

667 Karen J. J.

**JAMES HOWARD MEREDITH, on behalf of
Himself and Others similarly situated,**

U. S. COURT OF APPEALS
FILED

JUL 30 1962

EDWARD W. WADSWORTH
CLERK

**MOTION OF APPELLEES FOR ADDITIONAL
RELIEF PENDING APPLICATION FOR
WRIT OF CERTIORARI**

1.

On the 17th day of July, 1962, the United States Court of Appeals for the Fifth Circuit issued a Judgment "as and for the mandate" of the Court in the above referenced matter wherein the Court reversed the decision of the United States District Court for the Southern District of Mississippi and remanded the cause to said District Court with directions.

On the 20th day of July, 1962, the Clerk wired counsel for Appellees that the Court had directed the parties in this cause to file and exchange statements of position and memorandum briefs for or against the granting of any stays, including the vacating of the stay entered by Judge Cameron, the issuance by this Court of an injunction pending further appeal or other appropriate action. A true copy of the Clerk's telegram is attached to this motion as Exhibit "A".

3.

Under directions received from some member or members of the U.S. Court of Appeals for the Fifth Circuit Honorable Edward W. Wadsworth the clerk of said court has been forbidden to furnish a certified copy of the record of proceedings in said Court which must accompany the Petition for Certiorari in the Supreme Court under Rule 21 (1) of the revised rules of said Supreme Court. A true copy of the Clerk's letter so advising counsel is attached hereto as Exhibit "B".

4.

On July 28, 1962, a copy of a letter of transmittal from the Clerk of said Circuit Court of Appeals to the Clerk of the U. S. District Court at Jackson, Mississippi was received by counsel. A true copy of the letter is attached hereto as Exhibit "C". On the same date counsel for Appellees obtained a copy of an instrument styled "Judgment" and an instrument styled "Order Vacating Stay, Recalling Mandate and Issuing New Mandate Forthwith." Copies of these instruments are attached to this Motion as Exhibits "D" and "E", respectively.

5.

Appellees relied upon the express Section of 2101 (f) of the United States Code, which vests authority in your Honor as a Judge of the United States Court of Appeals for the

Fifth Circuit to stay the execution and enforcement of a final Judgment or Decree of that Court, which is subject to review by the Supreme Court of the United States on Writ of Certiorari.

Appellees objected to the recall of the Mandate which Rule 32 of this Circuit provides can only be recalled to prevent injustice and further objected to any proceedings in the United States Court of Appeals on any of the motions which the Court invited to be filed. Counsel for Appellees filed the Statement and Memorandum Brief directed in the telegram (Exhibit "B") as officers of the Court acting pursuant to the orders of the Court and under an express reservation of the rights of our clients.

6.

The necessary purpose and effect of the instruments (Exhibit "D" and Exhibit "E") are to attempt to vacate the statutory Stay Order of your Honor and are therefore contrary to the wording of Section 2101 (f) of the United States Code.

7.

The instrument Exhibit "E" is based entirely upon the assumption that the Court was not in error in refusing the findings of fact made by the District Judge that the Appellant was refused admission on valid non-discriminatory grounds and was not refused admission because of his race or color. With all due deference and respect, counsel for Appellees submit that such ipse dixit reasoning is not a valid premise upon which the Court could or should base an order setting aside the statutory stay granted by your Honor. With the same deference and respect, counsel would submit that it is better and more appropriate for a single Judge to stay a Judgment

and Mandate issued pursuant to an opinion of two Judges of a three-Judge panel than for any number of Judges of the Honorable Fifth Circuit Court of Appeals, an intermediate Appellate Court, whose decisions are subject to final Appellate review in the Supreme Court of the United States, to set aside the valid statutory right of Appellees to secure a stay from a Judge of said Fifth Circuit Court of Appeals pending the review of the decision of said Court by Writ of Certiorari. With deference and respect, counsel further submit that the proceedings by a panel of said Honorable Court of Appeals subsequent to the issuance of said statutory stay order departed from the accepted and usual course of judicial state proceedings to an extent which requires the exercise of supervision by the said Supreme Court of the United States.

