

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

1 don't know -- maybe the First Amendment gives him that right.

2 MR. BARRETT: Well, I think, Judge Brown, each  
3 instance may involve a question of fact, as it must, whether  
4 or not under the circumstances it is an incitement or merely  
5 an expression of the individual's views, and, of course, the  
6 injunction that we ask for would reach a direct incitement.

7 JUDGE TUTTLE: I think your answer to Judge Bell's  
8 question is that you are seeking as broad an order as is  
9 constitutional against any interference with a particular  
10 thing, which is this Court's order.

11 MR. BARRETT: That is right.

12 JUDGE TUTTLE: And, therefore, it is as broad as  
13 it can be in the persons it reaches acting on behalf of the  
14 State, but it is narrow in that it reaches only as far as  
15 this conduct may affect what this Court has previously  
16 issued --

17 MR. BARRETT: That is correct.

18 JUDGE TUTTLE: -- in the way of an order.

19 JUDGE BELL: Let us explore this a little. It seems  
20 to me this is very important. I read in the paper last week  
21 where Senator Stennis was complaining about the troops being  
22 in Mississippi. That was -- in a way he was criticizing the  
23 Federal Government and the way this case was being handled.  
24 Your injunction you don't contemplate would go so far as to  
25 stop him from objecting, do you?

1 MR. BARRETT: We do not.

2 JUDGE BELL: Well, that is where I don't know where  
3 you draw the line. Governor Barnett complaining is one thing,  
4 telling people not to obey the Court's order.

5 MR. BARRETT: Yes.

6 JUDGE BELL: He is directly involved, but then when  
7 you get over into the other people in Mississippi, there is  
8 a different shade of the thing. They are complaining, but  
9 they are not inciting anybody particularly to disobey the  
10 Court's order or defy the Court's order, you see.

11 MR. BARRETT: Yes.

12 JUDGE BELL: It is difficult to see where the line  
13 is drawn.

14 MR. BARRETT: Well, there may be a difficult  
15 factual situation, very close, but I would be sure that  
16 Senator Stennis was not inciting anyone to remove Meredith  
17 from the school or to interfere with the federal officers,  
18 who were carrying out the orders of this Court.

19 JUDGE BELL: Well, somebody, some Congressman from  
20 Mississippi, said that the matter never would resolve itself  
21 until Meredith was removed from the school. Just what you  
22 just said -- well, I don't want to interfere any longer with  
23 your argument. You go right ahead. The whole question  
24 concerns me.

25 MR. BARRETT: Well, perhaps I should say this, that

1 the --

2 JUDGE BELL: Let me say that you have six other  
3 Judges, so you'd better argue some to them and not waste  
4 your time too much on me.

5 MR. BARRETT: There is something I would like to  
6 say that does bear on that. The gist of our claim really is  
7 not what has been said but what has been done. Now what has  
8 been said does throw light on what has been done, and  
9 particularly what has been said recently in the October 3rd  
10 resolution indicates what may well be done in the future,  
11 unless there is some sort of restraint from this Court or  
12 from some other source.

13 JUDGE GEWIN: Mr. Barrett, suppose we grant all  
14 the restraints you seek. Who will try everybody? You know  
15 there is going to be someone criticizing, voicing objections,  
16 You get into the constitutional question of whether that is  
17 a right under one amendment or a violation of the Court's  
18 order under another. Who is going to try all those people  
19 if there is a possible marginal violation of the Court's  
20 order? Will this Court then have to sit as a trial court to  
21 determine who violated the order or who didn't?

22 MR. BARRETT: Well, Judge Gewin, I think it is  
23 true that this Court would have to determine whether or not  
24 its own orders had been violated. However, again let me say  
25 that the order we seek does not seek to enjoin segregation,

1 it does not seek to enjoin segregation in schools, it does  
2 not seek to enjoin generally obstruction to the Federal Court.  
3 All it seeks to enjoin is actual obstruction to this Court's  
4 orders and the orders that have been entered pursuant to  
5 this Court's mandate.

6 JUDGE BELL: In this case?

7 MR. BARRETT: In this case.

8 JUDGE BELL: Well, let's get it down to this case,  
9 and that will solve one --

10 MR. BARRETT: Exactly.

11 JUDGE BELL: -- point.

12 MR. BARRETT: And I would think that it would not  
13 be too difficult to determine in particular situations  
14 whether or not spoken words or actions obstructed this Court.  
15 It is not a question of whether or not they are in defiance  
16 of federal authority generally or disagreement with federal  
17 authority, but whether they are obstructing this Court, and  
18 I would say yes, this Court would have to determine it in  
19 each particular case. I would hope that there would be no  
20 occasion.

21 JUDGE JONES: Well, who is the citation directed  
22 to when the Legislature of Mississippi adopts another  
23 contemptuous resolution?

24 MR. BARRETT: Well, Judge Jones, assuming that a --

25 JUDGE JONES: Well; --

1 MR. BARRETT: It is difficult for me to assume.

2 JUDGE JONES: You have just read one that you say  
3 is one of the reasons why an injunction against the State of  
4 Mississippi is required.

5 MR. BARRETT: Well, I think I have not made myself  
6 clear. I am not saying that this particular resolution  
7 should have been or should now be enjoined. What I am  
8 saying is that the resolution is evidence, and I think very  
9 clear evidence, that the conduct which in the past has  
10 obstructed this Court is going to go on, unless this Court  
11 restrains it.

12 JUDGE TUTTLE: And is State action?

13 MR. BARRETT: And is State action. That is  
14 correct.

15 JUDGE WISDOM: To some extent your argument fits  
16 in with Mr. Clark's argument or the argument of the State  
17 that at this point, regardless of how it may have started  
18 out, at this point the controversy now is primarily with the  
19 State of Mississippi. In fact, that is one of their main  
20 arguments, that it is against the State of Mississippi, and,  
21 therefore, should be and comes within the Eleventh Amendment.

22 MR. BARRETT: Well, I think actually in the past  
23 hearings Counsel for the State has made the most effective  
24 arguments for enjoining the State.

