

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS

FILED

SEP 28 1962

NO. 19,475

EDWARD W. WADSWORTH
CLERK

ROSS E. BARNETT,

Appellant,

vs.

UNITED STATES OF AMERICA, et al.,

Appellees.

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**UNITED STATES OF AMERICA,
Attorney General and Petitioner,**

vs.

STATE OF MISSISSIPPI, et al.,

Defendants.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND JUDGMENT OF CIVIL CONTEMPT.

Before TUTTLE, Chief Judge, and HUTCHINGS, BRYAN, JONES, BROWN, WILSON,
GIBSON and HALL, Circuit Judges.

This Court having on September 25, 1962 issued orders requiring Ross E. Barnett to appear before this Court today at 10:00 A. M., to show cause, if any he has, why he should not be held in civil contempt of the temporary restraining orders entered in this action on September 25, 1962, and Ross E. Barnett having been given notice of the orders to show cause, and it having been regularly called on the calendar for hearing at 10:00 A. M. this day, and Ross E. Barnett having failed to appear or respond in person or by counsel, and having failed to deny the factual statements contained in the verified application of the United States, and of the appellant and

The Court having heard and received evidence on behalf of the United States and of the appellant, and having deliberated

and considered the legal issues involved, now renders its Findings of Fact and Conclusions of Law and Judgment as follows:

FINDINGS OF FACT

1. Since this Court entered its order of July 28, 1962, and the District Court for the Southern District of Mississippi entered its order on September 13, 1962, requiring the admission of James H. Meredith to the University of Mississippi, Ross E. Barnett, as Governor of the State of Mississippi, has issued a series of proclamations calling upon all officials of the state to prevent and obstruct the carrying out of the Court's orders with respect to the admission of James H. Meredith to the University. Two of these proclamations were issued by Ross E. Barnett on September 24 and September 25, 1962.

2. On September 25, 1962, this Court entered its temporary restraining orders restraining Ross E. Barnett from interfering with or obstructing in any manner or by any means the enjoyment of rights or the performance of obligations under this Court's order of July 28, 1962 and the order of the District Court of September 13, 1962.

3. At approximately 4:30 P. M. on September 25, 1962, Ross E. Barnett, having full knowledge of the existence and terms of this Court's temporary restraining orders, went to the office of the Board of Trustees of Institutions of Higher Learning in Jackson, Mississippi at a time when James H. Meredith was due to appear at the office and be enrolled as a student in the University of Mississippi, pursuant to the order of this Court. When James H. Meredith arrived at the office and sought to enter for the purpose of enrolling, Ross E. Barnett deliberately prevented him from entering and told him that his application for enrollment was denied by Ross E. Barnett.

4. On September 26, 1962, James H. Meredith sought to enter the campus of the University of Mississippi in Oxford.

Mississippi. He was prevented from entering by Paul B. Johnson, Jr., Lieutenant Governor of the State of Mississippi, acting pursuant to the instructions and under the authorization of Ross R. Barnett.

5. The conduct of Ross R. Barnett in preventing James H. Meredith from enrolling as a student in the University of Mississippi has been with the deliberate and announced purpose of preventing compliance with the orders of this and other federal courts.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of the person of Ross R. Barnett.
2. Ross R. Barnett is in contempt of the temporary restraining orders entered by this Court on September 25, 1962.

JUDGMENT OF CIVIL CONTEMPT

Upon the foregoing findings of fact and conclusions of law:

IT IS ORDERED, ADJUDGED AND DECREED THAT:

Ross E. Barnett is in civil contempt of the temporary restraining orders of this Court entered September 25, 1962; that such contempt is continuing; and that Ross E. Barnett shall be committed to and remain in the custody of the Attorney General of the United States and shall pay a fine to the United States of \$13,000. per day unless on or before Tuesday, October 2nd, 1962 at 11:00 a.m. he shows to this Court that he is fully complying with the terms of the restraining orders, and that he has notified all law enforcement officers and all other officers under his jurisdiction or command:

(a) To cease forthwith all resistance to and interference with the orders of this Court and the District Court for the Southern District of Mississippi;

(b) 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.

Nothing herein shall prevent a later assertion of a charge of criminal contempt against Respondent.

Jurisdiction is hereby reserved for such other
and further orders as may be appropriate.

Judges Jones, Cowin and Bell dissent from that
portion of the judgment imposing a fine upon the Respondent.

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 19,475

JAMES H. MEREDITH,

Appellant,

vs.

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CHARLES DICKSON FAIR, et al..

Appellees.

UNITED STATES OF AMERICA,
Amicus Curiae and Petitioner.

vs.

STATE OF MISSISSIPPI, et al..

Defendants.

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APPEALS RESEARCH SECTION
CIVIL RIGHTS DIVISION

FINDINGS OF FACT, CONCLUSIONS OF LAW AND
JUDGMENT OF CIVIL CONTEMPT AGAINST
PAUL B. JOHNSON, JR.

Before RIVES, BROWN and WISDOM, Circuit Judges.

This Court having entered an order on September 26, 1962, requiring Paul B. Johnson, Jr. to appear before this Court today at 10:00 A. M. to show cause, if any he has, why he should not be held in civil contempt of the temporary restraining order entered in this action upon application of the United States on September 25, 1962, and Paul B. Johnson, Jr., having been given notice of the order to show cause and it having been regularly called on the calendar for hearing at 10:00 A. M. this day, and Paul B. Johnson, Jr. having failed to appear or respond, in person or by counsel, and having failed to deny the factual statements contained in the verified application of the

United States, and

The Court having heard and received evidence on behalf on the United States and having deliberated and considered the legal issues involved, now renders its findings of fact, conclusions of law and judgment as follows:

FINDINGS OF FACT

1. On September 25, 1962 this Court entered its temporary restraining order upon application of the United States, amicus curiae herein, restraining the State of Mississippi, 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 in any manner or by any means the enjoyment of rights or the performance of obligations under this Court's order of July 28, 1962 and the order of the District Court of September 13, 1962.

2. The temporary restraining order of September 25, 1962 was served upon the State of Mississippi through its designated agent Joe T. Patterson, the Attorney General of the State of Mississippi, on September 25, 1962 and was served on Ross R. Barnett on September 25, 1962.

3. On September 26, 1962 Paul B. Johnson, Jr., acting as an officer and agent of the State of Mississippi and as an agent of and in active concert and participation with Ross R. Barnett, prevented James H. Meredith from entering the campus of the University of Mississippi at Oxford, Mississippi at a time when James H. Meredith was seeking to so enter for the purpose of enrolling as a student in the University pursuant to the orders of this Court of July 28, 1962 and the order of the District Court of September 13, 1962.

The conduct of Paul B. Johnson, Jr., in preventing James H. Meredith from entering the campus of the University of Mississippi and from enrolling as a student in the University was with the deliberate and announced purpose of preventing compliance with the orders of this and other federal courts.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of the person of Paul B. Johnson, Jr.
2. Paul B. Johnson, Jr. is in contempt of the temporary restraining order of September 25, 1962.

JUDGMENT OF CIVIL CONTEMPT

Upon the foregoing findings of fact and conclusions of law,

IT IS ORDERED, ADJUDGED AND DECREED that:

Paul B. Johnson, Jr. is in civil contempt of the temporary restraining order of this Court entered on September 25, 1962 upon application of the United States, amicus curiae; that such contempt is continuing, and that Paul B. Johnson, Jr. shall pay a fine to the United States of \$5,000.00 per day, unless on or before October 2, 1962 at 11:00 a. m. he shows to this Court that from and after the time of the issuance of this order he has been, and is, in full compliance with the terms of the restraining order, that he intends to do so in the future and that he will, during any periods of time that he is acting for or on behalf of, or in the name, place or stead of, or with the authority or power of, or as Governor of the State of Mississippi, notify all law enforcement officers and all other officers under his jurisdiction or command:

(a) To cease forthwith all resistance to and interference with the orders of this Court and the District Court for the Southern District of Mississippi;

(b) 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 shall be permitted to register and remain as a student at the University of Mississippi under the same conditions as apply to all other students.

