

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

JAMES H. MEREDITH,

Appellant

v.

CHARLES DICKSON FAIR, et al.,

Appellees

(UNITED STATES OF AMERICA, Amicus Curiae)

APPELLATE
NO. 19,475

UNITED STATES OF AMERICA

Plaintiff

v.

ROSS R. BARNETT,

Governor of the State of Mississippi,

AND

PAUL B. JOHNSON, JR.,

Lt. Governor of the State of Mississippi

Defendants

ORIGINAL
CIVIL ACTION
NO. 20,240

FIRST ALTERNATIVE MOTION OF
LIEUTENANT GOVERNOR PAUL B.
JOHNSON, JR. TO DISMISS
ORIGINAL PROCEEDINGS IN CAUSE
NO.20,240 AND ALL PENDING CON-
TEMPT PROCEEDINGS IN CAUSE NO.
19,475 BASED ON AN IMPROPER
AND INSUFFICIENT APPLICATION

COMES NOW Paul B. Johnson, Jr., Lieutenant Governor of
the State of Mississippi, and moves this Honorable Court to
dismiss all proceedings in original cause No. 20,240 and all
contempt proceedings in appellate cause No. 19,475 and, in
support hereof, would show the following matters, facts and
things, to-wit:

I.

All proceedings in Cause No. 20,240, an original action commenced in this court by an order of this court dated the 4th day of January, 1963, are based upon an unsworn application filed by the Attorney General of the United States in appellate cause No. 19,475.

II.

Said application is insufficient and improper as a basis for support of any proceedings in criminal contempt in this court, for the reason that it is unverified and for the further reason that it was commenced in a civil appellate action.

III.


No further remedial purpose can be served by the entry of any further civil order in cause No. 19,475.

Respectfully submitted,

PAUL B. JOHNSON, JR., Lt. Governor of
the State of Mississippi

BY: JOE T. PATTERSON, Attorney General
of the State of Mississippi
DUGAS SHANDS, Assistant Attorney
General of the State of Mississippi

MALCOLM B. MONTGOMERY
GARNER W. GREEN
M. H. ROBERTS
FRED B. SMITH


CHARLES CLARK
Special Assistant Attorneys General
of the State of Mississippi

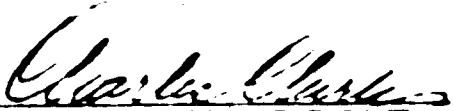
Address of each:
New Capitol Building
Jackson, Mississippi

NOTICE OF MOTION

TO: Burke Marshall, Esq.
Leon Jaworski, Esq.

ATTORNEYS FOR PLAINTIFF

Please take notice, that the undersigned will bring the above motion on for hearing before this Court in the Courtroom of the United States Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, on the 8th day of February, 1963 at 9:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.


ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I, CHARLES CLARK, of counsel for movant, certify that I have served true copies of the foregoing motion upon Burke Marshall, Esq. and Leon Jaworski, Esq., by United States mail.

THIS 31st DAY OF January, 1963.


CHARLES CLARK

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JAMES H. MEREDITH,)
Appellant)
v.) APPELLATE
CHARLES DICKSON FAIR, et al.,) NO. 19,475
Appellees)
(UNITED STATES OF AMERICA, Amicus Curiae))

UNITED STATES OF AMERICA,)
Plaintiff)
v.) ORIGINAL
ROSS R. BARNETT,) CIVIL ACTION
Governor of the State of Mississippi,) NO. 20,240
AND)
PAUL B. JOHNSON, JR.,)
Lt. Governor of the State of Mississippi,)
Defendants)

SECOND ALTERNATIVE MOTION OF GOVERNOR
ROSS R. BARNETT TO DISMISS ORIGINAL
PROCEEDINGS IN CAUSE NO. 20,240 FOR
LACK OF VENUE OR JURISDICTION.

COMES NOW Ross R. Barnett, Governor of the State of Mississippi, and moves this Honorable Court to dismiss all proceedings in original cause No. 20,240 and, in support of this motion, would show the following matters, facts and things, to-wit:

I.

On the 15th day of November, 1962, this Honorable Court entered an order in cause No. 19,475 appointing the Attorney General of the United States to institute and prosecute criminal contempt proceedings pursuant to Rule 42(b) of the Federal Rules

of Criminal Procedure and pursuant to the order of this court of September 13, 1962 appointing the United States of America amicus curiae in the United States District Court for the Southern District of Mississippi and in this court, in the matters then pending therein on behalf of James H. Meredith, Plaintiff below and Appellant here, against Charles Dickson Fair, et al., Defendants below and Appellees here.

II.

Contrary to and in contravention of that order of this court, the Attorney General subsequently filed in appellate cause No. 19,473 an untimely application before this court and not before the United States District Court for the Southern District of Mississippi or any other legal or appropriate district court authorized to maintain such proceedings, as directed by the said order of this court of November 19, 1962. The acts and omissions described in the Show Cause Order of this court in original proceedings No. 20,240, dated the 4th day of January, 1963, describe occurrences and omissions which allegedly occurred in the Northern District of Mississippi and/or in the Southern District of Mississippi. The only court constitutionally and statutorily competent to hear and determine the allegations and charges contained in the said application of the Attorney General and the said Show Cause Order of this court would be a United States District Court for the district and division wherein such acts and omissions as were alleged were purported to have occurred.

III.