WHEREFORE, premises considered, as additional relief to and to preserve the effectiveness of the statutory order entered by your Honor on the 18th day of July, 1962, Charles D. Fair, et al, move your Honor to stay the execution and enforcement of the instrument styled "Judgment" (Exhibit D), dated July 27, 1962, stated to be issued as and for the mandate of the Court on the same date, and further stay the execution and enforcement of the instrument styled "Order Vacating Stay, Recalling Mandate and Issuing New Mandate Forthwith," dated the 27th day of July, 1962, (Exhibit E) for a reasonable time to enable movants to obtain a Writ of Certiorari from the Supreme Court of the United States to review said "Judgment" and "Order," and in addition thereto Charles D. Fair, et al, move your Honor to extend the length of the stay granted in your Honor's Order dated the 18th day of July, 1962, until the

expiration of thirty (30) days from and after the date of this order to enable said parties to file with the Clerk of the Fifth Circuit Court of Appeals the Certificate of the Clerk of the Supreme Court of the United States that the Certiorari Petition and certified record required under the rules of said Supreme Court have been filed therein, which said stay, under the terms of said Order, is to continue in force until the final disposition of the case by the said Supreme Court and movants pray for such other, further and more general relief as the Court may think equitable and proper in the premises.

Respectfully submitted,

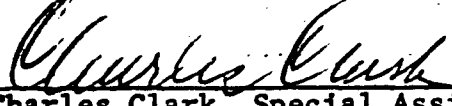
CHARLES DICKSON FAIR, ET AL, APPELLEES

BY JOE T. PATTERSON, ATTORNEY GENERAL
OF THE STATE OF MISSISSIPPI

DUGAS SHANDS, ASSISTANT ATTORNEY GENERAL
OF THE STATE OF MISSISSIPPI

CHARLES CLARK, SPECIAL ASSISTANT
ATTORNEY GENERAL OF THE STATE OF
MISSISSIPPI

BY:


Charles Clark, Special Assistant
Attorney General of the State of
Mississippi

V E R I F I C A T I O N

STATE OF MISSISSIPPI

COUNTY OF ~~WINDS~~ *Lauderdale*

Personally came and appeared before me the undersigned authority in and for the jurisdiction aforesaid, the within named Charles Clark, who being by me first duly sworn, states on oath that the matters, facts and things set forth in the foregoing Motion of Appellees for Additional Relief Pending Application for Writ of Certiorari are true and correct as therein stated.

Charles Clark

CHARLES CLARK

Sworn to and subscribed before me, this the 28th day of July, 1962.

Ben F. Carrion

NOTARY PUBLIC
H. J. Christ Judge

My Commission Expires:

/ / /

FILED

UNITED STATES COURT OF APPEALS

AUG 1 1962

FOR THE FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

IN RE: CAUSE #19,475 IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JAMES HOWARD MEREDITH, on behalf of
Himself and Others similarly situated,

Appellant,

v.

CHARLES DICKSON FAIR, President of the
Board of Trustees of State Institutions
of Higher Learning, et al,

Appellees.

**MOTION OF APPELLEES FOR ADDITIONAL
RELIEF TO STAY AMENDED ORDER FILED
JULY 28, 1962.**

COME NOW Charles Dickson Fair, et al, who were Appellees
in the above referenced cause, and respectfully move for the
entry of an order granting additional relief to them because
of the amended action taken by the U. S. Court of Appeals for
the Fifth Circuit, acting through a panel thereof, on the 28th
day of July, 1962, and in support of this motion would show
the following facts:

I.

On the 28th day of July, 1962, your present movants
moved Your Honor for a stay of an instrument styled "Judgment"
issued "as and for the mandate" of the said Court of Appeals

on the 27th day of July, 1962, and for a stay of an instrument styled "Order Vacating Stay, Recalling Mandate and Issuing New Mandate Forthwith" dated the same date.

II.

On said 28th day of July, 1962, Your Honor issued an order staying each and both of said instruments for a period of thirty (30) days from and after the 28th day of July, 1962 and granting other relief set forth therein in the form of extending a stay previously granted on the 18th day of July, 1962 of a prior order of said panel in Cause #19,475 in said Court of Appeals.

III.

On the 31st day of July, 1962 counsel for movants received via U. S. Mail a letter from the Clerk of said Court of Appeals and an "Order" from said court showing that the original thereof was filed on July 28, 1962, a true copy of which said letter and "Order" are attached to this motion as Exhibits "A" and "B" respectively.

