

TELEGRAM

ADDRESSED TO EUCLID RAY JOBE, EXEC. SEC'Y, BOARD OF TRUSTEES,
STATE INSTITUTION OF HIGHER LEARNING.

THE PURPOSE OF THIS TELEGRAM IS TO INFORM YOU AND THE BOARD OF
TRUSTEES OF THE UNIVERSITY OF MISS. OF THE GOVERNMENT'S VIEWS
ON THE LEGAL POSITION IN THE MEREDITH CASE. THE OFFICIALS OF
THE UNIV. INCLUDING THE REGISTRAR HAVE BEEN ORDERED BY BOTH THE
DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISS. AND THE COURT
OF APPEALS FOR THE 5TH CIRCUIT TO ACCEPT AND RETAIN MEREDITH AS
A STUDENT THIS SEMESTER AT THE UNIV. ALL MEMBERS OF THE BOARD
OF TRUSTEES ARE COVERED BY THESE ORDERS. THE BOARD OF TRUSTEES
IS PREVENTED BY THESE ORDERS AND BY AN ADDITIONAL ORDER OF
JUSTICE BLACK OF THE SUPREME COURT OF THE U.S., WHICH HAS THE CON-
CURRENCE OF EACH JUSTICE OF THE SUPREME COURT FROM TAKING ANY
STEPS TO HINDER COMPLIANCE WITH THE ORDERS.

WE HAVE COOPERATED AND WILL CONTINUE TO COOPERATE WITH GOV.
BARNETT AND OTHER STATE OFFICIALS IN MAKING EVERY EFFORT TO
AVOID LAW ENFORCEMENT PROBLEMS.

IT IS OUR PURPOSE TO SEE THAT THE ORDERS OF THE COURT ARE
COMPLIED WITH PEACEFULLY. HOWEVER, I AM INFORMED THAT MEREDITH
HAS BEEN UNABLE TO OBTAIN ANY COMMITMENTS FROM YOU OR THE BOARD
THAT HE WILL BE REGISTERED IN JACKSON WITHOUT EVASION OR DELAY
IF HE GOES THERE IN RESPONSE TO YOUR TELEGRAM. I HAVE BEEN
UNSUCCESSFUL IN OBTAINING ANY SUCH COMMITMENT AS WELL.

UNDER THE CIRCUMSTANCES, IT IS MEREDITH'S INTENTION TO PROCEED TOMORROW TO OXFORD, MISS. TO REGISTER ALONG WITH OTHER NEW AND TRANSFER STUDENTS. IT IS THE RESPONSIBILITY OF THE DEPT. OF JUSTICE TO TAKE ALL APPROPRIATE ACTION TO MAKE THE ORDERS OF THE COURTS EFFECTIVE. IT IS OUR VIEW THAT A REFUSAL BY THE OFFICIALS OF THE UNIV. IN OXFORD TO REGISTER MEREDITH IN OXFORD TOMORROW WOULD BE IN VIOLATION OF THE ORDERS OF THE DISTRICT COURT AND OF THE COURT OF APPEALS. IT IS ALSO OUR VIEW THAT ANY ORDERS OR OTHER STEPS BY THE BOARD OF TRUSTEES INTENDED TO PREVENT THE OFFICIALS OF THE UNIV. AT OXFORD FROM REGISTERING MEREDITH IN THE REGULAR COURSE WOULD BE IN VIOLATION OF THE ORDERS OF THE DISTRICT COURT, THE COURT OF APPEALS AND THE SUPREME COURT OF THE UNITED STATES.

January 12, 1963
Special Memorandum:

A book, or several books, could be written on the Meredith case to date. I do not propose to discuss the past occurrences of this case, but rather will offer some observations as to the present and future.

Since Meredith is already in the University of Mississippi, there are two main things awaiting future disposition. One of these is the prosecution of Governor Barnett and Lt. Governor Johnson for criminal contempt in the 5th Circuit Court of Appeals. The other is the continued intention of the military authorities and the Department of Justice to construct military housing on the Airport grounds at the University.

I realize that the Department of Justice did not prefer the charges presently pending in the Court of Appeals. It was ordered by the Court to do it. Nevertheless, in carrying out the Orders of the Court, the Department has some clear cut responsibilities. First, the litigation should be handled like any other litigation; that is, with common sense, with good judgment, and with a desire to accomplish some good.

As to Paul Johnson, Jr., the government really has no case against him except what it would have had against any private citizen not a public officer. While there were hundreds and possibly thousands of private citizens at the University attempting to thwart the Order of the Court of Appeals, none of them of course have been cited for criminal contempt. It is true that Johnson defied McShane, but at the time, Johnson had absolutely no official authority. The Governor was in the State, and while in the State, the Governor cannot delegate any of his duties to anybody. The Lt. Governor performs the functions of the Governor only when the Governor is out of the State. One of the grounds in the citation for Johnson is that he failed to keep order at Ole Miss on the night of the riots. This would fall of its own weight because Johnson had no authority to keep order. Under Mississippi Constitution and Mississippi law, a Lieutenant Governor has two functions to perform: one, to preside over the Senate when it is in session; and the other, to act as Governor when the Governor is out of the State; and, of course, to succeed to the office upon the death of the Governor. Barnett was in the State. Paul Johnson was strictly functus officio in anything he did or tried to do at Ole Miss even if Barnett sent him up there and told him to do it.

The result is that Johnson can be tried, true enough, and thus made the patron saint of the agitator and the racist and no doubt will thus be elevated, as a consequence of it, to the office of Governor of Mississippi, where for four years he can give trouble to the United States and its Courts. He has already been three times defeated for Governor and needs something like this to elect him, and in getting him elected the white and the colored people of Mississippi will be paying a terrible penalty for something they had nothing to do with in the first place.

Those who are willing to look at all the practical aspects of the situation will remember that in 1923, former Governor Theo G. Bilbo was sentenced to serve

thirty days in the Oxford, Mississippi jail for contempt of the U. S. District Court, presided over by Judge E. R. Holmes. This was for failing to obey a witness subpoena. No racial question was involved. Bilbo announced for Governor from the jailhouse steps upon the completion of his sentence, and came very near being elected that time. He was elected Governor in the next race and thereafter was elected three times to the United States Senate. When those who wish to promote the prestige and dignity of the Courts deal with a fellow like Johnson on the kind of case they have against him, they are defeating the very purposes they are hoping to achieve. The charges against him should be dismissed and he should be relegated as beneath the notice of the U. S. Court of Appeals unless, indeed, they are going to hail up every person who galloped to the Ole Miss campus and participated in everything that went on there.

As to Barnett, it is true that he, being the Governor, acting as Governor, did intentionally defy and frustrate certain Orders of the Court of Appeals, it is hard to see how he would have any legal defense to charges of contempt of court, in so far as that is concerned. However, he is a Governor of one of the fifty States. His term will expire within the year. If he is to be tried on the merits of the case, the Court of Appeals should defer that trial until Barnett goes out of office. The Court will then not be interfering with the State of Mississippi, but will only be trying an individual. And then, if he is convicted, the Court should not assess any imprisonment. For the Court to put Governor Barnett in jail simply will be to imitate the example of the Federal government which imprisoned Jefferson Davis for two years at Fortress Monroe. It is true that the facts are much different. But the general public will look at it the same way. Barnett will be made a hero when, as a matter of fact, at the beginning of the Oxford episode he was on the lowest limb of any Governor in seventy-five years. Putting him in jail will not add to the ability of the Federal Courts to deal with the racial question in a successful way.