25 JUDGE WISDOM: That is the very point of my remarks.

1 They are making the same arguments you are making.

2 MR. BARRETT: Our only disagreement would be that  
3 the responsibility of the State absolves all others, which  
4 is --

5 JUDGE BELL: That is the argument I thought they  
6 were making.

7 MR. BARRETT: Well, they are, but they agree with  
8 us that the State is responsible.

9 JUDGE BELL: Well, everyone else is absolved? That  
10 is what I took to be their argument.

11 MR. BARRETT: And that part of it, of course, we  
12 disagree with.

13 JUDGE BELL: Yes.

14 MR. BARRETT: We believe that the order of the  
15 District Court in the New Orleans School case is dispositive  
16 of whether or not a preliminary injunction is appropriate  
17 as against the particular types of defendants on the facts  
18 of this case. There as here the State had adopted a  
19 resolution of interposition; there as here the State  
20 Legislature enacted and the Governor signed laws seeking to  
21 implement that resolution. Some of these laws or some of  
22 the proclamations, as here, were directed against the agents  
23 of the Federal Government, who sought to implement the  
24 decrees of the Federal Court. The United States, as Amicus  
25 Curiae, filed a petition for an injunction, obtained a

1 temporary restraining order pending hearing of the motion for  
2 an injunction. After hearing, an order was entered. This  
3 was on November 30, 1960, the three-judge Court. Although  
4 the State of Louisiana as a state was not one of the enjoined  
5 defendants in this particular case, it was in other phases  
6 of the litigation. The Court enjoined the Governor and the  
7 Lieutenant Governor and the State Attorney General and various  
8 other officials, and then went on to enjoin the District  
9 Attorneys of all Judicial Districts of Louisiana as a class,  
10 the Criminal Sheriffs of all parishes in Louisiana as a  
11 class, the Mayors of all incorporated municipalities of the  
12 State of Louisiana as a class, the Chiefs of Police of all  
13 incorporated municipalities of the State of Louisiana as a  
14 class, and all other persons "who are acting or may act in  
15 concert with them, be and are hereby restrained," and then  
16 it goes on to state what they are restrained from doing,  
17 concluding with "from otherwise interfering in any way with  
18 the operation of the Public Schools of the Parish of Orleans  
19 by the Orleans Parish School Board pursuant to the orders of  
20 this Court."

21 Now that order of temporary injunction entered by  
22 the three-judge Court was appealed to the Supreme Court.  
23 Pending appeal, a stay was requested by the Appellants. The  
24 stay was denied, and the Court in denying it made its  
25 per curiam order, which has since been very much quoted, to



1 the effect that interposition is not a constitutional  
2 doctrine, and, if taken seriously, borders on sedition,  
3 words to that effect. Later, after the stay had been denied,  
4 the Supreme Court affirmed the order of the District Court,  
5 so that we have a clear Supreme Court precedent for exactly  
6 the type of preliminary injunction we are seeking here.  
7 Here as there the various officials, the sheriffs, the  
8 district attorneys, as a class, have been directed by the  
9 highest organs of the State Government, by the State itself,  
10 in fact, by direction that only the State as a state can  
11 give to obstruct the orders of this Court, and we urge upon  
12 the Court that both the State and they in their class  
13 capacity should accordingly be enjoined, and that the  
14 temporary injunction should issue pending further procedures.

15 MRS. MOTLEY: May it please the Court, I believe  
16 Mr. Clark stated that there was no motion for preliminary  
17 injunction by the Appellant pending before this Court. On  
18 September 25th, the Appellant made application for a  
19 temporary restraining order, in which the Appellant prayed  
20 for a preliminary injunction against the Governor.

21 JUDGE TUTTLE: A preliminary injunction?

22 MRS. MOTLEY: Yes, sir.

23 JUDGE RIVES: Never prayed for one against the  
24 State of Mississippi?

25 MRS. MOTLEY: No, sir, we have not. I will read

1 paragraph 5 of the prayer of our documents:

2 "We pray that said Governor be ordered  
3 to appear before this Court on October 5,  
4 1962 at 10:00 a.m. at the Old Post Office  
5 Building . . ."

6 -- and so forth --

7 ". . . and show cause why he should  
8 not be continued as a party in this case  
9 and why this temporary injunction should  
10 not be made a preliminary injunction."

11 JUDGE TUTTLE: Temporary restraining order?

12 MRS. MOTLEY: Why this "temporary injunction" it  
13 says.

14 JUDGE WISDOM: You meant restraining order?

15 MRS. MOTLEY: Should have been, yes, "should not  
16 be made a preliminary injunction." Now the document is  
17 entitled "Application for Temporary Restraining Order," but  
18 I don't think that we are bound by the name that happens to  
19 be given to the document. The order which was signed by  
20 this Court in paragraph one ordered Governor Barnett to  
21 appear before this Court on the date given before and show  
22 cause why he should not be made a party in this case and  
23 why a preliminary injunction should not issue.

24 Now, as I understand the State's first contention  
25 in this matter, it is that this Court does not have the

1 power to issue a preliminary injunction. Now this Court  
2 issued a preliminary injunction on July 28th, securing the  
3 admission of the Appellant to the University of Mississippi  
4 and enjoining Paul Alexander --

5 JUDGE BROWN: Nothing preliminary about that,  
6 July 28th. The only thing limited in point of time is the  
7 injunction against the prosecution of that one specific  
8 criminal case.

9 MRS. MOTLEY: Yes.

10 JUDGE BROWN: The rest of it is a permanent  
11 injunction, as I read it.

12 MRS. MOTLEY: Yes, sir. I was getting to that,  
13 that the preliminary injunction issue was limited to Paul  
14 Alexander, who was not a party to this case.

15 Now, in addition, I would like to point out that,  
16 with respect to that part of the order of July 28th, it was  
17 pending final action by the Supreme Court, and application  
18 for certiorari was denied Monday, which means that, if a  
19 preliminary injunction as to Paul Alexander ends, I would  
20 say -- and, therefore, there is a necessity for a preliminary  
21 injunction in addition to the restraining order which we have  
22 already received, either on the application of the Government  
23 or the Appellant, further restraining these Court actions,  
24 the one brought by Paul Alexander, the two or three brought  
25 by the Governor, and that is why it is necessary for this

1 Court to issue a preliminary injunction, a temporary restrain-  
2 ing order, without notice having been issued.

3 Now I think that the other thing which ought to be  
4 stressed with regard to the July 25th preliminary injunction  
5 order part is that the State contends that this Court is  
6 without power to issue any such preliminary injunction.  
7 Well, they ask the United States Supreme Court to review  
8 that question in their petition for writ of certiorari before  
9 the United States Supreme Court, and specifically on page  
10 27 of their petition they have an entire section devoted to  
11 this, in which they say:

12 "The actions of the Honorable Court  
13 of Appeals for the Fifth Circuit subject  
14 to the issuance of its mandate constitutes  
15 such a departure from the usual and  
16 accepted course of judicial proceedings  
17 as to call for the exercise of this Court's  
18 supervision."

19 Now in that section, they attack the power of this  
20 Court, on page 29, to issue the order of July 28th.

21 Now the denial of certiorari by the United States  
22 Supreme Court on Monday means that this Court's decision  
23 with respect to its power to issue a preliminary injunction  
24 has been left standing, so that I think that the law in this  
25 case now is that this Court does have the power to issue a

1 preliminary injunction, protecting the jurisdiction of this  
2 Court and more specifically preserving the effectiveness of  
3 the final injunction which it directed the District Court to  
4 issue in this case.

