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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.

DEC 3 1962

HEARING ON ORDER TO SHOW CAUSE WHY
LIEUTENANT GOVERNOR PAUL B. JOHNSON
SHOULD NOT BE CITED FOR CIVIL CONTEMPT,
held on this 29th day of September,
1962, Room 222, Post Office Building,
New Orleans, Louisiana, at 10:00
o'clock a.m.

DIETRICH & WITT, Inc.
- STENOGRAPHERS -
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New Orleans

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WITNESS DIRECT CROSS REDIRECT RECROSS

EDWARD WADSWORTH	5
HARRY ROWE	9
CECIL MILLER	15
JAMES H. MEREDITH	21

E X H I B I T S

EXHIBIT NO. IDENTIFIED OFFERED RECEIVED

GOVERNMENT 1	7	6	7
GOVERNMENT 2	8	8	8
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GOVERNOR PAUL B. JOHNSON SHOULD NOT BE CITED FOR CIVIL
CONTEMPT, held on this 29th day of September, 1962, Room
222, Post Office Building, New Orleans, Louisiana, at
10:00 o'clock a.m.,

B E F O R E :

THE HONORABLE RICHARD T. RIVES,
THE HONORABLE JOHN R. BROWN,
and
THE HONORABLE JOHN MINOR WISDOM,
Circuit Judges.

APPEARANCES:

For the United States of America:

JOHN DOAR, Esq.,
Assistant Attorney General,
Civil Rights Division,
Department of Justice;

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

JACK GREENBERG, Esq.,
10 Columbus Circle,
New York 19, New York

For the Appellees/Respondents:

JOHN C. SATTERFIELD, Esq.,
Yazoo City, Mississippi

CHARLES CLARK, Esq.,
Jackson, Mississippi

SPECIAL ASSISTANT ATTORNEYS
GENERAL.

HELEN R. DIETRICH,
Reporter.

...oOo...

P R O C E E D I N G S

JUDGE RIVES: Call the case of James H. Meredith
against Charles Dickson Fair et al., and particularly the
order requiring Paul B. Johnson, Jr. to show cause why he
should not be held in civil contempt.

1 What say the Appellants? Are they ready?

2 MRS. MOTLEY: The Appellant is ready, Your Honor.

3 MR. DOAR: The Government is ready, Your Honor.

4 JUDGE RIVES: Is Paul B. Johnson present in person
5 or by counsel? (NO RESPONSE) It appears that he is not.

6 The application of the State of Mississippi for
7 an order designating it as amicus curiae, Paul B. Johnson
8 not being present either in person or by counsel, is denied.

9 MR. SATTERFIELD: May it please the Court, in
10 view of the situation mentioned by the Court with reference
11 to the time consumed by the Court in this and similar
12 matters, it would be agreeable to Counsel for the State of
13 Mississippi, if it is agreeable to the Court and to the
14 parties, that this record show that all action by Counsel
15 for the State of Mississippi and the Court as to the State
16 of Mississippi on yesterday, be made a part of this record
17 as applicable to this proceeding, of course, with the
18 exception of the response which I made under compulsion of
19 the Court to the question of the Court concerning process
20 upon Governor Ross Barnett, which would not be applicable
21 here. If that is agreeable, it would be agreeable to the
22 State of Mississippi.

23 JUDGE RIVES: That will be agreeable.

24 MR. SATTERFIELD: Of course, that would proceed
25 through the entire matter as affecting the State of

1 Mississippi.

2 JUDGE RIVES: That will be agreeable.

3 MR. SATTERFIELD: May it please the Court, may I
4 ask as was done yesterday, because this is physically
5 different: At this time I file the Motion to Dissolve
6 Temporary Restraining Order and Stay or Dismiss Contempt
7 Proceedings, the allegations therein being applicable to
8 this hearing, if it is agreeable, with the understanding
9 that the same proceedings and results in connection with
10 this motion would be applicable as appears by the record
11 yesterday to that motion.

12 JUDGE RIVES: My recollection is that the motion
13 was simply not heard, that we heard the proceedings for
14 contempt.

15 MR. SATTERFIELD: The motion that it be set down
16 for hearing in advance privately was overruled. Whatever
17 was shown yesterday would be agreeable.

18 JUDGE RIVES: That would be agreeable, Mr.
19 Satterfield. Is there anything further you wish to say
20 before we proceed?

21 MR. SATTERFIELD: May I state to the Court, in
22 apology for the lack of physical presence of certain of the
23 attorneys, that there do appear for the State of Mississippi
24 the same attorneys who appeared yesterday, although Mr.
25 Thomas H. Watkins, Mr. Garner W. Green, and Mr. Bill
Goodwin were required to return to Jackson, Mississippi,

1 in view of the nature and extent of the order of court
2 yesterday. They are appearing and we are appearing in
3 their behalf at this court. They apologize for the lack
4 of being present this morning.

5 JUDGE RIVES: It will be so noted. Unless there
6 is something further, Mr. Satterfield, we will proceed with
7 the business at hand.

8 MR. SATTERFIELD: Surely.

9 JUDGE RIVES: The Appellants and the Amicus Curiae
10 may proceed. We would like first to be certain that Paul
11 B. Johnson, Jr. has been served with process or with
12 notice of this hearing and that we have authority to proceed
13 on the merits.

14 MR. BARRETT: The United States will call Edward
15 Wadsworth, the Clerk of the Court.

16 EDWARD W. WADSWORTH,

17 having been first duly sworn, was examined and testified as
18 follows:

19 DIRECT EXAMINATION

20 BY MR. BARRETT:

21 Q. Mr. Wadsworth, you are the Clerk of this Court?
22 Is that correct?

23 A. Yes, sir.

24 Q. On September 26th of this year after the Court
25 had entered its order to show cause directed against Paul B.

1 Johnson, Jr., did you give any notice of that order to
2 Paul B. Johnson, Jr.?

3 A. Yes, sir. I sent a letter that evening, the
4 evening of September 26th, addressed to the Honorable Paul
5 B. Johnson, Jr., Lieutenant Governor of Mississippi, at the
6 State Capitol Building in Jackson, airmail, special
7 delivery, with return receipt requested, and also sent
8 enclosed certified copies of both the application by the
9 United States as Amicus Curiae together with certified copy
10 of the order entered that date by Judges Rives, Brown, and
11 Wisdom of my court, and enclosed also a copy of those
12 documents to him at his home address in Memorial Drive,
13 Jackson.