In the event that Paul B. Johnson, Jr. while acting for, or on behalf of, or in the name, place or stead of, or with the authority or power of, or as Governor of the State of Mississippi fails at any time to take the steps set forth in sub-paragraphs (a) and (b) he shall, on a finding of such fact by the Court, be committed to the custody of the Attorney General and shall pay a fine to the United States of \$10,000.00 per day, such daily fine and imprisonment to continue during such period as he fails to purge himself of such contempt.

Nothing herein shall prevent a later assertion of a charge of criminal contempt against Respondent.

Jurisdiction is hereby reserved for such other and further orders as may be appropriate.

September 29, 1962

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 19475

JAMES H. HENNING,

Appellant,

v.

CHARLES DEEDON FAIR, et al.,

Appellees.

UNITED STATES OF AMERICA,
Amicus Curiae and Petitioner,

v.

STATE OF MISSISSIPPI, et al.,

Defendants.

ORDER

Before TUTTLE, Chief Judge, ~~HUTCHINSON~~, RIVES, JONES, BROWN,
WHEELER, , and HILL, Circuit Judges, en banc.

BY THE COURT:

The matter of the entry of further orders as to civil contempt insofar as concerns Governor Ross R. Barnett or Lieutenant Governor Paul B. Johnson, Jr., the motion for preliminary injunction and all other motions or matters in this cause are set for hearing in the courtroom at New Orleans, Louisiana at 11:00 o'clock A.M. on Friday, October 12, 1962.

The restraining order heretofore issued by this Court shall remain in full force and effect until such time.

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 19,475

JAMES H. MEREDITH,

Appellant,

v.

CHARLES DICKSON FAIR, et al,

Appellees.

UNITED STATES OF AMERICA,
Amicus Curiae and Petitioner,

- versus -

STATE OF MISSISSIPPI; ROSS R. BARNETT,
Governor of the State of Mississippi;
✓ JOE T. PATTERSON, Attorney General of
the State of Mississippi; T. B. BIRDSONG,
Commissioner of Public Safety of the
State of Mississippi; PAUL G. ALEXANDER,
District Attorney of Hinds County, and
✓ WILLIAM R. LAKE, District Attorney of
Lafayette County, individually; J. ROBERT
GILFOY, Sheriff of Hinds County, and J.
✓ W. FORD, Sheriff of Lafayette County,
individually; WILLIAM D. RAYFIELD, Chief
of Police of the City of Jackson, and
✓ JAMES D. JONES, Chief of Police of the
City of Oxford, individually; WALTER
CLERK SMITH, Constable of the City of Oxford,

Defendants.

ORDER AND JUDGMENT ON THE MOTION OF THE STATE OF
MISSISSIPPI TO DISSOLVE THE TEMPORARY RESTRAINING
ORDER OF SEPTEMBER 25, 1962, TO DISMISS THE CON-
TEMPT PROCEEDINGS AGAINST ROSS R. BARNETT and
PAUL E. JOHNSON, JR., and ORDER AND JUDGMENT ON
MOTION OF APPELLANT and UNITED STATES OF AMERICA,
AMICUS CURIAE, PETITIONER, FOR PRELIMINARY INJUNCTION.

This matter came on for hearing on October 12, 1962,
pursuant to an order to show cause why a preliminary injunction
should not be granted against the named Respondents, and on a
motion subsequently filed by the State of Mississippi to dissolve
the temporary restraining order entered by this Court on
September 25, 1962, and to dismiss the pending contempt pro-
ceedings which had resulted in a judgment of this Court finding

U.S. COURT OF APPEALS

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FRED W. WADSWORTH

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respondent, Ross R. Barnett, guilty of civil contempt. The United States, Amicus Curiae, by designation of the Court, as petitioner herein, named all of the respondents whose names are included in the caption of this order. The appellant named some but not all of the said respondents but did not name the State of Mississippi as a party.

Petitioners introduced oral testimony and documentary evidence which fully sustained the allegations of the petition. Respondents all appeared by counsel. Neither the State of Mississippi nor any other respondent made any factual showing in an effort to contradict the allegations of fact or the testimony tendered on behalf of petitioners supporting said allegations. The respondents contend that these petitions for injunction, as well as the petitions for temporary restraining order against the parties herein named undertook to make additional parties in an equity cause on appeal. as to which none of said parties had had an opportunity to contest the judgment of the trial court or the judgment of this Court which resulted in the injunction of July 28, 1962. Those judgments required the defendants in the original complaint, the administrative officials and the Board of Trustees of the University of Mississippi to admit James H. Meredith as a student and to permit his continued attendance as a student on the same basis as all other students.

The posture of this case at the time these motions for preliminary injunction and the accompanying motions for temporary restraining order were filed, is that this Court had issued its injunction, above referred to, prohibiting the officials of the University and the Trustees of the State Institutions of Higher Learning of the State of Mississippi from interfering with the admission of James H. Meredith and his continuance as a student in the University of Mississippi, and also prohibiting certain of the defendants now before the Court from further prosecuting criminal proceedings against the said Meredith; whereas, it

was alleged in the petition of the United States, the State of Mississippi, through its official state policy, pursuant to actions of its Legislature, and through the actions of its Governor by proclamation, and all of the other respondents, were then engaged in actively frustrating the execution of this Court's injunction against the officials of the University. These proceedings, therefore, are purely ancillary to the original lawsuit, and this Court has ample power to proceed against any party, including the State of Mississippi, which is shown to be engaged in a wilful, intentional effort to frustrate this Court's injunction.

The motion to dissolve the restraining order and the motion to dismiss the contempt proceedings by the Respondents are, therefore, DENIED.

The ruling just stated equally disposes of the contention made by the respondents that this Court is now powerless to issue the preliminary injunction. We, therefore, hold that the Court has the power to issue this injunction against the persons not previously named as defendants in the main suit to prevent their active interference with this Court's prior injunctions.

The evidence adduced before this Court, neither attacked by respondents nor contended by them to be legally insufficient to warrant the granting of the relief sought, establishes the following facts:

The State of Mississippi, Ross R. Barnett, Governor of Mississippi, Joe T. Patterson, Attorney General of Mississippi, T. E. Birdsong, Commissioner of Public Safety of Mississippi, Paul G. Alexander, District Attorney of Hinds County, William R. Lamb, District Attorney of Lafayette County, J. Robert Gilfoy, Sheriff of Hinds County, J. W. Ford, Sheriff of Lafayette County, William D. Rayfield, Chief of Police of the City of Jackson, James D. Jones, Chief of Police of the City of Oxford, Walton Smith, Constable of the City of Oxford, threaten to implement and enforce, unless restrained by order of this Court,

Mississippi Legislature, the provisions of Section 4065.3 of the Mississippi Code, and a Proclamation of Ross R. Barnett invoking the doctrine of interposition with respect to the enforcement of the orders of this Court in this case; that Paul G. Alexander has instituted two criminal prosecutions against James Howard Meredith on account of the efforts of James Howard Meredith to enroll in the University of Mississippi pursuant to the orders of this Court. On September 28, 1962, James H. Meredith was tried in absentia by the Justice of the Peace of Hinds County, Mississippi, and convicted on the charge by Paul Alexander that Meredith had falsely secured registration as a voter of Hinds County, when he was in fact a resident of Attala County, and for which he was assessed a penalty of imprisonment for one year and a fine of \$300. On September 20, 1962 James Howard Meredith, while seeking to enroll at the University of Mississippi in Oxford, Mississippi, pursuant to the orders of this Court, was served with a writ of injunction issued by the Chancery Court of Lafayette County, Mississippi, at the instance of Ross R. Barnett, enjoining James Howard Meredith from applying to or attending the University of Mississippi, and to which Meredith and his attorneys are required to show cause on the 4th day of November, 1962, why this injunction should not be made permanent. On September 20, 1962, Ross R. Barnett, the Governor of the State of Mississippi secured an injunction in the Chancery Court of Hinds County against Meredith and his attorneys enjoining them from proceeding to secure the registration, admission and continued attendance of Meredith as a student at the University of Mississippi to which Meredith has been ordered to show cause on the fourth Monday in October, 1962, why the injunction should not continue. Likewise on September 20, 1962, on application of Ross R. Barnett, Governor of the State of Mississippi, the Chancery Court of Hinds County issued an injunction against the Board of