5 Now, as I said, the preliminary injunction part,  
6 which was issued against Paul Alexander, has expired.

7 JUDGE TUTTLE: There is a restraining order  
8 outstanding against him now, isn't there?

9 MRS. MOTLEY: Yes, there is, there is. Now these  
10 other State Court actions, which were brought by the Governor,  
11 are returnable in those State Courts on the fourth Monday in  
12 October. Now, with respect to the one in Hinds County, for  
13 example, the Sheriff of Hinds County returned his summons  
14 with the statement -- and I don't know whether that is a part  
15 of the evidence that is already in, but we have a certified  
16 copy, if that is needed as additional evidence -- where the  
17 Sheriff said that he was enjoined, doesn't say by whom, from  
18 serving that injunction order on the Appellant Meredith, but  
19 the action according to the certified copy of the record in  
20 that Court makes that injunction returnable on October 4th.  
21 No action has been taken by the Governor or his attorneys to  
22 dismiss those proceedings, so that I think the injunction is  
23 certainly necessary, that is, the preliminary injunction  
24 against the continued prosecution of those State Court  
25 actions, because those State Court actions, as I see it, are

1 perhaps the greatest single threat to the continued attendance  
2 of the Appellant at the University of Mississippi, because  
3 all of those actions are designed to get him out of the  
4 University of Mississippi. They were brought to enjoin him  
5 from doing anything further to secure his attendance, and  
6 certainly the State Court prosecution is designed to get him  
7 out of the State University.

8 JUDGE BROWN: I suppose that if we issue such an  
9 injunction, anyone that is enjoined with regard to those  
10 individual State Court actions will have the right to come  
11 in and make a showing to this Court that there are reasonable  
12 grounds for the further prosecution, either as a criminal  
13 or civil case, against Meredith?

14 MRS. MOTLEY: That is right.

15 JUDGE BROWN: But, until that is done, it stands  
16 undenied that it is just a part of the scheme.

17 MRS. MOTLEY: That is right, and certainly I think  
18 that the reason we need a preliminary injunction here is,  
19 as the Government has argued, that what we have here is a  
20 war against the Constitution of the United States by all of  
21 the officials and the State of Mississippi, and the Supreme  
22 Court has ruled already in Cooper vs. Aaron that no state  
23 official, whether he is an executive, a legislator of the  
24 state, or the judiciary of the state, can war against the  
25 Constitution without violating the duty of those state

1 officials to uphold it.

2 JUDGE BELL: What do you mean by "warring against  
3 the Constitution"? Do you mean by that that you can't even  
4 complain about it?

5 MRS. MOTLEY: No, to do more than that, that is,  
6 to do exactly what was done here, to pass resolutions, to  
7 make inciting speeches, to bring State Court actions, and to  
8 do things of that nature in defiance of the authority of the  
9 United States. What you have here is a whole pattern of  
10 activity on the part of State officers; you don't have an  
11 isolated speech by some legislator opposing the decision of  
12 the Supreme Court in the Brown case. The Supreme Court in  
13 the Brown case has settled --

14 JUDGE BELL: Mrs. Motley, how would you go about --  
15 just think of the history of this country -- how would you  
16 go about amending the Constitution? Just forget about the  
17 segregation-integration issue, but some other thing,  
18 prohibition, we'll say. Don't you have to war against the  
19 Constitution, don't you have to argue and meet and assemble  
20 and petition and those sort of things?

21 MRS. MOTLEY: No, sir.

22 JUDGE BELL: I know you can go too far, but the  
23 problem here is where do you draw the line when you get to  
24 talking about warring against the Constitution.

25 MRS. MOTLEY: I think you draw the line at what

1 would clearly be in the area of free speech. I think that  
2 an effort could be made on the part of the Southern states  
3 to amend the Constitution to reverse the Supreme Court's  
4 decision in the Brown case. Now I think that the possibility  
5 of getting three-fourths of the states to do that is as  
6 remote as anything could be, but I still think the Southern  
7 states have a right to organize themselves.

8 JUDGE BELL: Well, suppose one state wanted to do  
9 it and maybe others don't.

10 MRS. MOTLEY: Yes, sir, that is true.

11 JUDGE BELL: I am not talking about organizing. I  
12 am just talking about resolving, and the Legislature gets  
13 together and wants to pass a resolution, they don't like the  
14 President or don't like the Attorney General or don't like  
15 the N.A.A.C.P. or don't like this one or that one.

16 MRS. MOTLEY: Yes, I think they could do that. I  
17 think that is probably within the --

18 JUDGE BELL: -- free speech --

19 MRS. MOTLEY: -- province of any Legislature, and  
20 that is free speech, but when they go beyond that and use the  
21 full power of the State to prevent the execution of the  
22 Federal Court's order -- and I think the evidence is clear  
23 that that is what Mississippi intended here, what the  
24 Governor intended and what has in fact taken place. They  
25 have filed all these Court actions, which certainly the



1 Appellant alone could not have kept up with. If it hadn't  
2 been for the intervention of the United States, we could  
3 never have carried on this litigation, and what the United  
4 States says to this Court is that when you have a rebellion  
5 against the United States, such as you have here, that  
6 rebellion can be put down by the United States either by  
7 force of arms or the courts will devise some method.

8 JUDGE BELL: Now that raises another grave  
9 constitutional question: The power of the Constitution to  
10 guarantee a republican form of government. Of course, you  
11 say this is a rebellion. Maybe it hasn't got anything to  
12 do with a republican form of government.

13 MRS. MOTLEY: Yes, I think that that is a question  
14 which I can't answer, what is a republican form of govern-  
15 ment and what can be used to guarantee it, but --

16 JUDGE WISDOM: You don't have to talk about warring  
17 against the United States. All you have to talk about is the  
18 fact that the State of Mississippi, through its officials,  
19 and particularly through its Governor, defied the orders of  
20 this Court and physically prevented the orders being carried  
21 out.

22 MRS. MOTLEY: That is right.

23 JUDGE JONES: You are not seeking an injunction  
24 against Mississippi as a state? You are only asking relief  
25 against individuals as individuals?

1 MRS. MOTLEY: That is right. Our motion was  
2 limited to the Governor and, I believe, the Sheriff of  
3 Hinds County.

4 JUDGE JONES: And you are not in a position to  
5 complain about the resolutions then?

6 MRS. MOTLEY: Well, we certainly support the  
7 Government's position. As I understand it, it is this, as I  
8 tried to say a moment ago --

9 JUDGE JONES: They are the amicus here? You are  
10 the Appellant?

11 MRS. MOTLEY: Yes, but I think that anything done  
12 by the Government is done on behalf of the Appellant in this  
13 case. I don't want to suggest that we don't agree with the  
14 position of the Government in this respect. As I started to  
15 say, I think what the Government is trying to do is to find  
16 a way to bring about compliance with the Constitution of the  
17 United States and respect for Federal Court orders by some  
18 means other than by the use of force, and they say to the  
19 Court that here you have this whole state apparatus defying  
20 the United States, and somehow we have got to find a legal  
21 remedy against this in place of the use of arms, which might  
22 be the only other alternative, and that is what they are; as  
23 I see it, trying to say, and, of course, there is a serious  
24 Eleventh Amendment question presented, but nevertheless I  
25 think that in this type of situation some method must be

1 found for bringing the whole state organization under a Court  
2 order, as this situation seems to require, because Mr.  
3 Barrett said -- he listed a number of state officials -- he  
4 hasn't listed them all and probably could not if he sat down  
5 and attempted to do so.