The acts and omissions alleged and charged in said application and in said Show Cause Order were alleged to have been had, done and performed or to have occurred at a time when the parties named, to-wit: Your movant and Lieutenant Governor Paul B. Johnson, Jr., were acting in the discharge of their official capacities as agents and servants of the Sovereign State of Mississippi and in furtherance of its statutes and Constitution and under and pursuant to their oaths of office in the discharge of their official functions and capacities; and, as such, the maintenance of any part of the proceedings in Cause No. 20,240 brought as an original action in this court constitutes an action against the Sovereign State of Mississippi, which is permitted to be brought and entertained only in a proper District court of the United States under 28 U.S. Code Section 1345, or in the Supreme Court of the United States, under Article 3, Section 2, Clause 2 of the Constitution of the United States of America, and this Honorable Court is without constitutional or statutory authority to entertain here or determine any part of said proceedings.

IV.

Under the provisions of Title 28 U. S. Code, Section 3231 jurisdiction of the action alleged in the unsworn application of the United States Attorney and in the Show Cause Order in original action 20,240 is cognizable only by a United States District Court as established by the Federal Rules of Criminal Procedure promulgated under Title 18 U. S. Code, Section 3771.

Respectfully submitted,

ROSS R. BARNETT, Governor of the State
of Mississippi

BY: JOE T. PATTERSON, Attorney General
of the State of Mississippi

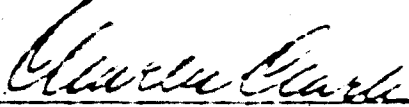
DUGAS SHANDS, Assistant Attorney
General of the State of Mississippi

MALCOLM E. MONTGOMERY

GARNER W. GREEN

M. M. ROBERTS

FRED B. SMITH



CHARLES CLARK

Special Assistant Attorney General
of the State of Mississippi

Address of each:

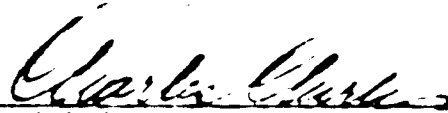
New Capitol Building
Jackson, Mississippi

NOTICE OF MOTION

TO: Burke Marshall, Esq.
Leon Jaworski, Esq.

ATTORNEYS FOR PLAINTIFF

Please take notice, that the undersigned will bring the above motion on for hearing before this Court in the Courtroom of the United States Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, on the 8th day of February, 1963 at 9:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.


ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I, CHARLES CLARK, of counsel for movant, certify that I have served true copies of the foregoing motion upon Burke Marshall, Esq. and Leon Jaworski, Esq., by United States mail.

THIS 31st DAY OF January, 1963.


CHARLES CLARK

contempt proceedings pursuant to Rule 42(b) of the Federal Rules of Criminal Procedure and pursuant to the order of this court of September 18, 1962 appointing the United States of America amicus curiae in the United States District Court for the Southern District of Mississippi and in this court, in the matters then pending therein on behalf of James H. Meredith, Plaintiff below and Appellant here, against Charles Dickson Fair, et al., Defendants below and Appellees here.

II.

Contrary to and in contravention of that order of this court, the Attorney General subsequently filed in appellate cause No. 19,475 an unsworn application before this court and not before the United States District Court for the Southern District of Mississippi or any other legal or appropriate district court authorized to maintain such proceedings, as directed by the said order of this court of November 15, 1962. The acts and omissions described in the Show Cause Order of this court in original proceedings No. 20,240, dated the 4th day of January, 1963, describe occurrences and omissions which allegedly occurred in the Northern District of Mississippi and/or in the Southern District of Mississippi. The only court constitutionally and statutorily competent to hear and determine the allegations and charges contained in the said application of the Attorney General and the said Show Cause Order of this court would be a United States District Court for the district and division wherein such acts and omissions as were alleged were purported to have occurred.

III.

The acts and omissions alleged and charged in said application and in said Show Cause Order were alleged to have been had, done and performed or to have occurred at a time when the parties named, to-wit: Your movant and Governor Ross R. Barnett, were acting in the discharge of their official capacities as agents and servants of the Sovereign State of Mississippi and in furtherance of its statutes and Constitution and under and pursuant to their oaths of office in the discharge of their official functions and capacities; and, as such, the maintenance of any part of the proceedings in Cause No. 20,240 brought as an original action in this court constitutes an action against the Sovereign State of Mississippi, which is permitted to be brought and entertained only in a proper district court of the United States under 28 U.S. Code, Section 1345 or in the Supreme Court of the United States under Article 3, Section 2, Clause 2 of the Constitution of the United States of America, and this Honorable Court is without constitutional or statutory authority to entertain here or determine any part of said proceedings.

IV.

Under the provisions of Title 28 U.S. Code, Section 3231 jurisdiction of the action alleged in the unsworn application of the United States Attorney and in the Show Cause Order in Original Action 20,240 is cognizable only by a United States District Court as established by the Federal Rules of Criminal

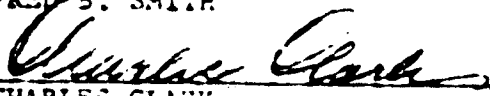
Procedure promulgated under Title 18 U.S. Code, Section 3771.

Respectfully submitted,

PAUL B. JOHNSON, JR., Lieutenant Governor
of the State of Mississippi

BY: JOE T. PATTERSON, Attorney General
of the State of Mississippi
DUGAS SHANDS, Assistant Attorney
General of the State of Mississippi

MALCOLM B. MONTGOMERY
GARNER W. GREEN
M. M. ROBERTS
FRED B. SMITH



CHARLES CLARK
Special Assistant Attorney General
of the State of Mississippi

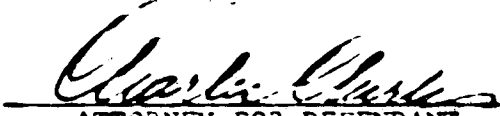
Address of each:
Jackson, Mississippi

NOTICE OF MOTION

TO: Burke Marshall, Esq.
Leon Jaworski, Esq.