Trustees of the State Institutions of Higher Learning enjoining it from admitting Meredith to the University of Mississippi. On September 20, 1962, the State of Mississippi enacted Senate Bill 1501, the effect of which is to punish James Howard Meredith should he seek enrollment in the University of Mississippi; that on October 3 and 5, 1962, respectively, the House and Senate of the Mississippi Legislature adopted House Concurrent Resolution No. 18, calling for the redress of grievances, including the removal of Meredith from the University, removal of all Federal Marshals and troops; that on September 28, 1962, House Bill #2, Laws of Mississippi, 1962, Extraordinary Session, was enacted, providing that all acts, words and conduct performed by any state officer in keeping Mississippi Institutions of Higher Learning segregated are adopted as the Acts of the sovereign state of Mississippi and not the acts of such individuals; that the effect of the conduct of the defendants herein named in implementing the policy of the State of Mississippi as proclaimed by Ross R. Barnett will necessarily be to prevent the carrying out of the orders of this Court and of the District Court for the Southern District of Mississippi; and that the acts and conduct of the defendants named in the petition will cause immediate and irreparable injury to the appellant Meredith and to the United States consisting of the impairment of the integrity of its judicial processes, the obstruction of the due administration of justice, and the deprivation of rights under the Constitution and laws of the United States unless prevented by an order of the Court,

IT IS NOW THEREFORE ORDERED that the State of Mississippi, Ross R. Barnett, Joe T. Patterson, T. B. Birdsong, Paul G. Alexander, William R. Lamb, J. Robert Gilfoy, J. W. Ford, William D. Rayfield, James D. Jones, Walton Smith, their agents, employees, officers, successors, and all persons in active concert or participation with them who shall receive actual notice

until the further order of this Court from:

1. Arresting, attempting to arrest, prosecuting or instituting any prosecution against James Howard Meredith under any statute, ordinance, rule or regulation whatever, on account of his attending, or seeking to attend, the University of Mississippi; without limiting the generality of the foregoing, this shall include:

(a) Proceeding to arrest the appellant pursuant to the conviction of appellant on September 20, 1962, in the case of State of Mississippi v. Meredith, Case No. 15-242, filed May 28, 1962, in the Justice of the Peace Court, Fifth Supervisors District of Hinds County, Mississippi, and from taking any action to enforce the judgment of conviction against the appellant in this case.

(b) Proceeding with the prosecution of appellant in State of Mississippi v. Meredith, Case No. 16-307, filed September 14, 1962, charging appellant with a felony and alleging that he falsely secured his registration as a voter in Hinds County.

(c) Commencing any other prosecutions or taking any action or doing any act to further prosecute the appellant for allegedly securing his registration as a voter in Hinds County.

2. Instituting or proceeding further in any civil action against James Howard Meredith or any other persons on account of James Howard Meredith's enrolling or seeking to enroll or attending the University of Mississippi; without limiting the generality of the foregoing this includes:

(a) Taking any action or doing any act to enforce or serve the injunction order obtained on the 20th day of September, 1962, in the Chancery Court of Hinds County, Mississippi, by the Governor of the State of Mississippi, Ross R. Barnett, against the appellant and his attorneys in the case of State of Mississippi, ex rel. Ross Barnett

v. Meredith, Complaint No. 62,000 filed September 20, 1962.

(b) Taking any action or doing any act to enforce or serve the injunction order obtained by the Governor of the State of Mississippi in the Chancery Court of Lafayette County, Mississippi, against the appellant and his attorneys in the case of State of Mississippi, ex rel. Ross R. Barnett v. Meredith, Complaint No. A-654, filed September 20, 1962.

(c) Taking any action or doing any act to serve or enforce the injunction issued against the appellee Board of Trustees of State Institutions of Higher Learning by the Chancery Court of Hinds County on September 20, 1962, upon the application of Ross R. Barnett, Governor of the State of Mississippi.

(d) Taking any action or doing any act to secure any further or additional state court injunctions against the appellant, his attorneys, the Board of Trustees of State Institutions of Higher Learning, or any official of the University of Mississippi which are designed to or which have the effect of interfering with the continued attendance of appellant as a student at the University of Mississippi.


3. Injuring, harassing, threatening or intimidating James Howard Meredith in any other way or by any other means on account of his attending or seeking to attend the University of Mississippi;

4. Interfering with or obstructing by any means or in any manner the performance of obligations or the enjoyment of rights under this Court's order of July 28, 1962, and the order of the United States District Court for the Southern District of Mississippi entered September 13, 1962, in this action, and

5. Interfering with or obstructing, by force, threat, arrest or otherwise, any officer or agent of the United States in the performance of duties in connection with the enforcement

by this Court and the District Court for the Southern District of Mississippi relating to the enrollment and attendance of James Howard Meredith at the University of Mississippi; or arresting, prosecuting or punishing such officer or agent on account of his performing or seeking to perform such duty.

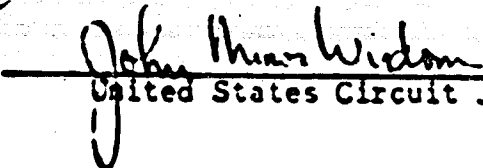
DATED: October 19th, 1962.


Chief Judge, United States Court of Appeals, Fifth Circuit

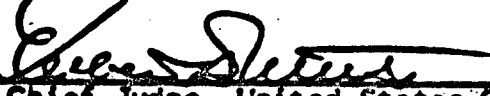

United States Circuit Judge


United States Circuit Judge


United States Circuit Judge


United States Circuit Judge

ENTER FOR THE COURT


Chief Judge, United States Court of Appeals, Fifth Circuit

**JAMES H. MEREDITH v. CHARLES DICKSON FAIR, NO. 19,475: IN THE ANCILLARY
MATTER OF UNITED STATES OF AMERICA, AMICUS CURIAE AND PETITIONER v.
STATE OF MISSISSIPPI; ROSS R. BARNETT, GOVERNOR OF THE STATE OF
MISSISSIPPI, ET AL., Defendants**

CIRCUIT JUDGES GEWIN and BELL concurring in part and dissenting in part:

With all deference to our brothers, and realizing that it involves for each of us a matter of judgment, we would make our injunction the mandate of this court and forward it to the United States District Court for the Southern District of Mississippi, there to be made the judgment of that court, and to be supervised and enforced along with our injunction of July 28, 1962 which was entered by that court on September 13, 1962 pursuant to our mandate. Our appellate jurisdiction would continue but the remand should tend to restore normalcy in Mississippi, and would comport with good judicial administration under the circumstances.

