

[page 1]

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

Lucile Bluford,
Plaintiff,
vs.
S. W. Canada,
Defendant.

Civil Action No. 42

DEFENDANT'S REQUESTED INSTRUCTIONS

At the close of the evidence defendant respectfully requests that the court instruct the jury on the law as set forth in each of the several requests which follow:

[page 2]

1.

I charge you that at all of the times in question it was, and it still is, the law and public policy of the State of Missouri that white and negro residents of the State shall receive equal opportunity and facilities for higher education in separate institutions of learning; and by equal facilities is not meant identical facilities, I charge you further that the State has the constitutional power thus to provide for race separation for the purposes of education.

[page 3]

2.

I charge you that the State of Missouri has established Lincoln University and has imposed the mandatory duty upon its board of curators, upon timely request of any qualified negro resident, to furnish graduate work in journalism in that institution up to the standard available at the University of Missouri; and the State also has appropriated to Lincoln University funds to enable said curators to perform their duty to establish such course of instruction; now therefore if you find that such appropriation was ample for that purpose, then I charge you that the State of Missouri has made proper provision within the State for graduate instruction of plaintiff in journalism elsewhere than at the University of Missouri, and plaintiff thereby has been accorded equal opportunity with that accorded to white residents of the State at the University of Missouri, for receiving graduate instruction in journalism.

[page 4]

3.

I charge you that under the law plaintiff's right to receive graduate instruction in journalism was a right which she was entitled to assert, not against the University of Missouri or against defendant, but only against the Lincoln University board of curators, the State agency

specifically charged with the duty to furnish her with that course of instruction.

[page 5]

4.

I charge you that the mandatory duty imposed by law upon the curators of Lincoln University to furnish in that institution graduate work in journalism, up to the standard available at the University of Missouri, upon request therefor by any qualified negro resident of Missouri, was not and could not be shifted to the University of Missouri by any alleged failure of Lincoln University to comply with such a request.

[page 6]

5.

I charge you that the board of curators of Lincoln University was and is the state agency charged with the duty to furnish graduate work in journalism to qualified negro residents of Missouri; and that at the time when plaintiff requested of defendant a permit to register in the University of Missouri, the laws of Missouri had imposed the mandatory duty on 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 request therefor by any qualified negro resident of Missouri.

[page 7]

6.

Under the law the defendant had the right to presume (in the absence of knowledge to the contrary) that the curators of Lincoln University had performed and would continue to perform their mandatory legal duty to furnish to qualified negro residents of Missouri in Lincoln University graduate work in journalism up to the standard furnished at the University of Missouri, upon request therefor by any qualified negro resident of the state.

[page 8]

7.

I charge you that there is no evidence that plaintiff applied to Lincoln University for graduate work in journalism in September, 1939, or at any other time; and your finding on the issue as to that matter must be in favor of the defendant.

[page 9]

8.

I charge you as a matter of law that plaintiff's letter dated September 8, 1939, to President Sherman D. Scruggs and the board of curators of Lincoln University, did not constitute an application by plaintiff to Lincoln University for graduate work in journalism.

[page 10]

9.

I charge you that there is no evidence that plaintiff applied to Lincoln University for

graduate work in journalism in ample time for the curators of that institution to have provided such a course at the opening of the September Term, 1939; and your finding as to that issue must be in favor of the defendant.

[page 11]

10.

I charge you that the government of the University of Missouri was and is vested in the hoard of curators of that institution, and not in the defendant registrar; and if you believe and find from the evidence that at the times in question defendant was a mere subordinate employee of said board, and that his duties were merely those prescribed by the board; and that he had no power to make rules or to establish policy, and owed a duty merely to obey rules and regulations of the board; and that in refusing to plaintiff a permit to register as a student in the University of Missouri defendant acted in accordance with his duty under said rules and regulations, then I further charge you that defendant is not liable in damages and your verdict must be in his favor.

[page 12]

11.

If you believe and find from the evidence that even if defendant had issued to plaintiff a permit to register as a student in the University of Missouri, that such permit would not have been sufficient, in and of itself, to have enabled plaintiff to receive graduate instruction in journalism in the University of Missouri, then I charge you that defendant's refusal to issue plaintiff a permit to register did not cause plaintiff any damage and your verdict should be for the defendant.

[page 13]

12.

If you believe and find from the evidence that at the times in question plaintiff Lucile Bluford did not actually desire to receive graduate instruction in journalism in the University of Missouri for her own personal benefit, and that her application to defendant registrar for a permit to register in the University of Missouri was not made in good faith, and was actually made with the expectation and hope that defendant would reject it and that such rejection would afford the basis for litigation fostered by the National Association for the Advancement of Colored People as part of its campaign to break down the Missouri state policy of race separation in education, then I charge you that your verdict shall be in favor of the defendant.

[page 14]

13.

If you believe and find from the evidence that defendant's rejection of plaintiff's request for a permit to register in the University of Missouri was exactly what plaintiff desired, as a preliminary step toward the institution in her name of the Boone County mandamus suit mentioned in evidence; and that such rejection actually caused plaintiff no damage whatever, then I charge you to return a verdict in favor of the defendant.