14 Q. Did you retain for your files a copy of that
15 letter?

16 A. Yes, sir.

17 Q. Do you have it with you?

18 A. Yes, sir.

19 Q. May I have it?

20 A. Yes, sir (producing document.)

21 MR. BARRETT: I will ask that this copy of the
22 letter that the Clerk, Mr. Wadsworth, has just handed me
23 be marked for identification as "Government's Exhibit 1."
24 I will ask that it be admitted in evidence.

25 JUDGE RIVES: It will be admitted in evidence as

1 "Government Exhibit 1."

2 (Whereupon, the document offered by
3 Counsel was duly marked for identi-
4 fication as "Government Exhibit 1,"
5 and received in evidence.)

6 Q. Did you give any further notice to Mr. Johnson
7 of the entry of the show cause order?

8 A. Yes, sir. Immediately following my personal
9 mailing of the letter notice to both his official and home
10 address, I proceeded to the local office of the Western
11 Union -- I believe it is 314 Carondelet Street -- in the
12 city a few blocks from the Main Post Office on Loyola, and
13 I quoted the entire text of the Court's order entered that
14 evening with reference to Mr. Johnson by night letter
15 addressed to him at his official State Capitol address in
16 Jackson.

17 Q. That was on the same evening, September 26th?

18 A. Yes, sir, immediately following my filing of
19 the letter notice enclosing copy of application and order.

20 Q. Did you retain a copy of that telegram for
21 your office files?

22 A. Yes, sir.

23 Q. Do you have it?

24 A. Yes, sir.

25 Q. May I have it, please.

1 A. Yes, sir (producing document).

2 MR. BARRETT: I ask that this copy of the telegram
3 Mr. Wadsworth has just given me be admitted into evidence
4 as "Government's Exhibit 2."

5 JUDGE RIVES: It will be so admitted as
6 "Government's Exhibit No. 2."

7 (Whereupon, the document offered by
8 Counsel was duly marked for identifi-
9 cation as "Government Exhibit 2,"
10 and received in evidence.)

11 A. (Continuing) I might add with reference to
12 the letter notices that these are two receipts I have for
13 the certified mail (producing documents), numbers 812116 and
14 812117, one being the certification as to the mailing of
15 the application and order to the State Capitol address and
16 the other being certification as to his Memorial Drive,
17 Jackson, home address.

18 MR. BARRETT: With the Court's permission, I will
19 ask that these receipts be attached to "Government Exhibit
20 1" as a part of that exhibit.

21 JUDGE RIVES: That may be so done.

22 MR. BARRETT: I have no further questions.

23 (Witness excused.)

24 MR. BARRETT: The United States will call Mr.
25 Harry Rowe.

HARRY ROWE,

1
2 having been first duly sworn, was examined and testified as
3 follows:

DIRECT EXAMINATION

4
5 BY MR. BARRETT:

6 Q. What is your full name?

7 A. My name is Harry E. Rowe.

8 Q. Do you hold any official position, Mr. Rowe?

9 A. United States Deputy Marshal.

10 Q. For what district?

11 A. The Southern District. I have been sworn for
12 the Southern District of Mississippi.

13 Q. Where is your regular post?

14 A. Washington, D.C.

15 Q. Mr. Rowe, I will call your attention to
16 September 27th of this year and ask you if you were given
17 any process of this court to serve on Paul B. Johnson, Jr.

18 A. Yes, sir, that is correct.

19 Q. (Exhibiting document to witness) I would
20 like to show you a document, entitled "Return on Service of
21 Writ," to which are attached certified copies of an order
22 of this Court and an application by the United States for
23 the order, and ask you if those documents were given you for
24 service on September 27th.

25 A. That is right, sir.

1 MR. BARRETT: I will ask that these documents that
2 the witness has just answered about be marked for identifi-
3 cation as --

4 THE CLERK: "Government 3."

5 JUDGE RIVES: It will be so admitted as "Govern-
6 ment's Exhibit 3" for identification.

7 (Whereupon, the document referred to by
8 Counsel was duly marked for identifica-
9 tion as "Government Exhibit 3," and
10 received in evidence.)

11 Q. Did you attempt service on Paul B. Johnson, Jr.?

12 A. That is correct, sir.

13 Q. Where did you first go in your efforts to
14 effect service?

15 A. Sir, at approximately 8:40 a.m. I arrived at
16 the Capitol Building.

17 JUDGE BROWN: What is the date, please.

18 THE WITNESS: On the 27th day of September,
19 Thursday.

20 A. (Continuing) I arrived at the Capitol
21 Building in Jackson, Mississippi, and went to the third
22 floor where I went to the Lieutenant Governor's Office. I
23 was met by three State police, and I merely asked if the
24 Lieutenant Governor was in at the time. They stated that
25 he was not and that he would not be in for the rest of the

1 day. So I immediately left and proceeded to Hattiesburg.
2 Supposedly the Lieutenant Governor lived there. And I
3 proceeded to Old Route 49 in Hattiesburg, Mississippi, and
4 arrived there at approximately 11:40, where I went to the
5 residence of the Lieutenant Governor, Lieutenant Governor
6 Johnson, and --

7 Q. Was that the morning of the same day?

8 A. This is the morning of the same day at
9 approximately 11:40 a.m.

10 Q. All right.

11 A. I rang the doorbell and a female answered the
12 door. I showed her my credentials and asked if this was
13 the residence of Lieutenant Governor Paul B. Johnson. She
14 stated that it was but he was not there and that she was
15 his wife, Mrs. Johnson. I explained to her that I had a
16 court process, a court order to show cause, and that I was to
17 leave it there. She stated that she would not accept it,
18 and there was a screen door between her and myself, and I
19 slid the court order into the screen door and explained to
20 her that it was for the Lieutenant Governor, Paul B.
21 Johnson, and left at that time and proceeded back to the
22 Capitol Building.