6 JUDGE BROWN: Whereas, if he lists Mississippi, it  
7 takes in all of those people who are acting under the color  
8 of their --

9 MRS. MOTLEY: Right.

10 JUDGE BROWN: If they have knowledge of the decree  
11 out of the newspaper.

12 MRS. MOTLEY: So then, if the Court could find some  
13 way of enjoining the State as an entity, which would cover  
14 all these state officials, certainly that is to be desired,  
15 and I think that is what the Government says, and I think in  
16 that respect the Appellant certainly supports the Government  
17 that the law must devise some way of preventing all the state  
18 officials who organize in this fashion to defeat a Federal  
19 Court order.

20 JUDGE BROWN: Are you saying about this that the  
21 Appellant -- has the Appellant from the occurrences so far  
22 seen the necessity for ancillary relief at the hands of the  
23 United States Government to see that these orders are  
24 enforced?

25 MRS. MOTLEY: Yes.

1 JUDGE BROWN: You can't be a party to it yourself,  
2 but you can --

3 MRS. MOTLEY: Yes, sir.

4 JUDGE GEWIN: Suppose the relief is granted.  
5 Suppose that everybody thinks this is concerted action and  
6 that many people are involved. Who would try them and  
7 decide whether they are guilty or not and whether they were  
8 making a speech that they had a right to make or whether they  
9 were inciting people to riot and disorderly conduct? Would  
10 that be the problem of this Court then, in your judgment, --

11 MRS. MOTLEY: Yes.

12 JUDGE GEWIN: -- to try all of those cases and  
13 decide all of those questions?

14 MRS. MOTLEY: I think if this Court issued that  
15 injunction and it appeared that somebody had violated that  
16 injunction, that person or persons would have to be brought  
17 in here, as we have some now, to determine whether they had  
18 obstructed the injunctive order of this Court.

19 JUDGE GEWIN: Your argument forebodes the idea,  
20 it seems to me, that an injunction is needed, because many  
21 people will violate it in one way or another, and, if that  
22 reason for granting it is true, then we might well expect  
23 numerous violations resulting in subsequent numerous  
24 determinations of whether or not the order has been violated.

25 MRS. MOTLEY: Well, I think that the issuance of a

1 Court order usually and generally is respected, and that, if  
2 this Court issues an injunction against all the State  
3 officials, you will have compliance. Perhaps a few would  
4 try to violate it even then, but I think the overwhelming  
5 majority, it could be assumed, would abide by the orders.

6 JUDGE JONES: What did Patrick Henry say? "No way  
7 of judging the future but by the past," in expecting compli-  
8 ance.

9 MRS. MOTLEY: Well, I think that at this stage of  
10 this litigation it is reasonable to assume that there would  
11 be a larger number of State officials who would not take any  
12 active part in further defiance of this Court's order. That  
13 is what I mean.

14 JUDGE BROWN: Provided they are named as parties  
15 and enjoined?

16 MRS. MOTLEY: Yes, yes.

17 JUDGE BROWN: But up to now there is no basis, from  
18 what we hear and what we have seen, that there will be any  
19 general spirit of willingness to cooperate or help enforce  
20 the orders of this Court up to this time, except by those  
21 people --

22 MRS. MOTLEY: Yes.

23 JUDGE BROWN: -- who are under a positive order.

24 MRS. MOTLEY: There has been no statement by any  
25 official that I know of to the effect that they would support

1 the orders of this Court. However, I think that also in the  
2 last few days there has been some evidence that not many are  
3 taking action in violation of this Court's order, but, as I  
4 say, I think what the Government is trying to do is to devise  
5 some method of dealing with this problem which we have, and  
6 which is unique, and which we may not have again. We have a  
7 whole state apparatus operating to defy a Court order, and  
8 this is the reason for their request, as I understand it, for  
9 an injunction against the State as an entity as well as  
10 against all of these other State officials.

11 JUDGE BELL: Now we are being asked to issue an  
12 injunction, and we haven't had any evidence at all -- and  
13 certainly I wouldn't think it is up to the Appellant or the  
14 Government to offer it -- that conditions have improved in  
15 recent days to demonstrate that there is no need for an  
16 injunction. There is nothing you can do about that.

17 JUDGE TUTTLE: Well, actually they are under a  
18 restraining order now.

19 JUDGE BELL: They are under a restraining order  
20 now, so, of course, they comply, but, if there is no restrain-  
21 ing order and no injunction, there is no indication of what  
22 would happen.

23 MRS. MOTLEY: Yes, I certainly think from the  
24 record in this case that there is a clear need for a con-  
25 tinuance of the temporary restraining orders which have been

1 issued. I don't think that this Court could conclude at  
2 this time that there is no further need for any restraint  
3 on the officials of the State of Mississippi, as many  
4 officials have already been named by the Government in its  
5 ancillary proceeding.

6 JUDGE TUTTLE: Mr. Clark, we would like to take a  
7 lunch recess at about one o'clock. That seems to be as  
8 good a time as any. Now would you give us an estimate of  
9 about how long the three of you would feel that you would  
10 like to argue the case.

11 MR. CLARK: If Your Honor, please, I will make  
12 the only argument, and, of course, Your Honor, I think it  
13 would depend entirely --

14 JUDGE TUTTLE: I see.

15 MR. CLARK: -- upon what questions the Court would  
16 want to ask of me as to how long it would be.

17 JUDGE TUTTLE: Right.

18 MR. CLARK: I would say as far as my response is  
19 concerned that it would probably take me thirty minutes  
20 or less, maybe not even that long.

21 JUDGE TUTTLE: Very well. Just a moment.

22 (Conference among the Court)

23 JUDGE TUTTLE: We will go ahead and run to 1:15  
24 or 1:20, if necessary, rather than --

25 (Conference among the Court)

1 JUDGE TUTTLE: Since it is so close, we will  
2 simply take a luncheon recess now. The Court will be back  
3 in here at twenty minutes of 2:00, one hour. The Court  
4 will recess for one hour.

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6  
7 ....Thereupon, at 12:42 o'clock p.m.,  
8 a recess was taken until 1:40 o'clock  
9 p.m. ....

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1 . . . Pursuant to the recess, hearing in the  
2 above-entitled matters was resumed at 1:40 o'clock p.m.,  
3 appearances being the same as heretofore noted in the  
4 record....

5 JUDGE TUTTLE: You may proceed, Mr. Clark.

6 MR. CLARK: May it please the Court, I submit that  
7 the Government's argument and the argument of the Appellant  
8 in this cause loses sight entirely of the matter that is  
9 before the Court. The controversy that brought jurisdiction  
10 to this Honorable Court was the case of James H. Meredith  
11 vs. Charles D. Fair and others on the Board of Trustees and  
12 three officials of the University of Mississippi.