WHEREFORE PREMISES CONSIDERED, movants pray that Your Honor will, pursuant to the provisions of Title 28, U. S. Code, Section 2101 (f), amend the stay order dated the 28th day of July, 1962 to include a stay of the order dated July 28, 1962 which is Exhibit "B" to this motion, for a period of thirty (30) days from and after the 28th day of July, 1962, to enable

movants to obtain a Writ of Certiorari from the Supreme Court of the United States to review said "Order", Exhibit "B" hereto.

Respectfully submitted,

CHARLES D. FAIR, ET AL, Movants

BY: JOE T. PATTERSON, Attorney General
State of Mississippi
New Capitol Building
Jackson, Mississippi

DUGAS SHANDS, Assistant Attorney General, State of Mississippi
New Capitol Building
Jackson, Mississippi

CHARLES CLARK, Special Assistant Attorney General
State of Mississippi
P. O. Box 1046
Jackson, Mississippi

By Charles Clark
Charles Clark, Special Assistant Attorney General
State of Mississippi

VERIFICATION

STATE OF MISSISSIPPI
COUNTY OF HINDS

Personally came and appeared before me, the undersigned authority in and for the jurisdiction aforesaid, the within named CHARLES CLARK, who, being by me first duly sworn, states on oath that the matters, facts and things set forth in the foregoing motion are true and correct as therein stated.

Charles Clark
Charles Clark

SWORN TO AND SUBSCRIBED BEFORE ME, this 31 day of July, 1962.

My commission expires:

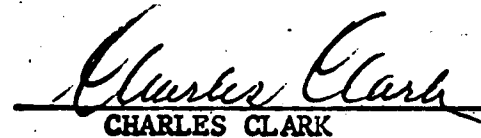
March 7 1965

William H. O'Neil
NOTARY PUBLIC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a true copy of the foregoing motion on Constance B. Motley, Esq. and R. Jess Brown, Esq. by U. S. Mail, postage prepaid, addressed to their best known addresses.

THIS 31st DAY OF JULY, 1962.


CHARLES CLARK

July 28, 1962.

Clerk
United States District Court
Jackson, Mississippi

Re: No. 19475 - James H. Meredith, etc. vs.
Charles Dickson Fair, etc., et al
(Your No. 3130 Civil-Jackson Div.)

Dear Sir:

Enclosed is a certified copy of the judgment of this Court in the above case, issued as and for the mandate, together with a copy of its opinion. ~~Some~~ ^{please substitute this judgment for the} forwarded on July 27, returning the first judgment issued.

Incorporated on the judgment is a detailed statement of the costs in this Court, as follows:

Docketing cause, etc. ----- \$ 25.00
recoverable by appellant from appellees upon a final settlement of all costs in your court.

Please acknowledge receipt.

Very truly yours,

EDWARD W. WADSWORTH, CLERK

By

Glenn R. James
Chief Deputy Clerk

encl. (Letter only)
Mr. C. B. Motley
Mr. R. Jess Brown
Mr. Chas. Clark
Hon. Joe T. Patterson
Mr. Dugas Shands

Exhibit "A"

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

FILED

JUL 28 1962

NO. 19,475

EDWARD W. WADSWORTH
CLERK

JAMES H. MEREDITH, on behalf of himself and others
similarly situated,

Appellant,

v.

CHARLES DICKSON FAIR, President of the Board of Trustees
of the State Institutions of Higher
Learning, et al.,

Appellees.

This Court on July 26, 1962 entered its opinion and judgment forthwith (1) vacating a stay issued herein by Judge Ben F. Cameron, July 18, 1962, (2) recalling its mandate issued herein July 17, 1962, (3) amending and reissuing its mandate, for the purpose of preventing an injustice, by ordering the District Court to issue forthwith an injunction against the defendants-appellees ordering the immediate admission of the plaintiff-appellant, James H. Meredith, to the University of Mississippi, (4) which opinion and judgment includes an order of injunction by this Court against the defendants-appellees herein.

Now therefore, the following injunctive order is issued:

ORDER

Pending such time as the District Court has issued and enforced the orders herein required and until such time as there has been full and actual compliance in good faith with each and all of said orders by the actual admission of plaintiff-appellant to, and the continued attendance thereafter at the University of Mississippi on the same basis as other students who attend the University, the defendants, 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 are expressly:

(1) Ordered to admit the plaintiff, James H. Meredith, to the University of Mississippi, on the same basis as other students at the University, under his applications heretofore filed, which are declared to be continuing applications, such admission to be immediate or, because of the second summer session having started, such admission to be in September, at Meredith's option, and without further registration,

(2) Prohibited from any act of discrimination relating to Meredith's admission and continued attendance, and is

(3) Ordered promptly to evaluate and approve Meredith's credits without discrimination and on a reasonable basis in keeping with the standards applicable to transfers to the University of Mississippi.