23 Q. Did you make any further effort to reach the
24 Lieutenant Governor personally?

25 A. Yes, sir, I did. I arrived at the Capitol

1 Building at approximately 2:20 the same day. This is p.m.
2 I went to the third floor of the Capitol Building where I
3 encountered seven State -- I think they were State policemen,
4 uniformed officers without badges of authority or name
5 plates. I asked them for admittance to the Lieutenant
6 Governor's office. They said that I would not be allowed
7 to go in. I told them -- showed them my credentials and
8 told them what I had, and they told me that I still would
9 not be permitted to enter. I told them that I was
10 instructed to leave the paper with one of them if I could
11 not get into the office, and they told me that I could not
12 do that either, and I told them that I would have to leave
13 the paper at their feet, and one man spoke up, a uniformed
14 officer, and told me if I put the paper on the floor that I
15 would be arrested for littering the hallways. I asked this
16 man for his name, and he told me John Smith, and by that
17 time there was about 15 people there gathered around, and I
18 made my departure.

19 Q. Thereafter, Mr. Rowe, did you make out this
20 return of service, which is the top page of "Government
21 Exhibit 3" for identification?

22 A. Yes, sir, I did.

23 Q. And the return of service shows that you did
24 effect service on Paul B. Johnson, Jr. by leaving a true
-25 copy thereof with Mrs. Paul B. Johnson, Jr. personally at

1 the residence of Paul B. Johnson, Jr., in Hattiesburg,
2 Mississippi. Is that correct?

3 A. That is correct, sir.

4 MR. BARRETT: I ask that "Government No. 3" for
5 identification be admitted into evidence and that it also
6 be filed with the Clerk as a part of the records in this
7 case.

8 JUDGE RIVES: It has been admitted in evidence
9 and filed with the Clerk.

10 MR. BARRETT: If the Court please, that is the
11 Government's evidence with respect to the service of the
12 show-cause order upon the Respondent, Paul B. Johnson, Jr.
13 I have no further questions.

14 JUDGE BROWN: I would like to ask the witness a
15 question.

16 BY JUDGE BROWN:

17 Q. Does the United States Marshal ordinarily
18 allow a constable or a state policeman to interfere in the
19 performance of his duty by telling him that if he puts a
20 process on the floor, he is going to be arrested for litter-
21 ing a public building?

22 A. Your Honor, I was instructed not to get
23 arrested.

24 JUDGE RIVES: That is all.

25 (Witness excused.)

1 JUDGE RIVES: Is there any further evidence on
2 behalf of the United States?

3 MR. BARRETT: No, nothing further on the point of
4 service of the show-cause order.

5 JUDGE RIVES: Do you wish to introduce any
6 evidence on service of the restraining order? As I under-
7 stand, the show-cause order is based upon the restraining
8 order, is it not, the temporary restraining order?

9 MR. BARRETT: Yes. We could have evidence both
10 of constructive and actual notice of the temporary restrain-
11 ing order upon Lieutenant Governor Johnson, and we are pre-
12 pared to proceed with that.

13 JUDGE RIVES: All right, sir. You may proceed
14 with that.

15 MR. BARRETT: We ask first that the Court take
16 notice in this proceeding of the return of service on the
17 State of Mississippi that has heretofore been filed with
18 the Clerk -- it was filed yesterday -- also the return of
19 service on Ross R. Barnett, which was filed with the Clerk
20 yesterday, both of those, both Mr. Barnett, Governor
21 Barnett, and the State being parties defendant in the
22 temporary restraining order, which this Respondent is
23 charged with having violated, being both the agents of
24 those two as well as acting in concert with them.

25 JUDGE RIVES: I would think it proper at this

1 time that all three of the judges constituting the present
2 court having been present throughout the proceedings on
3 yesterday, that all evidence respecting the service of
4 process on Ross R. Barnett and on the State of Mississippi
5 of the temporary restraining order be incorporated in the
6 record of the present hearing. Is that what you are asking?

7 MR. BARRETT: Yes, Your Honor.

8 JUDGE RIVES: Were the Respondent in the present
9 case present in person or by counsel, he would, of course,
10 be entitled to cross-examine the witnesses who were produced
11 on yesterday, but he not being present, nothing would be
12 gained by a simple repetition of the proceedings had on
13 yesterday. They will be incorporated into the record of
14 today's hearing.

15 MR. SATTERFIELD: Excuse me. May the record show
16 that the status of counsel for the State of Mississippi, in so
17 far as all these matters and other matters today, is as
18 was determined and announced by the Court yesterday?

19 JUDGE RIVES: It may do so.

20 MR. SATTERFIELD: Thank you, sir.

21 MR. BARRETT: The Government will call Cecil
22 Miller.

23 CECIL MILLER,
24 having been first duly sworn, was examined and testified as
25 follows:

DIRECT EXAMINATION

1
2 BY MR. BARRETT:

3 Q. Would you state your full name, please.

4 A. Cecil Harry Miller.

5 Q. Do you hold any office, Mr. Miller?

6 A. Yes, sir. I am Deputy United States Marshal.

7 Q. Where is your permanent station? Where are
8 you --

9 A. Miami, Florida, Southern District of Florida.

10 Q. Mr. Miller, I call your attention to
11 September 26th of this year, which was a Wednesday, and ask
12 you if you were in Oxford, Mississippi.

13 A. Yes, sir, I was.

14 Q. Did you go to the campus or near the campus of
15 the University of Mississippi on that day?

16 A. Yes, sir, I did.

17 Q. How did you go there?

18 A. Went in a Border Patrol car.

19 Q. And were there other cars travelling with you?

20 A. Yes, sir.

21 Q. I call your attention to James H. Meredith,
22 who is seated here at counsel table, and ask you if he was
23 in one of those cars.