If the trial is deferred as to Barnett, it will not only give the people time to settle down from the hysteria that has been running rampant for four months, but it will also negate the idea that the tyrannical Federal government is simply rushing in to satisfy a thirst for blood and using any kind of pretext to humble and humiliate a portion of the Union.

The Barnett case presents some pretty grave Constitutional questions anyway as to the trial and imprisonment of a Governor of one of the States during his term of office for something that is not, per se, a violation of the criminal laws like robbery or murder.

As to the construction of the buildings on the Airport at Ole Miss, this is a serious and severe mistake in policy. The buildings will stand there as a monument to and physical evidence of all of the hatred and uproar boiled up by the Meredith incident. No doubt the pictures of these buildings will be widely printed in the public press, and particularly in Mississippi. If Meredith is leaving the campus, it seems doubly foolish to spend this money. Even if he is not leaving, the Administration ought not to construct these buildings for the reasons already above stated. Ross Barnett "kept on persisting" until he achieved his original objective -- that is, forcing the Kennedy administration to send troops to Ole Miss.

Having been outwitted and outmaneuvered to that extent, there is certainly no point in the Administration allowing these Actors any further unearned and undeserved glory by continuing to play into their hands by continuing to make heroes of Barnett and Johnson, and raising additional hatred for the President and the U. S. Attorney General. In Louisiana, Mississippi, Alabama, South Carolina - and probably other places - the Oxford incident has been worth more to the Republican Party in the South than anything which has happened since Appomattox. At the same time, it has not made the pathway a bit easier for the colored man. The contrary is true. It has hardened and intensified opposition to a depth and to a bitterness previously undreamed of. It will take statesmanship, judicial as well as executive, to begin to fill some of the chasm.

27. 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

1961

May 31 Suit filed by Meredith against Board of Trustees, Chancellor, Dean of Liberal Arts College, and Registrar in Southern District of Mississippi.

December 12 Motion for Preliminary Injunction denied.

1962

January 12 Opinion of Court of Appeals denying Motion for Preliminary Injunction to secure Meredith's admission to February 6, 1962 term, but ordering prompt hearing.

February 3 Opinion by Judge Mize finding as a fact that Meredith had failed to prove that the University had a policy of denying admission to Negro applicants.

February 13 Denial by Court of Appeals of Motion for Injunction Pending Appeal.

About June 11 Criminal action instituted against Meredith in Hinds County for false registration application. This was based on the claim that Meredith had registered as a resident of Hinds County when he was in fact a resident of Attala County. The same claim had been made by the University as a grounds for refusing Meredith admission, and their position was that the refusal to admit him had nothing to do with his being a Negro. Accordingly the validity of this charge against Meredith was an issue on the appeal from Judge Mize's opinion.

June 13 Order by Court of Appeals in aid of its jurisdiction enjoining the criminal proceeding against Meredith.

June 25 Opinion of Court of Appeals reversing Judge Mize and remanding case to District Court with instructions to issue an injunction as asked in the complaint.

July 9 Denial by Court of Appeals of motion that mandate issue immediately. The motion was based on the fact that the summer term at the University would commence on July 12, 1962, and that Meredith could not enter unless the Court issued its mandate in less than the normal time. The motion was denied by Judge Wisdom.

July 18 Stay of mandate granted ex parte by Judge Cameron. No notice of this stay was given to the members of the panel who decided the case or to Meredith. It was discovered only because of an accidental inquiry made of Judge Cox as to when the District Court's order would issue.

July 27 Opinion and order by Court of Appeals vacating stay, recalling mandate, and issuing new mandate.

July 28 Order of Court of Appeals issuing injunction pending issuance of and compliance with injunction by District Court.

Stay by Judge Cameron of July 27 mandate of Court of Appeals.

July 31 Stay by Judge Cameron of Court of Appeals order of July 28.

August 4 Order by Court of Appeals vacating stay of orders of Judge Cameron and reinstating its orders of June 25, July 27, and July 28.

August 6 Stay by Judge Cameron of all prior orders of Court of Appeals. Like the three previous stays this was issued without notice to anyone.

August 13 Application filed by NAACP with Justice Black to vacate Judge Cameron's stays.

August 16 Opposition to Motion filed by Attorney General Patterson on behalf of University.

About August 23 Request from clerk of Supreme Court to Solicitor General that Department file memorandum on power of Judge Cameron to issue stays and power of Justice Black to set them aside. Until this time the Government had had no part in the case at all.

August 31 Memorandum filed with Supreme Court by Department as amicus curiae. The Memorandum gave our views that Judge Cameron's stays were unauthorized and that Justice Black had the power to set them aside.

September 3 Called John Seigenthaler to discuss situation with Commercial Appeal and possibly other newspapers.

Discussion with Governor Coleman

Instructions given to Jim McShane to start organizing marshals.

September 7 Conference with Professor Fortenberry of the University of Mississippi here in Washington.

September 10 Meeting with Civil Rights Commission in Newark.

Decision and order by Justice Black vacating orders of Judge Cameron and issuing his own order to the respondents that they not further interfere with the enforcement of the order of the Fifth Circuit. The memorandum filed by Justice Black stated that he had consulted other members of the Court.

September 11 Discussion with Ray Brown

September 12 Discussions with Governor Coleman, Dean Farley, Ray Brown, Professor Fortenberry, and Dr. Duncan Gray. At my request, Rev. Gray talked to Chancellor Williams and Hugh Clegg.

September 13 Order signed by Judge Mize of District Court of Southern District, Mississippi. (Order filed by Court 9/14/62.)

Interposition speech of Governor Barnett

September 14 Discussion with Bill Beecher suggesting Wall Street Journal survey of business opinion.

Dean Griswold on Satterfield and Bar.

Discussion with Hodding Carter.

Order obtained from Court of Appeals entering case in both District Court and Court of Appeals to protect integrity of the orders of the Court.

Dear, Owen, and Stern in Meridian; Flannery in Jackson.

Criminal proceedings filed in Jackson against Meredith charging perjury.

September 15 Compilation of a list of businesses started through Department of Commerce.

Geoghegan assigned to coordinate Army and marshals.

September 16 Meeting between Attorney General, Secretaries Wirts and Vance, Under-Secretary Fowler, on Mississippi businesses. Telephone discussion Secretary Hodges. The following companies were to be reached by the following people for the purpose of opening lines of persuasion to individual members of the Board of Trustees.

**Pepsi-Cola
Arneur Packing**

**Fowler
Wirts**

BVD's

Babcock & Wilcox
Sealtest, Borden, Pet
Milk, National
Dairy Products
Standard - M. J.
Johns-Manville
Kaiser Aluminum
Quaker Oats
Kraft
Ready-Mix Concrete
Reliance Manufacturing
St. Regis Paper
Sun Oil
Standard Oil - Kentucky
and California
U. S. Gypsum
Borg-Warner
Mississippi Chemical
All railroads
Mississippi Power &
Light
Southern Bell
Sperry Rand
Baxter Laboratories
Coca-Cola
Dr. Pepper

General Electric
Tennessee Gas
International Paper

Gudeman, Hickman
Price
Vance

Katzenbach
Fowler and Dillon
Fowler
Marshall
Gudeman
Katzenbach
Wirtz
Gudeman
Fowler
Katzenbach

Katzenbach
Fowler
Wirtz
Fowler
Gudeman

Fowler
Hodges (through AG)
Vance
Fowler
Kennedy
Ramsey Clark (through
Katzenbach)
Fowler
Fowler & Tom Corcoran
Dillon

September 17

Discussions with HEW on grants to
University

Orientation starting at University

September 18

Meyers MacDougall called members of Board,
Satterfield, others.

