Plaintiff heretofore filed in this Court a civil action denominated "Lucile Bluford, Plaintiff, vs. S. W. Canada, Defendant, Action No. 42, styled "Complaint For Deprivation of Plaintiff's Rights Under Color of State Law".

Defendant filed a motion to dismiss said complaint, putting in issue, among other things, the fact that plaintiff had made no lawful and timely demand of Lincoln University for graduate work in journalism before demanding such work in the University of Missouri. This Honorable Court, on April 6, 1940, ruled that before defendant was under any obligation to issue to plaintiff a permit to enroll in the graduate school of journalism at Missouri University, plaintiff must first make application to Lincoln University for graduate work in journalism, and that after such application was made to Lincoln University, the Curators of Lincoln University would have such time as was reasonable and necessary to make provision to furnish graduate work in a school of journalism, before any obligation rested upon Lincoln University to comply with the

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demand, or, If it failed to do so, upon the defendant to issue plaintiff a permit to enroll in Missouri University. The opinion of the Court is reported in 32 Fed. Supp. 707. Thereafter, in a mandamus suit filed by this plaintiff against this defendant, in the Circuit Court of Boone County, Missouri, entitled State ex rel Bluford v. Canada, decided by the Supreme Court of Missouri on July 8, 1941, the opinion of which is reported in 153 S. W. (2d) 12, the issue was again presented as to the obligation resting upon the plaintiff to make a demand upon Lincoln University to provide graduate work in the School of Journalism prior to any obligation resting upon the defendant to register the plaintiff in the School of Journalism of Missouri University, and, in said case, the Supreme Court of Missouri ruled that the Board of Curators of Lincoln

University was entitled to have a demand made upon it before being required to open a new department, and said Board is entitled to a reasonable time in which to open a new department, after demand is made. Upon Lincoln University receiving the said demand of plaintiff on July 17, 1941, for graduate work in journalism, the President of Lincoln University did thereupon seek an opinion of the Chief Law Officer of the State of Missouri, the Attorney General, as to whether or not if Lincoln University offered graduate work in journalism by the beginning of the second semester of the 1941-42 school term, commencing about February 1, 1942, such action on the part of Lincoln University would constitute a lawful compliance with the law in furnishing educational facilities to the negro race substantially equal to those provided for other citizens, and a lawful compliance with the requirements of the opinion of the Supreme Court of Missouri and a proper response to the demand of the plaintiff on Lincoln University for graduate work

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in journalism. The Attorney-General of the State of Missouri, in response to said inquiry, on August 7, 1941, did officially rule and advise the President of Lincoln University that if graduate work in journalism were provided at Lincoln University, commencing the second semester of the 1941-42 Term, in the circumstances then and there existing at the time of plaintiff's demand, such action would constitute a lawful compliance with the provisions and holdings of said opinion with reference to a reasonable time in which to furnish graduate work in journalism, and would constitute lawful and proper compliance with the laws of the State of Missouri, and the applicable provisions of the Constitution of the United States. Said opinion also ruled that a demand on July 17, 1941, was not made within a reasonable time in advance of the commencement of the next term of Lincoln University, and that it was not the duty of the Board of Curators of said Lincoln University to open and furnish the new department in journalism for and during the semester commencing September 10, 1941. Defendant was advised of the request for and issuance of said opinion, by the Attorney- General, and of its purport and effect prior to August 21, 1941.

Defendant, in refusing to issue to the plaintiff a permit to register in the University of Missouri Graduate School of Journalism, acted in good faith in reliance on the holdings and rulings of said opinions, which were binding upon him, and because the plaintiff had not made a reasonable and timely application and demand of Lincoln University to provide graduate work in journalism. Defendant so acted in the conscientious belief that he was lawfully and properly complying with the laws of the State of Missouri and the decisions of this Court and of the Supreme Court of the State of Missouri, interpreting said laws and determining the liabilities and obligations of

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the respective parties.

SIXTH DEFENSE

Defendant further states that because of the facts set forth in the fifth defense of this answer plaintiff failed to make a timely, reasonable and lawful demand on Lincoln University to be enrolled in the graduate school of Journalism, and that therefore the plaintiff had no legal right to be enrolled in the graduate school of journalism of Missouri University at the times requested and at the commencement of the first semester of the 1941-42 academic year of the University of Missouri.

SEVENTH DEFENSE

Plaintiff's request for a permit to register in the University of Missouri, the institution by plaintiff of the suit in this Court, above referred to, the institution of the aforesaid mandamus suit in the Circuit Court of Boone County, State of Missouri, and the institution of the present suit, were not in good faith and the prosecution of this suit is not in good faith on the plaintiff's part.

