

DEPARTMENT OF JUSTICE

CIVIL RIGHTS DIVISION

Enforcement of Court Desegregation Orders

UNIVERSITY OF MISSISSIPPI

Meredith v. Fair

Trial Files

Transcripts - U. S. v. Barnett -Johnson

COPY

UNITED STATES OF AMERICA
FIFTH CIRCUIT COURT OF APPEALS

.....
JAMES HOWARD MEREDITH, ET AL.,

Appellants,

VS.

CHARLES DICKSON FAIR, ET AL.,

Appellees.

NO. 19,475

.....
UNITED STATES OF AMERICA, as
Amicus Curiae and Petitioner,

VS.

CHARLES DICKSON FAIR, ET AL.,

Respondents.

.....

HEARING ON THE ENTRY OF FURTHER
ORDERS AS TO CIVIL CONTEMPT INSO-
FAR AS CONCERNS GOVERNOR ROSS R.
BARNETT OR LIEUTENANT GOVERNOR
PAUL B. JOHNSON, JR., THE MOTION
FOR PRELIMINARY INJUNCTION, AND ALL
OTHER PENDING MOTIONS OR MATTERS,
October 12, 1962, Room 222, Post
Office Building, New Orleans,
Louisiana, at 11:00 o'clock a.m.

DIETRICH & WITT, Inc.
- STENOGRAPHERS -
National Bank of Commerce Bldg.
New Orleans

UNITED STATES OF AMERICA
FIFTH CIRCUIT COURT OF APPEALS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

.....
JAMES HOWARD MEREDITH, ET AL.,
Appellants,
VS.
CHARLES DICKSON FAIR, ET AL.,
Appellees.
.....
UNITED STATES OF AMERICA, as
Amicus Curiae and Petitioner,
VS.
CHARLES DICKSON FAIR, ET AL.,
Respondents.
.....

NO. 19, 475

HEARING ON THE ENTRY OF FURTHER ORDERS AS TO
CIVIL CONTEMPT INSOFAR AS CONCERNS GOVERNOR ROSS R. BARNETT
OR LIEUTENANT GOVERNOR PAUL B. JOHNSON, JR., THE MOTION FOR
PRELIMINARY INJUNCTION, AND ALL OTHER PENDING MOTIONS OR
MATTERS, held on this 12th day of October, 1962, Room 222,
Post Office Building, New Orleans, Louisiana, at 11:00
o'clock a.m.,

B E F O R E : THE HONORABLE ELBERT P. TUTTLE,
CHIEF JUDGE,
and

B E F O R E :

THE HONORABLE RICHARD T. RIVES,
THE HONORABLE WARREN L. JONES,
THE HONORABLE JOHN R. BROWN,
THE HONORABLE JOHN MINOR WISDOM,
THE HONORABLE WALTER P. GEWIN,
and
THE HONORABLE GRIFFIN B. BELL,
CIRCUIT JUDGES.

A P P E A R A N C E S :

For the United States of America:

BURKE MARSHALL, Esq.,
Assistant United States Attorney General

and

ST. JOHN BARRETT, Esq.,
Attorney,
Civil Rights Division,
Department of Justice.

For the Appellant:

MRS. CONSTANCE BAKER MOTLEY,
Attorney-at-Law,
10 Columbus Circle,
New York 19, New York

and

DERRICK BELL, Esq.,
10 Columbus Circle,
New York 19, New York

(APPEARANCES CONTINUED)

1 APPEARANCES - CONTINUED:

2 For the Respondents:

3 THE HON. JOE T. PATTERSON,
4 Attorney General of the
5 State of Mississippi

6 CHARLES CLARK, Esq.,

7 MALCOLM B. MONTGOMERY, Esq.,

8 and

9 PETER STOCKETT, Esq.,

10 Special Assistant Attorneys General.

11 HELEN R. DIETRICH,
12 Reporter

13 ...oOo...

14 P R O C E E D I N G S

15 JUDGE TUTTLE: This is the case of James H.
16 Meredith against Charles Dickson Fair and others. We have
17 the motion of the United States of America and Meredith
18 against the State of Mississippi and others for a temporary
19 injunction, and the motion of the State of Mississippi for
20 a dissolution of the restraining order, and the response of
21 Governor Barnett to the order or citation of contempt, as
22 well as the response of Lieutenant Governor Johnson.

23 The Court has had a little preliminary discussion
24 of the order of procedure. We are equating as nearly as we
25 can to the Rules of Civil Procedure the restraining order
matter, and we have concluded that the movants, moving to

4
1 dissolve the restraining order, should proceed initially
2 with their motion for a dissolution of the restraining order.
3 However, before we do that, the only papers that are before
4 the Court are filed by the State of Mississippi, and the
5 Court would like to know if anyone represents Governor
6 Barnett and Lieutenant Governor Johnson.

7 MR. CLARK: Yes, Your Honor. I am Charles Clark,
8 Special Assistant Attorney General of the State of
9 Mississippi. There is also Attorney General J. T. Patterson,
10 Special Assistant Attorney General Peter M. Stockett, and
11 Mr. Malcolm B. Montgomery of the Jackson, Mississippi, Bar,
12 all present, representing all of the persons who were named
13 as defendants in the Amicus Curiae motion of the United
14 States of America for a temporary restraining order -- they
15 are numerous, if Your Honor please --

16 JUDGE TUTTLE: I know.

17 MR. CLARK: -- and I do not appear on behalf of
18 all classes of law enforcement officials, but only on behalf
19 of the named defendants. The same is true of all counsel.

20 JUDGE TUTTLE: So all of you gentlemen are stating
21 to the Court that you are here representing the individual
22 defendants named in the temporary restraining order as well
23 as the State of Mississippi?

24 MR. CLARK: That is true, Your Honor, and also we
25 have here this morning a response to the petition for

1 temporary restraining order, both the one filed by the
2 Government and the one filed by the Appellant. May I at
3 this time -- I have already served copies on Counsel opposite
4 -- may I at this time lodge that response with the Court?

5 JUDGE TUTTLE: This is done on behalf of all of
6 the persons?

7 MR. CLARK: Yes, sir.

8 JUDGE TUTTLE: Yes. Please lodge it with him.

9 (Document filed with the Clerk)

10 MR. CLARK: I might add, Your Honor, to explain to
11 the Court, that the only thing that it does is to go back
12 and adopt the position assumed by the State of Mississippi
13 in its motion to dissolve or dismiss, plus bringing forward
14 other later grounds that have occurred, such as the dis-
15 missal of the Petition for Writ of Certiorari by the
16 Supreme Court of the United States and subsequent actions,
17 as well as objection to the class action feature with regard
18 to the law enforcement officials.

19 JUDGE TUTTLE: Is this in form -- does this
20 include in it, Mr. Clark, anything in the nature of a showing
21 of compliance?