13 JUDGE TUTTLE: Your associates can't hear you.

14 MR. CLARK: This is the case of Meredith vs. Fair,  
15 and in connection with this case, the case of Meredith vs.  
16 Fair, the Court in its action saw fit to recall a mandate  
17 issued to the District Court, which had specifically  
18 directed that the jurisdiction of this cause remain in the  
19 District Court, and amended that mandate and returned it to  
20 the District Court, and therewith issued an injunction that  
21 said this:

22 "Pending such time as the District Court  
23 has issued and enforced the orders herein  
24 required and until such time as there has  
25 been full and actual compliance in good

1       faith with each and all of said orders  
2       by the actual admission of plaintiff-  
3       appellant to, and the continued at-  
4       tendance thereafter at the University  
5       of Mississippi on the same basis as  
6       other students who attend the  
7       University, the defendants, their ser-  
8       vants, agents, employees, successors  
9       and assigns, and all persons acting in  
10      concert with them, as well as any and  
11      all persons having knowledge of the  
12      decree are expressly: "

13   enjoined.

14               Now this particular injunction is the only vestige  
15   of jurisdiction that this Court has on the case of Meredith  
16   vs. Fair, on the Government's temporary restraining order,  
17   on the Appellant's temporary restraining order, on anything  
18   connected with this lawsuit. If it can't take a purchase on  
19   that injunction, then it doesn't belong before this Court at  
20   this time, for Congress has vested only the District Courts  
21   of the United States with jurisdiction of causes of action  
22   where the United States is a party, and, of course, you have  
23   got against the states an original jurisdiction in the  
24   Supreme Court of the United States, but there is no juris-  
25   diction granted to this Court by any act of Congress, which

1 created this Court, to exercise any original jurisdiction,  
2 but the Government says this is ancillary jurisdiction, and  
3 because ancillary jurisdiction becomes the entire connection  
4 between your power to act and the action that you are  
5 requested to take, may I have the indulgence of the Court to  
6 read you a definition of what is ancillary. It is from the  
7 case of O'Brien vs. Richtarsic, and it is from the District  
8 Court in the Western District of New York, speaking through  
9 Judge Knight. The opinion is reported in 2 F.D.R., page 42,  
10 and I read from page 44:

11 " . . . Webster defines ancillary as  
12 'designating or pertaining to a document,  
13 proceeding \* \* \* that is subordinate to,  
14 or in aid of, another primary or principal  
15 one; as an ancillary attachment, bill, or  
16 suit presupposes the existence of another  
17 principal proceeding.' 1. Bouvier's Law  
18 Dictionary \* \* \* defines ancillary as  
19 'Auxiliary,' 'Subordinate.' In Pell vs.  
20 McCabe (the Second Circuit) \* \* \* certain  
21 rules of determination were laid down. So  
22 far as could be relevant here, two only  
23 need be given consideration. The ancil-  
24 lary process must be 'to aid, enjoin, or  
25 regulate the original suit, \* \* \* .' The

1 cases last cited uniformly hold that  
2 ancillary jurisdiction in effect pre-  
3 supposes jurisdiction over the suit.  
4 Otherwise a claim could not be ancil-  
5 lary, and, of course, no jurisdiction  
6 be obtained."

7 This, of course, comports with the general authority  
8 under which this Court acted in this case, and that was 1651,  
9 Title 28, which allows you to issue whatever writs are neces-  
10 sary to aid your jurisdiction.

11 I would also call to Your Honors' attention -- and  
12 I am not going to quote from the brief, because we are going  
13 to submit it on the brief -- the reference on page 27 to the  
14 definition or rather the statement taken from 26 C.J.S.: The  
15 extraordinary power to issue writs is only -- and I am  
16 paraphrasing slightly -- is only for use in those rare  
17 instances when the appellate jurisdiction would be adversely  
18 affected unless the action is taken by the appellate court.

19 JUDGE BROWN: Do I assume correctly at this stage  
20 of your argument, Mr. Clark, you assume the validity of the  
21 orders of July 27 and 28?

22 MR. CLARK: For the purpose of this argument, yes,  
23 sir. Of course, Your Honors know we have taken the position  
24 the orders were improvidently issued and incorrectly issued.

25 A pause at this point might be appropriate here.

1 There has been a great deal said about denial of writ of  
2 certiorari. I call the attention of the Court to House vs.  
3 Mayo, 242 (?), in which the Supreme Court made it quite  
4 clear that a denial of certiorari establishes no principles  
5 in the case.

6 JUDGE BROWN: It establishes the law of the case.

7 MR. CLARK: If Your Honor please, we know of  
8 instances in which the writ of certiorari has been denied and  
9 the Court has later decided to take certiorari in the same  
10 lawsuit. I think it would certainly indicate that the  
11 Supreme Court didn't want to look at this lawsuit, and I  
12 think that my legal argument to you is -- because of the  
13 citation just given you -- it does not have the effect of an  
14 affirmance.

15 JUDGE TUTTLE: It certainly has as much effect as  
16 if no appeal had been taken though. You are no better off  
17 than if no appeal had been taken.

18 MR. CLARK: Certainly, sir, I am no better off.

19 JUDGE TUTTLE: That is what I am saying.

20 MR. CLARK: Yes, sir.

21 JUDGE TUTTLE: Whatever validity there is to this  
22 injunction issued by this Court on the 25th, 26th or 27th --  
23 whatever date it was -- has finally become the law of this  
24 case.

25 MR. CLARK: Yes, sir. In connection with the

1 proposition I advanced to the Court, that this is not  
2 ancillary relief, I would like to call the Court's attention  
3 to a case that you have heard time and again, In Re Debs,  
4 158 U.S. at 564. In this case the Supreme Court of the  
5 United States ruled that the United States had such an  
6 interest in seeing that its mails were duly delivered that  
7 it could have a separate and independent right of action to  
8 move into a railway labor strike and enjoin the principals  
9 and actually physically remove them from the scene of the  
10 strike, and the United States has time and again cited that  
11 case as support for the fact that any time its laws are  
12 being violated, that it has an independent right as the  
13 United States to come in and assert a cause of action in the  
14 District Court against whoever is violating those laws, and  
15 my point that I would make with you is that by coming into  
16 this Court to short-circuit the bringing of such a suit in  
17 the District Court, and thereby imposing an additional  
18 appellate burden upon this Court, is completely analogous  
19 to the bringing of a permissive counterclaim as an ancillary  
20 action to the original suit.

21           There are two distinct rules of law. A compulsory  
22 claim, which must be litigated, cannot defeat the juris-  
23 diction of the Court. A man having a compulsory counter-  
24 claim might in a diversity suit come in and wind up on the  
25 opposite side of a lawsuit to a person of his same state, to

1 a citizen of his same state, and he does not destroy federal  
2 jurisdiction that has attached, and the Court cannot con-  
3 sider the counterclaim, which could never have been brought  
4 in that court as an original action.