Of course, we should retain the contempt proceedings now pending against Governor Barnett and Lieutenant Governor Johnson for final disposition but such retention in no way militates against remand. The Governor and Lieutenant Governor must yield in order to purge themselves of contempt. They must yield also to preserve the integrity of the judicial process, the Federal Constitution and their oaths of office pursuant thereto:

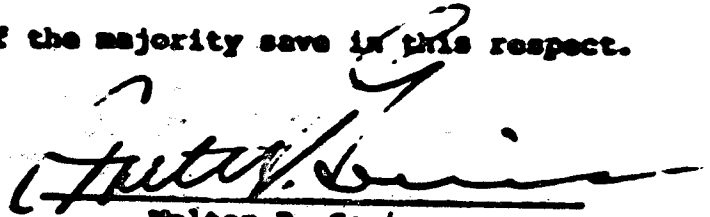
" . . . and all executive Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation to support this Constitution: . . ." Article 6, Clause 3.

Upon their yielding, the enforcement of all other outstanding orders in this matter would and should be the duty of the District Court.

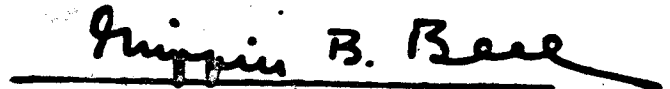
We have serious doubts, from a procedural and substantive point of view, as to the joinder of the State of Mississippi as a party.

We would dissolve the temporary restraining order as to the State of Mississippi and would not include the State of Mississippi in the preliminary injunction. U.S. Const. Art. III, § 2, par. 2 and the 11th Amendment.

We concur in the order of the majority save in this respect.



Walter P. Gowin
United States Circuit Judge



Griffin B. Bell
United States Circuit Judge

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 19,475

JAMES H. HODGSON,

Appellant,

vs.

CHARLES HICKMAN PAIT, et al.

Appellees.

UNITED STATES OF AMERICA,
Amicus Curiae and Petitioner,

vs.

STATE OF MISSISSIPPI, et al.

Defendants.

Before TUTTLE, Chief Judge, and RIVES, JONES, EMMETT, WINDOM, GIBSON
and BILL, Circuit Judges.

ORDER:

It appearing that this Court, on September 10, 1962,
designated the United States as amicus curiae, with the right to
submit pleadings, evidence, arguments and briefs, and to initiate
such further proceedings, including proceedings for injunctive
relief and proceedings for contempt of court, as may be appropri-
ate in order to maintain and preserve the due administration of
justice and the integrity of the judicial processes of the United
States; and

It appearing that the United States as amicus curiae
filed in this Court on November 6, 1962, a memorandum suggesting
that the taking of further evidence concerning the actions of Ross
B. Barnett would be appropriate with respect to the issue of
whether Ross B. Barnett has purged himself of his civil contempt
of this Court; and

It appearing that the pleadings filed and the oral

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on the petitions for temporary restraining orders and preliminary injunctions, and the civil contempt proceedings which were instituted against Ross R. Barnett and Paul B. Johnson, Jr., that proceedings should be instituted against the said Ross R. Barnett and Paul B. Johnson, Jr., to determine whether they are, or either of them is, guilty of criminal contempt of the orders of this Court; and

It appearing inadvisable to conduct such a series of proceedings involving similar factual issues and that litigation of such issues in a criminal contempt proceeding would afford to the said Ross R. Barnett and Paul B. Johnson, Jr., maximum procedural protection;

It is ORDERED that the Attorney General of the United States, and such attorneys in the Department of Justice as he may designate, be and they are hereby appointed by the Court to institute and to prosecute criminal contempt proceedings against the said Ross R. Barnett and Paul B. Johnson, Jr., pursuant to Rule 42(b) of the Federal Rules of Criminal Procedure and the order of this Court of September 10, 1962.

This 15th day of November, 1962.

ELBERT F. TUTTLE
CHIEF JUDGE
United States Court of Appeals
Fifth Circuit

RICHARD T. HIVES
CIRCUIT JUDGE

WARREN I. JONES
CIRCUIT JUDGE

JOHN I. BROWN
CIRCUIT JUDGE

JOHN MINOR WASHBURN
CIRCUIT JUDGE

GRIFFIN B. BELL
CIRCUIT JUDGE

X DESERT, MALTE F. GELIN, Circuit Judge.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 20240

UNITED STATES OF AMERICA

- versus -

ROSS R. BARNETT and PAUL
B. JOHNSON, JR.

Before TUTTLE, Chief Judge, RIVES, CAMERON, JONES, BROWN,
WISDOM, GEWIN and BELL, Circuit Judges.

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

This Court having entered an order on September 18, 1962, in the case of James H. Meredith, et al. v. Charles Dickson Fair, et al., No. 19475, designating and authorizing the United States to appear and participate in that case as amicus curiae 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, and

The Attorney General having instituted, pursuant to this Court's order of September 18, 1962, an action in the name of and on behalf of the United States, as amicus curiae, which action was entitled United States v. State of Mississippi, et al. restraining the State of Mississippi and Ross R. Barnett, their agents, employees, officers, successors, and all persons in active concert or participation with them, from interfering with or obstructing the enjoyment of rights

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or the performance of duties under the order of this Court of July 28, 1962, in the case of Meredith v. Fair, and a similar order of the District Court for the Southern District of Mississippi in that case, requiring the enrollment of James H. Meredith at the University of Mississippi, and

This Court having ordered on November 15, 1962, that the Attorney General, and such attorneys in the Department of Justice as he may designate, be appointed to institute and prosecute criminal contempt proceedings against Ross R. Barnett and Paul B. Johnson, Jr., and

Probable cause having been made to appear from the application of the Attorney General filed December 21, 1962, in the name of and on behalf of the United States that on September 25, 1962, Ross R. Barnett, having been served with and having actual notice of this Court's temporary restraining order of September 25, 1962, wilfully prevented James H. Meredith from entering the offices of the Board of Trustees of the University of Mississippi in Jackson, Mississippi, and thereby deliberately prevented James H. Meredith from enrolling as a student in the University pursuant to this Court's order of July 28, 1962; that on September 26, 1962, Paul B. Johnson, Jr., acting under the authorization and direction of Ross R. Barnett, and as his agent and as an agent and officer of the State of Mississippi, and while having actual notice of the temporary restraining order of September 25, 1962, wilfully prevented James H. Meredith from entering the campus of the University of Mississippi in Oxford, Mississippi, and thereby deliberately.

prevented James H. Meredith from enrolling as a student in the University pursuant to the orders of this Court; 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, instead, direct and encourage certain members of the Mississippi Highway Safety Patrol, Sheriffs and deputy Sheriffs and other officials of the State of Mississippi to obstruct and prevent the entry of James H. Meredith 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 upon 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.

IT IS ORDERED that Ross R. Barnett and Paul B. Johnson, Jr., appear before this Court in the courtroom of the United States Court of Appeals for the Fifth Circuit in New Orleans, Louisiana, on February 8, 1963, at 9:30 o'clock a.m., to show cause, if any they have, why they should not be held in criminal contempt, and should either of them at said time and place show such cause, either by pleading not guilty to the charges contained in the application of the United States, or by other means, he shall thereafter appear before this Court for hearing upon said charges at a time and place to be fixed by the Court.

This 4th day of January, 1963.

ELBERT P. TUTTLE

RICHARD T. RIVES

WARREN L. JONES

JOHN R. BROWN

I DISSENT - BEN F. CAMERON
UNITED STATES CIRCUIT
JUDGE, FIFTH CIRCUIT

I DISSENT - WALTER P. GEMIN
UNITED STATES CIRCUIT
JUDGE, FIFTH CIRCUIT

JOHN MYNOR WISDOM

GRIFFIN B. BELL
United States Circuit
Judges Fifth Circuit

IN THE UNITED STATES DISTRICT COURT
FOR THE
JACKSON DIVISION OF THE SOUTHERN DISTRICT OF MISSISSIPPI

JAMES HOWARD MÉRÉDITH,

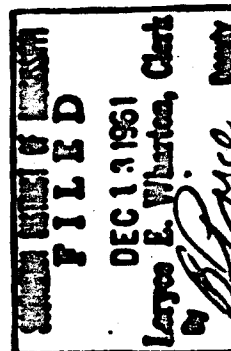
PLAINTIFF

VERSUS

CIVIL ACTION NO. 3130

CHARLES DICKSON FAIR, ET AL,

DEFENDANTS



OPINION OF THE COURT

Plaintiff, James Howard Meredith, is a member of the Negro race and a citizen of Mississippi. He filed his complaint on behalf of himself and of other Negro students in the State of Mississippi similarly situated. He seeks a preliminary and permanent injunction enjoining the defendants from refusing him admittance to the University of Mississippi and for a declaratory judgment. The defendants in the case are members of the Board of Trustees of State Institutions, the Chancellor of the University of Mississippi, the Dean of the College of Liberal Arts, and the Registrar of the University.

