

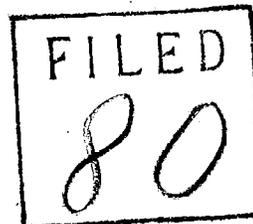
JOURNALISM SCHOOL:
LINCOLN UNIVERSITY:
REASONABLE TIME:

Establishment of journalism school 7 months
after demand is within a reasonable time.

8/8

August 7, 1941

Honorable Sherman D. Scruggs, President
Lincoln University
Jefferson City, Missouri



Dear President Scruggs:

This is in reply to the request for our opinion by
your letter dated July 19, 1941, which is in the following
terms:

"Some days ago the Supreme Court of the
State of Missouri handed down its
decision in the case 'State of Missouri,
at the Relation of Lucile Bluford,
Appellant, vs. S. W. Canada, Registrar
of the University of Missouri, Respond-
ent.'"

"The Board of Curators for Lincoln
University would be interested in an
interpretation of a certain aspect of
this decision, namely, the meaning or
construction placed upon the expression
'after a reasonable time' which appears
in the paragraph preceding the last one
of the text of the decision. The full
paragraph is quoted herewith:

"The present session of the General
Assembly will, no doubt, shortly adjourn.
The Lincoln Board will then know the
amount of funds at its disposal and be
in position to determine whether and
when a journalism course can be instituted
at that school. If, upon proper demand
and after a reasonable time, the desired
course is not available at Lincoln,
Appellant will be entitled to take the
course at Missouri University."

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"Further, the Board of Curators finds itself in a difficult position to provide a course of study in journalism up to the standard offered at the University of Missouri as required in Section 9618, Revised Statutes of Missouri for the year 1939, with the amount of \$65,000.00 to include housing of the same."

"There is no space on the campus at present to provide adequate quarters for the operation of the School of Journalism. To provide necessary minimum space will require the allocation of a part of the appropriation grant for the erection of suitable quarters, even of a temporary nature."

"Should the amount allocated to the erection of the temporary quarters not exceed \$15,000.00, there remains the sum of \$50,000.00 to provide salaries for administration and instruction, the purchase of minimum necessary equipment facilities, and the operation costs."

"The amount of \$50,000.00 will provide the salaries, equipment purchase and operation cost for a period not to exceed twelve months."

"Temporary quarters can be erected and made ready for occupancy not sooner than November first at the rate materials can be secured in these times."

"It would seem reasonable for the Board of Curators to announce the opening of the course to Miss Bluford not earlier than the beginning of the second semester of the school term, 1941-1942, which is February 1, 1942. It seems that the Board may be in the better position to offer the course then, provided no unforeseen unavoidable delays interfere,

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since in this time it would erect the quarters as described above, assemble the faculty, purchase equipment, and organize the work for readiness on the date (February 1, 1942) suggested above."

"The Board of Curators would be advised whether in the opinion of the Attorney General this date of opening would be reasonable and fair for all persons concerned in the light of the decision. The Board shall await the earliest opinion of the General."

The opinion of the Supreme Court of Missouri to which you refer was handed down on July 3, 1941, and a motion for rehearing was overruled on July 25, 1941. The Clerk of the Supreme Court of Missouri has informed us that no further steps have been taken in that case in his office. Of course, the opinion is not yet published.

You also sent us a copy of a letter written by Miss Bluford, dated July 17, 1941, which is in the following terms:

"Dr. Sherman D. Scruggs
Lincoln University
Jefferson City, Missouri

Dear Dr. Scruggs:

I herewith make application for a graduate course in Journalism, looking forward to the M. A. degree in journalism, at the beginning of the autumn term, 1941, provided I can get courses substantially equal to those offered in the Graduate School and School of Journalism at the University of Missouri.

When I applied for admittance to your School of Journalism in 1940, you wrote me that Lincoln University would not be able to open a Journalism School until February, 1941, but when I went to your

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campus to enroll in February, 1941, the school still had not been established. Eight months have passed since then and I am anxious to know whether your school of Journalism will be established this fall so that I may begin my graduate work without further delay.