[page 15]

14.

In determining whether or not plaintiff's application to defendant for a permit to register in the University of Missouri was in good faith, you may take into consideration the followings

(a) If you find that by reason of plaintiff's previous education in journalism, supplemented by her practical newspaper experience, she had already received such education and training in journalism as to render it unnecessary from her standpoint and a misuse of her time and salary to give up her occupation and return to the classroom to take graduate work in journalism, then I charge you that you may consider those facts on the issue of her good faith.

(b) If you find that plaintiff had no real intention of taking graduate work in journalism in the University of Missouri, and that at the time she made her request of defendant she only intended, if admitted, to attend classes for a few days and then return to her regular occupation as managing editor, then I charge you that you may take into consideration those facts in determining the issue of good faith.

(c) If you find that there was a conspiracy between plaintiff and the officials and counsel of the National Association for the Advancement of Colored People, and that the object of the conspiracy was to break down the Missouri state policy of race separation for purposes of education; and that when plaintiff made

[page 16]

her request of defendant for a permit to register in the University of Missouri she was acting solely in furtherance of that conspiracy; and that the mandamus suit which she brought against defendant in the Circuit Court of Boone County, Missouri was also brought solely as part and in furtherance of such conspiracy, then I charge you that you may consider those facts in determining the issue of her good faith.

(d) If you find that the aforesaid Association and plaintiff are actually opposed to Lincoln University offering graduate courses; and that as part of the aforesaid conspiracy (if you find there was a conspiracy) plaintiff and the Association opposed the enactment by the State Legislature of the so-called Taylor Bill (which was a bill to impose on the curators of Lincoln University a mandatory duty to equalize its courses of study and standard of education with those at the University of Missouri); and opposed the appropriation by the State Legislature of money to enable the Lincoln University curators to perform such duty, then I charge you that you may take into consideration those facts in determining the issue of her good faith.

(e) If you find that plaintiff's request for a permit to register in the University of Missouri was made in the hope that defendant registrar would reject it, and was made for the purpose and with the intent on plaintiff's

[page 17]

part of obtaining newspaper publicity as a means of furthering the aforesaid campaign of the Association, then I charge you that you may take into consideration those facts in determining the issue of her good faith.

(f) If you find that defendant's rejection of plaintiff's request for permit to register in the University of Missouri was actually welcomed by plaintiff, as a necessary

preliminary step paving the way for the institution by her of the mandamus suit in the Boone County Circuit Court, then I charge you that you may take into consideration those facts in determining the issue of her good faith# I further charge you that if you believe and find from all the evidence in the case that plaintiff did not actually desire in good faith to take graduate work in journalism in the University of Missouri, and that defendant's rejection of her request for a permit to register actually caused plaintiff no injury or damage whatever, then I charge you to return a verdict in this case in favor of the defendant.

[page 18]

15.

If you believe and find from the evidence that in September, 1939, plaintiff did not apply to Lincoln University for graduate work in journalism, then I charge you that regardless of all other questions you should return a verdict in favor of defendant.

[page 19]

16.

Even if you should believe and find that in September, 1939, plaintiff did apply to Lincoln University for graduate work in journalism, yet if you further find that such application was not made in ample time for the curators of Lincoln University to have provided for graduate work in journalism at the opening of the fall term September, 1939, then I charge you to return a verdict for the defendant.

[page 20]

17.

Even if you should believe and find from the evidence that in September, 1939, plaintiff did apply to Lincoln University for graduate work in journalism, and even if you should further find that such application was made in ample time for the curators of Lincoln University to have provided for graduate work in journalism at the opening of the fall term in September, 1939, yet unless you also find that the curators of Lincoln University refused her application, and that such refusal was unlawful, as defined in other parts of this charge, then I charge you to return a verdict for the defendant.

[page 21]

18.

Even if you should believe and find from the evidence that in September, 1939, plaintiff did apply to Lincoln University for graduate work in journalism, and that such application was made in ample time for the curators of Lincoln University to have provided for graduate work in journalism at the opening of the fall term in September, 1939, and that the curators of Lincoln University unlawfully refused her application, yet if you further find that when on or about September 14, 1939, she applied to defendant for a permit to register in the University of Missouri, defendant did not know she had so applied to Lincoln University or that her application had been rejected, then I charge you to return a verdict in favor of the defendant.

[page 22]

19.

You are charged by the Court that the judgement of the Circuit Court of Boone County, Missouri is a former adjudication against plaintiff of all the issues in this case; and on that ground your verdict must be in favor of the defendant.

[page 23]

20.

In determining whether a demand was made by the plaintiff for instruction in graduate school of journalism of Lincoln University substantially the same as at Missouri University at the time involved in this case plaintiff must have had at said time a bona fide desire, intention, and will to attend such a school at Lincoln University if available and must further have communicated such intention desire, and will to the officials of Lincoln University in such a manner that they understood the intention, desire and will of plaintiff as a bona fide demand for such instruction at Lincoln University.

[page 24]

Filed Oct 24, 1940.

A. L. Arnold, Clerk

by John S. Boyer, Jr. Deputy.