Hastefield to Jackson

Lloyd Cutler and Morris Abram working

Suggestion of registration in Jackson
rejected.

September 19

Telephone call from General Patterson and Col. Birdsong on arrangements for escort to University for Meredith on 20th. Arrangements to meet Birdsong and escort at Batesville at 2:15 on 9/20 at Highway Patrol Station north of intersection between highway from Memphis to Batesville and from Batesville to Oxford. General Patterson guaranteed safe passage until Meredith's business at the campus was concluded.

September 20

At 9:50 a.m. call from General Patterson stating he could not guarantee safe conduct because of issuance of arrest warrant.

Meredith tried in absentia in Jackson on charges of false registration, convicted and sentenced to one year and \$300.

Suit in Jackson brought by Governor against Meredith to enjoin him from entering University; ex parte restraining order issued.

Suit filed by Governor in Oxford against Meredith to restrain him from entering University; ex parte order issued.

Senate Bill 1501 enacted by Mississippi Legislature to make it a crime for anyone accused of a felony to enter University. This applied directly to Meredith.

Discussions with Tom Watkins on Meredith's arrest; Watkins undertook to have the arrest warrant rescinded and it was in fact rescinded.

Proclamation by Barnett directed Board of Trustees and Registrar to refuse Meredith admission.

Confrontation of Meredith by Barnett at University and refusal to register.

September 20
cont'd

Civil contempt petition filed in District Court in Meridian against Chancellor, Dean, and Registrar. Order to show cause returnable September 21 at Meridian. Civil contempt order returnable September 24 issued by panel of Court of Appeals sitting in Hattiesburg against Board of Trustees and three University officials.

September 21

Marshall to Meridian by Air Force jet. Hearing in District Court. Finding by District Court that Governor removed all power from University officials to register or refuse to register Meredith.

September 24

Hearing in New Orleans before eight members of the Court of Appeals. Finding of willful refusal by Board of Trustees to comply with the court order. Unanimous agreement by Board of Trustees in court to accept Meredith as a student and retain him.

HUNTSVILLE, ALABAMA (UPI) - Guards will begin patrolling the Marshall Space Flight Center's Mississippi test operations in Hancock County today. A \$41,000 contract was awarded to Hancock County for protective service at the future rocket test site.

WEATHER--Clear to partly cloudy and warm through Tuesday. High temperature today, in the 80s. Lows tonight, 55 to 60.

OTHER NEWS MEDIA ARE HEREBY GRANTED PERMISSION TO REPRINT ARTICLES PUBLISHED IN "MORNING HISTORY LETTER" ON SUCCEEDING THURSDAYS ONLY.

Mr. J. R. Wiggins, Editor
The Washington Post
Washington, D. C.

Dear Mr. Wiggins:

I would like to commend the Washington Post on the concern for the exercise of proper legal procedures reflected by the editorial, "Law and Order", of October 4, 1962. However, I believe an explanation of the authority for federal activities in the Oxford, Mississippi area will serve to assure you and readers of the Post that those activities are being conducted in full conformance with the law and with proper procedures.

Your editorial said, "It is disquieting, in any case, to learn that, without any declaration of martial law, soldiers are in some instances acting without regard to procedures established by law." I would like to make it clear that the activities of troops in the Oxford area are conducted with full sanction of law at present and that a declaration of martial law is unnecessary.

Their authority stems initially from three federal statutes (Sections 332 through 334 of Title 10, United States Code). These authorize the President under the circumstances specified in those statutes to direct an end to civil disorder by proclamation and to use armed forces or any other means to suppress violence which impedes the course of justice.

- 2 -

You will recall that on September 30, 1962, the President issued such a proclamation, concerning "Obstruction of Justice in the State of Mississippi". He also issued a companion executive order directing the Secretary of Defense to take all appropriate steps to put down disorder and to insure compliance with federal court orders.

The President's lawful authority thus was delegated to the Secretary of Defense, who further delegated it to the military commander in the Oxford area. The military commander thus is lawfully empowered to take such steps as he believes necessary.

The exercise of this power in the Oxford area seems to me to have been perfectly reasonable. It has been limited largely to searching for weapons in vehicles coming to Oxford. To do so is only prudent, considering that two persons were killed and scores injured in rioting there. Furthermore, investigation demonstrated that a large number of persons were going to Oxford from all over the South, carrying weapons, in response to inflammatory calls to arms.

The legal power of the military commander is not absolute under this authority. He may not, for example, establish military courts. He is limited by a specific Army Regulation (500-50) applying to "Emergency Employment of Army Resources--Domestic Disturbances." And any aggrieved citizen is free to go to the federal courts and seek relief from what he believes to be unlawful action.

Sincerely,

Burke Marshall

OCT 1 1962

Law and Order

Three days have passed since violence erupted in Oxford, Miss., on Sunday evening and made necessary the intervention of Federal troops. At least a sullen semblance of order has been restored. But the situation is undoubtedly still tense and ugly, with dangerous undercurrents that could produce new outbreaks of lawlessness. Perhaps it would have been wise to declare martial law in Oxford in order to enable military authorities lawfully to search for weapons and take other summary measures to maintain order. Perhaps a declaration of martial law would still be desirable. It is disquieting, in any case, to learn that, without any declaration of martial law, soldiers are in some instances acting without regard to procedures established by law.

The Army was sent into Mississippi expressly to re-establish respect for the Constitution. Its mission can only be corrupted if it behaves in unconstitutional ways. Roadblocks, searches and seizures, and other emergency measures may be necessary; if so, let the emergency be recognized and military rule be proclaimed. In this connection, it seems in order to ask if all the protections of due process are being accorded Edwin A. Walker. For all the malevolence of his part in the Oxford violence, he ought not to be denied reasonable release on bail and he ought not be committed to a mental institution even for examination without the precautions customary in the case of such a commitment.

It was to uphold the law as well as to maintain order that the Army was sent into Mississippi. Let it manifest, therefore, the most conscientious respect for law consonant with the immensely difficult and delicate task entrusted to it.

Oxford, Mississippi
October 3, 1962

AIR MAIL

Honorable Burke Marshall
Assistant Attorney General
Civil Rights Division
United States Department of Justice
Washington 25, D. C.

Dear Burke:

Attached is the article from The Clarion-Ledger about the group of business leaders. I suggest that this list be circulated among the appropriate members of the Executive Branch to see if there are any personal friends or business associates involved who might be thanked and encouraged.

Sincerely,



LOUIS C. OBERDORFER
Assistant Attorney General

Attachment

THE CLACKSON-LEDGER
JACKSON, MISS. 10/3/62

Say Violence Regrettable

Reaffirming their belief in segregation, but expressing grief at the events which have taken place, a group of 135 business and professional leaders of Mississippi Tuesday called for prevention of any further violence in the state.

Meeting at the King Edward hotel, the group determined to criticize no one and to advance the political interest of no one, and studied long and carefully the statement finally agreed upon.

The prominent leaders said the desegregation decision was morally and legally wrong, but in the present crisis, the "honor and dignity of our state" require state officials to investigate and prosecute "the offenders who have incited our people to riot," rather than leaving the matter to federal authorities.