Please let me know at once whether Lincoln University will offer the graduate courses I desire with faculty members of substantially the same qualifications and experience as those at the University of Missouri. Please send me an application blank and all information pertaining to your Journalism School."

Your reply dated July 19, 1941 was, omitting caption and signature, in the following terms:

"Dear Miss Bluford:

I shall bring your letter of July 17 to the attention of our Board at its next meeting, August 9, 1941. Your request for admission will be considered at that time."

In the case of State ex rel Bluford v. Canada, mentioned above, the court ruled that it is not the duty of the Board of Lincoln University to establish a new school of journalism at all until demand therefor has been made. This is fully explained by the following pertinent portions of the opinion:

"Since 1865 this State has maintained free public schools for negroes and it has been, and now is, the public policy of Missouri, established by our constitution and statutes, to segregate the white and negro races for the purpose of education in the common and high schools of the State. This policy also applies to our institutions of higher education."

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"It is the duty of this court to maintain Missouri's policy of segregation so long as it does not come in conflict with the Federal constitution. It is also our duty to follow the interpretation placed on the Federal constitution by the Supreme Court of the United States. The Supreme Court has many times approved the policy of segregation. Mr. Chief Justice Hughes, citing authorities, again approved the policy in the Gaines case, provided substantially equal facilities for colored persons be furnished within the State. Since that opinion, Missouri, by legislative enactment, has ordered that equal facilities be provided within her borders and has designated the Board of Lincoln University as the proper authority to furnish such facilities. The duty of the Lincoln Board to open new departments on proper demand is now mandatory. True, the Board can not operate without funds. If its funds are insufficient to provide all courses taught at Missouri University, the Board should allocate its funds to the courses most needed. But that very fact entitles the Board to have a demand made upon it before being required to open a new department, for surely the Board is not required to maintain departments for which there are no students. We think also that the Board is entitled to a reasonable time in which to open a new department after demand is made. If, upon proper demand, the Lincoln Board had refused to establish a course in journalism within a reasonable time, or had informed appellant that it was unable to do so, appellant would have been entitled to admission to that course in the Missouri University. The proof does not make that kind of a case. It

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shows no demand upon or refusal by, the Lincoln Board. On the contrary, it shows a desire and effort by the Board to establish the course by February 1, 1941, which, if accomplished, would have delayed appellant for two semesters, reckoned from the date of suit, or for one semester reckoned from the date of trial. For that matter, appellant might have avoided all delay in receiving instruction by making demand on Lincoln University a reasonable time in advance of the opening of the school term. We do not think that is an unreasonable requirement. The purpose to attend school is not often the result of a sudden impulse or happening, but is usually planned well in advance. That is true of appellant as shown by her own testimony. She had formed the purpose to take a graduate course in journalism many months before she made her application, but her purpose was to take it at the Missouri University, not at some other school in Missouri."

"We are now faced with a different problem. Here, because of the lack of a previous demand on Lincoln University, appellant was not entitled to admission to Missouri University at the time of her application and respondent committed no wrong in denying her application. Therefore, we are not authorized to make the writ permanent or to remand the case for determination of appellant's right to admission at the beginning of the next school term."

"The present session of the General Assembly will no doubt shortly adjourn. The Lincoln Board will then know the amount of funds at its disposal and be in position to determine whether and when a journalism course can be instituted at that school.

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If, upon proper demand and after a reasonable time, the desired course is not available at Lincoln, appellant will be entitled to take the course at Missouri University."

The decision was based in part on Sec. 10774 R. S. Mo. 1939, therein quoted.

As shown by the quoted portion of the court's opinion, it was ruled that Miss Bluford had made no demand upon Lincoln University for the furnishing and opening of the new department in journalism. We note that Miss Bluford's letter to you was written on July 17, nine days after the opinion was handed down on July 8. In our opinion Miss Bluford's letter should be regarded as the demand contemplated in the court's opinion. It then became the duty of the Board of Lincoln University to open and furnish the new journalism department, within a reasonable time after said demand.