In aid of this Court's jurisdiction and in order to preserve the effectiveness of its judgment, this Court entered a preliminary injunction on June 12, 1962. The injunction was against Paul G. Alexander, Attorney for Hinds County, Mississippi, his agent, employees, successors, and all persons in active concert and participation with him and all persons who received notice of the issuance of the order, restraining and enjoining each and all of them from proceeding with the criminal action instituted against James H. Meredith in the Justice of the Peace Court of Hinds County, Justice District No. 5, or any other court of the State of Mississippi, charging that Meredith knowingly secured his registration as a voter in Hinds County but was a resident of Attala County, Mississippi. In further aid of this Court's jurisdiction and in order to preserve the continued effectiveness of its judgment and orders, the said preliminary injunction is continued against the same parties and all other parties having knowledge of this decree pending the final action of the United States Supreme Court if and when the defendants-appellees should apply for a writ of certiorari or for any other appropriate action in this cause by the United States Supreme Court.

It is further ordered that a copy of this order be served upon the defendants-appellees, through their attorneys, and upon Paul G. Alexander, County Attorney for Hinds County, Mississippi, and Joseph T. Patterson, Attorney General for the State of Mississippi.

Entered at New Orleans, Louisiana
this 28th day of July, 1962.


John R. Brown, JMW
United States Circuit Judge

John Minor Wisdom
United States Circuit Judge

Dozier A. DeVane, JMW
United States District Judge

1-P
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 347

Filed
9-11-62

JAMES H. MEREDITH,

PETITIONER,

v.

CHARLES DICKSON FAIR, ET AL.

O R D E R

UPON CONSIDERATION of the application of counsel for the movant and of the opposition of the respondents thereto,

IT IS ORDERED that the orders of Circuit Judge Ben F. Cameron of the United States Court of Appeals for the Fifth Circuit of July 18, 1962, July 28, 1962, July 31, 1962, and August 6, 1962, purporting to stay the effectiveness of the mandates of the United States Court of Appeals for the Fifth Circuit be, and the same are hereby, vacated and that the judgment and mandate of said Court shall be effective immediately.

IT IS FURTHER ORDERED that the respondents be, and they are hereby, enjoined from taking any steps to prevent enforcement of the United States Court of Appeals judgment and mandate pending final action by this Court on the petition for writ of certiorari now on the docket.

/s/ HUGO L. BLACK

Associate Justice of the
Supreme Court of the United States

Dated this 10th

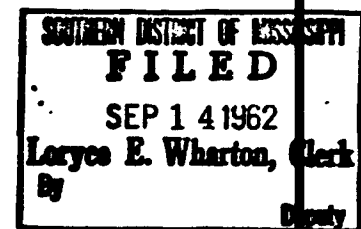
IN THE UNITED STATES DISTRICT COURT
FOR THE
JACKSON DIVISION OF THE SOUTHERN DISTRICT OF MISSISSIPPI

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 on July 17, 1962, be recalled and amended by making explicit the meaning that was 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 Mette Roberts, Hattiesburg, 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.

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 discriminating 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.

s/ S. C. Mize

UNITED STATES DISTRICT JUDGE

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

B. Price
Deputy Clerk

Section 4065.3 of the Mississippi Code

Compliance with the principles of segregation of the races.