24 A. Yes, sir, he was.

25 Q. Was he in the car you were in?

1 A. No, sir, he was in the preceding car.

2 Q. The car ahead of yours?

3 A. Yes, sir.

4 Q. Where did the cars leave from for the
5 University campus?

6 A. From the Oxford Airport.

7 Q. Were the cars that you were in and Mr.
8 Meredith was in escorted by any other cars?

9 A. Yes, sir, we were.

10 Q. And what cars were those?

11 A. They were from the Mississippi Highway Patrol.

12 Q. And in relation to your two cars, where were
13 those cars?

14 A. There was one car in front of the entire
15 convoy -- caravan, let's say. Then there was two cars in
16 the rear.

17 Q. Where did you drive?

18 A. We drove from the Airport to Highway No. 8,
19 went into the Town of Oxford and over to University Avenue
20 and out University Avenue to the -- right near the main
21 entrance on the campus of the University of Mississippi.

22 Q. Did you go on to the campus?

23 A. No, sir, we did not.

24 Q. And would you tell the Court the circumstances
25 of your stopping short of the campus.

1 A. The car leading us in, escorting us in, was
2 driven by an inspector of the Mississippi Highway Patrol,
3 who had met us at the Airport and stated that he would
4 escort us in to the campus so that there would not be any
5 trouble of any kind. As we arrived in Oxford, University
6 Avenue just short of the entrance to the college, the
7 Inspector turned his car to the right, pulled on to a side
8 street, and stopped, and there was a row of uniformed
9 Mississippi Highway Patrolmen standing entirely across this
10 University Avenue blocking it. Immediately behind them was
11 a row of plain clothes men. So we got out of the cars,
12 Mr. Doar, Mr. Meredith, Mr. McShane, and a Mr. Charles
13 Chambley was in the first car of our unit. They all got
14 out, and then there was five of us in the second car, and
15 we got out and walked up with them to the group of uniformed
16 patrolmen, and then Mr. Johnson came through and was stand-
17 ing approximately in the center of University Avenue approxi-
18 mately one step in front of this line of uniformed Highway
19 Patrolmen.

20 Q. Now you refer to Mr. Johnson. Are you refer-
21 ring to Paul B. Johnson, the Lieutenant Governor of the
22 State of Mississippi?

23 A. Yes, sir, I am.

24 Q. Go ahead.

25 A. Mr. McShane stepped up to the Lieutenant

1 Governor and introduced himself and stated that we were
2 there on the orders of this Court to enroll James Meredith
3 in the University of Mississippi and that we had a duty to
4 perform and had a right to take him through into the
5 University of Mississippi and register him. Mr. Johnson,
6 Lieutenant Governor Johnson, at that time asked if we
7 intended to take him on through, and Mr. McShane said yes,
8 and Mr. Johnson then stated that he was refusing us
9 entrance and the registering of James Meredith on the
10 same grounds that Governor Barnett had used in a prior
11 instance, and Mr. McShane again stated that he had a duty
12 to perform and a right to take this man through and we
13 were going to do so. So then he stepped over and tried to
14 go through the line immediately on the right hand side. It
15 would be to our right of the Lieutenant Governor. And the
16 line of patrolmen closed up tightly, and the Lieutenant
17 Governor stepped over in front. Mr. McShane pushed
18 against them as (though) trying to push his way through,
19 and they would not let him through. He stepped back and
20 walked over to our left of the Lieutenant Governor and
21 attempted again to push his way through the line and could
22 not. So then he walked on over to the extreme left side
23 of University Avenue, trying to go around the end of this
24 line of patrolmen, and they just continued to move over as
25 he moved over. Then he came back into the center of the

1 avenue, and Mr. Doar at this time stepped up and intro-
2 duced himself and stated that he was an officer of the
3 Court and that he had a restraining order there against
4 the Governor, Governor Barnett, and against all enforcement
5 agencies or other people attempting or in any way to
6 interfere in the registering of James Meredith in the
7 University, and he said that he was making service on the
8 Lieutenant Governor with those papers, and at the time he
9 stated what they were the Lieutenant Governor said, "Yes,
10 I know," and then at the time Mr. Doar said he was making
11 service upon him, he stepped back, the Lieutenant Governor
12 stepped back just one step and said, "I refuse these
13 papers. Of course, I do so politely." And then Mr.
14 McShane again at that time stated that he had a right and
15 a duty to take James Meredith in to register him and again
16 made an attempt to push through this line, and they
17 refused him entrance again, and Mr. Doar at this time
18 stated that it was apparent that we weren't getting
19 through and we should leave, so we all got back in our cars.
20 The Highway Patrol again escorted us back to the Airport.

21 Q. Did Mr. Doar tell the Lieutenant Governor
22 what the papers were that he tendered to him?

23 A. Yes, sir, he did.

24 Q. What did he tell them?

25 A. He read them -- at least, quoted them -- it

1 was -- the best I can remember, it was a restraining order
2 against the Governor and against all enforcement agencies
3 or parties, against their interfering with the entrance and
4 registering of James Meredith.

5 Q. Incidentally, Marshal, were you armed in any
6 way?

7 A. No, sir, we were not.

8 MR. BARRETT: The Government has no further
9 questions.

10 JUDGE RIVES: No questions by the Appellant's
11 Counsel?

12 MRS. MOTLEY: No, Your Honor.

13 JUDGE RIVES: You may come down.

14 (Witness excused.)

15 MR. BARRETT: We call Mr. Meredith to the stand.

16 JAMES H. MEREDITH,

17 having been first duly sworn, was examined and testified as
18 follows:

19 DIRECT EXAMINATION

20 BY MR. BARRETT:

21 Q. Mr. Meredith, you are the Appellant in the
22 case of James H. Meredith against Charles Dickson Fair,
23 pending on appeal in this Court? Is that correct?

24 A. That is right, sir.

25 Q. Mr. Meredith, on Wednesday, September 26th, of

1 this year, did you go to the campus of the University of
2 Mississippi in Oxford, Mississippi, to enroll as a student
3 pursuant to the orders of this Court and the District Court?

4 A. Yes, sir, I did.

5 JUDGE BROWN: This is the 26th, Mr. Barrett?

6 MR. BARRETT: This is the 26th.

7 JUDGE BROWN: Thank you.

8 Q. How did you get there?

9 A. We flew by plane from Memphis to Oxford,
10 to the Oxford Airport, and from there we were in a Government
11 car. We went in a Government car from there to the point
12 that we went on the campus. I assume it was on the campus or
13 near the campus.