The management and control of the University of Mississippi and all other state institutions of higher learning in the State of Mississippi is vested in the Board.

James Howard Meredith filed his complaint on the 31st day of May, 1961 and alleged that he had been deprived of rights secured to him by the Constitution of the United States in violation of Title 42, U.S.C. Sec. 1983. He alleged that the University of Mississippi is limited by policy and custom to students on a segregated basis only. The defendants answered and denied the material allegations of the complaint, particularly that part where he alleged that he was denied admittance solely because of his race. Plaintiff further alleged that certain rules and regulations of the University of Mississippi have been improperly and unconstitutionally applied to him and avers that he was not accepted as a resi-

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Negro. This was denied by the defendants.

Concurrently with the filing of the complaint plaintiff moved for a temporary restraining order without notice. This application for preliminary restraining order without notice was denied by the Court on the ground that notice of application should have been given to the defendants. Concurrently with the filing of the complaint he also filed a motion for a preliminary injunction and this motion was noticed for hearing on the 12th of June, 1961 at Biloxi, Mississippi, at which time it came on for hearing. This motion specifically related to the summer session of the University of Mississippi beginning June 8, 1961. The motion was called for hearing on June 12 and before the beginning of any proceedings the Court inquired of counsel on both sides as to whether or not the motion was to be heard on affidavits or on oral testimony. Attorney for the plaintiff advised the Court that she desired to proceed on oral testimony and the trial was thereupon begun upon the application for the preliminary injunction. Not having finished the case during that day and because prior to this time other matters had been set for hearing on the following day, the Court recessed this hearing until July 10, 1961. On June 29, 1961 plaintiff filed another motion for preliminary injunction, praying that the Court would enjoin the defendants from refusing to admit plaintiff to the second summer session commencing on July 17, 1961 solely because of his race and color. On July 10, pursuant to the former order of recess, the Court met and at that time was advised that the leading counsel for the defendants was seriously ill and that his physical condition prevented his attendance at the hearing. The Court heard this matter and from the affidavits and from doctors' certificates determined that it would endanger the life of leading counsel if he were compelled to proceed. He is the first Assistant Attorney General of the State and has taken the leading part throughout all hearings and the Court

that it should again recess the hearing to the next available date, which was the 10th of August. On that date counsel for plaintiff announced in open court that she would withdraw her motion for preliminary injunction relating to the date of June 8, 1961 and the Court granted her leave to withdraw that motion and gave her permission to file a later motion, but a later motion was not filed. However, the one that was filed on June 29, 1961 was left pending and it was this motion that was taken up for hearing on August 10 and proceeded to a conclusion on August 16. It is the contention of plaintiff that although the July 17 session--the second summer session--was past, yet it was the duty of the Court to proceed and determine if a preliminary injunction should be granted for the remainder of the summer session or for future terms or sessions of the University of Mississippi. No application had been filed with the authorities of the University of Mississippi other than the one mentioned in the original complaint.

In his original complaint the plaintiff alleged that on the first day of February, 1961 the Registrar of the University of Mississippi received by registered mail an application from the plaintiff for admission to the mid-year or 1961 spring session, which commenced on February 6, 1961. In that application he represented himself to be a citizen of Mississippi, having a permanent address at Kosciusko, in Attalla County, Mississippi, and a mailing address in the City of Jackson, Hinds County, Mississippi. In his application he stated that he applied to be classified as a junior in the College of Liberal Arts. The Court finds as a fact that he did make application by that letter and that in response to that request forms for the listing of the names of six alumni residing in the County of plaintiff's residence, who had known plaintiff for at least two years and who would certify him as a person of good, moral character, and would recommend him

for admission to the University of Mississippi, but as a matter of fact these forms were never furnished by the plaintiff. Instead, he sent five certificates addressed "To Whom It May Concern", certifying that he was of good moral character, none of which were signed by persons who were alumni of the University of Mississippi. On the 4th day of February, 1961 the Registrar telegraphed plaintiff and all other applicants whose applications had been received after January 25, 1961 that the University had found it necessary to discontinue consideration of all applications for the Spring, 1961 mid-year semester received subsequent to that date. The facts show that this was due to an overcrowded condition existing in the University classrooms and dormitories, which had been recognized and had been under consideration by the University Committee on Admissions since October, 1960 as a part of an over-all plan to upgrade the quality of educational opportunity afforded by the University. This applied to all applications made after January 25, 1961, without any regard to the race or color of the applicant. The testimony shows without contradiction, and I find as a fact, that many other potential applicants who made inquiry about applications subsequent to February 4 were similarly treated and none were permitted to apply for the Spring, 1961 mid-year semester. The testimony shows, and I find as a fact, that there was no discrimination against any student, and particularly the plaintiff, solely because of his race or color with regard to the action of the University of Mississippi in discontinuing consideration of applications for the Spring, 1961 semester after the January 25, 1961 cut-off date.

By letter dated February 20, 1961 plaintiff responded to the Registrar's cut-off telegram by requesting that his application be considered as an application for admission to the Summer, 1961 session beginning June 8. This letter, as well as all subsequent correspondence, was sent to the University by plaintiff by registered mail with return receipt requested, which is an unusual procedure. Again on March 26 the plaintiff

cates did not comply with the regulations of the University in that they did not recommend his admission to the University of Mississippi and with this letter he enclosed additional letters from the same five people which referred to his good moral character and also recommended him for admission to the University of Mississippi. On April 12, 1961 plaintiff mailed a letter which was prepared by his attorneys to the defendant, Dr. Lewis, who is Dean of the College of Liberal Arts, which stated that plaintiff concluded that the Registrar had failed to act upon his application solely because of his race and color and requesting Dr. Lewis to review his case. In response to that letter the Registrar on May 9, 1961 sent plaintiff a preliminary evaluation of credits indicating a maximum credit allowance at the University of Mississippi or 48 semester hours out of a total of 90 semester hours offered according to plaintiff's transfer from Jackson State College. On May 15, 1961 the Committee on Admissions at the University of Mississippi met with eight members in attendance. Only two of these eight members had any knowledge that plaintiff had applied to the University of Mississippi. At this meeting no specific instructions or students were discussed. The Committee at that time adopted several regulations. The action of the Committee taken that day affected the award of credit for military training; acceptance of credits from institutions which are not members of regional accrediting associations; and also problems connected with school credits. The undisputed testimony is that the adoption of these particular regulations were considered in terms of the quality of students transferred to the University and the adoption of the regulations was a means of improving that quality and was simply a part of a continuing study and action by the Committee on Admissions to effect such improvement. The testimony is and I find as a fact that this action was not taken in any attempt

the ground of race or color.

Later, in a letter received by the University on May 16, 1961, plaintiff stated that he desired to have his application treated as a pending application for admission to the summer session beginning with the first term in June, 1961. Many of the credits tendered by the plaintiff for admission as a transfer student were denied because they did not measure up to the regulations required of all students who applied for admission to the University. The Jackson State College, where plaintiff was in attendance, was not a member of the Southern Association of Colleges and Secondary Schools.