22 MR. CLARK: No, Your Honor.

23 JUDGE TUTTLE: This is merely a legal motion?

24 MR. CLARK: Yes, Your Honor.

25 JUDGE TUTTLE: All right.

1 **MR. CLARK:** There is no response to the allegations
2 of the motion for the temporary restraining order, nor is
3 there any other responsive pleading, other than a motion to
4 the Court.

5 **JUDGE TUTTLE:** Well, now, the Court -- we have also
6 considered this fairly carefully a week ago last Tuesday, I
7 think it was, when you were last here, wasn't it?

8 **MR. CLARK:** Yes, Your Honor.

9 **JUDGE TUTTLE:** On the 6th of October. There was
10 argued very fully on behalf of the State of Mississippi the
11 motion to dismiss the temporary restraining order.

12 **MR. CLARK:** Excuse me. I agreed too readily with
13 Your Honor. That happened on Monday.

14 **JUDGE TUTTLE:** Was it Monday?

15 **MR. CLARK:** We were present again on Tuesday with
16 regard to the response to the citations to the Governor and
17 Lieutenant Governor.

18 **JUDGE TUTTLE:** So on a week ago last Monday a
19 panel consisting of Judges Rives, Wisdom and Gewin heard the
20 motion to dissolve the temporary restraining order.

21 **MR. CLARK:** That is correct, Your Honor.

22 **JUDGE TUTTLE:** That was taken down by the reporter.
23 You have filed very full and complete briefs on that. How
24 much time would you like to have now to argue that same
25 point, that is, the motion to dismiss the temporary restrain-

1 ing order.

2 MR. CLARK: If Your Honor please, as I understand
3 it, not only have these briefs been filed and this argument
4 been had, as Your Honor outlines, but also I believe that
5 the Court has given the State of Mississippi a right to
6 reply to the briefs filed.

7 JUDGE TUTTLE: That is correct.

8 MR. CLARK: For that reason, I would suggest to
9 the Court that the State of Mississippi would not care to
10 have further argument before this Court on its motion to
11 dissolve the temporary restraining order. If I might say
12 to the Court -- and I don't know whether it would be helpful
13 or not, but in my analysis of what we have here now,
14 determination of the motion of the Government for a pre-
15 liminary injunction would in and of itself decide every issue
16 that is before this Court today, and I would think that the
17 Court might save its time, since we have announced that we
18 don't care to argue the motion to dissolve and we will stand
19 on the briefs that we have filed and will be permitted to
20 file, that the argument on the temporary injunction might
21 well show the Court a solution to the entire problem.

22 JUDGE TUTTLE: That is apparent, and really I was
23 going to suggest it, if you argued further orally on the
24 motion to dissolve the temporary restraining order, that
25 that argument would encompass the same legal arguments that

1 would attack the legal power of the Court or the propriety
2 of the Court in issuing a temporary injunction. So now it
3 simply means that you are suggesting the Government proceed
4 with its motion for a temporary injunction and make whatever
5 proof it considers it necessary to make on that, and you then
6 reserve your right to make an argument on the legal questions
7 that are raised by that motion.

8 MR. CLARK: Which are largely dependent upon the
9 same grounds as the motion to dissolve, but there are some
10 very important additional grounds that apply to the
11 Government's motion for preliminary injunction here that
12 are not applicable to the other. I would like to bring that
13 to the Court's attention at the proper time.

14 JUDGE TUTTLE: I have spoken in terms of the
15 Government going ahead with the proof. Does either movant
16 object to this method of procedure, that is, either the
17 Appellant or the Government proceeding first with whatever
18 proof you wish to put on as to venue title to temporary
19 injunction?

20 MR. BARRETT: No objection at all, and we are pre-
21 pared to proceed.

22 MRS. MOTLEY: The Appellant has no objection.

23 JUDGE TUTTLE: The Court has also considered this
24 matter, because it is obviously one for us to have in our
25 minds. Whatever proof has heretofore been made a part of

1 this record on the hearing on the contempt proceeding as
2 against the Trustees and against the individual defendants
3 will be considered a part of this record. There may be addi-
4 tional proof that you feel it necessary or wise to offer to
5 the Court. If so, you may proceed to do it at this time.

6 MR. BARRETT: If Your Honor please --

7 JUDGE TUTTLE: We are not now going into the
8 question as to whether the Governor has purged himself.

9 MR. BARRETT: Yes. If the Court please, since the
10 Government filed its petition and applied for the temporary
11 restraining order, the state court action entitled Meador
12 vs. Meredith has been dismissed by the District Court for
13 the Southern District of Mississippi after removal from the
14 state court. For that reason, I think it not appropriate
15 for interlocutory relief to be granted against the class of
16 persons consisting of the plaintiffs in that state court
17 case, and we ask permission to withdraw our motion for pre-
18 liminary injunction insofar as it relates to Mr. Meador and
19 the class he represents.

20 JUDGE TUTTLE: Just so that that may not be over-
21 looked, since again I will say the Court desires to act as
22 promptly as possible on the disposition of these matters,
23 will you see that a motion is filed with the Clerk to amend
24 your --

25 MR. BARRETT: Yes, we will prepare a motion.

1 JUDGE TUTTLE: -- to amend your complaint to that
2 extent?

3 MR. BARRETT: Yes, we will.

4 JUDGE TUTTLE: It can be just inform .1, but in a
5 sense we have to have the names and know what we are doing
6 about it.

7 MR. BARRETT: Yes, sir, we will do it. Insofar as
8 the Government's proof on our petition for preliminary
9 injunction, we are relying largely upon the evidence that the
10 Court has already received in the related proceedings. There
11 are, however, a few documents which have not heretofore been
12 admitted into evidence, which we intend to offer. I have
13 already asked the Clerk to mark, and he has marked, the
14 transcripts and documents upon which we are particularly
15 relying in the present motion, and even though the Court
16 will consider all of the evidence generally, I think it
17 might be a help to the Court to direct their attention par-
18 ticularly to these items and have them admitted and marked
19 especially in this proceeding. I have a list of the items,
20 and, if I may, I will run down them briefly.

21 JUDGE TUTTLE: Now have you attempted to or have
22 you got any agreement with Counsel that there --

23 MR. BARRETT: Yes.

24 JUDGE TUTTLE: -- will be no objection to these
25 documents? If not, maybe you'd better at this time show

1 them to Counsel so we can see what objections, if any, will
2 be made to them.

3 MR. BARRETT: Well, if the Court please, I have
4 given Counsel this same list that I have given to the Clerk.
5 We have available to testify those witnesses whom the
6 Government has previously called and whose testimony is in
7 these transcripts, so that they may be further cross-
8 examined, if Counsel wishes. That was done at the request
9 of Counsel for the State of Mississippi, but it is my under-
10 standing that with that one qualification, that we have
11 the witnesses here to further testify, if they desire it,
12 they have no objection to our relying on it.