5 Also it is a rule of the same force and effect  
6 that a permissive counterclaimant will not be heard by a  
7 court, a man who could bring his action here or later will  
8 not be heard by a court who would not have jurisdiction of  
9 that cause, and I think that that is exactly the position  
10 that the United States is in here, particularly now since  
11 they have come in here and tried to assert to this Court  
12 that they don't comply with your order admitting them as an  
13 amicus, that they have come in here as a party.

14 JUDGE BROWN: Well, the order is very specific as  
15 to what they can do.

16 MR. CLARK: Yes, sir.

17 JUDGE BROWN: And everything they have done is  
18 literally expressed in that order.

19 MR. CLARK: And that order is just as positive as  
20 can be, Judge Brown, that they are amicus curiae to this  
21 Court in this proceeding.

22 JUDGE WISDOM: It is called an amicus curiae,  
23 but it is not the ordinary amicus.

24 JUDGE BELL: I might say that I signed the order,  
25 and, had they not been an amicus, I would not have signed it.

1 Judge Wisdom and Judge Brown also signed it, but they are  
2 amicus curiae, that is exactly what they are; whatever that  
3 is, that is what they are.

4 JUDGE WISDOM: I go beyond that description of it.  
5 I think the powers given to the United States make it in  
6 effect a party, if it has any power to assert as a party,  
7 that is, it may initiate action, and I don't think of that  
8 in the ordinary sense as being associated or included within  
9 the rights of an amicus. That is why I-- I would say that  
10 the description is inaccurate to call the United States an  
11 amicus in this case.

12 MR. CLARK: Judge, I wouldn't agree with you, sir,  
13 for this reason:

14 JUDGE WISDOM: Intervenor would be a better term.

15 MR. CLARK: I wouldn't agree with you because of  
16 what they have done under the holding in this Universal Oil  
17 Production versus, I think, Root Refining Company, in which  
18 they allowed an intervention as amicus, and the amicus  
19 actually got a master appointed and proceeded to take evi-  
20 dence for the court there. The persons who came in as  
21 amicus definitely told the Court at that time that they  
22 were going to later be attorneys for the parties. This case  
23 is cited both in the Government's original Memorandum of  
24 Authorities to intervene as amicus and in their brief that  
25 has been filed with the Court.



1  
2 JUDGE JONES: Were there any such powers expressly  
3 granted as were expressly granted here?

4 MR. CLARK: Judge, I haven't read the order. I  
5 don't know.

6 JUDGE RIVES: Isn't this case very close to Bush  
7 vs. Orleans Parish School Board, where they brought --

8 JUDGE JONES: -- as amicus, and later filed --  
9 except it was a district court instead of an appellate.

10 MR. CLARK: And, as I pointed out to Your Honors,  
11 you invited them in there, and the Court in its opinion in  
12 that case said it should also be stressed that the Government  
13 appeared -- and it italicized -- at the Court's request. The  
14 Justice Department was not intervening to protect a special  
15 interest of its own, and here --

16 JUDGE RIVES: I thought we invited them in here.  
17 I thought the Court directed them to appear as amicus.

18 MR. CLARK: On their petition.

19 JUDGE BELL: They filed a petition, but the purpose  
20 of the appointment of the Government as amicus curiae in  
21 this case was to preserve the processes of the Court -- it  
22 is so stated in the last clause of the order -- and in that  
23 connection they can file orders and those sort of things, but  
24 it is to preserve the processes of the Court, which I assume  
25 was the same reason they were allowed to appear as amicus in

1 the Bush case.

2 MR. CLARK: If Your Honor please --

3 JUDGE BELL: Even though in fact they may have been  
4 invited in that case, I don't think that makes a great deal  
5 of difference. It is when the processes of the Court are  
6 under attack that you have to have somebody to do some of the  
7 things that a court cannot do, like filing petitions, citing  
8 people for contempt, and those sort of things. The Court  
9 could do it, but it wouldn't be as orderly a way to do it.

10 MR. CLARK: As I said in the previous argument I  
11 made to you, I conceive the fact (to be that) the Court could  
12 have in Hattiesburg, Mississippi, called on a member of the  
13 Hattiesburg Bar to come in and act as amicus if it chose at  
14 that time.

15 JUDGE WISDOM: But the order specifically --

16 MR. CLARK: -- to submit pleadings, arguments,  
17 briefs, and initiate such further proceedings, including  
18 proceedings for injunctive relief, proceedings for contempt  
19 of court. Those are powers not ordinarily associated with --

20 JUDGE BELL: Read the last part of it.

21 JUDGE WISDOM: Of course, that is all qualified by  
22 the scope, which is to protect and preserve the integrity of  
23 the Court.

24 MR. CLARK: In this Court -- in other words, you  
25 admitted them in this Court at the appellate level because

1 you wanted this Court's orders protected?

2 JUDGE BELL: No. We let them in the District  
3 Court, too.

4 MR. CLARK: Yes, sir.

5 JUDGE BELL: Let them in both courts.

6 MR. CLARK: That is correct. I beg your pardon.  
7 That is true. They are amicus both in the District Court --  
8 they filed amicus pleadings in the District Court. Your  
9 Honor might like to have a reference: At page 876 of 19  
10 Federal Supplement (?), your order in the Bush case or  
11 rather the District Court's order in the Bush case is set  
12 out, and it is very substantially similar as far as the  
13 powers granted to the amicus.

14 JUDGE RIVES: I remember we referred to the Faubus  
15 case in the Bush case. In the Faubus case, though called an  
16 amicus, they were something more than an amicus.

17 MR. CLARK: Yes, sir. The Faubus order said that  
18 they were permitted -- the Attorney General of the United  
19 States is directed to file -- in other words, they not only  
20 called them in as amicus but said, You are directed to file  
21 a petition seeking injunctive relief against the Governor and  
22 against the National Guard Commander as may be appropriate  
23 to prevent existing interferences with and obstructions to  
24 the carrying out of the orders heretofore entered by this  
25 Court, but an amicus curiae by name has got to be a friend of

1 this Court.

2 JUDGE BROWN: He can be a friend of the Court and  
3 still help, can't he?

4 MR. CLARK: Yes, sir. What I am saying is that  
5 there is no such thing as an amicus curiae on behalf of the  
6 Appellant. Now that is an amicus-appellant, if there is any  
7 kind of animal like that, but this amicus has got to be as  
8 friendly to the State of Mississippi as to the Appellant.  
9 He acts for the Court.

10 JUDGE BELL: The amicus has one duty and one only  
11 in my view, and that is to see that the orders of the Court  
12 are carried out. That is what they are doing in the case.

13 MR. CLARK: That is right, sir.

14 JUDGE BELL: They are not a friend of one party or  
15 another. They are trying to get the orders of the Court  
16 carried out, and that is what they are here for.