ATTORNEYS FOR PLAINTIFF

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ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

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THIS 31st DAY OF January, 1963.


CHARLES CLARK

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JAMES H. MEREDITH,

Appellant

v.

APPELLATE

CHARLES DICKSON FAIR, et al.,

NO. 19,475

Appellees

(UNITED STATES OF AMERICA, Amicus Curiae)

UNITED STATES OF AMERICA

Plaintiff

v.

ORIGINAL

ROSS R. BARNETT,
Governor of the State of Mississippi
AND

CIVIL ACTION

PAUL B. JOHNSON, JR.,
Lt. Governor of the State of Mississippi

NO. 20,240

Defendants

THIRD ALTERNATIVE MOTION OF GOVERNOR ROSS R. BARNETT
TO DISMISS ALL PENDING PROCEEDINGS IN CRIMINAL CONTEMPT FOR
LACK OF GRAND JURY PRESENTMENT OR INDICTMENT

COMES NOW Ross R. Barnett, Governor of the Sovereign State of Mississippi, and moves this Honorable Court to dismiss all pending proceedings in Criminal Contempt in Appellate Cause No. 19,475 and in Original Cause No. 20,240 and, in support hereof, would show the following matters, facts and things:

I.

The Constitution of the United States of America provides that no person shall be held to answer for an infamous crime unless on a presentment or indictment of a grand jury.

II.

Penalties inflicted in previous Criminal Contempt cases classify such proceedings as falling within the prohibitions of said Fifth Amendment.

III.

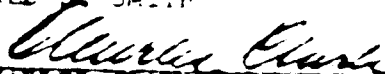
No such presentment or indictment of any grand jury has ever been sought, made or returned against movant as to any matters, facts or things which are the subject of these proceedings.

Respectfully submitted,

ROSS R. BARNETT, Governor of the State
of Mississippi

BY: JOE T. PATTERSON, Attorney General
of the State of Mississippi
LUCAS SHANDS, Assistant Attorney
General of the State of Mississippi

MALCOLM B. MONTGOMERY
GARNER W. GREEN
M. M. ROBERTS
FRED B. SMITH


CHARLES CLARK
Special Assistant Attorneys General
of the State of Mississippi

Address of each:

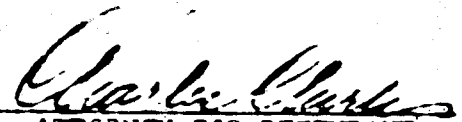
New Capitol Building
Jackson, Mississippi

NOTICE OF MOTION

TO: Burke Marshall, Esq.
Leon Jaworski, Esq.

ATTORNEYS FOR PLAINTIFF

Please take notice, that the undersigned will bring the above motion on for hearing before this Court in the Courtroom of the United States Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, on the 8th day of February, 1963 at 9:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.


ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I, CHARLES CLARK, of counsel for movant, certify that I have served true copies of the foregoing motion upon Burke Marshall, Esq. and Leon Jaworski, Esq., by United States mail.

THIS 31st DAY OF January, 1963.


CHARLES CLARK

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JAMES H. MEREDITH,

Appellant

v.

CHARLES DICKSON FAIR, et al.,

Appellees

(UNITED STATES OF AMERICA, Amicus Curiae)

APPELLATE

No. 19,475

UNITED STATES OF AMERICA

Plaintiff

v.

ROSS R. BARNETT,
Governor of the State of Mississippi
AND
PAUL B. JOHNSON, JR.,
Lt. Governor of the State of Mississippi

Defendants

ORIGINAL

CIVIL ACTION

NO. 20,240

DEMAND OF GOVERNOR ROSS R. BARNETT
FOR TRIAL BY JURY

Movant herewith demands that all issues made or which may be or could be made by any proceedings had, done or taken as to movant in original cause No. 20,240 and all related proceedings in appellate cause No. 19,475 be submitted to, heard and determined by a constitutionally composed jury chosen from the district and division where the alleged criminally contemptuous acts or omissions were committed or omitted.

Respectfully submitted,

ROSS R. BARNETT, Governor of the State
of Mississippi
BY: JOE T. PATTERSON, Attorney General of
the State of Miss.

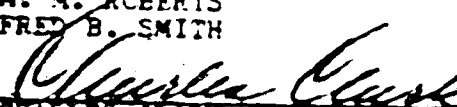
DUGAS SHANDS, Assistant Attorney General
of the State of Miss.

MALCOLM B. MONTGOMERY

GARNER W. GREEN

M. M. ROBERTS

FRED B. SMITH


CHARLES CLARK

Special Assistant Attorneys General of
the State of Mississippi

Address of each:
New Capitol Building
Jackson, Mississippi

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JAMES H. MEREDITH,

Appellant

v.

CHARLES DICKSON FAIR, et al.,

Appellees

(UNITED STATES OF AMERICA, Amicus Curiae)

APPELLATE

NO. 19,475

UNITED STATES OF AMERICA

Plaintiff

v.

ROSS R. BARNETT,
Governor of the State of Mississippi

AND
PAUL B. JOHNSON, JR.,
Lt. Governor of the State of Mississippi

Defendants

ORIGINAL

CIVIL ACTION

NO. 20,240

DEMAND OF LIEUTENANT GOVERNOR PAUL B. JOHNSON, JR.
FOR TRIAL BY JURY

Movant herewith demands that all issues made or which may be or could be made by any proceedings had, done or taken as to movant in original cause No. 20,240 and all related proceedings in appellate cause No. 19,475 be submitted to, heard and determined by a constitutionally composed jury chosen from the district and division where the alleged criminally contemptuous acts or omissions were committed or omitted.

Respectfully submitted, .

PAUL B. JOHNSON, JR., Lieutenant Governor of
the State of Miss.
BY: JOE T. PATTERSON, Attorney General of the
State of Miss.