13 MR. CLARK: That is correct, sir. We made that
14 agreement.

15 JUDGE TUTTLE: You may tender them in evidence.
16 To refresh our minds, you can read the list.

17 MR. CLARK: May I make one qualification?

18 JUDGE TUTTLE: Yes.

19 MR. CLARK: Mr. Barrett, I am sure, has been very
20 accurate in getting this list of materials up. We have not
21 had a chance to proof it, but previously when there was
22 introduced the text of the Governor's speech, I believe it
23 was introduced on the basis that if subsequent investigation
24 of counsel showed some typographical or some other error in
25 the transcription, that that could be corrected, and I would

1 like to have the same --

2 JUDGE TUTTLE: The Court will give you every
3 privilege of objecting later on to any inaccuracy or typo-
4 graphical error, and we will then pass on that whenever you
5 raise it.

6 MR. CLARK: And that is the only objection I have.

7 MR. BARRETT: The exhibits to which we particularly
8 call the Court's attention are, No. 1, the transcript of
9 testimony before the United States District Court for the
10 Southern District of Mississippi in Meredith against Fair
11 on September 21, 1962. The testimony relates to the
12 incident at the campus of the University of Mississippi at
13 Oxford on September 20th.

14 JUDGE TUTTLE: Which was testimony given by whom,
15 by the officials of the University?

16 MR. BARRETT: Well, there were -- no, none of
17 the officials testified, as I recall. However, I testified
18 myself regarding the events, and there were two witnesses
19 for the Respondents.

20 JUDGE TUTTLE: This is the evidence that you sub-
21 mitted for the purpose of seeking a contempt --

22 MR. BARRETT: That is correct.

23 JUDGE TUTTLE: I see.

24 MR. BARRETT: No. 2 is the transcript --

25 JUDGE TUTTLE: It may be admitted without objec-

1 tion?

2 MR. BARRETT: Yes. I am informed by Mr. Clark that
3 one of the witnesses for the Respondents was a University
4 official.

5 JUDGE TUTTLE: I was just trying to determine the
6 nature of the testimony without going into it.

7 MR. BARRETT: Yes.

8 (Whereupon, the document offered by
9 Counsel was duly marked for identi-
10 fication as "Government's Exhibit
11 No. 1" and received in evidence.)

12 MR. BARRETT: "Government's Exhibit No. 2" is
13 transcript of testimony before this Court on September 28,
14 1962, which was the hearing on the alleged contempt, what
15 the Court found to be contempt, by Governor Barnett.

16 JUDGE TUTTLE: Now we have already held that that
17 is available and before the Court. That may be received in
18 evidence.

19 (Whereupon, the document offered by
20 Counsel was duly marked for identi-
21 fication as "Government's Exhibit
22 No. 2" and received in evidence.)

23 MR. BARRETT: And "Government's Exhibit No. 3,"
24 transcript of testimony before this Court on September 29,
25 1962. That was the hearing relating to the Lieutenant

1 Governor.

2 JUDGE TUTTLE: It may be received.

3 (Whereupon, the document offered by
4 Counsel was duly marked for identi-
5 fication as "Government's Exhibit
6 No. 3" and received in evidence.)

7 MR. BARRETT: "Government's Exhibit No. 4" is the
8 transcript of the speech delivered by Ross R. Barnett on
9 September 13, 1962. This is the speech to which Counsel has
10 already alluded. "Government's Exhibit No. 5" is a certi-
11 fied copy of the Interposition Proclamation of Ross R.
12 Barnett, dated September 13, 1962. "Government's Exhibit No.
13 6" is a certified copy -- certified copies of records of the
14 Justice of the Peace Court of the Fifth Supervisor's
15 District of Hinds County in the case of State of Mississippi
16 vs. Meredith, filed on September 14, 1962.

17 JUDGE TUTTLE: Admitted.

18 (Whereupon, the documents offered by
19 Counsel were duly marked for identi-
20 fication as "Government's Exhibits
21 Nos. 4, 5, and 6" and received in
22 evidence.)

23 MR. BARRETT: "Government's Exhibit No. 7" is
24 certified copies of records of the Justice of the Peace
25 Court of the Fifth Supervisor's District, same court, in the

1 case of Mississippi -- State of Mississippi vs. Meredith,
2 Case No. 15-242, which was filed on May 28, 1962, and tried
3 on September 20, 1962. The Court may recall that this is
4 the case which was the subject of this Court's temporary
5 restraining order against Mr. Alexander.

6 "Government's Exhibit No. 8" is certified copies
7 of the records of the Chancery Court of Hinds County in the
8 case of State of Mississippi Ex Rel. Ross R. Barnett vs.
9 Meredith, filed on September 20, 1962.

10 "Government's Exhibit No. 9" is certified copies
11 of the records of the Chancery Court of Lafayette County in
12 a case captioned the same as the case I just mentioned,
13 this one also being filed on September 20, 1962. I might
14 say that both of the complaints in those two cases are the
15 same. The complaints filed in Hinds County and in Lafayette
16 County are word for word the same.

17 "Government's Exhibit No. 10" is the Proclamation
18 of Ross R. Barnett, dated September 20, 1962, directing the
19 Board of Trustees and the Registrar to refuse James H.
20 Meredith admission to the University of Mississippi.

21 "Government's Exhibit No. 11" is the Proclamation
22 of Ross R. Barnett of September 20, 1962, directed to
23 James H. Meredith and refusing him admission to the
24 University.

25 "Government's Exhibit No. 12" is the text, certi-

1 fied copy of the text, of Senate Bill 1501, enacted on
2 September 20, 1962, by the Mississippi Legislature.

3 "Government's Exhibit No. 13" is a certified copy
4 of the Proclamation of Ross R. Barnett of September 24, 1962,
5 directed to state officials and directing them to arrest any
6 representative of the federal government violating the laws
7 of Mississippi.

8 "Government's Exhibit No. 14" is Proclamation of
9 Ross R. Barnett, dated September 25, 1962, to all sheriffs and
10 law enforcement officers, interposing the police powers of
11 the State of Mississippi.

12 "Government's Exhibit No. 15" is a certified copy
13 of the Proclamation of Ross R. Barnett, dated September 25,
14 1962, denying James H. Meredith admission to the University.

15 "Government's Exhibit No. 16" is the film of the
16 events of September 25, 1962, which --

17 JUDGE TUTTLE: That is the one you showed us last
18 time?

19 MR. BARRETT: -- which the Court has already seen.
20 That is correct.

21 "Government's Exhibit No. 17" is a certified copy
22 of the House Concurrent Resolution No. 18 of the Mississippi
23 Legislature, adopted on October 3, 1962.

24 Lastly, "Government's Exhibit No. 18" is a copy of
25 an injunction issued by the Chancery Court at Hinds County

1 on September 20, 1962, upon application of Ross R. Barnett,
2 enjoining the Board of Trustees of the University from
3 enrolling James H. Meredith. This particular document has
4 previously been admitted as "Respondents' Exhibit No. 9" at
5 the hearing of September 24th.