1. That the entire executive branch of the government of the State of Mississippi, and of its subdivisions, and all persons responsible thereto, including the governor, the lieutenant governor, the heads of state departments, sheriffs, boards of supervisors, constables, mayors, boards of aldermen and other governing officials of municipalities by whatever name known, chiefs of police, policemen, highway patrolmen, all boards of county superintendents of education, and all other persons falling within the executive branch of said state and local government in the State of Mississippi, whether specifically named herein or not, as opposed and distinguished from members of the legislature and judicial branches of the government of said state, be and they and each of them, in their official capacity are hereby required, and they and each of them shall give full force and effect in the performance of their official and political duties, to the Resolution of Interposition, Senate Concurrent Resolution No. 125, adopted by the Legislature of the State of Mississippi on the 29th day of February, 1956, which Resolution of Interposition was adopted by virtue of and under authority of the reserved rights of the State of Mississippi, as guaranteed by the Tenth Amendment to the Constitution of the United States; and all of said members of the executive branch be and they are hereby directed to comply fully with the Constitution of the State of Mississippi, the Statutes of the State of Mississippi, and said Resolution of Interposition, and are further directed and required to prohibit, by any lawful, peaceful and constitutional means, the implementation of or the compliance with the Integration Decisions of the United States Supreme Court of May 17, 1954 (347 US 483, 74 S Ct 686, 98 L ed 873) and of May 31, 1955 (349 US 294, 75 S Ct 753, 99 L ed 1083), and to prohibit by any lawful, peaceful, and constitutional means, the causing of a mixing or integration of the white and Negro races in public schools, public parks, public waiting rooms, public places of amusement, recreation or assembly in this state, by any branch of the federal government, any person employed by the federal government, any commission, board or agency of the federal government, or any subdivision of the federal government, and to prohibit, by any lawful, peaceful and constitutional means, the implementation of any orders, rules or regulations of any board, commission or agency of the federal government, based on the supposed authority of said Integration Decisions, to cause a mixing or integration of the white and Negro races in public schools, public parks, public waiting rooms, public places of amusement, recreation or assembly in this state.

2. The prohibitions and mandates of this act are directed to the aforesaid executive branch of the government of the State of Mississippi, all aforesaid subdivisions, boards, and all individuals thereof in their official capacity only. Compliance with said prohibitions and mandates of this act by all of aforesaid executive officials shall be and is a full and complete defense to any suit whatsoever in law or equity, or of a civil or criminal nature which may hereafter be brought against the aforesaid executive officers, officials, agents or employees of the executive branch of State Government of Mississippi by any person, real or corporate, the State of Mississippi or any other state or by the federal government of the United States, any commission, agency, subdivision or employee thereof.

[Laws of Mississippi, 1956, ch. 254, §§ 1, 2.]

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NO. 19475

JAMES H. MEREDITH,

Appellant,

v.

CHARLES DICKSON FAIR, et al.,

Appellees.

ORDER DESIGNATING UNITED STATES OF AMERICA
AS AMICUS CURIAE

It appearing from the application of the United States, filed this day, that the interest of the United States in the due administration of justice and the integrity of the processes of its courts should be represented in these proceedings,

IT IS ORDERED that the United States be designated and authorized to appear and participate as amicus curiae in all proceedings in this action before this Court and by reason of the mandates and orders of this Court of July 27, 28, 1962, and subsequently thereto, also before the District Court for the Southern District of Mississippi to accord each court the benefit of its views and recommendations, 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 appropriate in order to maintain and preserve the due administration of justice and the

integrity of the judicial processes of the United States.

The marshal is directed to serve a copy of this order upon each of the parties to this action through their attorneys.

September 18, 1962

15/ John R. Brown
Circuit Judge

15/ John Minor Wisdom
Circuit Judge

15/ Griffin B. Bell
Circuit Judge

A true copy

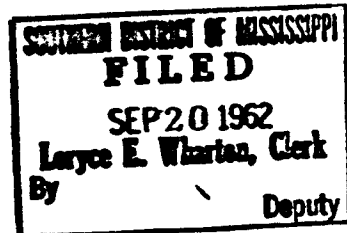
Test: EDWARD W. WADSWORTH
Clerk, U. S. Court of Appeals, Fifth Circuit

Edward W. Wadsworth
Deputy
New Orleans, Louisiana

SEP 18 1962

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

Jackson Division



JAMES HOWARD MEREDITH, et al.,
Plaintiffs,

v.

CHARLES DICKSON FAIR, et al.,
Defendants

UNITED STATES OF AMERICA, as
Amicus Curiae and Petitioner,

v.

JAMES DAVIS WILLIAMS, ARTHUR BEVERLY
LEWIS, AND ROBERT BYRON ELLIS,
Respondents.