Plaintiff contends and alleges that he is a citizen of Attala County, Mississippi. The defendants denied this and they contend that he was a non-resident of the State of Mississippi and not a resident citizen of this State, and they cross examined him at length about his various movements and activities. Defendants contend that while he was born in Mississippi, yet he changed his domicile either to Michigan or Indiana and that he never did move back to Mississippi as a citizen, but only came back as a student. On cross examination it was shown that he was married to an Indiana girl and that he claimed Michigan as his residence; that he enlisted in the Army from the State of Michigan and not from the State of Mississippi. Defendants further brought out on cross examination that after he entered Jackson State College at Jackson, Mississippi, he registered in Hinds County, Mississippi and that when he registered in Hinds County, Mississippi he swore falsely that he was a citizen of Hinds County, Mississippi and that this was knowingly done for the purpose of obtaining a registration. He admitted that he knew he was not a citizen of Hinds County, but that he knew he was a citizen of Attala County, and finally, on cross examination, he admitted that he knew he was swearing falsely when he swore to the Registrar of Voters in

Attala County, Mississippi that he was a citizen of that county. He stated that he had always claimed Attala County as his domicile and still claims it as his domicile. As a result of his false swearing the record shows that he was registered as a voter in Jackson, Hinds County, Mississippi. In determining whether he is a resident of Mississippi or a non-resident of Mississippi I have taken this evidence into consideration, along with all the other evidence touching on that question. The testimony shows without conflict that he was born and reared in Kosciusko, Attala County, Mississippi; that he finished High School there and thereafter took courses in other schools and while he was in the service, but that during all this time he claimed Attala County as his domicile. The record further shows that while he was in the Army he made investments back in Attala County, having bought two farms there. The record further shows that in order for one to register as a voter in Mississippi he must be a citizen of the state for a period of two years and a citizen of the county and precinct in which he was to register for a period of one year. It is unnecessary to detail further the testimony touching on this question, but I find as a fact from all of the testimony that he was and is now a citizen of Attala County, Mississippi. This holding is supported by the authorities of *Texas v. Florida*, et al 306 U. S. 398.

There was a good deal of testimony introduced in the cause, but very little conflict, and the overwhelming weight of the testimony is that the plaintiff was not denied admission because of his color or race. The Registrar swore emphatically and unequivocally that the race of plaintiff or his color had nothing in the world to do with the action of the Registrar in denying his application. An examination of the entire testimony of the Registrar shows conclusively that he gave no consideration whatsoever to the race or the color of the plaintiff when he denied the application for

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admission and the Registrar is corroborated by other circumstances and witnesses in the case to this effect. Careful consideration was given to the application and in the honest judgment of the Registrar he did not meet the requirements required of all students at the University. This testimony is undisputed and the testimony of the Registrar was not unreasonable, but on the contrary was given openly and fairly; and in addition to his testimony, of course there is the presumption of law that an official will perform his duties honestly.

The burden of proof, of course, is upon the plaintiff to prove by a preponderance of the evidence that his admission was denied because of his race or color and this the plaintiff has utterly failed to do. The action taken by the Registrar and the other authorities at the University was not based to any extent at all on his race or color and the plaintiff has failed to meet the burden and the motion for the preliminary injunction should be denied.

An order may therefore be drawn denying the motion for the temporary injunction and the case set for final hearing on its merits on January 15, 1962.

This the 12th day of December, 1961.


UNITED STATES DISTRICT JUDGE

BY: _____
CLERK


Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

James Edward Meredith,
on behalf of himself
and others similarly
situated, Plaintiff.

VS.

Civil Action No. 3130

FF

Charles Dickson Fair,
President of Board
of Trustee of State
Institutions of Higher
Learning of the State
of Mississippi, et al.,
Defendant

FILED
DEC 14 1961
Loyce E. Wharton, Clerk
[Signature]

ORDER

This cause came on for hearing on the 12th of June, 1961,
10th of August, 1961 and the 15th day of August, 1961. On
Plaintiff's motion for a preliminary injunction and after having
heard the testimony and oral arguments and after consideration of
Briefs', and in accordance with the Opinion of the Court dated
December 12, 1961, the motion for preliminary injunction is de-
nied and the case is set for trial on the merits for January 15,
1962.

[Signature]
JUDGE, UNITED STATES DISTRICT COURT

O. B. 1961, Page 600.

A TRUE COPY, I HEREBY CERTIFY.
LOYCE E. WHARTON, CLERK
BY:

[Signature]

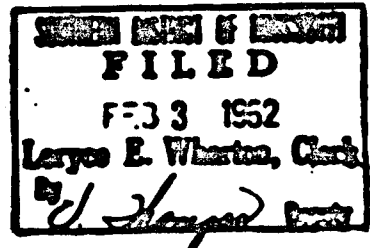
IN THE UNITED STATES DISTRICT COURT
FOR THE
JACKSON DIVISION OF THE SOUTHERN DISTRICT OF MISSISSIPPI

JAMES HOWARD MEREDITH

V.

CIVIL ACTION NO. 3130

CHARLES DICKSON FAIR, ET AL



OPINION OF THE COURT

FINDING OF FACT AND CONCLUSIONS OF LAW

Plaintiff, James Howard Meredith, is a member of the Negro race and a citizen of Mississippi. He filed this suit against the members of the Board of Trustees of State Institutions, the Chancellor of the University of Mississippi, the Dean of the College of Liberal Arts, and the Registrar of the University. He alleged that he sought admission to the University of Mississippi as a resident, under-graduate, transfer student to that Institution and that he was denied admission solely because of his race. The complaint was answered by the Defendants, denying that he was refused admission solely because of his race. A motion for preliminary injunction was filed and a full and complete hearing upon the motion for the preliminary injunction to enjoin the Defendants from refusing to admit him was had by the Court and on December 12, 1961 his motion for preliminary injunction was denied and the Court set the case for final hearing on January 15, 1962. After fully hearing all the evidence and considering the record on the motion for a preliminary injunction the Court held that the Plaintiff was not denied admission because of his race. The Plaintiff filed his notice of appeal from that judgment on December 14, 1961 to the Court of Appeals for the Fifth Circuit, which appeal was heard on January 9, 1962 and the opinion rendered by the Court of Appeals on January 12, 1962, affirming the judgment of the District Court, and the Court of Appeals denied the motion of the Plaintiff to order the District Court to enter a preliminary injunction in time to secure the Plaintiff's admission to the February 6 term of the University.

The statement of the pleadings and the background of the facts leading up to the filing of the suit are contained in the opinion of the

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of the Court of Appeals is not yet reported, but will appear in the Advance Sheets of the Federal Reporter in the near future. The style of the case in the Court of Appeals is "James H. Meredith, on behalf of himself and others similarly situated versus Charles Dickson Fair, President of the Board of Trustees of the State Institutions of Higher Learning, et al".

The only question now posed for decision is whether or not the Plaintiff was denied admission to the University of Mississippi solely because of his race or color and only a question of fact appears for determination.

After the Mandate came down from the Court of Appeals a hearing of the controversy was begun in the District Court on the final merits on the 17th of January and was concluded on the 27th of January, and after oral argument was submitted to the Court for decision. During this hearing many additional witnesses testified, principally the parties to the suit, and in addition thereto all the testimony that was given on the hearing for the preliminary injunction was introduced into evidence along with all of the exhibits, and several questions of law relative to procedure were raised.