6 With respect to those documents for which we have
7 not previously supplied extra copies, for the Court's con-
8 venience, I have extra copies (distributing documents).

9 The Government has no further evidence to offer in
10 support of its motion. I ask that all of the documents be
11 admitted into evidence.

12 (Whereupon, the documents offered by
13 Counsel were duly marked for identi-
14 fication as "Government's Exhibits
15 Nos. 7 through 18," both inclusive,
16 and received in evidence.)

17 JUDGE TUTTLE: Now on the basis of this factual
18 proof, the Government is now moving that the Court grant an
19 interlocutory injunction?

20 MR. BARRETT: That is correct.

21 JUDGE TUTTLE: In the terms of the present
22 restraining order?

23 MR. BARRETT: That is correct.

24 MR. CLARK: If Your Honor please, we have no
25 documentary proof.

1 JUDGE TUTTLE: Excuse me just a minute, Mr. Clark.
2 Mrs. Motley, do you have any proof to offer?

3 MRS. MOTLEY: No, sir, the Appellant has no further
4 proof.

5 JUDGE TUTTLE: And have you a pending motion also?

6 MRS. MOTLEY: Yes, Your Honor. The motion which
7 we had related primarily to the Court's actions in all of
8 those documents, that is, the state court proceedings (which)
9 are now in evidence.

10 MR. CLARK: If Your Honor please, let me be sure
11 that we do understand each other about one thing. There is
12 no motion for a temporary or -- pardon -- there is no
13 motion for a preliminary injunction on the part of the
14 Appellant in this Court?

15 JUDGE TUTTLE: On the part of Meredith?

16 MR. CLARK: Yes. My understanding of the plead-
17 ings that were filed is that they asked only for a temporary
18 restraining order and did not pray for a preliminary
19 injunction, but, of course, there were citations for
20 contempt filed on the basis of the temporary restraining
21 order issued by Appellant against Governor Barnett, but not
22 against Lieutenant Governor Johnson.

23 JUDGE TUTTLE: You may proceed. Do you have any
24 factual proof?

25 MR. CLARK: No, Your Honor, I have no documentary

1 proof, I have no factual proof, if the United States Attorney
2 and Appellant will admit that the marshals who served the
3 processes of this Court were never acting as marshals of
4 the Eastern District of Louisiana. I believe that to be
5 so, and that would be the only purpose for putting them on.

6 MR. BARRETT: We will so stipulate.

7 JUDGE TUTTLE: That is, there is no order of any
8 kind deputizing them to act in that capacity. That is what
9 you mean?

10 MR. CLARK: That is what I mean, Your Honor. They
11 were never sworn in so-called or deputized by the Marshal
12 of the Eastern District of Louisiana to act as --

13 JUDGE TUTTLE: No one is considering what legal
14 effect that would have?

15 MR. CLARK: I don't intend to. I am only talking
16 about what I would prove from them from the stand.

17 JUDGE TUTTLE: All right. Now have you any showing
18 at all as to why these facts now shown by the Government
19 should not result in the issuing of a temporary injunction?

20 MR. CLARK: Yes, sir, Your Honor. In other words --

21 JUDGE TUTTLE: Facts.

22 MR. CLARK: Pardon. Facts, no, sir.

23 JUDGE TUTTLE: Now I would include in the facts,
24 Mr. Clark, if it be the fact, that the Governor has now or
25 is now agreeing that he will do all these things, and, there-

1 fore, no injunction may be necessary against him. Are you in
2 a position to say that or to make a showing?

3 MR. CLARK: If Your Honor please, it is my position
4 before this Court that on the motion of the Government for
5 preliminary injunction, that we do not care to offer that
6 fact at all.

7 JUDGE TUTTLE: All right, all right. You may
8 argue the motion for preliminary injunction on behalf of the
9 Government.

10 MR. BARRETT: If Your Honor please --

11 JUDGE TUTTLE: Again that, I guess, is covered
12 fully in your briefs, so I don't think we need very prolonged
13 argument on either side, but you may say what you --

14 MR. BARRETT: Well, if the Court please, I do not
15 intend to address myself to the jurisdiction problems, which
16 have already been argued in brief, but --

17 JUDGE TUTTLE: Let me ask you a question, if I may,
18 Mr. Barrett.

19 MR. BARRETT: Yes, sir.

20 JUDGE TUTTLE: When the Supreme Court denied
21 certiorari in the Meredith case, did the Supreme Court have
22 before it the injunction issued by this Court as a part of
23 that record?

24 MR. BARRETT: I can't answer that certainly. I
25 don't believe they did.

1 JUDGE TUTTLE: Well, I don't mean to say the
2 temporary restraining order. I am talking about the injunc-
3 tion issued on July 27th or July 28th. Now Mr. Justice Black
4 in his brief order referred to the fact --

5 MR. BARRETT: Yes.

6 JUDGE TUTTLE: That the respondents there, that is
7 -- or the defendants in the original suit, the Trustees, had
8 been enjoined by the Court of Appeals, this Court, and I
9 assume, therefore, that the record in the Supreme Court
10 included the injunction issued by this Court on July 28th as
11 well as the mandate down to the District Court.

12 MR. BARRETT: Well, I believe the application of
13 the Appellant to Justice Black --

14 JUDGE BROWN: I had the Clerk's Office call, and
15 the Supreme Court confirms that the three supplemental
16 records, one, two, and three, were filed by Mr. Clark.
17 Before that I have a copy of this petition for certiorari,
18 which includes that order in the appendix.

19 MR. BARRETT: That is correct.

20 MR. CLARK: Yes.

21 JUDGE TUTTLE: My reason for asking that question
22 is because, if the Supreme Court has denied certiorari in
23 the Application for Certiorari which took up to the Supreme
24 Court the injunction issued by this Court on July 28th, it
25 would seem to me that that issue is finally disposed of as

1 to our power --

2 MR. BARRETT: Yes.

3 JUDGE TUTTLE: -- or the propriety of our issuing
4 an injunction in addition to the mandate. I invite your
5 comment.

6 MR. BARRETT: Well, I must say that I do not know
7 whether the issues raised by the Petition for Certiorari
8 included the propriety of the July 28th injunction as dis-
9 tinguished from the June 25th judgment, but it may be that
10 it --

11 JUDGE TUTTLE: Well, Mrs. Motley can discuss that
12 in her argument, if she wishes to.

13 MR. BARRETT: If the Court please, the record now
14 before the Court shows substantially this:

15 Shortly after the Supreme Court decided the Brown
16 case and entered its implementing decision in 1955, the
17 Legislature of Mississippi adopted its so-called Interposi-
18 tion Resolution, which has been attached as an appendix to
19 our application for designation as Amicus. Now this resolu-
20 tion is in effect an effort to nullify the determination of
21 the Supreme Court in that case. It is not a legal attack or
22 any other sort of an attack on a particular fact situation
23 relating to a case pending in Mississippi; it is a frontal
24 and broad assault upon the judicial system of this country.
25 Now among other things, the Interposition Resolution says