14 Q. When you got to that point near the campus,
15 did you see Paul B. Johnson, Jr., the Lieutenant Governor
16 of Mississippi?

17 A. Yes, sir, I did.

18 Q. Did he read anything to you?

19 A. Yes, sir, he did.

20 Q. What did he read from?

21 A. From a paper that he had in his hands that I
22 later found was a proclamation.

23 Q. Did he give it to you after he read it?

24 A. Yes, sir, he did.

25 Q. Did you bring it to court this morning?

1 A. Yes, sir.

2 Q. (Exhibiting document to witness) I would
3 like to show you this document, bearing the certification
4 of the Secretary of State of Mississippi, attached to which is
5 a photocopy of another document directed to James H.
6 Meredith, applicant for admission as a student at the
7 University of Mississippi, that second document under the
8 certificate being dated September 20, 1962, signed "Ross
9 R. Barnett, Governor." I will ask you if these are the
10 papers that Lieutenant Governor Paul B. Johnson, Jr., gave
11 you on September 26th, about which you have just testified.

12 A. Yes, sir, these are the papers.

13 MR. BARRETT: I will ask that the papers which
14 the witness has just identified be admitted into evidence.

15 THE CLERK: "Government's Exhibit 4."

16 MR. BARRETT: As "Government's Exhibit 4."

17 JUDGE RIVES: Let them be received.

18 (Whereupon, the documents offered by
19 Counsel were duly marked for identifica-
20 tion as "Government Exhibit 4," and
21 received in evidence.)

22 Q. Mr. Meredith, on September 26, 1962, did you
23 enroll at the University of Mississippi?

24 A. No, sir. I was refused admission to the
25 grounds by the Lieutenant Governor, Paul Johnson.

1 Q. Now did you see the Lieutenant Governor, Mr.
2 Johnson, prior to that occasion?

3 A. Yes, sir, on several different occasions.

4 Q. When was the last time prior to that
5 occasion on which you had seen him?

6 A. The first time that I went to the University
7 to attempt to register, he was with the Governor and the
8 party.

9 Q. Was this on September 20, 1962?

10 A. That is correct, sir, on Thursday, September
11 20.

12 Q. Was that an occasion on which the Registrar
13 of the University, Robert Ellis, read a statement?

14 A. That is right, sir.

15 Q. And was it on the same occasion when the
16 Governor read a proclamation directed to you, denying you
17 admission to the University?

18 A. That is right, sir, an identical proclamation
19 to the one that I just said that the Lieutenant Governor
20 issued. The only difference was the date on the proclama-
21 tion signed by the Secretary of State, Mr. Ladner.

22 Q. It had a different certificate?

23 A. Yes, sir.

24 Q. But other --

25 A. Different date.

1 Q. But otherwise the same proclamation? Is that
2 correct?

3 A. Yes, sir.

4 Q. And on September 20th was the Lieutenant
5 Governor present during all of the proceedings?

6 A. Yes, sir. He was in the room during all of it.

7 Q. Had you known him by sight prior to that time?

8 A. Yes, sir.

9 Q. And you knew him to be the Lieutenant Governor?
10 Is that correct?

11 A. Yes, sir, that is right, sir.

12 MR. BARRETT: No further questions.

13 JUDGE RIVES: Any questions?

14 MRS. MOTLEY: No questions, Your Honor.

15 (Witness excused.)

16 MR. BARRETT: The Government rests.

17 JUDGE RIVES: Is there any evidence for the
18 Appellant?

19 MRS. MOTLEY: The Appellant has no further
20 evidence, Your Honor.

21 JUDGE RIVES: Do the Government and the Appellant
22 desire to address the Court as to what sanctions -- whether
23 the Defendant is guilty or the Respondent is guilty of
24 contempt of court, and, if so, what sanctions should be
25 imposed?

1 MR. DOAR: Yes, Your Honor.

2 JUDGE RIVES: You may do so.

3 MR. DOAR: If the Court please, the position of
4 the Government is that Lieutenant Governor Johnson of the
5 State of Mississippi is clearly in contempt of this Court's
6 order, this Court's temporary restraining order, directing
7 the Governor of the State of Mississippi not to interfere
8 in any way with James Meredith's registration at the
9 University of Mississippi. The sanctions which the
10 Government of the United States suggests to this Court
11 and which are suggested with the view that, first of all,
12 that this Court's orders are going to be enforced, and, as
13 Mr. Marshall said yesterday, if this Court can by the use of
14 a coercive sanction compel the high officials of the State
15 of Mississippi to face up to their responsibilities of
16 being -- of obeying the Constitution of the United States
17 and recognizing the supremacy of the Constitution of the
18 United States, then the entrance of James Meredith at the
19 University and his continued attendance will be -- bringing
20 that about would be less disruptive to the country as a
21 whole, and we, therefore, recommend that this Court find Mr.
22 Johnson in contempt of court and give him until the same
23 time that the Governor was given to purge himself of
24 contempt by coming to court and showing the Court that he is
25 now in full compliance with the temporary restraining order

1 and advising the Court that if and when he shall ever
2 assume the position of Governor or Acting Governor of this
3 State, that he will forthwith issue the same orders that
4 Governor Barnett has been compelled to issue, in the event
5 they have not already been issued and enforced by a prior
6 act of the Governor, and, if this is not done, then we
7 recommend that the Lieutenant Governor be required to pay
8 a fine of so much per day but that no jail sanction be
9 imposed. The reason we suggest that, Your Honors, is
10 this: First, the act of the Lieutenant Governor while in
11 direct disobedience of this Court's order was more or less
12 an act done on behalf of the Governor. At least, this is
13 what the Lieutenant Governor said. Now this is really only
14 a small excuse for his performance, but nonetheless it is
15 some excuse. The second thing is that it doesn't seem to
16 make much sense for this Court to confine both the Governor
17 and Lieutenant Governor of the State of Mississippi in the
18 custody of the Attorney General at the same time, and we
19 think it would be more effective and more practical and
20 better, more likely to carry out, to help carry out the
21 orders of this Court, if a fine was imposed upon the
22 Lieutenant Governor only rather than --

23 JUDGE BROWN: Don't we have to reserve the power
24 in the event the Governor is taken into custody and remains
25 in defiance of the Court and the fine against the Lieutenant

1 Governor which you suggest is equally ineffective? Don't
2 we have to reserve the power then to commit the Lieutenant
3 Governor in that event?