DUCAS SHANES, Assistant Attorney General
of the State of Miss.

MALCOLM B. MONTGOMERY

GARNER W. GREEN

M. M. ROBERTS

FRED B. SMITH


CHARLES CLARK

Special Assistant Attorneys General of

Address of each:
New Capitol Building

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JAMES H. MEREDITH,)
Appellant)
v.)
CHARLES DICKSON FAIR, et al.,)
Appellees)
(UNITED STATES OF AMERICA, Amicus Curiae))
-----)

APPELLATE
NO. 19,475

UNITED STATES OF AMERICA
Plaintiff

v.)
ROSS R. BARNETT,)
Governor of the State of Mississippi)
AND)
PAUL B. JOHNSON, JR.,)
Lt. Governor of the State of Mississippi)
Defendants)

ORIGINAL
CIVIL ACTION
NO. 20,240

FOURTH ALTERNATIVE MOTION OF
GOVERNOR ROSS R. BARNETT TO
DISMISS ALL PROCEEDINGS IN
ORIGINAL ACTION NO. 20,240 FOR
LACK OF JURISDICTION TO SUMMONS
A CONSTITUTIONAL JURY.

COMES NOW, Ross R. Barnett, Governor of the State of
Mississippi, and moves this Honorable Court to dismiss all pro-
ceedings in original action No. 20,240 in this court and, in
support hereof, would show unto this court the following matters,
facts and things, to-wit:

I.

Under the clear and unambiguous terms and provisions of
the Constitution of the United States of America and the Amend-
ments thereto duly ratified and adopted, movant is entitled to

have any such charges as are here brought against him in his individual and/or official capacity, pursuant to the application of the Attorney General of the United States in cause No. 19,475 and/or pursuant to the Show Cause Order entered by this court on the 4th day of January, 1963 in said original cause No. 20,240 submitted to, heard and determined by a constitutional jury chosen from the district and division where the alleged acts or omissions constituting criminal contemptuous acts were committed or omitted, pursuant to Movant's demand for such jury trial heretofore filed herein.

II.


This Honorable Court is without statutory power or authority to summon such a constitutional jury and said power is lodged only in a district court of the United States duly functioning in such district and division as previously determined and existing at the time of said alleged acts and omissions.

Respectfully submitted,

ROSS R. EARNETT, Governor of the State of Mississippi

BY: JOE T. PATTERSON, Attorney General of
State of Mississippi
DUGAS SEANES, Assistant Attorney General
of the State of Mississippi

MALCOLM B. MONTGOMERY
GARNER W. GREEN
M. M. ROBERTS
FRED B. SMITH


CHARLES CLARK
Special Assistant Attorneys General
of the State of Mississippi


Address of each:
New Capitol Building
Jackson, Mississippi

NOTICE OF MOTION

TO: Burke Marshall, Esq.
Leon Jaworski, Esq.

ATTORNEYS FOR PLAINTIFF

Please take notice, that the undersigned will bring the above motion on for hearing before this Court in the Courtroom of the United States Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, on the 8th day of February, 1963 at 9:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.


ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I, CHARLES CLARK, of counsel for movant, certify that I have served true copies of the foregoing motion upon Burke Marshall, Esq. and Leon Jaworski, Esq., by United States mail.

THIS 31st DAY OF January, 1963.


CHARLES CLARK

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JAMES H. MEREDITH,)	
Appellant)	
v.)	APPELLATE
)	NO. 19,475
CHARLES DICKSON FAIR, et al.,)	
Appellees)	
(UNITED STATES OF AMERICA, Amicus Curiae))	
-----)	
UNITED STATES OF AMERICA,)	
Plaintiff)	
v.)	ORIGINAL
)	CIVIL ACTION
ROSS R. BARNETT,)	NO. 20,240
Governor of the State of Mississippi)	
AND)	
PAUL B. JOHNSON, JR.)	
Lt. Governor of the State of Mississippi,)	
Defendants)	

FOURTH ALTERNATIVE MOTION OF
LIEUTENANT GOVERNOR PAUL B.
JOHNSON, JR. TO DISMISS ALL
PROCEEDINGS IN ORIGINAL ACTION
NO. 20,240 FOR LACK OF JURISDIC-
TION TO SUMMONS A CONSTITUTIONAL
JURY.

COMES NOW, Paul B. Johnson, Jr., Lieutenant Governor of the State of Mississippi, and moves this Honorable Court to dismiss all proceedings in original action No. 20,240 in this court and, in support thereof, would show unto this court the following matters, facts and things, to-wit:

I.

Under the clear and unambiguous terms and provisions of the Constitution of the United States of America and the Amendments thereto duly ratified and adopted, movant is entitled to

have any such charges as are here brought against him in his individual and/or official capacity, pursuant to the application of the Attorney General of the United States in cause No. 19,475 and/or pursuant to the Show Cause Order entered by this court on the 4th day of January, 1963 in said original cause No. 20,240, submitted to, heard and determined by a constitutional jury chosen from the district and division where the alleged acts or omissions constituting criminal contemptuous acts were committed or omitted, pursuant to movant's demand for such jury trial heretofore filed herein.

II.

This Honorable Court is without statutory power or authority to summons such a constitutional jury and said power is lodged only in a district court of the United States duly functioning in such district and division as previously determined and existing at the time of said alleged acts and omissions.


Respectfully submitted,

PAUL B. JOHNSON, JR., Lieutenant Governor
of the State of Mississippi

BY: JOE T. PATTERSON, Attorney General
of the State of Mississippi

DUGAS SHANDS, Assistant Attorney
General of the State of Mississippi

MALCOLM B. MONTGOMERY
GARNER W. GREEN
M. M. ROBERTS
FRED B. SMITH


CHARLES CLARK
Special Assistant Attorneys General
of the State of Mississippi

NOTICE OF MOTION

TO: Burke Marshall, Esq.
Leon Jaworski, Esq.