1 this: that a question of contested power has arisen. The
2 Supreme Court of the United States has asserted for its part
3 that the states are prohibited from taking unto themselves
4 the power to maintain racially separate public institutions,
5 and the State of Mississippi for its part asserts that it
6 and its sister states have never delegated such rights.
7 The resolution continues, saying:

8 "We do hereby declare the decisions
9 and orders of the Supreme Court of the
10 United States of May 17, 1954, and May 31,
11 1955, to be a usurpation of power reserved
12 to the several states, and do declare as
13 a matter of right that said decisions
14 are in violation of the constitutions
15 of the United States and the State of
16 Mississippi, and, therefore, are con-
17 sidered unconstitutional, invalid; and
18 of no lawful effect within the confines
19 of the State of Mississippi."

20 Now, thereafter the Legislature in implementing
21 that Resolution of Interposition adopted Section 4065.3 of
22 the Mississippi Code, the text of which is appended as
23 Appendix B to our Application for Designation as Amicus.

24 Now this code section, which is still in the
25 Mississippi law, refers specifically to the Interposition

1 Resolution and calls upon all members of the executive branch
2 of the State, whether they be at the local level or the
3 state level, and naming specifically all sheriffs, constables,
4 mayors, policemen, highway patrolmen, chiefs of police,
5 and calls upon them to implement the Interposition Resolu-
6 tion, and they are directed to comply with the Constitution
7 of the State of Mississippi and with the Resolution itself.

8 And then it goes on to say that they are further
9 directed and required to prohibit by any lawful, peaceful,
10 and constitutional means the implementation of or the
11 compliance with the integration decisions of the United
12 States Supreme Court of May 17, 1954, and of May 31, 1955.
13 and to prohibit by lawful, peaceful, and constitutional
14 means, the causing of the mixing or integration of the white
15 and Negro races in public schools.

16 JUDGE BELL: That was a resolution too that you
17 just read?

18 MR. BARRETT: No, sir, this is a law.

19 JUDGE BELL: A statute?

20 MR. BARRETT: This was passed by the Legislature,
21 signed by the Governor.

22 JUDGE BELL: Yes.

23 MR. BARRETT: And it is presently codified.

24 JUDGE RIVES: It would seem to me none of that
25 extends as far as the colleges. The colleges came in even

1 before those Brown decisions.

2 MR. BARRETT: Well, it is true that there were
3 earlier decisions within the framework of the separate but
4 equal doctrine, in which the Supreme Court held that as to
5 particular courses of study there could be no equality with
6 separation, but, as I read this Interposition Resolution,
7 it relates in fact not only to schools but to discrimination
8 in all fields of public life, parks, playgrounds, transporta-
9 tion.

10 JUDGE TUTTLE: Does that speak of "integration
11 decisions of the Supreme Court"? What was that line you
12 just read?

13 MR. BARRETT: Yes, it says "integration decisions."
14 I think there it refers specifically to the Brown case. It
15 says, "to prevent compliance with the integration decisions
16 of the United States Supreme Court of May 17, 1954, and of
17 May 31, 1955," and then it goes on to say, "and to prohibit
18 by name of the named means the causing of mixing or integra-
19 tion of the white and Negro races in public schools, public
20 parks, public waiting rooms, public places of amusement,
21 recreation or assembly in this State by any branch of the
22 Federal Government."

23 JUDGE WISDOM: The law as distinguished from the
24 resolution does use the term "by all lawful, peaceable,
25 and" -- I think -- "constitutional means"?

1 MR. BARRETT: Well, that is correct, but the law
2 refers specifically to the Interposition Resolution and
3 clearly uses it as a basis for defining what is lawful and
4 constitutional.

5 JUDGE JONES: Might it not modify it?

6 MR. BARRETT: Well, I think not, because in the
7 statute also, Judge Jones, the Legislature of the State has
8 said that the decisions of the United States Supreme Court
9 construing the Fourteenth Amendment are illegal and uncon-
10 stitutional.

11 JUDGE JONES: But they are to be opposed only by
12 lawful and constitutional means?

13 MR. BARRETT: Well, that is correct, but it would
14 seem to me that inherently there is a contradiction in the
15 statement that they will achieve an unlawful object by
16 lawful means, namely, obstructing the valid orders of the
17 courts of the United States by means that are lawful.

18 JUDGE BELL: Suppose we got the Constitution
19 amended. That wouldn't be unlawful, would it?

20 MR. BARRETT: Not at all.

21 JUDGE BELL: Well, it might have meant that.

22 MR. BARRETT: I think from a reading of both the
23 statute and the Interposition Resolution, it is perfectly
24 clear that that is not what is meant, because it is directed
25 to policement, to all public officials, both minor and major.

1 It is not directed to the State Attorney General, who might
2 perhaps prosecute a lawsuit, but it directs all of the
3 members of the executive branch of the State, at the local
4 and state levels, to prevent white persons and Negroes from
5 using the same facilities, whatever those facilities are,
6 and there is no qualification as to the means, other than the
7 general statement that it shan't be done in an unlawful
8 manner. It seems to us that these pronouncements by the
9 State of Mississippi set the stage for the clash that has
10 in fact come within recent months between the United States
11 Judiciary and the State. They announced at that time that
12 they were not going to comply and that they do not regard
13 the decisions of the Federal Courts as having any legally
14 binding power upon it.

15 After this Court rendered its judgment of June 25,
16 reversing the District Court, and Justice Black on September
17 10th dissolved the last of the stays that had delayed execu-
18 tion of that judgment, the events which were foretold in
19 these resolutions came to pass.

20 Just three days later, on September 13th -- and
21 on the very day on which the District Court entered its
22 order in compliance with the mandate of this Court, the
23 Governor went on television and radio and in a statewide
24 broadcast delivered his speech, which is in the record of
25 this Court. He also as part of it read his proclamation,

1 which is an exhibit. He referred to these resolutions, the
2 law, and called upon all officials of the State of
3 Mississippi to carry out the policy of the State as set
4 forth in the resolution of 1946.