—Frank Everett, Vicksburg, attorney who has assisted in defense of state officials against the federal law suits, was chairman of the meeting.

"We are grieved at events which have taken place at the University.

"We recognize that enforcement of law and order and not mob rule is absolutely essential to the peace and safety of all of our homes and all of our citizens.

"Violence at any point in our beloved State must not be permitted to further arise.

"We reaffirm the feeling of our people that the Supreme Court decision of 1954 requiring the integration of races in our schools was morally and legally wrong.

URGE UNITING

"We urge all of the people to unite now.

1. To urge all of our Mayors and local public officials in every town, city and county to advocate forthrightly and immediately the maintenance of law and order and to urge their communities to that end.

2. To urge all of our news media — newspapers, radio and

Continued on Page 1

STATEMENT

Continued From Page 1

TVs — to cooperate with sane, sensible public utterances and to refrain from the publication of inflammatory statements.

3. To call on, and support, our public officials, both local and state, in the investigation, arrest and prosecution, without delay, of the offenders, whether from within or without our State, who have incited any of our people to riot. The honor and dignity of our State requires us to do this ourselves and not to leave such to the Federal Government.

4. To band together to help assure the thousands of parents and students of Ole Miss that they should promptly return to the campus and that they can remain there in safety and good order and continue their education.

APPEAL TO STUDENTS

5. To appeal to the students for calmness and let them know that restraint and judgment on their part is essential to saving all the institutions of higher learning in our State.

6. To pledge our support to the Chancellor, Faculty and Administration at the University and to reassure them they can pursue their educational careers in financial security and with dignity.

7. To urge an immediate system of communication between all of the alumni and friends of all of our Universities and Colleges to the end that each may be strengthened and that a reservoir of public interest and support can be effectively corralled to prevent loss of accreditation.

8. Mississippi has made tremendous—almost unbelievable—progress and we rededicate ourselves to binding up our present wounds and to continue to march forward with honor, dignity and respect.

Those signing the statement, listed alphabetically, are:

Louis Alford, McComb; H. E. Allen, Jackson; Max T. Allen Jr., Jackson; A. B. Archer Jr., Cruger; J. Russell Bailey, Coffeeville; W. E. Barbour, Yazoo City; J. W. Barksdale Jr., Jackson; Gerald M. Barrett Jr., Greenwood; Lyle Bates, Jackson; James A. Becker Jr., Jackson; J. B. Bell, Mayor of Hernando; James P. Bledsoe, Vicksburg;

R. Baxter Brown, Jackson; Ed Brugh, Jackson; William G. Burgin Jr., Columbus; D. S. Burnett, Tupelo; Jim B. Buchanan, Holly Springs; J. W. Campbell, Jackson; W. J. Caraway, Leland;

Mott Jr., Yazoo City; Jim Neal, Jackson;

MORE SIGNERS

John F. Lucas, M.D., Greenwood; W. B. McCarty, Jackson; Alex McKeigney, Jackson; Pat McMullan, Jackson; Richard McRae, Jackson; C. Eugene McRoberts Jr., Jackson; T. D. Magruder, McComb; Tom Dewese, Philadelphia; Ernest N. Mino, Macon; William H. Mouser, Jackson; William Neville Jr., McComb; Robert S. Newton, Wiggins;

M. P. Payment, Jackson; Robert D. Patterson, Aberdeen; Robert E. Perry, Jackson; R. Pearce Phillips, Brookhaven; George B. Pickett, Jackson; Billy H. Quinn, Vicksburg; James Hugh Ray, Tupelo; Ray Rayne, Jackson; J. C. Redd, Jackson; Jack Reed, Tupelo; W. R. Reed, Tupelo; C. R. Ridgway, Jackson;

W. B. Ridgway, Jackson; H. C. (Bunk) Roberts, Canton; Nat Rogers, Jackson; Harrison Russell, Jackson; Julius F. Russum, Hernando; Sam E. Scott, Jackson; Tom B. Scott, Jackson; E. O. Spencer, Jackson; Fred B. Smith, Ripley; Orma R. Smith, Corinth; Leland Speed, Jackson; Ernest G. Spivey, Jackson;

Boswell Stevens, Macon; Orrin H. Swayze, Jackson; Landman Teller, Vicksburg; J. T. Thomas, Cruger; C. S. Tindall, Greenville; Cecil F. Travis, Jackson; Everett Truly, Natchez; George K. Wade, Greenwood; John B. Walker Jr., Jackson; E. C. Ward, Natchez; E. L. Wayne, Jackson; Karl Weil, Port Gibson;

David C. Welch, Laurel; Alex Wilson, Hazlehurst; Earl R. Wilson, Jackson; Calvin Wells, Jackson; Sherwood W. Wise, Jackson; D. R. Yandell, Canton; Thomas Yates, Jackson.

summary statements.

3. To call on, and support, our public officials, both local and state, in the investigation, arrest and prosecution, without delay, of the offenders, whether from within or without our State, who have brought any of our people to riot. The honor and dignity of our State requires us to do this ourselves and not to leave such to the Federal Government.

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R. Baxter Brown, Jackson; Ed Brugh, Jackson; William G. Burgin Jr., Columbus; D. S. Burnett, Tupelo; Jim B. Buchanan, Holly Springs; J. W. Campbell, Jackson; W. J. Caraway, Leland; Sam R. Carter, Quitman; Sam H. Coffey, Yazoo City; J. M. Cole, Union; Jim Conner, Canton; Owen Cooper, Yazoo City;

J. O. Crosby Jr., Picayune; W. L. Cutcliff, Amory; Sam W. E. Cleveland; Baxter O. Elkins Sr., Oxford; John S. Fair, Lumberton; R. Brent Forman,

Carl Fox, Jackson; J. French, Jackson; R. H. Gage, III, Port Gibson; A. Gann, Jackson;

E. Gann, Jackson; Don Gann, Jackson; Jack Gann, Jackson; L. Gann, Jackson; W. E. Gann, Jackson;

Alex A. Hood, Jackson; Cover Hood, Natchez;

G. Howard, Laurel; Fred Johnson, Jackson; Russ M.

Alex McKeigney, Jackson; Pat McMullan, Jackson; Richard McRae, Jackson; C. Eugene McRoberts Jr., Jackson; T. D. Magruder, McComb; Tom Deweese, Philadelphia; Ernest N. Mina, Macon; William H. Moonger, Jackson; William Neville Jr., McComb; Robert S. Newton, Wiggins;

M. P. Payment, Jackson; Robert D. Patterson, Aberdeen; Robert E. Perry, Jackson; R. Pearce Phillips, Brookhaven; George B. Pickett, Jackson; Billy H. Quinn, Vicksburg; James Hugh Ray, Tupelo; Ray Rayne, Jackson; J. C. Redd, Jackson; Jack Reed, Tupelo; W. R. Reed, Tupelo; C. R. Ridgway, Jackson;

W. B. Ridgway, Jackson; H. C. (Bunk) Roberts, Canton; Nat Rogers, Jackson; Harrison Russell, Jackson; Julius P. Russum, Hernando; Sam E. Scott, Jackson; Tom B. Scott, Jackson; E. O. Spencer, Jackson; Fred B. Smith, Ripley; Orma R. Smith, Corinth; Leland Speed, Jackson; Ernest G. Spivey, Jackson;

Boswell Stevens, Macon; Orrin H. Swayze, Jackson; Landman Teller, Vicksburg; J. T. Thomas, Cruger; C. S. Tindall, Greenville; Cecil F. Travis, Jackson; Everett Truly, Natchez; George K. Wade, Greenwood; John B. Walker Jr., Jackson; E. C. Ward, Natchez; E. L. Wayne, Jackson; Karl Weil, Port Gibson;

David C. Welch, Laurel; Alex Wilson, Hazlehurst; Earl R. Wilson, Jackson; Calvin Wells, Jackson; Sherwood W. Wise, Jackson; D. R. Yandell, Canton; Thomas Yates, Jackson.