No. 3130

PETITION OF THE UNITED
STATES FOR AN ORDER TO
SHOW CAUSE WHY THE
RESPONDENTS HEREIN NAMED
SHOULD NOT BE HELD IN CIVIL
CONTEMPT

No. _____

The United States of America, amicus curiae herein,
petitions the Court for an order requiring 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, (hereinafter collectively referred to as the respon-
dents) to show cause, if any they have, why they should not be held
in civil contempt of this Court, and as reasons therefor alleges:

1. That on September 13, 1962, pursuant to the judgments
and mandates of the Court of Appeals for the Fifth Circuit of
July 17, 1962, July 27, 1962, and August 4, 1962, and pursuant
to the mandate of Mr. Justice Black of the United States Supreme
Court of September 10, 1962, this Court ordered the above-named

defendants to this action, among others, and their agents, servants, employees, successors, attorneys, and all persons in active concert and participation with them, from further refusing to admit James Howard Meredith to continued attendance as a student at the University of Mississippi:

2. That on September 19, 1962, Robert F. Kennedy, the Attorney General of the United States, sent to each of the respondents, among others, copies of the following telegram:

THE PURPOSE OF THIS TELEGRAM IS TO INFORM YOU AND THE BOARD OF TRUSTEES OF THE UNIVERSITY OF MISSISSIPPI OF THE GOVERNMENT'S VIEWS ON THE LEGAL POSITION IN THE MEREDITH CASE. THE OFFICIALS OF THE UNIVERSITY, INCLUDING THE REGISTRAR, HAVE BEEN ORDERED BY BOTH THE DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI AND THE COURT OF APPEALS FOR THE FIFTH CIRCUIT TO ACCEPT AND RETAIN MEREDITH AS A STUDENT THIS SEMESTER AT THE UNIVERSITY. 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 UNITED STATES WHICH HAS THE CONCURRENCE 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 GOVERNOR 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 COMMITMENT FROM YOU OR THE BOARD THAT HE WILL BE REGISTERED IN JACKSON WITHOUT EVASION OR DELAYS 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, MISSISSIPPI, TO REGISTER ALONG WITH OTHER NEW AND TRANSFER STUDENTS. IT IS THE RESPONSIBILITY OF THE DEPARTMENT OF JUSTICE TO TAKE ALL APPROPRIATE ACTION TO MAKE THE ORDERS OF THESE COURTS EFFECTIVE. IT IS OUR VIEW THAT A REFUSAL BY THE OFFICIALS OF THE UNIVERSITY 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 UNIVERSITY 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.

I RESPECT THE STATE OF MISSISSIPPI WHOSE CITIZENS HAVE MADE MANY CONTRIBUTIONS TO THE COUNTRY, AND THE GREAT UNIVERSITY

WHICH YOU ARE PRIVILEGED TO SERVE. HISTORICALLY AMERICAN CITIZENS HAVE FREELY AND FREQUENTLY DISAGREED WITH OR DISAPPROVED OF LAWS AND COURT DECISIONS BUT HAVE OBEYED THEM NEVERTHELESS. THE FEDERAL COURTS HAVE SPOKEN UNEQUIVOCALLY ON THIS MATTER. ALL OF US AS CITIZENS OF THE UNITED STATES HAVE A RESPONSIBILITY TO OBEY THE LAW. I AS ATTORNEY GENERAL HAVE THE RESPONSIBILITY TO ENFORCE THE LAW. I AM CONFIDENT THAT YOU WILL ACT IN SUCH A WAY NOT ONLY AS TO PRESERVE ORDER BUT TO ASSIST IN MEETING THESE RESPONSIBILITIES.
SINCERELY, ROBERT F. KENNEDY, ATTORNEY GENERAL.

3. That on September 20, 1962, James Howard Meredith presented himself for registration as a student for the fall 1962 semester at the University of Mississippi, Oxford, Mississippi;

4. That the above-named respondents, and other persons acting in concert with them, failed and refused to permit James Howard Meredith to register and enroll at the University of Mississippi solely on account of his race;

5. That St. John Barrett, of counsel for petitioners, announced to the respondent Ellis and other persons acting in concert with him, including additional defendants to the principal action, that James Howard Meredith was presenting himself for registration and enrollment at the University of Mississippi pursuant to the order of this Court of September 13, 1962, and that the failure and refusal of the respondents to register and enroll James Howard Meredith constituted disobedience and contempt of this Court's order;

6. That the respondents and other persons acting with them and bound by the order of this Court persisted in their failure and refusal to register and enroll James Howard Meredith at the University of Mississippi solely on account of his race.