What is a reasonable time cannot be measured by a fixed rule applicable to all cases; it must depend upon the circumstances of each particular case. 52 Corpus Juris p. 1182-1184, Sec. 2, states:

"Reasonable Time: A relative and flexible term, which cannot be defined by any prescribed rule and the meaning of which in a particular case depends on the context and attendant circumstances, and not upon mere opinion or expectation; something more than 'directly.' It has been variously defined as meaning as soon as circumstances will permit; as soon as convenient; conveniently can; so much time as is necessary under the circumstances, conveniently to do what should be done; such length of time as may fairly, and properly, and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstance; such promptitude as the situation of the parties and the circumstances of the case will allow; such time as a prudent man could exercise or employ in or about his own affairs; such time as is necessary

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conveniently to do what should be done; such time as may be supposed to have been contemplated; that time which, as rational men, the parties to a contract ought to have understood each other to have in mind; that time which preserves to each party the rights and advantages he possesses, and protects each party from losses that he ought not to suffer; the time which persons of ordinary care and prudence take to do a certain thing; what was reasonable time under the circumstances."

"When it begins to run. Reasonable time will not begin to run until some one interested in the matter calls for something to be done respecting it."

In Kostrean Realty Company v. Steinke, 263 S. W. 448, l. c. 450, 215 Mo. App. 30, the St. Louis Court of Appeals said:

"'A reasonable time' is a relative term, and depends upon all of the attending facts and circumstances in each particular case."

To the same effect are many authorities collected and analyzed at 36 Words and Phrases (perm. ed.) 382, 391 et seq.

The question here is what is a reasonable time for the establishment and furnishing of a new department in journalism, in the circumstances of this case.

House Bill No. 581, passed by the General Assembly of Missouri, and approved by the Governor of this State on July 31, 1941, appropriated \$65,000.00 for establishment and maintenance of the School of Journalism of Lincoln University, and by virtue of its emergency clause became effective on the date it was approved. As pointed out in the court's opinion and in your letter, it will be necessary to allocate these funds, and plan the various necessary steps. Temporary quarters must be erected on the campus. Equipment must be purchased. A faculty must be procured. Undoubtedly it will be necessary to make some study of methods employed by other universities in the establishment and operation of journalism departments. Doubtless there are many other problems which are not apparent to one not conversant with educational work. The next semester of the university commences on the tenth day of

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September, and the following one commences on February first.

Obviously it would be impossible for the Board to establish the new department in the circumstances of this case, in the short space of less than two months between the demand on July 17, and the commencement of the semester on September 10. The decision of the Supreme Court plainly said it would be reasonable to require that the demand be made within "a reasonable time in advance of the opening of the school term." It is universally recognized that schools must be conducted in fixed terms. That the whole University schedule should be disrupted by establishment and furnishing of a new department between regular terms was, in our opinion, not required by the opinion of the court. This demand was not made within a reasonable time in advance of the commencement of the term or semester. Therefore, it is not the duty of the said Board to open and furnish the new department in journalism for and during the semester commencing September 10, 1941.

Your letter addressed to this office states that the new journalism department probably can be established and furnished for and during the term commencing on or about February 1, 1942. That would allow less than seven months from time of demand. The above quoted definitions of a reasonable time allow for the care and prudence necessary to do the particular thing involved. Establishment of the new department by February 1, 1942 appears distinctly to be the minimum time within which the same can be done consistently with the standards of excellence now prevailing at Lincoln University; it would be well within a reasonable time.

CONCLUSION

In our opinion, establishment and furnishing of a new department of journalism at Lincoln University for and during the term commencing on February 1, 1942 -- less than seven months after demand therefor -- would be well within a reasonable time. It is not the duty of the Board to furnish said department sooner.

Respectfully submitted,

ERNEST HUBBELL
Assistant Attorney General

APPROVED:

ROBERT L. HYDER
(Acting) Attorney General

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