About eight years before plaintiff first requested a permit to register in the University of Missouri, plaintiff was graduated at the University of Kansas after completing a course in journalism. Upon her graduation she became a newspaper woman. At the time of her aforesaid request for permit to register in the University of Missouri, and for some years before that, she held and still holds a remunerative position as managing editor of the Kansas City Call. By her university education and practical newspaper experience she had already received such education and training in journalism as to render it unnecessary

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from her standpoint and a waste of her time and salary to give up her occupation and return to the classroom to take a graduate course in journalism; and she had no real intention of doing any such thing. At the time plaintiff made said request she did not actually intend to take graduate instruction in the University of Missouri; she only intended, if admitted, to attend classes for a few days and then return to her regular occupation as managing editor of the Kansas City Call.

Plaintiff made her said request for a permit to register in the University of Missouri, instituted said suits and is prosecuting this suit, solely as part and in furtherance of a conspiracy between plaintiff and officials and counsel of the National Association for the Advancement of Colored People, and for the ulterior, indirect and wrongful purpose of attempting to aid said Association in its campaign to break down the policy of the State of Missouri, and other States, requiring separation of the white and negro races for purposes of higher education. Plaintiff is and for years has been an active and militant member of the aforesaid association. During all that time said association has been and is systematically engaged in bringing test suits in various States to break down the State policy of race separation in higher education -- which suits have been and are systematically brought in the names of negroes ostensibly claiming to desire instruction in various branches of higher education. The present suit and the mandamus

suit aforesaid are suits of that type, and both were brought in the name of plaintiff as nominal plaintiff at the instance of said association, as part of the conspiracy and campaign aforesaid, for the purpose aforesaid.

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Said association and plaintiff have never been and are not now actually interested in having Lincoln University offer graduate work in journalism; and are actually opposed to that being done. As part of the campaign and conspiracy aforesaid, plaintiff during the 1939 session of the General Assembly, in collaboration with said association, vigorously opposed the enactment of the Taylor Bill (a bill to amend Section 9618, R. S. 1929 by imposing on the Curators of Lincoln University a mandatory duty, instead of mere discretionary power, to equalize its curriculum and standard of education with those at the University of Missouri); and, following the enactment of said bill, plaintiff as managing editor of the Kansas City Call, wrote and caused to be written and published in said newspaper numerous articles severely condemning and criticising the efforts of the Board of Curators of Lincoln University to expand the curriculum of said university so as to afford the same courses of study with the same standard of instruction as in the University of Missouri - all of which acts were prompted by an actual desire on the part of plaintiff and said association to cause Lincoln University to fail to equalize its curriculum and standard of education with those at the University of Missouri.

Plaintiff's request for permission to register in the University of Missouri, and the institution of said two suits aforesaid, and the prosecution of this suit, have been and are further prompted by the desire of plaintiff and said association to obtain newspaper publicity advertising the aforesaid campaign, which they deem desirable and in furtherance of the aforesaid campaign of said association.

Instead of defendant's rejection of plaintiff's request for a permit to register in the University of Missouri injuring

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plaintiff in any way, it actually was the occasion for rejoicing and the exchange of congratulations between plaintiff and said association, and as paving the way for the institution of this suit and the aforesaid mandamus suit.

Defendant states that plaintiff knew, and was bound to know, that under the law it was a prerequisite to her securing a permit to register in the University of Missouri that she make timely demand for graduate work in Journalism at Lincoln University. Nonetheless she waited until July 17, 1941 to make any demand upon Lincoln University for graduate work in Journalism, commencing at the first semester of the 1941-42 academic year, and, in so doing, did not act in good faith and in the desire actually to secure graduate work in journalism at Lincoln University, if such could be obtained.

Defendant further states that in the case before this Court, in which plaintiff was a party, this Court ruled, and plaintiff thereby obtained knowledge on April 6, 1940 that if she desired

graduate work in journalism that she was obligated to make a timely demand on Lincoln University to provide graduate work in journalism, and, notwithstanding said knowledge, the plaintiff deliberately delayed making application and demand to Lincoln University, for graduate work in journalism, until July 17, 1941, when she knew that a demand as of that date would not provide sufficient time in fact and under the law for Lincoln University to provide her with graduate work in journalism at the commencement of the first semester of the school year 1941-42.

Defendant further states that the plaintiff, with knowledge that Lincoln University was making plans to provide a school of journalism and provide graduate work in journalism, did, prior to the setting up of the facilities at Lincoln University to

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provide said course, and before Lincoln University had entered upon the providing of said course, criticise the equipment and teaching staff of Lincoln University, and alleged, represented and claimed that the school of journalism, which Lincoln University was providing, would be an inferior school and would not provide educational opportunities in journalism substantially equal to those of Missouri University, all without any knowledge or information upon which to base said charges. Such action on her part constituted an effort to sabotage, undermine, and destroy the efforts of the Curators of Lincoln University to comply in good faith with their duties under the law and to plaintiff individually in the premises. Such efforts further constituted an attempt on her part to prevent action which she claimed to desire.

For the above reasons, the institution and prosecution of this suit is not in good faith and is an abuse of the process of this Court.