CONCLUSION

WHEREFORE, the United States prays for an order

(1) Directing that the respondents be ordered to show cause, if any they have, on September 21, 1962, at a time to be

fixed by this Court why they should not be held in civil contempt of the order of this Court entered on September 13, 1962;

(2) Remanding the respondents to the custody of the Attorney General, and to remain until they agree in open court and instruct their agents, employees and deputies in writing:

(a) to register forthwith for enrollment in the University of Mississippi and to admit forthwith to the University of Mississippi the plaintiff, James Howard Meredith, and

(b) to retain the plaintiff, James Howard Meredith, as a student in the University of Mississippi upon the same terms and conditions as are applicable to white students.

(3) Ordering the assessment and taxation of the costs of this proceeding against the respondents.

UNITED STATES OF AMERICA

By

BURKE MARSHALL
Assistant Attorney General

ROBERT E. HAUBERG
United States Attorney

/s/ J. Harold Flannery
J. HAROLD FLANNERY
Attorney, Department of Justice

VERIFICATION

I, J. Harold Flannery, of counsel for petitioners, hereby

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


Deputy Clerk

affirm that the facts recited in the foregoing petition of the United States of America are true and correct to the best of my knowledge and belief.

J. HAROLD FLANNERY

Subscribed and sworn to before me
this 20th day of September, 1962.

LORYCE E. WHARTON
Clerk of the United States
District Court

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

Debra Carter
Deputy Clerk

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

Jackson Division

JAMES HOWARD MEREDITH, et al.,
Plaintiffs,

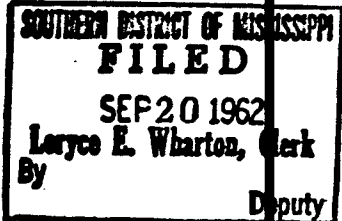
v.

CHARLES DICKSON FAIR, et al.,
Defendants

UNITED STATES OF AMERICA, as
Amicus Curiae and Petitioner,

v.

JAMES DAVIS WILLIAMS, ARTHUR BEVERLY
LEWIS, AND ROBERT BYRON ELLIS,
Respondents.



No. 3130

ORDER TO SHOW CAUSE WHY
A FINDING OF CIVIL
CONTEMPT SHOULD NOT BE
ENTERED

It appearing from the verified petition of the United States of America attached hereto that James David 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, have failed and refused, and are now failing and refusing to discontinue their policy, practices, customs, and usages of excluding Negro students from the University of Mississippi solely because of their race and color, and specifically that they have failed and refused to register and admit the plaintiff in the case of Meredith v. Fair, No. 3130,

all in disobedience of the injunction issued by this Court on September 13, 1962, in the above case:

IT IS ORDERED that James Davis Williams, Chancellor of the University of Mississippi, Arthur Beverly Lewis, Dean of the College of Liberal Arts of the University of Mississippi, and Robert Byron Ellis, Registrar of the University of Mississippi, show cause, if any they have, on September 21, 1962, at 1:30 P. M., o'clock in the United States District Courtroom at the Courthouse in the Federal Building in Meridian, Mississippi, why each of them should not be held in civil contempt by reason of his failure and refusal to obey the injunction of this Court of September 13, 1962.

This order shall be effective immediately.

/s/ Sidney C. Mize
SIDNEY C. MIZE
United States District Judge

September 20, 1962

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

Loryce E. Wharton
Deputy Clerk

DOLE MISS MIXING HASTE

Satterfield Attacks Federal Rule Through Intimidation

Failure of the federal government to avoid judicial procedure, plus ill-advised public statements of high federal officials, has created "government by intimidation," according to the immediate past president of the American Bar Association.

John C. Satterfield, Yazoo City and Jackson attorney, addressed the Jackson Rotary Club at noon Monday, at Hotel Helldorf.

He was introduced by Jackson Alfred, member of the club's program committee. J. Ardy Brown, vice-president, presided at the meeting in the absence of president Fred Neill.

Satterfield analyzed his personal role in the recent Ole Miss integration crisis, and took issue with Attorney General Robert Kennedy and his assistant Nicholas Katzenbach on statements about the state and its attorneys.

He opined that a "government of intimidation" has been built up concerning Mississippi. The bulk of his address is reprinted here in full:

GOVERNMENT BY INTIMIDATION

Every citizen from the smallest to the greatest must recognize that our nation of liberty under the law and freedom of speech

and action is a nation in which men may happily differ and yet respect each other. Unity is diversity will never be attained until we learn to disagree without being disagreeable, that liberty under the law means the freedom of dissent; that might does not make right and that those with whom we disagree absolutely may nevertheless be honest, law-abiding and patriotic American citizens.