ATTORNEYS FOR PLAINTIFF

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ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

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THIS 31st DAY OF January, 1963.


CHARLES CLARK

the United States of America, heretofore filed in appellate cause No. 19,475, four counts of wilful action were therein set out. The first count was stated to be against this movant alone; the second and the third counts of said application were stated to be jointly made against this movant and Lt. Governor Paul B. Johnson, Jr. and alleged therein a conspiracy between this movant and said other party; the fourth count was again stated to be against this movant alone.

Each and all of said counts allegedly described actions which were taken by movant in his elected and official capacity as the Governor of the Sovereign State of Mississippi. Movant was elected to this high office by the people of the Sovereign State of Mississippi and is the only duly elected, qualified and acting Governor of said state.

On the 4th day of January, 1963, this court entered an order in original action No. 20,240, stating that probable cause had been made to appear by said unsworn application of the Attorney General of the United States that movant and Lt. Governor Paul B. Johnson, Jr. wilfully committed acts in disobedience and defiance of an order of this court entered in appellate cause No. 19,475 on September 25, 1962, in which said order of January 4, 1963 this court required movant and Lt. Governor Paul B. Johnson, Jr., jointly, to appear before the court on February 8, 1963 and show cause why they should not be held in criminal contempt by pleading to the charges contained in the application.

Movent would show unto this Honorable Court that Lt. Governor Paul B. Johnson, Jr. is also a duly elected, qualified and serving official, agent and servant of the people of the Sovereign State of Mississippi and that the allegations of the application in said appellate cause No. 19,475 and statements contained in the order of the court in original cause No. 20,240, under date of January 4, 1963, allege and aver actions by the said Lt. Governor in his official capacity as Lt. Governor.

Both movent and Lt. Governor Paul B. Johnson, Jr. are separately and individually responsible and accountable to the citizens of the Sovereign State of Mississippi and to its duly elected Senate and other officials for the performance of the duties of their offices in discharge of the functions and trusts assigned to them and placed in their care by said sovereign state, and any determination of the issue of whether or not the discharge of movent's said office was accomplished in such a manner as could or did violate the sovereignty of the United States of America or any part of the judicial system thereof in a manner which would carry with it any element of criminality must of necessity charge and allege a severable and separate offense from any such charge layed against any other person.

Due process of law requires the alleged criminal acts be separately heard and determined as to your movent from any and all other hearing or determination of any other criminal

charges against any other person or persons, and any failure to so separately hear and determine such charges against movant would violate both movant's rights and the rights of the people of the sovereign state of Mississippi.

WHEREFORE PREMISED CONSIDERED, movant prays that this honorable Court will enter an order severing the proceedings in either and both of the above causes presently pending as against your movant in his individual and official capacity, from any other and all other proceedings had, done or taken in either of said causes against any other person in any other capacity.

Respectfully submitted,

JOSEPH W. BARNETT, Governor of
the State of Mississippi

By: JOE T. PATTERSON, Attorney General
of the State of Mississippi

CHARLES BRADSHAW, Assistant Attorney
General of the State of Mississippi

MARSHALL B. MONTGOMERY

GARLAND W. GREEN

W. H. WRIGHT

FRANK B. SMITH

Charles Bradshaw
CHARLES BRADSHAW
Special Assistant Attorneys General
of the State of Mississippi

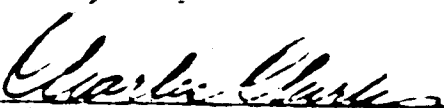
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TO: Burke Marshall, Esq.
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CERTIFICATE OF SERVICE

I, CHARLES CLARK, of counsel for movant, certify that I have served true copies of the foregoing motion upon Burke Marshall, Esq. and Leon Jaworski, Esq., by United States mail.

THIS 31st DAY OF January, 1963.


CHARLES CLARK

in support hereof, would show the following matters, facts and things.

That in the unsworn application of the United States of America, heretofore filed in appellate cause No. 19,475, four counts of wilful action were therein set out. The first count was stated to be against Governor Ross R. Barnett alone; the second and the third counts of said application were stated to be jointly made against this movant and Governor Ross R. Barnett and alleged therein a conspiracy between this movant and said other party; the fourth count was again stated to be against Governor Ross R. Barnett alone.

The second and the third counts allegedly described actions which were taken by movant in his elected and official capacity as the Lieutenant Governor of the Sovereign State of Mississippi. Movant was elected to this high office by the people of the Sovereign State of Mississippi and is the only duly elected, qualified and acting Lieutenant Governor of the said state.

On the 4th day of January, 1963, this court entered an order in original action No. 20,240, stating that probable cause had been made to appear by said unsworn application of the Attorney General of the United States that movant and Governor Ross R. Barnett wilfully committed acts in disobedience and defiance of an order of this court entered in appellate cause No. 19,475 on September 25, 1962, in which said order of

January 4, 1963 this court required movant and Governor Ross R. Barnett, jointly, to appear before the court on February 8, 1963 and show cause why they should not be held in criminal contempt by pleading to the charges contained in the application.

Movant would show unto this Honorable Court that Governor Ross R. Barnett is also a duly elected, qualified and serving official, agent and servant of the people of the Sovereign State of Mississippi and that the allegations of the application in said appellate cause No. 19,475 and statements contained in the order of the court in original cause No. 20,240, under date of January 4, 1963, allege and aver actions by the said Governor in his official capacity as Governor.