BACKGROUND BRIEFING

on Walker matter

October 5, 1962, 4:30 p.m., Office of Burke Marshall, Assistant Attorney General

✓ Associated Press	Lon Pamos
✓UPI	John Harbers
✓Washington Post	Alan Barth
✓Washington Star	Miriam Ottenberg?
New York Times	Anthony Lewis
NY Herald Tribune	Don Irwin
✓Congressional Quarterly	Liz Brenner
✓St. Louis Post-Dispatch	Ed Woods
— St. Louis Globe-Democrat	Ed O'Brien (maybe)
✓Wall Street Journal	Bill Beecher
— Dallas News	Bob Backin
— Houston Post	Felton West (maybe)
— Houston Chronicle, Dallas Times-Herald	Vernon Louviere
✓Scripps-Howard	Seth Kanter

UNITED STATES GOVERNMENT

Niss
DEPARTMENT OF JUSTICE

Memorandum

TO : Burke Marshall
Assistant Attorney General
Civil Rights Division

DATE: June 10, 1963

FROM : John Doar
First Assistant

JD:stj

SUBJECT: Marshals in Oxford, Mississippi

I have discussed the marshal situation in Oxford and believe that 18 men is ample to handle the situation on campus, including the guarding of Baxter Hall. There are no other students in Baxter Hall this summer. When the Army leaves if it stays quiet for a week or two, I recommend that the marshal force be reduced to 12. This merely eliminates one extra man traveling with Meredith and McDowell to and from classes. It does not reduce the protection at the dormitory.

With respect to weekends, I discussed this with Mr. McShane on Friday and we decided that we would not send anybody with McDowell when he leaves the campus. I think probably in Sunflower County the presence of marshals would attract more attention and McDowell probably would be safer being by himself.

If you would like, after I finish with the work in Alabama, I will drop over to Oxford and check the situation.

MEREDITH CASE CHRONOLOGY

- 5/31/61 - Complaint and Motion for Temporary Restraining Order and Preliminary Injunction Filed in District Court
- 12/14/61 - Order of District Court Denying Preliminary Injunction, 199 F. Supp. 734
- 1/9/62 - Opinion of the Court of Appeals Affirming Denial of Preliminary Injunction, 298 F.2d 693
- 2/5/62 - Opinion of District Court denying permanent injunction and dismissing complaint, 202 F. Supp. 224
- 2/13/62 - Court of Appeals denial of Motion for Injunction Pending Appeal, 305 F.2d 341
- 6/13/62 - Appellant's Motion for Injunction in Aid of Court of Appeals' Jurisdiction
- 6/12/62 - Order Granting Injunction in Aid of Court of Appeals' Jurisdiction (Criminal Proceedings against Appellant Enjoined)
- 6/25/62 - Opinion of Court of Appeals Reversing and Remanding Case to District Court with Instructions to Issue an Injunction as Prayed for in Complaint, 305 F.2 343
- 7/9/62 - Denial of Appellant's Motion that Court of Appeals' Mandate Issue Forthwith
- 7/18/62 - Motion Before Judge Cameron For Stay of Court's Mandate
- 7/18/62 - Motion for Stay Granted
- 7/27/62 - Opinion and Orders of Court of Appeals vacating Stay, Recalling Mandate, and Issuing New Mandate and Preliminary Injunction, 306 F.2d 374
- 7/28/62 - Order of Court of Appeals Issuing Preliminary Injunction Pending Issuance of District Court's Mandate and full compliance therewith
- 7/28/62 - Stay of 7/27/62 Mandate by Judge Cameron
- 7/30/62 - Stay of 7/28/62 Amended Mandate by Judge Cameron
- 8/4/62 - Order of Court of Appeals Vacating Stay Orders and Reinstating Orders of 7/17/62, 7/27/62, and 7/28/62
- 8/6/62 - Stay by Judge Cameron of All Prior Orders of the Court of Appeals

- 9/10/62 - Justice Black's Order
- 9/13/62 - Permanent injunction by DC requiring admission of Meredith
- 9/18/62 - Application of U.S. for designation as amicus
- 9/18/62 - Order of CA designating U.S. as amicus in the CA and DC
- 9/19/62 - Petition by U.S. to remove Meadors v. Meredith from Jones County Court to U.S. DC
- 9/20/62 - Motion of U.S. in DC to vacate order of injunction in Meadors v. Meredith
- 9/20/62 - Order of DC setting hearing on motion to vacate Meadors injunction for September 20
- 9/20/62 - Application of U.S. to DC for TRO
- 9/20/62 - TRO by DC restraining arrest of Meredith under S.B. 1501 1/
- 9/20/62 - Petition of U.S. to DC for contempt show cause order against Ellis, Williams and Lewis
- 9/20/62 - DC order to show cause why Ellis, Williams and Lewis should not be held in contempt, returnable 9/21/62
- 9/20/62 - Petition by U.S. to CA for injunction against further proceedings in Jones County Court on Meadors case
- 9/20/62 - CA order restraining enforcement of S.B. 1501, further proceedings in the Hinds prosecution of Meredith, and further proceedings in the Meadors case
- 9/21/62 - Respondents' (Ellis, Lewis and Williams) motion to stay or dismiss contempt proceeding
- 9/21/62 - Order by DC finding Ellis, Williams and Lewis not in contempt
- 9/21/62 - Application by U.S. in CA for order requiring Board of Trustees and officials to show cause why they should not be held in contempt
- 9/21/62 - CA order to show cause against members of Board
- 9/22/62 - U.S. motion to add respondents (Lewis, Williams and Ellis) in CA contempt proceeding

1/ Enacted 9/20/62 to deny admission to Mississippi colleges and universities of persons convicted of crime of moral turpitude aimed at ~~Meredith~~ conviction, supra.
Meredith