5 The next day, September 14th, the Defendant, Paul
6 Alexander, as District Attorney for Hinds County, filed in
7 the Hinds County Chancery Court a criminal charge, a felony
8 charge, of perjury against James Meredith. The allegations
9 in the complaint were of the same facts that were contained
10 in a prior charge, which this Court had restrained, and the
11 temporary restraining order was at that time still outstand-
12 ing. It was known at that time that the regular time for
13 enrollment for James Meredith as a transfer student was
14 September 20th and that he could be expected to commence
15 classes on September 21st. On September 20th, the Governor,
16 in the name of the State, filed three separate injunction
17 suits in the State Court. Two of them were in Hinds County,
18 one was in Lafayette County. The one in Lafayette County
19 and one of those in Hinds County named James H. Meredith as
20 the defendant. They are identical in their terms. Para-
21 graph 2 of those complaints reads as follows:

22 "Complainant shows unto the Court that
23 James H. Meredith, Defendant herein, is
24 seeking and plans to apply for admission,
25 enrollment, and matriculation as a student

1 at the University of Mississippi by
2 virtue of an illegal decree and an
3 illegally issued injunction issued
4 thereon mandatorily requiring that he
5 be admitted and be enrolled as a
6 student in said school."

7 Paragraph No. 3 of the two complaints has this
8 language:

9 "James H. Meredith, the Defendant,
10 is a colored man. The University of
11 Mississippi is an educational institu-
12 tion belonging to and being operated by
13 the State of Mississippi under its
14 Constitution and statutes lawfully
15 enacted and establishing it as an
16 institution of higher learning for
17 members of the white race. It is
18 against the public policy of the State
19 of Mississippi as well as its laws
20 for any colored person to be admitted
21 as a student at said institution and
22 his enrollment and entry therein would
23 be in direct violation of the laws of
24 the State of Mississippi."

25 JUDGE BROWN: What did you read from there?

1 MR. BARRETT: I am reading from a complaint sworn
2 to by the Governor of Mississippi, filed -- actually two
3 complaints, one filed in Hinds County and one filed in
4 Lafayette County on September 20th, the date James Meredith
5 was due to enroll in the University.

6 JUDGE TUTTLE: All of the Trustees and all of the
7 Officials of the University testified at the trial before
8 Judge Mize that it was not an institution maintained for the
9 white race, that there was no policy of segregation. It
10 would have saved a lot of time of the Trial Court and a lot
11 of our time if he had made this statement a year ago.

12 JUDGE WISDOM: As a matter of fact, Counsel for
13 the University insisted they had no segregation policy.
14 The Registrar was shocked and surprised that anyone would
15 think the University of Mississippi would turn down a
16 qualified Negro.

17 JUDGE TUTTLE: That has no bearing on your argument.
18 We can't help but comment on it.

19 MR. BARRETT: I think it does.

20 JUDGE WISDOM: It has some bearing in my mind.

21 MR. BARRETT: I think it has this bearing -- if
22 Your Honor please --

23 JUDGE TUTTLE: Whether the good faith of people
24 is justified?

25 MR. BARRETT: As to the issue now before the Court,

1 we believe --

2 JUDGE BROWN: Relief from the State of
3 Mississippi --

4 MR. BARRETT: Yes, indeed, and also in addition
5 whether or not the facts of this case are such as to warrant
6 the extraordinary exercise of the ancillary jurisdiction of
7 the Court in aid of its jurisdiction.

8 JUDGE TUTTLE: I might comment to you as to the
9 inconsistency of this position.

10 MR. BARRETT: Yes.

11 JUDGE TUTTLE: I don't think the facts are what
12 you are trying to present to the Court right now.

13 MR. BARRETT: Now on that same day, September 20th,
14 when Meredith was expected to enroll in the University and
15 did in fact attempt to enroll, he was prosecuted in the
16 Hinds County Court on the misdemeanor charge which had
17 been filed back in May, May 28th, and prosecution of which
18 was restrained by order of this Court. The documents which
19 we have offered into evidence include not only the pleadings
20 but the minute entries in connection with that case.

21 JUDGE BELL: Haven't we already issued an injunc-
22 tion on that? I believe there is a temporary restraining
23 order still outstanding, still in effect.

24 MR. BARRETT: And it was continued as a temporary
25 injunction in the Court's order of July 28th, I believe, but

1 the minute entries of the Hinds County Justice of the Peace
2 Court show that there was no effort to give notice to
3 Meredith or his counsel that the trial would be held at
4 8:30 a.m. on September 20th until the preceding day, and
5 the record shows that at 5:10 p.m. on September 19th his
6 attorney, Jess Brown, was contacted by telephone and told
7 that the hearing would be held at 8:30 the following morning.
8 There was no appearance, of course, by either Meredith or
9 his attorney by the following morning, but he was nonetheless
10 tried, found guilty in absentia, and sentenced. In addition,
11 on that same day the Governor issued a further proclamation,
12 which we have marked as "Government's Exhibit No. 10" for
13 the purposes of this hearing, directed to the Board of
14 Trustees, instructing them under the police power of the
15 State of Mississippi, and with the Governor interposing
16 himself, to deny admission to James Meredith. Also on that
17 day the Legislature of the State enacted, and the Governor
18 signed, Senate Bill 1501, which provided that any person
19 against whom a charge was pending, even though he had not
20 been convicted of it, a charge involving moral turpitude,
21 could not be admitted to the University, and, if he
22 attempted in any way to enroll or be admitted, he would be
23 subject to arrest and prosecution, as would anybody who
24 sought to aid him in such enrollment.

25 At that time, of course, the September 14th charge,

1 which had been filed immediately after the entry of the
2 District Court order requiring his admission, was still
3 pending, and, therefore, under the terms of the bill which
4 was clearly directed against James H. Meredith he would be
5 arrested if he stepped onto the campus of the University to
6 enroll as a student pursuant to the orders of this Court.

7 JUDGE BELL: Is there an outstanding injunction on
8 that bill?

9 MR. BARRETT: There is not.

10 JUDGE BELL: -- preventing the use of it against
11 Meredith?

12 MR. BARRETT: There is a temporary restraining
13 order, of course, which we now ask --

14 JUDGE TUTTLE: That is part of the things you are
15 asking us to enjoin?

16 MR. BARRETT: That is right, as well as the
17 perjury prosecution.

18 JUDGE BELL: I thought we signed another one on
19 that particular law. We signed it up in Hattiesburg, Judge
20 Wisdom and I signed it. I think it is still outstanding,
21 I believe.

22 MR. BARRETT: Yes, that may well be.

23 JUDGE BELL: Well, it is not important. You go
24 ahead. We will find that out later.

25 MR. BARRETT: I believe there was a District Court

1 temporary restraining order against any arrest under that
2 bill.

3 JUDGE BELL: Yes.

4 MR. BARRETT: But it did not extend to the effect
5 of the bill in barring him as a student, and thereafter this
6 Court entered a temporary restraining order which covered
7 the other phase of the bill. Now on that same day and
8 presumably after the Governor had by proclamation directed
9 the Trustees to deny Meredith admission, the Governor himself
10 signed a further proclamation denying -- as Registrar, but
11 in the Governor's name -- Meredith's admission to the
12 University. Of course, it was on that day that the
13 confrontation between the Governor and Meredith occurred on
14 the campus at the University.