17 MR. CLARK: That is my view of it, sir. Their  
18 normal function would be to suggest to the Court its proper  
19 jurisdiction. That has been the historical significance of  
20 an amicus, as I understand it, but in this case their  
21 amicus position was to help the Court to get its orders  
22 enforced?

23 JUDGE BELL: Right.

24 MR. CLARK: Here as amicus in this Court to help  
25 you get your appellate orders carried out, and I think that

1 at that -- in other words, the purchase that they took on  
2 this lawsuit as an amicus has to go back to the only thing  
3 that was then outstanding for this Court to do or to have  
4 any jurisdiction over, and that was the injunctive order  
5 that you issued on the 28th day of July, 19 --

6 JUDGE BROWN: I don't see how you can say that that  
7 order is continuing in its terms.

8 MR. CLARK: Yes, sir.

9 JUDGE BROWN: So that -- well, I notice you raise  
10 an objection in this formal pleading that -- I suppose --  
11 the denial of certiorari in the Meredith case puts an end to  
12 any power we have.

13 MR. CLARK: Yes, sir.

14 JUDGE BROWN: If we had the authority to issue the  
15 injunction and by its terms it is continuing in effect,  
16 doesn't this Court then have at least some power by ancillary  
17 proceedings to see to it that its orders are carried out?

18 MR. CLARK: Yes, sir. I had agreed with you too  
19 readily on the first part of your statement. It was a con-  
20 tinuing injunction, but the injunction has by its terms come  
21 to an absolute end, because the parts that you wanted done,  
22 the things that you wanted done while this injunction was a  
23 pending matter have been done, and it is not --

24 JUDGE BROWN: You make no effort to show that, and  
25 I read the papers every day, and when people are throwing

1 rocks and things in the window of the cafeteria, I'd have a  
2 lot of doubt that it has been complied with in good faith,  
3 and you have made no effort to show that conditions have  
4 changed one bit from the way they were when we saw the  
5 photograph of the Governor obstructing the orders of this  
6 Court.

7 MR. CLARK: Please the Court, I was under the  
8 impression that this Court was going to --

9 JUDGE BROWN: I am talking about this order. Now  
10 the order of July 28th says until such time as he is in --  
11 continues in attendance and in good faith on the same terms  
12 and conditions as any other student, this injunction remains  
13 alive.

14 MR. CLARK: That is right.

15 JUDGE BROWN: You have made no effort to show at  
16 all that the conditions of that continuing injunction have  
17 been met.

18 MR. CLARK: And I say to Your Honor that the  
19 entire showing that is necessary is to say that qualification  
20 was met when this Court received the evidence that it con-  
21 sidered sufficient to discharge every person against whom  
22 this injunction was directed by name, because they had  
23 complied with the injunction, because he had been admitted.  
24 This Court knows, has to know, that James Meredith has been  
25 admitted to the University of Mississippi, and that he is a

1 student there and has been attending --

2 JUDGE BROWN: On the same terms and conditions as  
3 any other student? -- being attacked and roughed up and things  
4 thrown, and no effort being made by the authorities to  
5 discipline students?

6 MR. CLARK: If Your Honor please, this man is in  
7 the custody of the United States.

8 JUDGE TUTTLE: Mr. Clark, there is one mis-  
9 apprehension I think you have. What we found as against the  
10 Trustees of the University, or as in their favor, and  
11 officials of the University was with respect to certain  
12 claimed violations of the Court's order. Now they are still  
13 subject to the restraining order and injunction of this Court,  
14 and, if anything has happened since that order by us,  
15 obviously, as you well know, they are subject to further  
16 citation for contempt, so, the mere fact that we have dis-  
17 charged them on a previous citation is no proof that they  
18 are now in complete compliance in this particular respect.  
19 I just think we ought to have that cleared out of the way.  
20 I am not suggesting that they are in violation now. All I  
21 am saying is the fact that we heretofore entered an order  
22 discharging them from citation for contempt is no proof of  
23 the present status in relation to the matter Judge Brown  
24 speaks about, whether he is now in full attendance in good  
25 faith, in the same standing as all other students.

1 MR. CLARK: All right. But you get back to this  
2 rule of law. If you don't accept that, the action of this  
3 Court established the fact they are public officials, and  
4 under Watson vs. Buck, 313 U.S. 817, you have to presume  
5 that they are doing their duty and doing it correctly until  
6 you know otherwise.

7 JUDGE BROWN: Well, I know otherwise. I don't  
8 know how I know it, but that is one thing that is crystal  
9 clear in this case.

10 MR. CLARK: Judge, it can't be. It's not so. This  
11 man is not being dealt with -- he has already been admitted  
12 to the University under the same terms --

13 JUDGE GEWIN: If I understand your position, in  
14 arguing to the motion for preliminary injunction, you are  
15 simply saying now that the mandate of this Court and the  
16 injunctive provisions of that mandate of July 28th have been  
17 complied with because the man is in school, has been  
18 registered, enrolled, and is attending classes.

19 MR. CLARK: That is right, sir. If there is a  
20 problem left, Judge Gewin, it is a district court problem.

21 JUDGE GEWIN: And then left for the Court to  
22 further -- something you will speak to later is the matter  
23 of whether there has been a purging of the contempt.

24 MR. CLARK: That is my understanding, that Your  
25 Honors would permit us to take up the motion for the



1 temporary or preliminary injunction, and that is all that I  
2 address myself to at this time.

3 JUDGE BROWN: Well, my questions are related to  
4 that too. I am not trying to get at contempt.

5 MR. CLARK: Yes, sir. The only point I make with  
6 Your Honors is that insofar as the order of the 27th or 28th  
7 is concerned, that it has expired by its own terms, No. 1,  
8 and No. 2, I make the point in which event obviously you have  
9 nothing to have an ancillary proceeding on. In other words,  
10 I don't even attack at this particular moment for the purpose  
11 of this argument, your authority to issue the temporary  
12 restraining order. I just say that, if it was validly issued,  
13 it is gone, too. This matter was dealt with to some extent,  
14 in a district court case that I think is very well reasoned  
15 called Pacific Gamble Robinson Company vs. the Minneapolis  
16 and St. Louis Railway Company. It is not cited in our  
17 briefs, by the way, and these cases I am giving you now are  
18 not.

19 JUDGE WISDOM: What is the case?

20 MR. CLARK: 92 Fed. Supp. 352, Pacific Gamble  
21 Robinson Company vs. the Minneapolis and St. Louis Railway  
22 Company. There was a claim there that the Railway Company  
23 had been refusing to allow this Pacific Company to have  
24 refrigerated cars that had cost them quite a bit of money,  
25 and they got an injunction in the lower court, and then the

1 injunction was violated, and on a contempt citation there  
2 was a fine, a recompensatory fine, of \$250,000 imposed. On  
3 the appeal or during the pendency of the appeal to the Court  
4 of Appeals, the matter was settled, and they began to let  
5 them have these refrigerated cars. They had refused to let  
6 them have them because they said there was a strike going on  
7 and their personnel would be endangered physically if they  
8 dealt with this company during the strike, and so forth, but  
9 when it came back to the District Court there were two  
10 matters to consider. One was contempt, and I am not going  
11 to deal with that phase of the opinion, because we are not  
12 there yet, but the other was this preliminary or temporary  
13 injunction that had already been issued in the District  
14 Court and never been rescinded by the District Court.