- 9/22/62 - CA order requiring Williams, Lewis and Ellis to show cause for contempt
- 9/24/62 - Motion by Jobs to quash subpoena
- 9/24/62 - Motion by Board of Trustees to change place of hearing to Jackson
- 9/24/62 - Motion by Board of Trustees to dismiss or to change place of hearing to Jackson
- 9/24/62 - Motion in CA by Williams, Lewis and Ellis to dismiss as to them
- 9/24/62 - Motion in CA by Williams, Lewis and Ellis for severance
- 9/24/62 - Entry of special and limited appearance
- 9/24/62 - Per curiam order by CA directing Board to take certain steps to comply with injunction of 7/28/62
- 9/25/62 - Petition of U.S. in CA for injunction against the State and others
- 9/25/62 - Notice of motion by U.S. for hearing for preliminary injunction on 10/5/62
- 9/25/62 - TRO by CA against State of Mississippi and others on application of U.S.
- 9/25/62 - Application by U.S. to CA for contempt show cause against Barnett
- 9/25/62 - Show cause order by CA requiring Barnett to appear on 9/28/62
- 9/25/62 - Application to CA by Meredith for TRO against Barnett restraining him from proceeding in Hinds County Court on injunction suit filed 9/20/62
- 9/25/62 - Motion by Meredith to add Barnett as a defendant
- 9/25/62 - Order by CA upon application of Meredith adding Barnett as a defendant
- 9/25/62 - TRO by CA upon application of Meredith restraining Barnett and Gilfoy from proceeding in 9/20 injunction suit in Hinds County Court; from filing other such suits, and from arresting or interfering with Meredith. Barnett ordered to appear on October 3 for hearing on motion to be added as defendant, and on motion for preliminary injunction
- 9/26/62 - Motion by Meredith for order by CA requiring Barnett to show cause why he should not be held in contempt
- 9/26/62 - Order by CA upon application of Meredith requiring Barnett to show cause on 9/28 why he should not be held in contempt
- 9/26/62 - Application to CA by U.S. requiring Paul B. Johnson, Jr. to show cause why he should not be held in contempt

9/28/62 - Application by State for designation as amicus in
CA re contempt proceedings against Barnett

9/28/62 - Motion by State to dissolve TRO and stay or dismiss Barnett contempt proceedings in CA

9/28/62 - Order by CA finding Barnett in contempt and allowing him until 10/2 to purge himself

9/29/62 - Application by State for order designating it as
amicus in CA contempt proceedings against Johnson

9/29/62 - Motion by State to dissolve TRO and stay or dismiss
CA contempt proceedings against Johnson

9/29/62 - Order by CA finding Johnson in contempt and allowing him until 10/2 to purge himself

10/2/62 - Memorandum order of CA discharging contempt proceedings against the University officials and Board of Trustees

10/2/62 - Order of DC dismissing Mader complaint

10/2 62 - Order of DC permitting U.S. to withdraw application
for injunction against S.B. 1501

10/12/62 - Withdrawal of 9/25/62 Motion by U.S. for Preliminary Injunction against Meador, because of decision under 3-1

10/12/62 - State's Motion to dismiss, dissolve TRO, and transfer or dismiss contempt proceedings

10/19/62 - Order for preliminary injunction prohibiting arrest of Meredith or further state proceedings against him and interference with desegregation orders

11871 - 11872 - 11873

107-52 - Opinion and Order of Attorney General
 Clegg, Secretary of the U.S. Department of Justice
 and Preliminary Investigation, 107-52

1940 - Order of Court of Appeals for the Second Circuit
 re: Motion for Rehearing in Case No. 10,000
 1940 and 1941 - Full Employment Act, 1940-1942

U.S. DEPARTMENT OF JUSTICE

[illegible]

SECRET

UNITED STATES GOVERNMENT

Memorandum

TO : The File

DATE: January 25, 1963

FROM : Burke Marshall
Assistant Attorney General

51-40-17
12,232

SUBJECT: United States v. Barnett and Johnson

The following matters were discussed in the meeting on January 16, 1963, with Leon Jaworski and Mr. Vaughn:

1. Mr. Jaworski and his associates will present all matters to the Court, including the position of the government on whatever pre-trial matters are taken up at the hearing on February 8.
2. I undertook to arrange a meeting with counsel for Governor Barnett in New Orleans during the week beginning January 21.
3. With respect to the possibility of a commissioner to take evidence, it was agreed that the disadvantages of having a hearing before eight judges were so great that we should take the unavoidable risk of telling the Court that, in our view, the Court had the power to follow that course. It is recognized that, if counsel for Barnett do not agree to this procedure, there is a substantial risk of reversal by the Supreme Court. Another course which should be suggested to the Court, in the event of no agreement with counsel for Barnett, would be for the case to be heard by a panel of three judges, with their decision reviewable by the entire bench of the Fifth Circuit.

If evidence is taken before a single person, it was agreed that the person should preferably be a judge, but that the government should not suggest a name to the Court of Appeals if that were avoidable. If a name had to be suggested, the judges mentioned were Brewster, Prettyman, Bootle, Bolt, Swigart, or a member of the Court of Appeals.

If a commissioner is appointed, he should have subpoena power, should just take evidence, without making findings,

should pass on the admissibility of evidence, and otherwise have the power to control the hearings, and should be enabled to perform such additional functions as the Court might from time to time assign to him.

4. It was the view of Mr. Jaworski that the Court should sit in New Orleans because of the possible damage to the dignity of the Court if it had to take evidence in Jackson. On the other hand, it was agreed that if the place of sitting were a controlling factor in obtaining agreement from counsel for Barnett to the appointment of a commissioner, we should at least agree that the parties could apply to the Court to have the commissioner sit in Mississippi for the purpose of taking evidence from Barnett or Johnson, or possibly other witnesses. We should avoid requiring the Governor to absent himself from the state for any substantial period.

5. It was agreed that the government should advise the Court that it is not required to give Barnett a trial by jury. This is not constitutionally necessary; the governing statutes all relate only to contempt trials in district courts; and the order violated was, in any event, sought by the United States. This point is to be briefed by Mr. Jaworski.

6. It was agreed that the basic issue was simply whether there was willful defiance of orders of the Court by Barnett and Johnson. We should accept a full burden of proof on this. I agreed to obtain assistance from the Criminal Division in the precedents to support the position that willfulness can be inferred from circumstantial evidence, and that evidence of statements and actions by the Governor prior to the actual contempts charged were relevant to show state of mind. This point should be briefed for the Court.

In addition, we will probably have to rebrief the questions of jurisdiction and mootness.

7. I undertook to have the Governor and Lt. Governor served again by a deputy from the Eastern District of Louisiana.

8. Mr. Jaworski will have prepared a separate brief on the contempts by Johnson, dealing with the fact that he was not personally named in the September 25 order of the Court of Appeals.

9. I undertook to talk to the Attorney General about his testifying, and about how to deal with the President's conversations with the Governor.

10. If possible, Mr. Jaworski will attempt to embarrass the defendants in open Court into producing recordings of the telephone conversations.

11. I should supply Mr. Jaworski with copies of all Court orders back to the order in June enjoining the prosecution of Meredith for falsely stating that he resided in Hinds County.

12. We should obtain certified copies of all proclamations issued by the Governor during the month of September.

13. We should obtain copies of all speeches given by the Governor, and all public statements by the Governor, regarding the Meredith case, and his position concerning desegregation.

14. Sometime after the February 8 hearing, I should arrange with Mr. Vaughn to have him see all the photographs we have collected.

UNITED STATES GOVERNMENT

DEPARTMENT OF JUSTICE

Memorandum

TO : Burke Marshall, Assistant
Attorney General, Civil Rights Division

DATE: January 30, 1963

KMW:jvm

FROM : Kathryn M. Werdegarr, Attorney

144-100-40-1
#9782

SUBJECT: Petition for Certiorari in Mississippi v. Meredith, No. 661

Petitioners in the above-entitled case purport to be seeking review of essentially every order entered by the Court of Appeals for the Fifth Circuit, commencing with the order designating the United States as amicus curiae, entered September 18, 1962, through the order granting the preliminary injunction against Mississippi Governor Barnett, et al., entered upon motion of the United States on October 19, 1962. However, the most substantial challenges are directed to the following orders issued by the court of appeals:

1. Order Admitting United States as Amicus Curiae - September 18, 1962.
2. Temporary Restraining Order against State of Mississippi, Governor Barnett, Lt. Governor Johnson, et al. - September 25, 1962.
3. Judgment and Orders of Civil Contempt against Governor Barnett (September 28, 1962) and Lt. Governor Johnson (September 29, 1962).
4. Preliminary Injunction against State of Mississippi, Governor Barnett, and Lt. Governor Johnson - October 19, 1962.