The Plaintiff obtained a subpoena duces tecum addressed to the Registrar of the University to bring with him certain records pertaining to the admission and denial of all the transfer students from the summer term to the date of the trial. The Defendants moved to quash the subpoena duces tecum, which was overruled, and the Plaintiff moved for an inspection of the documents to be produced under the subpoena duces tecum before placing the Registrar on the witness stand. The Defendants objected to this procedure on the ground that the only way Plaintiff could obtain inspection of the documents was by motion under Rule 34, showing good cause for the inspection and production. The Court overruled this objection and stated that in this particular instance it was permissible to look through the shell of the subpoena to bring with him the documents and go to the substance and that rather than delay the trial to permit a motion under Rule 34, the Court would require the Registrar to bring the applications and all correspondence pertaining thereto with reference to all students from the summer school up to the date of the trial, and would permit the Plaintiff to inspect those documents without making a motion under Rule 34.

dents situated as was the Plaintiff. Rule 34 of the Federal Rules of Civil Procedure, of course, requires that when one is in possession of documents that are material to the issues in a lawsuit, he may be required to produce them on motion and on showing of good cause, but in this particular case it was proper and not error for the Court to rule as it did. Plaintiff alleges and contends that he was denied admission solely because of his race. Defendants categorically deny that he was denied admission because of his race and aver that his race had no bearing at all on the rejection of his application for admission.

As held on the hearing on motion for preliminary injunction, the evidence overwhelmingly showed that the Plaintiff was not denied admission because of his race. The Plaintiff, during this hearing on the merits, called as adverse witnesses nearly every member of the Board of Trustees, who testified unequivocally and definitely that at no time had the question of the race of a party ever been discussed at a meeting of the Board of Trustees or at any other place and that so far as the members of the Board of Trustees was concerned, all policies and regulations were adopted and followed without regard to race, creed or color, and that at no time was the application of James Meredith, the Plaintiff, ever discussed by any members of the Board of Trustees. The Registrar, who also had testified on the motion for preliminary injunction, again testified to the effect that the question of the race of the Plaintiff was not discussed or considered in any way whatsoever when his application for admission to the University was being considered. All of the other officials of the University testified to substantially the same thing. One member of the Board of Trustees was not used, in addition to a few members who were not called because of ill health.

The effect of this additional testimony heard during the trial on the final merits strengthens the former finding of the Court that the Plaintiff was not denied admission because of his race, rather than weakens it.

The proof shows on this trial, and I find as a fact, that there is no custom or policy now, nor was there any at the time Plaintiff's application was rejected, which excluded qualified Negroes from entering the University. The proof shows, and I find as a fact, that the University is not a racially segregated institution. Prior to the decision in the case of *Brown et al v. Board of Education of Topeka et al.* 347 U. S. 483. there

Mississippi and the Court takes judicial notice of that custom as outlined by the statutes prior to the trial of the Brown case. This custom or doctrine had been approved by the doctrine of the Supreme Court of the United States in the case of Plessy v. Ferguson, 163 U. S. 537. Prior to the Brown decision this was a legitimate and lawful custom and it was within the province of the Legislature to pass those Acts. The proof in the instant case on this hearing fails to show that the application of any Negro or Chinaman or anyone of any other race has been rejected because of his race or color. Under the proof in this case judicial notice, while considered, and properly so, is not enough to meet the burden of proof cast upon Plaintiff to show that he was denied admission because of his race. Judicial notice of facts is not conclusive on factual matters, but is considered along with all the other evidence in the case. Shopleigh v. Mier, 299 U. S. 468; Words & Phrases, Permanent Edition, Vol. 23, p. 294, and the 1961 pocket part.

The Court takes judicial notice of Sec. 4065.3 of the Mississippi Code of 1942 as amended. This was passed in 1956 and the Act requires the officers to use any lawful, peaceable or constitutional means to prevent the implementation of or the compliance with the integration decisions of the Supreme Court of the United States. The Legislature in passing that Act had in mind to use every legitimate means to prevail upon the Supreme Court of the United States to return to the doctrine of Plessy v. Ferguson, but nowhere are any of the officers required to disobey the decisions of the Supreme Court of the United States. There is nothing in the Act that obligates or casts a burden upon any official to disobey or disregard the decisions of the Supreme Court of the United States or to use any unlawful methods to prevent compliance. All the proof in this case, considered in the light of the opinion of the Court of Appeals affirming the judgment of this Court and denying the preliminary injunction, but holding that it was improper to consider the failure to furnish certificates from the alumni of the University, demonstrates clearly that the Plaintiff was not denied admission because of his race. I have weighed the testimony carefully in the light of the decision of the Court of Appeals and have rejected, in weighing it, the evidence to the effect that he had failed to furnish certificates of the alumni, and have taken judicial notice of the statutes affecting the custom of segregation, and am of the opinion, and find as a fact, that he was not denied admission because of his

full consideration to the judicial notice that the policy prior to the decision in the Brown case was to segregate the races, and considering that policy along with all the evidence in this case as of 1961 and 1962, I conclude that the evidence is insufficient to hold that that policy is now in effect.

The burden of proof was upon the Plaintiff to prove by a preponderance of the evidence that there was a policy at the time of his application of denying entry to the University of Mississippi because of race, and to prove by a preponderance of the evidence that such policy was applied to the Plaintiff in order to produce discrimination. The Plaintiff failed entirely to meet that burden, but on the contrary the evidence shows rather conclusively that he was not denied admission because of his race. In the trial on the merits every witness called by the Plaintiff testified that the race of the Plaintiff was not discussed or considered at all in passing on his application for admission. Each member of the Board of Trustees who was called testified that the question of race was not at any time discussed with any other member of the Board of Trustees concerning the admission of applicants to the University of Mississippi. It is a well accepted rule of law that sworn positive testimony, unless so unreasonable as to be unbelievable, or unless denied by sworn testimony, is to be accepted as true.

Since all of the evidence and all of the exhibits that were introduced into evidence on the trial of the motion for preliminary injunction is now before this Court upon this trial on the merits, I adopt the finding of fact that was made in my opinion of December 12, 1961 as my finding of fact herein, and in addition thereto I find as a fact from all of the additional evidence that was offered on this trial, when considered with all of the evidence offered on the former trial that the Plaintiff was not denied admission because of his race and that the evidence taken in its entirety shows clearly that there was no denial of admission because of his race or color. In adopting the finding of fact which I made in my opinion of December 12, 1961, I am making the same finding after having disregarded those features of it that were eliminated by the Court of Appeals in its decision affirming my judgment.

The Registrar, on cross examination by attorney for Plaintiff,

plication for admission would be based not in the slightest on his race, but that the same rule would be applied if the applicant had been a white person; that the race of the Plaintiff did not enter into his judgment. The Registrar gave as his reason for this statement that credible evidence had been furnished to him since Plaintiff's applications had been presented and rejected that Plaintiff was a rather unstable person; was depressed at times and of a highly nervous temperament; that the Plaintiff had sworn falsely before the Circuit Clerk of Hinds County in making application to register as a voter, swearing that he was a citizen of Hinds County when, as a matter of fact he knew he was a citizen of Attala County, Mississippi and that through this false affidavit Plaintiff had procured himself to be registered as a voter by the Circuit Clerk of Hinds County, Mississippi; that Plaintiff had filed five certificates by citizens of Attala County, certifying that he was of good moral character and recommending him for admission to the University, but that subsequent investigation showed that in procuring these certificates Plaintiff made false representations to the signers as to the purpose for which he intended to use them, stating to two of the signers in substance that he was without a job and needed these statements to help him get a job.

Some of this evidence was objected to, but was tentatively received in evidence. Since the main question before me is whether the Registrar, an administrative officer of the State of Mississippi, had acted in good faith in his rejection of Plaintiff's application for reasons other than race and since these facts were not known to the Registrar at the time the application was rejected, I have concluded that this testimony should not be considered and have not considered it in reaching my conclusions.

There is one other question of law which was raised prior to the beginning of the trial on the merits that should be commented upon. A motion was filed by the Defendants for the organization of a three-judge court to pass upon the constitutionality of the requirement of the Board of Trustees of State Institutions of Higher Learning that every application for admission to any state institution must be accompanied by recommendations of five alumni. I did not pass upon this question in considering the application for a temporary injunction because of the universal rule that con-

application had not been rejected because of his race.