EIGHTH DEFENSE

Defendant states that the University of Missouri, since Jan. 29, 1942, has not offered, and does not now offer, graduate work in journalism to any students of the State of Missouri, and that he cannot, and has no legal duty to issue to plaintiff, or anyone else, a certificate to enroll for graduate work in journalism in the University of Missouri. In the circumstances, had plaintiff been enrolled in the Graduate School of Journalism of the University of Missouri, she would have had to cease said work on the abandonment on the date aforesaid of such school and the courses she claims to seek, so that she could have suffered no damage, loss, or injury as a result of the denial of a certificate of registration as aforesaid.

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NINTH DEFENSE

The above-mentioned civil action, filed in this court, involved the same parties and the same issues here involved, and, on October 24, 1940, in this court a verdict was rendered

against plaintiff thereon and in favor of defendant, and judgment was entered on said verdict, and said judgment is a former adjudication against plaintiff of the issues involved in this case.

The above-mentioned mandamus suit, filed by this plaintiff against defendant, in the Circuit Court of Boone County, Missouri, on October 13, 1939, involved the same parties and the same issues here involved, and, on May 31, 1940, said Circuit Court rendered judgment therein against plaintiff, which judgment was affirmed by the Supreme Court of Missouri on July 8, 1941, and said judgment is a former adjudication against plaintiff of the issues involved in this case.

WHEREFORE, having fully answered, defendant prays that plaintiff take nothing by her complaint and the first count thereof, and that judgment be rendered on said count in favor of defendant, and that defendant recover of plaintiff his costs herein.

ANSWER TO COUNT TWO

Comes now defendant, and, for answer to Count Two of plaintiff's complaint, states:

FIRST DEFENSE

Count Two of the complaint fails to state a claim against defendant upon which relief can be granted.

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SECOND DEFENSE

Defendant denies that Lincoln University School of Journalism and its courses are not accredited, and denies that the course in journalism offered at the University of Missouri would be of higher value in fact to the plaintiff than the course of journalism offered at Lincoln University, and further denies that the value of the course in journalism offered at the University of Missouri would be of greater value to the plaintiff than the course of journalism offered at the Lincoln University, for transfer purposes to other schools and for public prestige in plaintiff's field of work, and defendant denies that the School of Journalism established at Lincoln University does not provide substantial equipment and does not offer her substantially equal educational opportunity compared with what is available at the University of Missouri.

10. Defendant denies the allegations of Paragraph 10.
11. Defendant denies the allegations of Paragraph 11, and denies that he has any duty to issue to plaintiff a permit to register in the University of Missouri, and that he has illegally refused, and will continue illegally to refuse to perform any duty to plaintiff in the premises.
12. Defendant denies the allegations of Paragraph 12.

THIRD DEFENSE

Defendant states that the University of Missouri does not now offer graduate work in journalism to any students of the State of Missouri, and that he cannot, and has no legal duty to issue to plaintiff, or anyone else, a certificate to enroll for graduate work in journalism in the University of Missouri.

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FOURTH DEFENSE

Defendant incorporates and adopts by reference all the allegations of his answer to Count One of plaintiff's complaint.

FIFTH DEFENSE

Defendant states that plaintiff does not come into this court with clean hands and in good faith and good conscience, seeking equitable relief, in view of all the allegations hereinabove.

WHEREFORE, Defendant having fully answered Count Two, prays for judgment thereon In his favor, together with his costs.

ANSWER TO COUNT THREE

Comes now defendant, and, for answer to Count Three of plaintiff's complaint, states:

FIRST DEFENSE

Count Three of plaintiff's complaint fails to state a claim against defendant upon which relief can be granted.

SECOND DEFENSE

13: Defendant denies the allegations of Paragraph 13 of plaintiff's complaint constituting Count 3 for a declaratory judgment.

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THIRD DEFENSE

Defendant incorporates and adopts, by reference, all the allegations heretofore made in his answer to Counts One and Two of plaintiff's complaint.

WHEREFORE, having fully answered, defendant prays for judgment in his favor on said Count Three of plaintiff's complaint.

William S. Hogsett
Kenneth Teasdale
Rubey M. Hulen
Attorneys for Defendant

DEMAND FOR JURY TRIAL

Demand for jury trial has heretofore been made in this cause in defendant's Motion For More Definite Statement Under Rule 12 (E) And To Require Plaintiff To Separately State And Number, duly served on plaintiff's counsel. Defendant, in accordance with Rule 38, hereby demands, and again demands, a trial by jury of all issues in this cause triable of right by jury.

William S. Hogsett
Kenneth Teasdale
Rubey M. Hulen
Attorneys for Defendant

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FILED
MAR 12 1942
A. L. ARNOLD, Clerk
By Charles Seibold Deputy

IN THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DIVISION OF THE WESTERN
JUDICIAL DISTRICT OF MISSOURI

LUCILE BLUFORD,
Plaintiff
vs. (Civil Action No.)
S. W. CANADA,
Defendant

ANSWER

William S. Hogsett,
Kenneth Teasdale,
Rubey M. Hulen
Attorneys for Defendant