15 JUDGE TUTTLE: That was a State office building,
16 wasn't it?

17 MR. BARRETT: No, sir, this was at the Extension,
18 Education Extension Building at Oxford.

19 JUDGE TUTTLE: I see.

20 MR. BARRETT: It was just four days later, on
21 September 24th, that the Governor issued his proclamation,
22 which we have now marked as "Government's Exhibit No. 13,"
23 directed to all public officials of the State of
24 Mississippi and requiring them to arrest any representative
25 of the Federal Government, who in effect did anything to

1 ~~implement or~~ enforce the orders of this Court and of the
2 District Court in connection with the Meredith case.

3 On the following day the Governor issued another
4 proclamation, specifically directed to law enforcement
5 officials, all law enforcement officials of the State of
6 Mississippi. It is rather ambiguous in language. However,
7 it specifically again interposes the police powers of the
8 State of Mississippi and calls on the officers to "take due
9 notice thereof and govern yourselves accordingly." It was
10 on that day that the Governor went to the office of the
11 Board of Trustees in Jackson -- this is September 25th --
12 and barred the entry of Mr. Meredith and the representatives
13 of the Department of Justice from entering the offices to
14 proceed with the registration of Meredith according to the
15 orders of this Court.

16 On the following day, September 26th, the
17 Lieutenant Governor, Paul B. Johnson, Jr., together with
18 the state troopers, law enforcement officers of the State of
19 Mississippi, physically prevented the entry of Mr. Meredith
20 and representatives of the Federal Government onto the
21 campus at Oxford. At that time, the Lieutenant Governor said
22 he was acting for the Governor, and gave Mr. Meredith another
23 copy of the proclamation which the Governor had previously
24 given him, denying him admission.

25 Then more recently, on October 3rd, the State

1 Legislature adopted House Concurrent Resolution No. 18,
2 which we have marked, the text of which we have marked for
3 identification as "Government's Exhibit No. 17," which is
4 titled, "A Concurrent Resolution Declaring It To Be the
5 Sense of the Legislature That Each and Every Act of the
6 Sovereign State of Mississippi, as Performed through and by
7 Its Proper Officials, in Connection with the Matter of James
8 H. Meredith, Has Been Legal under the Laws of the State of
9 Mississippi and under the Constitution of the United States
10 of America, and That Every Act of the Attorney General and
11 the President of the United States in This Matter Has Been
12 Illegal and in Direct Violation of Certain Articles of and
13 Amendments to the Constitution of the United States of
14 America."

15 JUDGE BELL: Mr. Barrett, let me interrupt you

16 MR. BARRETT: Yes, sir.

17 JUDGE BELL: -- to ask this question: In Georgia
18 the Governor, the Executive Department, has nothing to do
19 with a resolution of the Legislature. He can't veto it, he
20 has nothing to do with it. Is that so in Mississippi, or do
21 you know?

22 MR. BARRETT: I believe it is. I don't know
23 definitely, but I believe these resolutions are not signed
24 by the Governor.

25 JUDGE BELL: They can pass a resolution nearly

1 every day, you know, on something.

2 MR. BARRETT: Yes.

3 JUDGE BROWN: Have you got a copy of this act the
4 State referred to on page 19 of its brief, called "House
5 Bill No. 2," enacted September 28th, 1962, ". . . providing
6 that all acts, words and conduct performed or attempted to
7 be performed by any state officer and in anywise connected
8 with keeping the institutions of higher learning segregated
9 are adopted as the acts of the State of Mississippi in its
10 sovereign capacity and not the individual acts of such
11 persons"?

12 MR. BARRETT: Well, we do not have a copy of it in
13 the record.

14 JUDGE BROWN: Do you have a copy of it?

15 MR. BARRETT: I believe I do back in the office. I
16 don't have it here. It is our position that that is of no
17 legal effect in any event as far as it purports to relieve --

18 JUDGE BROWN: Well, the Governor did approve that?

19 MR. BARRETT: Oh, yes, indeed, yes, indeed. That
20 was a --

21 JUDGE BELL: When was that?

22 JUDGE BROWN: September 28, 1962, Brief page 19.

23 JUDGE TUTTLE: You don't say it has no effect to
24 relieve the individual, but it may have some effect as to
25 binding the State of Mississippi as a defendant?

1 MR. BARRETT: Yes, indeed. The conduct of the
2 State through its agents, which were of all three branches
3 of the Government, the Legislative, the Executive, the
4 Judicial, I think hardly needs argument to establish that
5 they were designed to and did frustrate the orders of this
6 Court. This threat, however, is clearly continuing. None
7 of these proclamations, these resolutions, these statutes,
8 have been repealed or rescinded in any way. On the contrary,
9 as lately as October 3rd the legislative organ of the State
10 has reaffirmed its determination to continue with this
11 policy. None of the prosecutions of Meredith which were
12 pending have been dropped or dismissed; none of the temporary
13 restraining orders issued by the State Courts have been
14 withdrawn or dissolved.

15 JUDGE BROWN: You said one had, didn't you?

16 MR. BARRETT: Well, one of them was dismissed by
17 the United States District Court after it was removed, but
18 there has been absolutely no watering down or withdrawal from
19 the policy which the State has repeatedly enunciated.

20 JUDGE JONES: You are going to tell us before you
21 sit down how an injunction against the State is to be
22 enforced, I assume.

23 MR. BARRETT: Well, Judge Gewin, an injunction
24 against the State --

25 JUDGE WISDOM: Judge Jones.

1 MR. BARRETT: I beg your pardon, Judge Jones. An
2 injunction against the State could be enforced by all the
3 means that are available in enforcing an injunction against
4 a corporation. While the sanction of imprisonment, of course,
5 is not appropriate, the other sanctions are. The states have
6 on a number of occasions been enjoined upon suit by the
7 United States. Of course, other litigants cannot sue a
8 state.

9 JUDGE JONES: Are there precedents for the
10 enforcement of the contempt determination so far as the
11 State is concerned?

12 MR. BARRETT: I am not aware, Judge Jones, of any
13 actual contempt proceedings against a state as such. There
14 may well be some. I am simply not familiar with any
15 precedents on that, but I, of course, am familiar with
16 precedents on granting injunctions against the state.

17 JUDGE TUTTLE: That is a point that I have some
18 concern about. Since the United States is not a party to
19 the litigation --

20 MR. BARRETT: Yes, sir.

21 JUDGE TUTTLE: -- how can this suit against the
22 State of Mississippi stand up under the Eleventh Amendment?

23 MR. BARRETT: Well, Judge Tuttle --

24 JUDGE TUTTLE: And, furthermore, why is it
25 necessary to accomplish the objectives that the Appellant

1 here is seeking to accomplish? In other words, you enjoined
2 all of the officers of the State, who, if it is solely State
3 action, would be the persons who would carry out the State
4 action. Well, there are two questions. Can you under the
5 Eleventh Amendment maintain this injunction against the
6 State of Mississippi and separately from the individuals?