4 MR. DOAR: I think that is right.

5 JUDGE WISDOM: Whatever we do would not be with
6 reference to any further action by this Court, because his
7 contempt would be a continuing contempt. Isn't that --

8 MR. DOAR: That is exactly right.

9 JUDGE WISDOM: -- your position?

10 MR. DOAR: That is the position of the United
11 States, that whatever action is taken today, (it) should
12 be made clear that this is not a final action. It is just
13 because of the position of the Lieutenant Governor. In any
14 state his powers are very limited when the Governor is
15 acting.

16 JUDGE RIVES: This entire matter, of course, today
17 is remedial and in an effort to have the orders of the Court
18 complied with.

19 MR. DOAR: That is correct.

20 JUDGE RIVES: And if the Lieutenant Governor
21 should hereafter be guilty of further contempt, either as
22 Lieutenant Governor or as Acting Governor, there would be
23 no obstacle to the Court proceeding further.

24 MR. DOAR: No.

25 JUDGE RIVES: And, of course, this is without

1 prejudice to any citation for criminal contempt.

2 MR. DOAR: Yes, sir, that the Court made.

3 JUDGE BROWN: What can we do -- we fixed Tuesday
4 until 11:00 o'clock for the Governor -- what can the
5 Lieutenant Governor be ordered to do that would be
6 effectual at all, since Governor Barnett presumably is in
7 full charge of Mississippi at the moment? I mean, for
8 example, in order to remove any resistance himself, I
9 should think some -- what affirmative action?

10 MR. DOAR: If Governor Barnett does not comply
11 with the order, then he is to be committed into custody
12 immediately. If this Lieutenant Governor is in Court
13 that morning, he will know and the Court will know what his
14 status will be, and if he then says, I will do this
15 forthwith, then -- or if you give him --

16 JUDGE BROWN: In other words, between now and
17 Tuesday at 11:00 o'clock, the Lieutenant Governor must
18 desist from all actions on his own behalf or those under
19 his direct control in the resistance to or obstruction to
20 the Court's order. That is No. 1, isn't it?

21 MR. DOAR: Yes.

22 JUDGE BROWN: And then beginning at 11:00 o'clock,
23 if he is the executive officer of the State of Mississippi,
24 he must do the things that we have required the Governor to
25 do in the order entered yesterday.

1 MR. DOAR: That is right.

2 JUDGE WISDOM: Do you have concrete suggestions
3 to make to the Court?

4 MR. DOAR: You mean a draft?

5 JUDGE WISDOM: Yes.

6 MR. DOAR: Yes, we do. We are just finishing it
7 now, and we could get it to the Court within 15 or 20
8 minutes.

9 JUDGE RIVES: We may hear from the Appellant then.

10 MRS. MOTLEY: May it please the Court, we would
11 like to for the record renew our position of yesterday
12 with respect to the length of time given the Lieutenant
13 Governor to purge himself. We think that the time should
14 be shortened. That was the position we had taken with
15 respect to our proposed order yesterday because of the
16 great necessity for avoiding any further delay in the
17 admission of the Appellant to the University of Mississippi.
18 We think that the shortest possible time should be given
19 those who put themselves in contempt of this Court's order.
20 Secondly, we would like for the record to renew our posi-
21 tion of yesterday with respect to the adequacy of a fine
22 imposed in these situations. As we said yesterday, we
23 thought a fine was inadequate, because the money would
24 probably be paid not by the person in contempt of this
25 Court but by some other source. We think that, as we

1 suggested yesterday, the only really effective coercive
2 sanction here would be a prison term with a very short
3 time within which to purge one's self of contempt of this
4 Court, so that in this case we say that the coercive
5 sanction which should be imposed here on the Lieutenant
6 Governor should be a prison term, and, as Mr. Doar has
7 already pointed out, we agree that the Lieutenant Governor
8 should be required to advise this Court that he will no
9 longer obstruct any orders of this Court or take any further
10 action to prevent the admission of Mr. Meredith within the
11 time given him to purge himself.

12 JUDGE RIVES: I am not certain of what we could
13 require the Lieutenant Governor to do if we committed him to
14 the custody of the Attorney General. We are ordering him
15 to -- we might order him to cease resistance, but he would
16 automatically cease resistance the minute he is committed.

17 MRS. MOTLEY: Yes, sir.

18 JUDGE RIVES: So there would be no way for him to
19 purge himself then. He has no authority to take any
20 affirmative action as long as the Governor is governor, so
21 how could he purge himself after he was committed?

22 MRS. MOTLEY: No, sir. I was suggesting this be
23 done within the time allowed him to purge himself.

24 JUDGE RIVES: That is all right, but I am thinking
25 of the propriety of a jail sentence here. It seems to me

1 if we order him imprisoned we automatically are removing
2 any method of him purging himself. He would not carry the
3 keys to the prison in his pocket.

4 MRS. MOTLEY: I hope not.

5 JUDGE RIVES: As I see it, we don't alter our
6 position that he may hereafter be subject to criminal
7 contempt, but I don't see any practical method of sentencing
8 him to any imprisonment today for myself at present on the
9 civil contempt.

10 MRS. MOTLEY: Well, --

11 JUDGE RIVES: We would leave no avenue open for
12 him to purge himself.

13 JUDGE BROWN: May I suggest that under the coercion
14 of confinement for a clear contempt of the orders of this
15 Court you are going to be confined unless you --

16 MRS. MOTLEY: That is right.

17 JUDGE BROWN: -- take an affirmative step to
18 announce that you will not hereafter --

19 MRS. MOTLEY: Yes, sir, that is what I thought of.

20 JUDGE BROWN: -- that he will not hereafter * * *

21 (Whereupon, the reporter requested a
22 re-statement of the context lost on
23 line 20, above.)