15 "The validity of a temporary  
16 injunction is derived from the pendency  
17 of the main action. It is ancillary  
18 thereto. And its ultimate and basic  
19 validity, as well as any contempt orders  
20 predicated thereon, necessarily depends  
21 upon the outcome of the main action.

22 \* \* \* \*

23 "Circumstances have now arisen  
24 which prevent this Court from finally  
25 determining whether or not the temporary

1           injunction was providently granted."

2   And I say you are in the same position with the temporary  
3   restraining order, and, therefore, I say there is no neces-  
4   sity to argue its correctness vel non, because, if we devote  
5   our time and attention to the issuance now of the preliminary  
6   injunction, it would settle the other.

7           "A decision at this time on the  
8           merits would be a determination of an  
9           abstract question. The merits of the  
10          controversy between the parties has not  
11          and cannot be determined by reason of the  
12          happening of the events which have ter-  
13          minated the dispute which invoked the  
14          equitable jurisdiction of this Court.  
15          Such a termination divests the Court of  
16          any equitable grounds to proceed further,  
17          either to enforce any interlocutory orders  
18          or to enter a final decree."

19          JUDGE BELL: Now you are now alluding to the merits  
20          rather than to the power of the Court to retain jurisdiction  
21          under that order of July 27-28?

22          MR. CLARK: Yes, sir. I say that regardless of  
23          whether you had the power to retain the jurisdiction to  
24          enter the order of the 27th or 28th, that it by its own  
25          terms has expired, and everything else in the case has got to

1 fall with it.

2 JUDGE BELL: Suppose everything has been done  
3 that was supposed to be done.

4 MR. CLARK: Yes, sir, and the other temporary  
5 restraining orders --

6 JUDGE BELL: Yes.

7 MR. CLARK: -- and a motion for a preliminary  
8 injunction all come to you because you have an outstanding  
9 injunction.

10 JUDGE JONES: Have there been some criminal pro-  
11 ceedings dismissed?

12 MR. CLARK: The Meador case was dismissed.

13 JUDGE JONES: Have all the criminal proceedings  
14 against Meredith been dismissed?

15 MR. CLARK: No, sir.

16 JUDGE BELL: I thought you said one had.

17 JUDGE TUTTLE: A private action dismissed.

18 MR. CLARK: Enjoined but not dismissed. Judge  
19 Bell, I think, asked the question during other argument with  
20 regard to an order entered by the Judges in Hattiesburg,  
21 Judges Brown, Wisdom and Bell.

22 JUDGE JONES: If our injunctive orders are all now  
23 gone, Meredith is going to have to stand trial in two  
24 different courts for the same offense, I suppose?

25 MR. CLARK: No, sir, and that is what I am getting

1 to. On the 20th of September -- I see you were thinking  
2 ahead of me. I was going to tell you of the order that was  
3 already entered enjoining 1501, the execution of 1501, which  
4 is the Senate Bill that says if you be convicted of a crime  
5 and you enter a university, then you are also guilty of a  
6 second crime. You also enjoined in that same order the  
7 conviction of the 20th in the Fifth District in Hinds County,  
8 and you enjoined the execution of the Jones County injunction.

9 JUDGE JONES: All of that is gone now?

10 MR. CLARK: Yes, Your Honor. I would say that  
11 under my argument that particular order would have to fall  
12 with my contention that your appellate jurisdiction for  
13 ancillary purposes goes.

14 JUDGE JONES: And as soon as we agree with you,  
15 they take Meredith out of the University of Mississippi and  
16 try him in Hinds County and send him to jail for-how long?

17 MR. CLARK: Well, Judge, I'd say this --

18 JUDGE TUTTLE: He's been convicted for how long?  
19 I think that is what Judge Jones is asking.

20 JUDGE BROWN: Five Hundred and a year?

21 MR. CLARK: Three Hundred and a year, I believe.  
22 I don't remember the terms of the conviction.

23 JUDGE BELL: The \$300.00 is probably not too  
24 important.

25 MR. CLARK: I would say this: There are presently

1 proceedings pending in the District Court which seek to  
2 enjoin this particular action and the Senate Bill 1501.

3 JUDGE WISDOM: Mr. Clark, how could this order of  
4 ours be effective without a continuing injunction? I mean:  
5 Let's assume that the merits are disposed of insofar as the  
6 merits relate to whether he should be admitted to the  
7 University. How in the circumstances of this case can our  
8 judgment be made effective without a continuing injunction?

9 MR. CLARK: Judge, I don't know the answer to that,  
10 unless it is the answer that the District Court has already  
11 given you pursuant to your own mandate, that the injunction  
12 continues, I suppose, as long as Meredith is a student of  
13 any kind, because it doesn't specify he has to be an under-  
14 graduate student at the University -- the District Court's  
15 injunction is now in full effect. It is a permanent, final  
16 injunction, and it continues, but your ancillary -- this is  
17 the point that Judge Jones makes -- is that without your  
18 ancillary preventive relief, that you are scared that the  
19 people in the State of Mississippi are going to move back in  
20 and disturb the situation.

21 JUDGE JONES: Well, what has been done to relieve  
22 us of that apprehension?

23 MR. CLARK: I don't know of any specific act that  
24 has been done in the State of Mississippi.

25 JUDGE JONES: Or elsewhere, except in this

1 courtroom?

2 JUDGE BELL: The District Court hasn't done  
3 anything. They haven't enjoined those same things, have  
4 they?

5 MR. CLARK: No, sir, because there has been no  
6 request to them, and the point I would make to this Court  
7 above all others --

8 JUDGE BELL: It seems everything is being  
9 litigated here. Some of these things could be handled in  
10 the District Court. You haven't been there to suggest to  
11 the District Court --

12 JUDGE WISDOM: They have litigated whether or not  
13 there was a policy of segregation in Mississippi in the  
14 District Court.

15 MR. CLARK: Yes, sir, and the District Court has  
16 further entered an order, pursuant to the mandate of this  
17 Court. There never has been anything dishonest done by  
18 either one of the district judges in the Southern District  
19 of Mississippi. They are subject to your mandate.

20 JUDGE WISDOM: No one is suggesting that.

21 MR. CLARK: The thing that amazes me is here we are  
22 before this Court of Appeals. It's the busiest circuit in  
23 the United States. You judges have got cases pending from  
24 here to yon. Yet every time something comes up in this  
25 lawsuit, all the Mississippi lawyers and the Washington