7 MR. BARRETT: Well, as to your first question, we
8 believe we are a party to the present ancillary proceeding.
9 We are the moving party.

10 JUDGE TUTTLE: Well, that is the first time this
11 has been stated, I believe. In other words, you take the
12 position that the United States, so far as seeking an
13 injunction against the State of Mississippi, is a party to
14 that proceeding?

15 MR. BARRETT: Yes. We have never intended to take
16 any other position. Now if the --

17 JUDGE WISDOM: Well, you captioned it pretty
18 clearly --

19 MR. BARRETT: Yes.

20 JUDGE WISDOM: -- as the United States against
21 Mississippi.

22 MR. BARRETT: Well, we recognize the ancillary
23 nature of this proceeding in that jurisdiction lies in this
24 Court only by virtue of the existence of the Meredith case.
25 Nonetheless, we are a party in the same sense that the

1 Defendants in our petition are parties. They have been
2 brought in as parties.

3 JUDGE BROWN: The order entered in Hattiesburg
4 gave you the right to do everything a party could do by name
5 almost: file pleadings, produce evidence, initiate action --

6 MR. BARRETT: Yes, sir. Exactly the same
7 procedure was followed in the New Orleans School case where
8 the United States did sue the State of Louisiana.

9 JUDGE WISDOM: Except -- it was the same proceeding,
10 except that it was a District Court.

11 MR. BARRETT: Oh, that is correct, but as far as
12 the suability --

13 JUDGE WISDOM: Yes.

14 MR. BARRETT: -- of the State is concerned in this
15 type of proceeding, I believe the Louisiana case, which was
16 affirmed by the Supreme Court, is clear authority in that --

17 JUDGE TUTTLE: Well, I have your answer. In other
18 words, it is by reason of the fact you say the United States
19 is a party and it may in the ancillary proceeding join or
20 sue the State of Mississippi?

21 MR. BARRETT: Yes.

22 JUDGE TUTTLE: That that proceeding is available to
23 you?

24 MR. BARRETT: That is correct, and, as I understand
25 it, the Appellant has not sought relief against the State.

1 JUDGE TUTTLE: I see that now. Mr. Clark called
2 our attention to it.

3 MR. BARRETT: Now as to the need or desirability
4 of relief against the State as distinguished from the
5 individual officials, I would say this: This is not a case
6 where particular officials of the State, whether in accord-
7 ance or in violation of State law, have offended some
8 provision of Federal law. This is a case where the State
9 as a whole, through the official organs of its government,
10 not only has set a policy of defiance of Federal law, but
11 has directed and indeed has been and is compelling its
12 agents, whether they wish to or not, to violate the laws of
13 the United States. Now we think that under these
14 circumstances it is not only appropriate but it is necessary
15 that the State itself be named as a party and that relief
16 be granted as to it. Now the State has many agents. Even
17 by naming all the sheriffs of the various counties in
18 Mississippi as a class, the chiefs of police, you by no means
19 reach all of the instrumentalities through which the State
20 may act.

21 JUDGE BROWN: Do I understand that, if an injunc-
22 tion, preliminary injunction, is issued against the State --

23 MR. BARRETT: Yes.

24 JUDGE BROWN: -- and that any agent of the State,
25 whether he is a sheriff or constable or highway patrolman,

1 who has knowledge of the decree, he would be in contempt?

2 MR. BARRETT: That is correct. In other words,
3 they might -- if a particular function, which had been
4 performed by a law enforcement official, was transferred
5 to some other person, if he was an agent of the State, he
6 would still be bound. There wouldn't be any question as to
7 whether --

8 JUDGE BROWN: That eliminates this question of
9 all persons having knowledge hereof who are not parties.

10 MR. BARRETT: Yes, sir.

11 JUDGE JONES: Would the injunction prohibit a
12 member of the Legislature from voting for some resolution?

13 JUDGE BELL: He couldn't even make a speech
14 against the Federal Government or the policies of the
15 Federal Government. He would be restrained from making a
16 speech, as I understand it.

17 MR. BARRETT: I think not.

18 JUDGE BELL: He couldn't even protest.

19 JUDGE BROWN: Could he vote for a resolution that
20 said Mississippi was right and the United States and the
21 Department of Justice and all of its attorneys were wrong?

22 MR. BARRETT: I believe he could, I believe he
23 could.

24 JUDGE BROWN: He could vote for that resolution,
25 but the State couldn't adopt it? The State couldn't enact

1 it?

2 MR. BARRETT: Well, it could not be implemented in
3 any way. I think the injunction which we have asked would
4 prohibit no one, state official or other person, from
5 criticizing, disagreeing, making speeches, voting along with
6 the others to make pronouncements which are critical. It
7 would, however, restrain any action or any direct purposeful
8 incitement to action to obstruct the orders of this Court
9 and to prevent others from either enjoying rights under this
10 Court's orders or performing obligations. That would be the
11 extent of it, and, as I see it, anything beyond that would
12 be a questionable Constitutional invasion.

13 JUDGE WISDOM: Do you think it would go beyond
14 Meredith?

15 MR. BARRETT: Oh, yes, indeed.

16 JUDGE WISDOM: Because of the class action?

17 MR. BARRETT: Yes, indeed, because --

18 JUDGE BELL: You wouldn't have to have any more
19 integration cases in Court? You just handle it from now on
20 out of this one case?

21 MR. BARRETT: No, that is not correct.

22 JUDGE WISDOM: There still would be a question
23 whether in that particular case there was discrimination.

24 JUDGE BELL: I am worried about the effect it will
25 have. I have another question: This injunction against the

1 State, would it go so far as to bind the United States
2 Senators and Congressmen? Are you going to stop with the
3 Legislature?

4 MR. BARRETT: If I may answer your first question
5 first --

6 JUDGE BELL: Yes.

7 MR. BARRETT: -- it is true that the injunction we
8 ask is broad in its terms in two regards, as to the persons
9 it reaches -- and we think it should be broad, that it has
10 to be broad, that it has to be as broad as the conduct which
11 has obstructed this Court -- it is also broad in that it
12 would apply to any type of action which obstructs it, not
13 narrowly limited to a particular injunction suit in a
14 particular state court or a particular prosecution. It is
15 general in terms. However, in another sense I think it is
16 limited. It does confine itself to forbidding acts of
17 interference with existing orders of this Court and of the
18 District Court. It doesn't --

19 JUDGE BROWN: At times that comes close to so-
20 called First Amendment freedom of speech rights.

21 MR. BARRETT: Oh.

22 JUDGE BROWN: My personal view is that the
23 Governor going on television, which I saw again repeated when
24 I was in Hattiesburg and read it, since this was an open
25 incitement to rebellion and it ought to be forbidden, -- I