24 JUDGE RIVES: That is of no importance to the
25 Court.

1 MRS. MOTLEY: For the record, I would like to
2 clarify my position, and that is that the Lieutenant
3 Governor should be given an opportunity to purge himself,
4 but a shorter period than suggested by the Government; that
5 he purge himself on the following conditions: (1) that he
6 do nothing further to interfere or obstruct the admission
7 of the Appellant and so advise the Court that he will not
8 do anything further to obstruct the admission of the
9 Appellant within the time allowed him to purge himself.

10 JUDGE WISDOM: Do you have a concrete suggestion
11 in written form?

12 MRS. MOTLEY: We don't have. We rely on whatever
13 the Government presents.

14 JUDGE BROWN: If you do have any, if you want to
15 write it out, we would like to have them, I am sure. They
16 don't have to be very formal.

17 JUDGE RIVES: She says she relies on what the
18 Government --

19 MRS. MOTLEY: Yes, in this instance we will.

20 JUDGE RIVES: Now the present hearing on the order
21 to show cause directed to Paul B. Johnson, Jr. as to why he
22 should not be adjudged in civil contempt of court is closed.
23 There are certain matters set for hearing which might be
24 proper for the consideration of this Court on October 5th
25 and among those the question of the continuation of the

1 present temporary restraining order, the motion for pre-
2 liminary injunction, and the motion of the State of
3 Mississippi to dismiss. I would think it would be proper at
4 this time to consider whether any further hearing should be
5 held on October 5th on any of those matters, or what
6 matters are to be considered on October 5th, and as to those
7 matters, the State of Mississippi is a party, and Mr. Clark
8 and Mr. Satterfield could participate as parties, as
9 attendants for the parties, if they so desire. It is the
10 Court's present view, frankly, that no further orders
11 entered by the Court at this time will contribute to the
12 solution of this grave controversy and that the hearing
13 on October 5th should be passed by at least one week,
14 hearings of any of these matters should be passed for at
15 least one week and the temporary restraining order
16 continued in force for that week. Is there any objection on
17 the part of any of the parties to that procedure?

18 MR. DOAR: Your Honor, I would like to call this
19 to the Court's attention: The paper that the State of
20 Mississippi filed was a motion to dissolve the temporary
21 restraining order. Under the rules of civil procedure for
22 district courts, a party is entitled to a prompt hearing on
23 that motion to dissolve, and we would like to indicate to
24 the Court that the Government would have no objection if
25 the Court were to set the motion to dissolve the temporary

1 restraining order made by the State of Mississippi say at
2 9:00 o'clock on Tuesday at some time prior to the time that
3 the deadline for Governor Barnett's action is to be taken.
4 Now my thinking on this is this: In some of these
5 motions, the State has challenged the jurisdiction of this
6 Court to act, and it would seem that the Defendant should
7 be afforded a hearing on that, if he insists upon it, and --

8 JUDGE BROWN: That is Mississippi?

9 MR. DOAR: That is the State of Mississippi,
10 and under the rule it says he is entitled to a two-day
11 hearing or a hearing on two days' notice.

12 JUDGE RIVES: Of course, that rule is applicable
13 to the District Court --

14 MR. DOAR: True.

15 JUDGE RIVES: -- and I believe it has been held
16 not applicable to a three-judge District Court --

17 MR. DOAR: True.

18 JUDGE RIVES: -- and would not be directly
19 applicable to the Court of Appeals, I don't believe.

20 MR. DOAR: That is true.

21 JUDGE RIVES: But it might be by analogy observed
22 by the Court of Appeals.

23 MR. SATTERFIELD: Please the Court, in behalf of
24 the State of Mississippi, we feel that the suggestion by
25 the Government with reference to hearing the motion to

1 dissolve or dismiss is necessary and that justice cannot be
2 done to the parties and all of the parties in this case --
3 we represent the State of Mississippi in making that state-
4 ment -- unless it is so set. We also feel that in view of
5 the gravity of the matters before this Court and the gravity
6 of the order entered yesterday in this Court, that justice
7 cannot be done to the parties if the Court does not hold
8 the hearing which has been set for the 5th. We feel -- I
9 won't go into extended argument unless the Court has a
10 question.

11 JUDGE RIVES: What do you understand is set for
12 the 5th, Mr. Satterfield?

13 MR. SATTERFIELD: It is my understanding that, so
14 far as I know, the record here reveals in the Clerk's
15 Office that all services of process in connection with the
16 temporary restraining orders granted both to the Government
17 and to the Appellant are set for hearing on the 5th of
18 October. I believe that record so shows.

19 JUDGE RIVES: The motion for a preliminary
20 injunction is also set, is it not?

21 MR. SATTERFIELD: I believe it is.

22 JUDGE RIVES: Correct. And your motion to dismiss
23 and dissolve has not been set, the motion of the State of
24 Mississippi to dismiss.

25 MR. SATTERFIELD: That is correct. My motion that

1 it be heard prior to the termination of either of these
2 hearings of yesterday or today was overruled. No setting
3 has been granted by the Court.

4 JUDGE RIVES: You are asking now for a very prompt
5 hearing on that?

6 MR. SATTERFIELD: We are asking for hearing
7 Tuesday prior to the deadline that has been given to the
8 Governor of the State of Mississippi, as mentioned by Counsel
9 for the Government.

10 JUDGE RIVES: Would you be ready for a hearing on
11 Monday?

12 MR. SATTERFIELD: Well, may I confer just a moment?
13 I just came into this case a few days ago. Just a moment,
14 please.

15 (Discussion among Counsel off the record.)

16 MR. SATTERFIELD: May it please the Court, it
17 seems to me in view of all the circumstances with which we
18 are confronted that it would be preferable for it to be held
19 on Monday, and, if it would be agreeable, some time after
20 lunch perhaps at the convenience of the Court. On Monday
21 then we certainly would be prepared to present it and able
22 to come to New Orleans in time to do so.