Both movant and Governor Ross R. Barnett are separately and individually responsible and accountable to the citizens of the Sovereign State of Mississippi and to its duly elected Senate and other officials for the performance of the duties of their offices in discharge of the functions and trusts assigned to them and placed in their care by said sovereign state, and any determination of the issue of whether or not the discharge of movant's said office was accomplished in such a manner as could or did violate the sovereignty of the United States of America or any part of the judicial system thereof in a manner which would carry with it any element of criminality

must of necessity charge and allege a severable and separate offense from any such charge laid against any other person.

In the unsworn application, filed by the Attorney General of the United States in appellate cause No. 19,475 against movant, the first and fourth counts of said application do not in any way purport to be made against movant or to state or to contain any matters, facts or things concerning any actions taken by movant individually, or in his official capacity as Lieutenant Governor of said sovereign state.

The order of this Honorable Court dated January 4, 1963 in original action No. 20,240 alleges and states matters which are directed solely against Governor Ross R. Barnett, as well as matters which are apparently intended to be jointly directed to this movant and said Governor.

Due process of law required the alleged criminal acts be separately heard and determined as to your movant from any and all other hearing or determination of any other criminal charges against any other person or persons, and any failure to so separately hear and determine such charges against movant would violate both movant's rights and the rights of the people of the Sovereign State of Mississippi.

WHEREFORE PREMISES CONSIDERED, movant prays that this Honorable Court will enter an order severing the proceedings in either and both of the above causes presently pending as against your movant in his individual and official capacity, from any other and all other proceedings had, done or taken in either of said causes against any other person in any other capacity.

Respectfully submitted,

PAUL B. JOHNSON, JR., Lt. Governor of the
State of Mississippi

BY: JOE T. PATTERSON, Attorney General of
the State of Mississippi

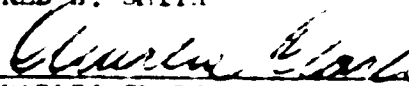
DUGAS SHANDS, Assistant Attorney General
of the State of Mississippi

MALCOLM B. MONTGOMERY

GARNER W. GREEN

M. M. ROBERTS

FRED B. SMITH


CHARLES CLARK

Special Assistant Attorneys General
of the State of Mississippi

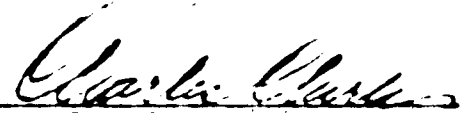
Address of each:
New Capitol Building
Jackson, Mississippi

NOTICE OF MOTION

TO: Burke Marshall, Esq.
Leon Jaworski, Esq.

ATTORNEYS FOR PLAINTIFF

Please take notice, that the undersigned will bring the above motion on for hearing before this Court in the Courtroom of the United States Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, on the 8th day of February, 1963 at 9:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.


ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I, CHARLES CLARK, of counsel for movant, certify that I have served true copies of the foregoing motion upon Burke Marshall, Esq. and Leon Jaworski, Esq., by United States mail.

THIS 31st DAY OF January, 1963.


CHARLES CLARK

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JAMES H. MENDITH,

Appellant

v.

CHARLES DICKSON FAIR, et al.,

Appellees

No. 19,475

UNITED STATES OF AMERICA

v.

CIVIL ACTION

NO. 20,240

ROSS R. BARNETT,

Governor of the State of Mississippi
AND

PAUL B. JOHNSON, JR.,

Lt. Governor of the State of Mississippi

**NOTICE OF ROSS R. BARNETT, GOVERNOR
OF THE STATE OF MISSISSIPPI, TO STRIKE
THE THIRD AND FOURTH CHARGES CONTAINED
IN THE ORDER TO SHOW CAUSE OF DATE OF
JANUARY 4, 1963.**

NOW COMES, Ross R. Barnett, Governor of the State of Mississippi, and moves to strike from the order to show cause, of the date of January 4, 1963, the following charges, to-wit:

" . . . that on September 27, 1962, Ross R. Barnett and Paul B. Johnson, Jr. wilfully failed to take such measures as were necessary to maintain law and order upon the campus of the University of Mississippi and did, in fact, direct and encourage certain members of the Mississippi Highway Safety Patrol, Sheriff's and Deputy Sheriff's and other officials of the State of Mississippi to obstruct and prevent the entry of James H. Mendith upon the campus of the University that day; that on September 30, 1962, Ross R. Barnett, knowing of the planned

entry of James H. Meredith upon the campus of the University of Mississippi, knowing that disorders and disturbances had attended and would attend such entry, and knowing that any failure of the Mississippi Highway Safety Patrol to take all possible measures for the maintenance of peace and order on the campus could and would result in interferences with and obstructions to the carrying out of the court's order of July 28, 1962, wilfully failed to exercise his responsibility, authority, and influence as Governor to maintain law and order upon the campus of the University of Mississippi; and that all of said acts, omissions and conduct of Ross R. Barnett and Paul B. Johnson, Jr., were for the purpose of preventing compliance with this court's order of July 28, 1962, and of the similar order of the United States District Court for the Southern District of Mississippi, entered on September 13, 1962, and were in wilful disobedience and defiance of the temporary restraining order of this court entered on September 25, 1962."

and as grounds of said motion, assigns the following:

1. The acts charged to be in contempt of the temporary restraining order, issued by the Court of Appeals for the Fifth Circuit under date of September 25, 1962, do not fall within nor are they embraced by, nor do they violate any of the terms of the temporary restraining order of that date.

2. No charge for criminal contempt of the temporary restraining order can be based upon any charge other than of a wilful disobedience of the express terms of the temporary restraining order.

WHEREFORE, defendants move to strike the aforesaid

charges from the order to show cause.