In essence, petitioners allege that the Court of Appeals usurped the jurisdiction of the district court, and the United States improperly assumed control of private litigation. Petitioners' major contentions may be outlined as follows:

1. The United States improperly intervened in private litigation at the appellate level.

2. The Court of Appeals had no jurisdiction to issue a temporary restraining order after its mandate issued to the district court.
3. The Court of Appeals was without authority to issue its injunction against petitioners for the following reasons:
 - a. The Eleventh Amendment prohibits a suit against the State.
 - b. Governor Barnett, Lt. Governor Johnson, et al., were not parties in the original suit of Meredith v. Fair and could not be enjoined without a separate suit first determining the validity of their executive acts.
 - c. The discretionary acts of an executive officer of a sovereign state may not be enjoined.
4. The civil contempt judgments improperly imposed both a fine and imprisonment for civil contempt. Moreover, the civil contempt proceedings are now moot, as nothing remains for petitioners to do.

While the NAACP has waived the right to oppose the petition for a writ of certiorari, the United States on January 4, 1963, filed a motion to be added as a respondent before the Supreme Court. Petitioners have opposed this motion, and the Court has yet to rule.

November 9, 1962

QUESTIONS AND ANSWERS
LANE - MARSHALL

The question is what part the government played in the Meredith case.

One point is that people question the statement of the President that it was simply a private litigation because of the government's amicus role in the litigation.

The case was started by Meredith personally without any role being played by the government. In June of 1961 there was a trial before the District Court. The defense at that trial was that the University of Mississippi did not have any policy of refusing admission to Negroes. On the hearing for a preliminary injunction, the District Court found as a fact that the University of Mississippi did not have any policy of refusing admission to Negroes. That was appealed.

At the time of that appeal, the Fifth Circuit was requested by Meredith's lawyers to enter an injunction pending appeal which would have had the effect of putting Meredith into the University at the term that started in February, 1961. The government was still not participating, and did not participate on that issue. The Court of Appeals took the appeal but denied the request for an injunction pending appeal, thus deferring any chance that Meredith might be admitted into the University. The Court of Appeals reversed, but remanded the case for a full trial on the merits.

In reversing they held that the record did not sustain the District Court's conclusion at that time that the University had no policy against admitting Negroes, but that the record on the contrary indicated that Meredith, at least as a prima facie matter, was refused entry to the University on account of his records.

There was then a full trial on the merits in the District Court. The District Court again found as a matter of fact that the University of Mississippi did not reject Meredith because of his race. That was appealed to the Fifth Circuit Court of Appeals. The Fifth Circuit Court of Appeals in June of 1962 reversed the District Court. They found on the record before the District Court that the evidence sustained Meredith's contention that the State of Mississippi and the University of Mississippi had a policy of segregation in their educational institutions, including the University of Mississippi, and that that policy was applicable to Meredith.

Meredith's attorneys again requested speedy action by the Court of Appeals in the form of a request for expedition of the entry of the mandate. This would have had the effect of putting Meredith into the University of Mississippi for the summer term of 1962. The Court of Appeals denied that request also. The government at this point had had nothing at all to do with the litigation.

When the mandate issued Judge Cameron, who did not sit on the panel of the Court of Appeals, and did not have the record before him, and was not acquainted with the issues in the litigation, issued a stay of the mandate pending the State presenting a petition for certiorari to the Supreme Court of the United States. The panel of the Court of Appeals which had heard the case then recalled its mandate, set aside Judge Cameron's stay, and issued its own order against the University requiring the admission of Meredith in the semester starting in September, 1962.

The next day Judge Cameron issued another stay setting aside the Court of Appeals order. The Court of Appeals sat again on the matter, found that Judge Cameron was without power to issue the second stay, and set aside the second stay. At this point the only issue in the case was whether the University of Mississippi was or was not a segregated institution. The government was not in the litigation at all.

Judge Cameron issued a third and a fourth stay under the same circumstances as the first two stays. After the fourth stay was issued, the attorneys for Meredith presented the matter to Mr. Justice Black, who was the appropriate

Justice of the Supreme Court because he has been designated by the Chief Justice of the Supreme Court for many years to sit on matters coming up from the Fifth Circuit. The matter had to be presented to a single Justice, because the Court was not in session. The issue presented to Mr. Justice Black was whether Judge Cameron had power to issue the stay, whether there was a substantial question for presentation to the Supreme Court, and whether Justice Black should and had power to set aside the stay. This was filed in the middle of August. The government was not a party to the case.

Around the 20th or 25th of August, the clerk of the Supreme Court, at the request of Mr. Justice Black, called the Solicitor General of the United States, Mr. Archibald Cox, and requested that the Department of Justice file a memorandum on two of the three points that were presented. One was the power of Judge Cameron to issue the successive stays even though he was not a member of the panel who sat on the case and had no record before him, and the other was the power of Mr. Justice Black sitting as a single Justice when the Supreme Court was not in session, to set aside the stay of Judge Cameron.

The Department of Justice filed the memorandum in accordance with the request of the Court on these two points.

The Department's memorandum stated that it was the Department's view that Judge Cameron did not have the power to issue these successive stays, and that Mr. Justice Black did have the power to set the last stay aside, acting by himself. Justice Black held finally that he did have the power to set aside the stay acting by himself, and he did set it aside. However, he noted in his memorandum that he had consulted with each other member of the Supreme Court to determine whether they agreed with that and also whether they agreed on the question whether there was any substantial question for presentation to the Supreme Court. Mr. Justice Black noted in his memorandum that there was no substantial question for presentation to the Supreme Court and that accordingly, there was no basis for the theories of the stays issued by Judge Cameron. Accordingly, on September 10, 1962, Justice Black issued an order which not only set aside Judge Cameron's stay but also enjoined the respondents in the case, that is, the Board of Trustees and the officials of the University, from further interfering with the effectiveness of the order of the Court of Appeals.

The effect of this determination by the Supreme Court, which was made unanimously, was to require the University

to accept Meredith as a student in the semester starting September, 1962. At this point, the Government was still not a party to the case and had had nothing to do with the case except for the filing of the memorandum with the Supreme Court, at the request of that Court.

On September 13, Governor Barnett gave a public speech in which he called upon all officials of the State to defy the orders of the federal courts. It was after this public statement of the policy of the State that they were not to obey the order of the federal court that the Department of Justice for the first time entered the case in order to accomplish two purposes. One was to protect the integrity of the orders of the federal court, and the other was to preserve the due administration of justice in the State of Mississippi.

The question is that there has been criticism of Justice Black's opinion because of the unusual procedure of polling other members of the Court and because of the fact that he stated in the opinion that the petition for certiorari was likely to be turned down when the court sat on it.

The answer to the first point is that it is an unusual procedure for a single justice acting as such while the

court is not in session to consult with other members of the Court before deciding what he has power to decide as a single justice. The reason that Justice Black did it, I suppose, was to give full weight to the importance of having a complete determination of the matter. He could not avoid the responsibility of deciding it one or another -- that was his personal responsibility -- but he did take the extraordinary step of consulting all of his brothers which he did not have to do in order to make sure he had decided it correctly.