Under the laws of Mississippi this Board of Trustees is a constitutional body and its duties are fixed by Articles V, et seq, Title 24, Vol. 5, Recompiled, of the Mississippi Code, being set forth in Section 6724 and the following sections of that chapter. The Registrar in acting on Plaintiff's application was engaged in the enforcement of an order made by an administrative Board acting under the statutes of Mississippi, but I overruled the motion, declining to request that a three-judge court be convened because the Court of Appeals had, in its opinion, declared these requirements of Mississippi law unconstitutional.

Inasmuch as Plaintiff has failed to meet the burden by showing by a preponderance of the evidence that he was denied admission to the University of Mississippi solely because of his race, the complaint must be dismissed. The Plaintiff undertook to bring the action as a class, acting under Rule 23(a)(3) of the Federal Rules of Civil Procedure, but since Plaintiff failed to maintain this action in his own behalf, he cannot maintain it as a Class Action.

This the 3rd day of February, 1962.


UNITED STATES DISTRICT JUDGE

A TRUE COPY. I HEREBY CERTIFY.
WALTER E. STANSON, CLERK

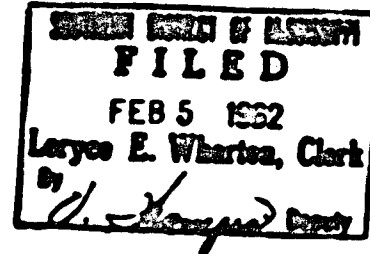

CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE
JACKSON DIVISION OF THE SOUTHERN DISTRICT OF MISSISSIPPI

JAMES HOWARD MEREDITH

V.

CIVIL ACTION NO. 3130




CHARLES DICKSON PAIR, ET AL

ORDER

This cause having come on for final hearing before the Court on its merits and the Court having heard all the testimony and considered the record, is of the opinion that the complaint should be dismissed and the relief sought denied. It is therefore

Ordered by the Court that the complaint be and the same is hereby dismissed and the relief sought therein is denied, all in accord with the Opinion of the Court heretofore filed in this cause, which Opinion is made a part hereof.

ORDERED, this the 5th day of February, 1962.


UNITED STATES DISTRICT JUDGE

A TRUE COPY, I HEREBY CERTIFY.
LORRYCE E. WHARTON, CLERK
BY:


Deputy Clerk

HH

IN THE UNITED STATES DISTRICT COURT
FOR THE
JACKSON DIVISION OF THE SOUTHERN DISTRICT OF MISSISSIPPI

JAMES HOWARD MEREDITH, On Behalf Of Himself
And Others Similarly Situated

V.

No. 3130

CHARLES DICKSON FAIR, President of the Board
of Trustees of the State Institutions of Higher
Learning, ET AL

ORDER GRANTING PERMANENT INJUNCTION

This matter is now before this Court by virtue of the
Mandate of the United States Court of Appeals for the Fifth
Circuit and the Mandate of Mr. Justice Black of September 10,
1962 setting aside all stays granted by Judge Ben F. Cameron
and putting into effect the mandates of the Court of Appeals
for the Fifth Circuit enjoining the Trustees and officials
of the University of Mississippi from taking any steps to
prevent enforcement of the mandates of the Court of Appeals
for the Fifth Circuit, and this Court having now considered
the mandates of the Court of Appeals for the Fifth Circuit
of July 17, 1962, July 27, 1962 and its final order of
August 4, 1962, and this Court having considered the mandate
of July 17, 1962 wherein the Court of Appeals reversed the
judgment of the District Court with directions to this Court
to issue an injunction as prayed for in the complaint and by
its mandate of July 27, 1962 ordered that the judgment of that
Court issued as and for the mandate of July 17, 1962, be
recalled and amended by making explicit the meaning that was

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implicit as expressed in its opinion dated June 25, 1962 and ordering that this Court "forthwith grant all relief prayed for by the plaintiff and to issue forthwith a permanent injunction against each and all of the defendants-appellees, their servants, agents, employees, successors and assigns, and all persons acting in concert with them, as well as any and all persons having knowledge of the decree, enjoining and compelling each and all of them to admit the plaintiff-appellant, James H. Meredith, to the University of Mississippi under his applications heretofore filed, which are declared by us to be continuing applications. Such injunction shall in terms prevent and prohibit said defendants-appellees, or any of the classes of persons referred to from excluding the plaintiff-appellant from admission to continued attendance at the University of Mississippi."

And by its mandate of August 4, 1962 the Court of Appeals reaffirmed its orders of July 17, 1962 and July 27, 1962 in the following language: "All of our orders of July 17, July 27 and this date, therefore continue in full force and effect and require full and immediate obedience and compliance."

Now, therefore, it is here ordered, adjudged and decreed that the plaintiff, James Howard Meredith, be and he is hereby granted all the relief that is prayed for by him in his complaint and that the defendants, Charles Dickson Fair, President of the Board of Trustees of State Institutions of Higher Learning of the State of Mississippi, Louisville, Mississippi; Euclid Ray Jobe, Executive Secretary of the Board of Trustees of State Institutions of Higher Learning of the State of Mississippi, Jackson, Mississippi; Edgar Ray Izard, Hazlehurst,

Mississippi; Leon Lowrey, Olive Branch, Mississippi; Ira Lamar Morgan, Oxford, Mississippi; Malcolm Nette Roberts, Nattiesburg, Mississippi; William Orlando Stone, Jackson, Mississippi; S. R. Evans, Greenwood, Mississippi; Verner Smith Holmes, McComb, Mississippi; James Napoleon Lipscomb, Macon, Mississippi; Tally D. Riddell, Quitman, Mississippi; Harry Gordon Carpenter, Rolling Fork, Mississippi; Robert Bruce Smith, II, Ripley, Mississippi, and Thomas Jefferson Tubb, West Point, Mississippi, Members of the Board of Trustees of State Institutions of Higher Learning; James Davis Williams, Chancellor of the University of Mississippi, Oxford, Mississippi; Arthur Beverly Lewis, Dean of the College of Liberal Arts of the University of Mississippi, Oxford, Mississippi, and Robert Byron Ellis, Registrar of the University of Mississippi, Oxford, Mississippi, and each of them, their agents, servants, employees, successors, attorneys and all persons in active concert and participation with them be and they hereby are permanently restrained and enjoined from:

(1) Refusing to admit plaintiff, James Howard Meredith immediately to the University of Mississippi and that they shall each of them be, and they are hereby required to admit him to the University of Mississippi upon the same terms and conditions as applicable to white students;

(2) From interfering in any manner with the right of plaintiff, James Howard Meredith to matriculate in, or attend the University of Mississippi;

(3) From taking any action or doing any act or being guilty of any conduct which will impair, frustrate or defeat his right to enter the University of Mississippi;

(4) Refusing to admit the plaintiff, James Howard Meredith to the University of Mississippi upon his applications heretofore filed, all of which are continuing applications.

It is further ordered that said defendants, or any of the classes of persons referred to, are prohibited and enjoined from excluding the said James Howard Meredith from admission to continued attendance at the University of Mississippi.

It is further ordered that the defendants, their servants, agents, employees, successors and assigns, and all persons acting in concert with them, are enjoined to admit the plaintiff, James Howard Meredith, to the University of Mississippi upon his applications heretofore filed and they are enjoined from excluding the said James Howard Meredith from admission to continued attendance at the University of Mississippi or discrimination against him in any way whatsoever because of his race.

It is further ordered that a copy of this order and injunction be served by the United States Marshal on each of the defendants herein.

ORDERED, this the 13th day of September, 1962.

UNITED STATES DISTRICT JUDGE