Respectfully submitted,

ROSS E. BARNETT, Governor of the
State of Mississippi

BY: JOE T. PATTERSON, Attorney General
of the State of Mississippi

DUGAS SHARDS, Assistant Attorney General
of the State of Mississippi

MALCOLM B. MONTGOMERY
GARNER W. GREEN
M. M. ROBERTS
FRED B. SMITH

CHARLES CLARK
Special Assistant Attorneys General
of the State of Mississippi

Address of each:
New Capitol Building
Jackson, Mississippi

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JAMES H. MEREDITH,
Appellant

v.

CHARLES DICKSON FAIR, et al.,
Appellees

UNITED STATES OF AMERICA,
Amicus Curiae and Petitioner.

v.

STATE OF MISSISSIPPI, et al.,
Defendants.

U. S. COURT OF APPEALS
FILED

DEC 21 1962

EDWARD W. WALSWORTH
CLERK

~~NOV 27 1962~~

APPLICATION FOR AN ORDER REQUIRING
ROSS R. BARNETT AND PAUL B. JOHNSON, JR.
TO SHOW CAUSE WHY THEY SHOULD NOT BE
HELD IN CRIMINAL CONTEMPT

Pursuant to this Court's order of November 15, 1962,
the Attorney General of the United States applies to the
Court for an order requiring Ross R. Barnett and Paul B.
Johnson, Jr., to show cause, if any they have, why they
should not be held in criminal contempt of this Court for
wilfully disobeying the temporary restraining order entered
on September 25, 1962, in United States v. State of Mississippi,
et al., No. 19,475, and as a first count against Ross R.
Barnett, states:

FIRST COUNT

1. Ross R. Barnett is Governor of the State of Mississippi and, as such, is an officer and agent of the State.

2. On July 28, 1962, this Court entered its order in the case of James H. Meredith, et al. v. Charles Dickson Fair, et al., No. 19475, requiring the defendant officials of the University of Mississippi and the defendant members of the Board of Trustees of Institutions of Higher Learning of the State of Mississippi to register and admit James H. Meredith to continued attendance as a student at the University of Mississippi on the same terms and conditions as are applied to other students.

3. On September 18, 1962, this Court ordered that the United States be designated and authorized to appear and participate as amicus curiae in the case of Meredith v. Fair, referred to in the preceding paragraph, with the right to submit pleadings, evidence, arguments and briefs and to initiate such further proceedings, including proceedings for injunctive relief, as might be appropriate in order to maintain and preserve the due administration of justice and the integrity of the judicial processes of the United States.

4. On September 24, 1962, this Court, in instructing the defendant officials of the University of Mississippi and the members of the Board of Trustees of Higher Learning what they must do to comply with this Court's order of July 28, 1962, directed the defendant Robert B. Ellis, Registrar of the University, to be available at Jackson, Mississippi, at the office of the Board of Trustees, from 1:00 p.m. to

6:00 p.m. on September 25, 1962, for the purpose of registering James H. Meredith and admitting him as a student to the University.

5. On September 25, 1962, the Attorney General filed in this Court in the name of and on behalf of the United States, amicus curiae, an action titled United States v. State of Mississippi, et al., which was ancillary to the case of Meredith v. Fair. In connection with its complaint in the case of United States v. State of Mississippi, the Attorney General, in the name of and on behalf of the United States, applied for, and the Court on September 25, 1962 issued, a temporary restraining order restraining the State of Mississippi and Ross R. Barnett, their agents, employees, officers and successors, together with all persons in active concert or participation with them, from interfering with or obstructing by any means or in any manner the enjoyment of rights or the performance of obligations under this Court's order of July 28, 1962 and an order of the United States District Court for the Southern District of Mississippi entered September 13, 1962, both of which orders require the enrollment of James H. Meredith at the University of Mississippi.

6. On September 25, 1962, the State of Mississippi and Ross R. Barnett were each served with summons and with copies of the complaint filed by the Attorney General in the name of and on behalf of the United States, together with the application for a temporary restraining order and the temporary restraining order issued by this Court as described in the preceding paragraph.

7. On September 25, 1962, Ross R. Barnett, after service of the summons and other papers upon him and upon the State of Mississippi as described in the preceding paragraph, and while having actual notice of the terms of the temporary restraining order, wilfully prevented James H. Meredith from entering the office of the Board of Trustees in Jackson, Mississippi at a time when James H. Meredith, as Ross R. Barnett well knew, was seeking to enter the office for the purpose of registering as a student in the University pursuant to this Court's order of July 28, 1962.

8. The conduct of Ross R. Barnett, as herein described, was in wilful disregard and defiance of the temporary restraining order entered by this Court on September 25, 1962.

As a second and further count against Ross R. Barnett and Paul B. Johnson, Jr., the Attorney General of the United States further states:

SECOND COUNT

9. The United States realleges and re-states each of the facts and matters set forth in paragraphs 1, 2, 3, 5 and 6 of the First Count.

10. Paul B. Johnson, Jr. is Lieutenant Governor of the State of Mississippi and, as such, is an officer and agent of the State.

11. On September 26, 1962, Ross R. Barnett authorized and directed Paul B. Johnson, Jr., as his officer and agent, and as an officer and agent of the State of Mississippi, to prevent James H. Meredith from entering the campus of the

University of Mississippi, in Oxford, Mississippi, and from enrolling as a student in the University.

12. On September 26, 1962, Paul B. Johnson, Jr., acting as the officer and agent of the State of Mississippi and of Ross R. Barnett pursuant to the authorization and direction described in the preceding paragraph, and while having actual notice of the terms of the temporary restraining order described in paragraph 5, wilfully prevented James H. Meredith from entering the campus of the University of Mississippi in Oxford, and did thereby prevent James H. Meredith from enrolling as a student in the University.