As to the second point, the only question which was raised was the question whether the University of Mississippi was or was not a segregated institution. The determination made by Justice Black after consultation with his brothers, was that that was not a significant legal question such that the Supreme Court of the United States would exercise its discretionary authority to review. In fact, the Supreme Court did, at its first order day of the Term, deny certiorari anyway.

The question is, why didn't the Supreme Court have a special session to dispose of the issue. The case was of importance not because of the legal issues that were raised in it; the legal issue was simply an issue of fact whether

the University was or was not a segregated institution. The importance of the case lay only in the circumstances that the State of Mississippi had not yet, at that time, taken any steps to conform with the constitutional decisions of the Court in this area.

As far as the Government is concerned, and the actions of the Department of Justice, once the Supreme Court decided this issue, it didn't make any difference whether the Supreme Court was right or wrong in deciding it the way that it did. At that point orders became effective -- not only of the Supreme Court of the United States but also of the Court of Appeals for the Fifth Circuit and the District Court for the Southern District of Mississippi. The question was whether those orders were going to be obeyed or whether they were going to be defeated because of the publicly announced policy of the State of Mississippi of all the states of the Union not to obey federal court orders.

It is, of course, true that neither the President or the Attorney General control what that Court does. The judicial system of the Federal Government is entirely independent of the Executive Branch, and while I do not have any doubt that the Supreme Court decided it rightly,

the duty of the President arose when it was decided that the duty of the President was to enforce the order of the Court whether he thought it was a proper order or not.

The question is whether the executive branch has the authority to enforce court orders or whether the only enforcement of court orders can be by court officials, such as the local US Marshals, at the direction of the court.

The answer is that it is the sworn duty of the President of the United States, the sworn duty of the Attorney General of the United States, to enforce the law of the land, and that the orders of the federal courts are as much the law of the land as the criminal statutes of the United States or the other statutes of the United States. In addition, of course, there are criminal statutes against obstructing orders of the court. There are criminal statutes against sedition and insurrection. There was widespread civil disorder in Oxford, Mississippi, and while all of these matters are pending because no grand jury has been in session since then, charges of criminal activity have been made against some people.

The question is why Meredith came on the campus on Sunday afternoon, particularly why he came there late at

the time when many students were returning from the football game which had been held out of town.

The answer to this is that it was caused by our efforts to avoid a direct clash with the law enforcement officials of the state. On Saturday, Governor Barnett made an arrangement with the President of the United States for the registration and admission of Meredith to the University of Mississippi. Late Saturday night, he called and cancelled that arrangement.

At that point, it became necessary for the President, who had withheld doing it until the last moment, to federalize the National Guard and to issue a Proclamation calling upon the state of Mississippi to cease its policy of defiance of the Court's orders. On Sunday, the Attorney General discussed this with Governor Barnett, and I discussed it with a representative of Governor Barnett. This was in midday. Governor Barnett stated that it was his intention on Monday to have the University surrounded by a large number of state highway patrol, by a large number of deputy sheriffs, and other local law enforcement officials, and then by a citizens' army.

He suggested that the federal government should come down with troops and should break through this barricade

of people surrounding the University. He said that at the point when we came with troops, he would give up and call on the people of Mississippi to preserve law and order. He was contemplating a crowd of at least a thousand people to confront federal officers on Monday.

This plan obviously had in it the seeds of great disaster. The Governor was persuaded of that fact. The reason that the Governor changed his mind was that he finally understood that if he did not, the President would have to state in his television address scheduled for Sunday night, the terms of the arrangement that the Governor had made the previous day for the admission of Meredith into the University of Mississippi.

Accordingly, the Governor arranged with us that we should put Meredith on the campus on Sunday afternoon; that he would then announce to the people of Mississippi that the federal government had sneaked Meredith onto the University; and that he would then cease all resistance and call upon the people of Mississippi to cease resistance. It was for that reason that Meredith was put on the campus on Sunday afternoon.

The reason that it was late Sunday afternoon was because the Governor was preparing a statement which he

finally issued late Sunday afternoon. The Governor's suggestion was not made until nearly 1:00 P.M. on Sunday, Washington time. We had a large job to follow the suggestion of the Governor and suddenly move a large number of people from Memphis, where they were, to go down to Oxford. Simply the assembling of these people and the movement of them on Sunday afternoon took a lot of time. It was done as quickly as possible, but there were 500 people that were involved. We refused in view of the past vasculations of the Governor to put Meredith on the campus until the campus had been made secure.

The question is whether the University officials objected to his coming on Sunday.

The University officials did not object to his coming on Sunday. At the suggestion of the Governor's representative, I called the University officials to see if they would not agree not only to have him come on the campus on Sunday, but also to have him registered on Sunday. The purpose of that was so that when the Governor made his public retreat on Sunday afternoon, he could say not only that Meredith had been sneaked on the campus without his knowledge, but also that he could say that Meredith had

been registered without his knowledge. The Governor was making these arrangements with us at the same time that he was making arrangements with large numbers of other people to come up there Monday, and telling them that he would be up there on Monday to lead them in resistance of the Federal Government.

The University officials did object to registering him on Sunday on the grounds that the churches would object to it. The purpose of the entire arrangement with the Governor was to avoid the use of troops. The Governor's first suggestion was that we should invade Mississippi on Monday with a lot of troops to break through his barricade of state law enforcement officials and citizen soldiers on Monday. When the Governor finally abandoned that plan because he thought that it would cause him more political trouble to have the people of Mississippi know of the arrangements he made with the President on Saturday, he gave guarantees to us, very explicit guarantees, that the State Highway Patrol would be available to cooperate with the marshals to control law and order in the vicinity of Oxford. The federal government was very anxious not to have to use troops against the citizens of one of the

states and, accordingly, did not until it became absolutely necessary because the riot got out of control.

The question is why the Marshals were posted around the Lyceum Building.

The answer to that is that they entered the University in order to establish security so that Meredith could enter. After they got there, a crowd started collecting, and they were at the Lyceum Building, and there was really no other place for them to go. Meredith was brought onto the campus and he first went to the Administration Building and then to Baxter Hall. The marshals at that time were faced with a large crowd and their only choice other than staying where they were would have been to withdraw and leave Oxford which would have required taking Meredith out also.

The question is why they had to stay outside the building and attract the attention of everybody when they could have retreated inside and stayed out of sight safely. I will take that up with Mr. Katzenbach.

One answer to that is that the feeling were so high at that point that I do not think there was any way of avoiding collision between the marshals and the people in the crowd. The suggestion is that it was an invitation --

that the marshals were inviting trouble by exposing themselves outside the building.

The question is whether Meredith is being paid to pursue the litigation and whether he is making a lot of money out of it.

There is no suggestion that he is being paid by the federal government.

As far as I know, Meredith has not been paid by anyone to pursue the litigation. The litigation was financed, as most of the litigation of this sort is financed, in the sense of legal fees, by the N.A.A.C.P. Legal Defense Fund, which is a private organization over which the Federal Government has no control and little influence. That has been held to be a perfectly proper activity. There have been a lot of expenses to Meredith which he has been paying out of his own pocket or the GI Bill. I simply do not know about any financial arrangements, or what they are about the article in the Saturday Evening Post which he wrote.

The question is, in what way did Governor Barnett fail to carry out his commitments with respect to the State Police.

The answer to that is that shortly after the marshals