23 JUDGE RIVES: As I understand, the motion to
24 dissolve the temporary restraining order contains purely
25 legal questions on which no evidence will be taken.

1 MR. SATTERFIELD: If the Court will pardon me,
2 may I confer with Counsel?

3 (Discussion among Counsel off the record.)

4 MR. SATTERFIELD: May it please the Court, of
5 course, at that time we would expect to go into documentary
6 evidence and there is a possibility other documentary
7 evidence would be presented. As to evidence other than
8 documentary evidence, as representing the State of
9 Mississippi I have had no opportunity to confer with any
10 officer of the State since evidence came in with reference
11 to process and the motion includes lack of jurisdiction
12 because of lack of process, it will be necessary for us to
13 confer. We will be delighted to advise both the Court and
14 Counsel as quickly as possible over the weekend and prior
15 to Monday morning if such evidence should be required.

16 JUDGE RIVES: Is there any objection on the part
17 of the Appellant to a hearing on the motion to dissolve the
18 temporary injunction on Monday?

19 MRS. MOTLEY: No, Your Honor, there is no objection
20 to that.

21 JUDGE RIVES: On the part of the United States, is
22 there any objection to the hearing on that?

23 MR. DOAR: No objection.

24 JUDGE RIVES: Your suggestion, Mr. Satterfield, is
25 that that hearing be held in the afternoon rather than in

1 the morning?

2 MR. SATTERFIELD: As a matter of necessity of
3 conferring with the officials of the state which we repre-
4 sent over the weekend on very important matters, I would
5 suggest that if the Court could indulge us to this extent,
6 that if we find any extensive testimony is to be given we
7 immediately notify the Court and find if it is convenient to
8 all the parties for it to be in the morning. I believe a
9 definite setting in the afternoon would be preferable, and
10 my present impression would be that if there is any
11 evidence, it would not be so extensive as to delay the
12 Court beyond a hearing during the afternoon.

13 JUDGE BROWN: I am curious to know what kind of
14 documentary evidence you are thinking about. We have the
15 returns; we have heard evidence about service and attempted
16 service. How long do we have to hear and how much do we
17 have to hear these things?

18 MR. SATTERFIELD: Please the Court, no opportunity
19 has been given to the State of Mississippi to make any
20 presentation, documentary or otherwise. I came into this
21 case during the week after an absence of a year and a half.
22 I make that reservation for the simple reason I am not in
23 a position to say there would not be documentary evidence.
24 I am sorry, I am just in that position.

25 JUDGE REVES: This hearing that is suggested, as

1 I understand, is on the motion of the State of Mississippi
2 to dissolve the temporary restraining order?

3 MR. CLARK: Yes, Your Honor.

4 MR. SATTERFIELD: Yes, sir.

5 JUDGE RIVES: And that is all that would be set
6 for Monday?

7 MR. SATTERFIELD: There are parallel motions
8 filed having identical recitations, except one being with
9 reference by the State to its Governor, the other reference
10 by the State to its Lieutenant Governor. Other matters
11 being identical, I assume we would include both motions.

12 JUDGE WISDOM: Mr. Satterfield, is your motion
13 accompanied by a brief legal memorandum?

14 MR. SATTERFIELD: No, sir. We have not had an
15 opportunity to prepare it. I am sorry.

16 JUDGE WISDOM: Ordinarily where matters are pre-
17 sented to this Court purely on issues of law, we hear the
18 matters on briefs.

19 MR. SATTERFIELD: Yes, sir.

20 JUDGE WISDOM: But this is a matter of such
21 importance, and the parties have not had an opportunity to
22 prepare briefs. I think it is appropriate that you be
23 accorded a hearing, and, as I understand, that hearing would
24 go to the jurisdiction of the Court insofar as the State of
25 Mississippi is concerned?

1 MR. SATTERFIELD: Yes, sir.

2 JUDGE RIVES: The matter will then be set.

3 MR. SATTERFIELD: Pardon me. Insofar as all
4 matters set forth in the motion of the State of Mississippi.

5 JUDGE RIVES: With the understanding that if you
6 find that there is other evidence to be introduced that we
7 might set it for the morning, because the Court will have
8 to be available, a court -- I don't know that it will
9 necessarily be this same court, but a court will have to be
10 available all during the day, and if you gentlemen over
11 the weekend find that other evidence will be available or
12 should be introduced so that the Court should proceed that
13 morning, you can so advise the Court, but, with that
14 understanding, if it is acceptable to all parties, we will
15 set the motion of the State of Mississippi to dissolve
16 the temporary restraining order for hearing at 1:30 p.m.
17 on Monday.

18 MR. SATTERFIELD: Thank you, sir.

19 JUDGE RIVES: My understanding is you will as
20 promptly as you can give notice to the Appellants and the
21 Amicus of the nature and extent of any testimony that you
22 may have.

23 MR. SATTERFIELD: May I ask the attorneys where
24 someone could be reached? I am sorry. We don't have to
25 bother the Court with that. We will be glad to do so.

1 JUDGE RIVES: I am sure you will do that. As to
2 any further hearings on October 5th, we may make further
3 announcements on Monday as to whether any matters will be
4 heard on October 5th. It is ordered by this Court, however,
5 and it is now ordered by this Court, so that all parties may
6 understand, that pending any further hearings or decisions
7 or orders, the temporary restraining order heretofore
8 issued by this Court remain in effect.

9 The Court will stand adjourned until 1:30 p.m.
10 on Monday, October 1, 1962.

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14Thereupon, at 10:58 o'clock a.m.,
15 hearing in the above-entitled matter
16 was adjourned to 1:30 o'clock p.m. on
17 Monday, October 1, 1962....
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25

C E R T I F I C A T E

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2
3 I, Helen R. Dietrich, do hereby certify
4 that the above and foregoing (42 pages of typewritten
5 matter) is a true and correct transcription of the
6 stenographic (Stenotype) notes of the proceedings
7 herein, taking down by me, and by me transcribed,
8 on the day and date hereinbefore noted, in the
9 above-entitled and -numbered cause now pending
10 before the United States Fifth Circuit Court of
11 Appeals.

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15 Reporter
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