13. In all of the acts and conduct described in paragraphs 11 and 12, Ross R. Barnett and Paul B. Johnson, Jr., were in active concert and participation each with the other.

14. The acts and conduct of Ross R. Barnett and Paul B. Johnson, Jr. described in paragraphs 11 and 12 were in wilful disregard and defiance of the temporary restraining order issued by this Court on September 25, 1962.

As a third and further count against Ross R. Barnett and Paul B. Johnson, Jr., the Attorney General of the United States further states:

THIRD COUNT

15. The United States re-alleges and restates each of the facts and matters set forth in paragraphs 1, 2, 3, 5, 6, and 10.

16. During the day of September 27, 1962, Ross R. Barnett and Paul B. Johnson, Jr., as Governor and Lieutenant Governor of Mississippi, respectively, assumed responsibility for and personal direction of measures necessary to maintain law and order on the campus of the University of Mississippi in Oxford, Mississippi, in connection with the expected enrollment of James H. Meredith at the University.

17. On September 27, 1962, James H. Meredith left Memphis, Tennessee, enroute to Oxford, Mississippi to enroll in the University of Mississippi pursuant to the order of this Court of July 28, 1962, and the order of the United States District Court for the Southern District of Mississippi of September 13, 1962.

18. On September 27, 1962, Ross R. Barnett and Paul B. Johnson, Jr., knowing that James H. Meredith was enroute to Oxford for the purpose of enrolling in the University, wilfully failed to take such measures as were necessary to maintain law and order upon the campus of the University to the end that James H. Meredith might enroll as a student pursuant to the order of this Court, and did, instead, direct and encourage certain members of the Mississippi Highway Safety Patrol, sheriffs and deputy sheriffs of the various Mississippi Counties, members of the police departments of various Mississippi cities, and other officials and residents of Mississippi to obstruct and prevent the entry of James H. Meredith upon the campus of the University that day. The acts and conduct of Ross R. Barnett and Paul B. Johnson, Jr., in directing and encouraging efforts to exclude James H. Meredith from the campus of

the University did effectively on that day cause James H. Meredith to abandon his effort to enter the campus and cause him to return to Memphis, Tennessee.

19. All of the acts, conduct and omissions of Ross R. Barnett and Paul B. Johnson, Jr., described in this Third Count, were in wilful disregard and defiance of the temporary restraining order issued by this Court on September 25, 1962.

20. In all of their actions, conduct and omissions described in paragraphs 16 and 18, Ross R. Barnett and Paul B. Johnson, Jr. were in active concert and participation, each with the other.

As a fourth and further count against Ross R. Barnett, the Attorney General states:

FOURTH COUNT

21. The United States re-alleges and restates each of the facts and matters set forth in paragraphs 1, 2, 3, 5, and 6.

22. On September 28, 1962, this Court adjudged Ross R. Barnett to be in civil contempt of the restraining order of September 25, 1962, and directed that among the things he must do to purge himself of that contempt was to notify all law enforcement officers and all other officers under his jurisdiction or command:

To maintain law and order at and around the University and to cooperate with the officers and agents of this Court and of the United States in the execution of the orders of this Court and of the District Court for the Southern District of Mississippi to the end that James H. Meredith be permitted to register and remain as a student at the University of Mississippi under the same conditions as apply to all other students.

23. The Mississippi Highway Safety Patrol is a law enforcement organization of the State of Mississippi and is a part of the executive department of the State under the authority of Ross R. Barnett as governor.

24. On September 30, 1962, Ross R. Barnett personally assumed the responsibility, as Governor of the State of Mississippi, to direct and request all available law enforcement officers of the State and its political subdivisions to assist in maintaining law and order at the campus of the University of Mississippi in Oxford, Mississippi, in connection with the enrollment of James H. Meredith as a student in the University.


25. On September 30, 1962, James H. Meredith entered the campus of the University of Mississippi for the purpose of enrolling and attending the University as a student. James H. Meredith's entry upon the campus was accomplished without any interference or obstruction as a result of cooperation between the State Highway Patrol and officials of the United States Department of Justice.

26. On September 30, 1962, Ross R. Barnett, knowing of the planned entry of James H. Meredith upon the campus of the University of Mississippi, knowing that disorders and disturbances had attended and would attend such entry, and knowing that any failure by the Mississippi Highway Safety Patrol to take all possible measures for the maintenance of peace and order upon the campus could and would result in interference with and obstruction to the carrying out of this Court's order of July 28, 1962, wilfully failed to exercise his responsibility, authority and influence as Governor to maintain law and order upon the campus of the University of Mississippi.

27. As a result of the acts and omissions of Ross R. Barnett described in the preceding paragraph, the entry of James H. Meredith upon the campus was followed by disorder, disturbances and acts of violence designed to prevent and discourage his enrollment and attendance at the University of Mississippi.

28. All of the acts, conduct and omissions of Ross R. Barnett described in the Fourth Count of this application were in wilful disregard and defiance of the temporary restraining order issued by this Court on September 25, 1962.

Upon the basis of the facts set forth in the First, Second, Third and Fourth Counts above, the Attorney General, on behalf of and in the name of the United States, requests the Court to enter an order requiring Ross R. Barnett and Paul B. Johnson, Jr., to appear before this Court at a time and place to be fixed by the Court, to show cause why they should not be held in criminal contempt. If, upon such appearance, Ross R. Barnett and Paul B. Johnson, Jr., or either of them, pleads not guilty to the charges set forth in this application, the United States further requests that a time and place be set for hearing upon the charges.



ROBERT F. KENNEDY
Attorney General



BURKE MARSHALL
Assistant Attorney General



JOHN DOAR
Attorney