In the face of intense provocation by the Attorney General of the United States, I have remained silent concerning the Meredith case. This is for the reason that I am one of the attorneys representing the State of Mississippi, the Governor and other defendants in the Meredith case, which is still pending as to them in the Court of Appeals of the Fifth Circuit. The Attorney General of the United States is also one of the attorneys in that case, acting on behalf of the plaintiff.

It has never been and is not

Continued From Page 1

now my intention to try pending litigation before the public in the newspapers. Such discussion is prohibited generally by Canon 29 of the Canons of Ethics of the American Bar Association. However, the numerous statements by the Attorney General of the United States including derogatory statements concerning the lawyers of Mississippi and the South have been accentuated by Deputy Attorney General Katzenbach's speech recently made before a bar association in Washington, D.C.

It is my considered opinion that such statements cause the present situation to become "an extreme circumstance of a particular case justifying a statement to the public," as provided in Canon 29. I conceive it to be my duty to the legal profession in Mississippi and the nation to make such a statement at this time.

It is regrettable that within recent days and weeks, the lawyers of Mississippi and the South have been called cowards by Attorney General Robert K. Kennedy; they have been recklessly accused by Deputy Attorney General Katzenbach of being untrue to their professional trust and of contributing by their silence to the violence at the University of Mississippi; I have been personally so accused by name by Mr. Katzenbach; Mississippi educators have been called "weak men" by the Attorney General; Mississippi businessmen have been threatened with economic reprisals and Mississippi citizens have been threatened by the Attorney General with diversion of federal funds to which they are justly entitled — all because they have not agreed with the Attorney General of the United States in the Meredith case. Is government by intimidation taking the place of liberty under the law?

BELIEVE IN PEACE

The lawyers, educators, businessmen and other citizens of Mississippi believe in law and order, and the use of judicial processes to determine and enforce the rights of parties in any litigation. They believe in the maintenance of peace and prevention of violence. They resist and do not con-

done the violence and rioting at the University of Mississippi.

Two are dead. Many are injured. Irreparable damage has been done. The violators of the law should be punished. No issue exists on this score between federal and state officials. Professional and businessmen of Mississippi

and its other citizens are in accord with men of like mind throughout the nation.

Nevertheless, every citizen of our country must realize that a person or a state which tests whether or not he or it is bound by a court decree to which he or it was not a party, or attempts to persuade a court to overrule any one or more of its decisions, is exercising a heritage of freedom which is ours under our form of government and is not a violator of the law or a defier of the Constitution of the United States.

In this time of peril these truths should be recognized by all citizens of our great country, whether they be liberal, moderate or conservative. There must be forbearance and there must be understanding.

The American people must realize that citizens who act to protect their constitutional liberties and states which act to protect their sovereign rights are not defiers of the law nor violators of our Constitution.

What has happened in Mississippi is an illustration of what may happen in any state when the desire of the Attorney General or the President of the United States may be opposed by a state or by individuals. As was said by the editor and publisher of the Manchester, New Hampshire, Union Leader concerning actions of the federal marshals in the classroom of the University of Mississippi:

"It can happen here—you may say this is remote from you since you are not in Mississippi, but if federal marshals can use this sort of illegal and unauthorized force to keep a group of students sitting in a classroom where they don't want to sit, in Mississippi, they can do it to you right here in New Hampshire—and your freedom is gone.

It seems that tolerance and forbearance have been forgotten

and we have come to a sort of "government by intimidation". This is a grave charge, but here are the facts:

1. The use of more than 400 armed federal marshals and more than 25,000 armed troops by the Attorney General in preference to completing pending judicial processes, including orderly and constitutional procedures in maintaining due process of law in the United States. It is intimidation by physical force.

2. Attorney General Robert Kennedy recently told a reporter for the Sunday Times of London: "I have been talking this

week to the top executives of forty important business firms whose central offices are not in the South but who have branches and investments in Mississippi, and have asked them to use their influence, either by persuasion or by threatening to curtail their investments in Mississippi."

INTIMIDATION

Financial pressure upon private business concerns goes far beyond the legitimate functions of the federal government and its officials. This is intimidation by economic pressure.

3. On the same date the Attorney General said in the same statement:

"The Federal Government is spending about 650 million dollars in Mississippi, even though the state pays only 350 million dollars in federal taxes. There are possibilities of withholding some Federal money from Mississippi, but it's a lever that must be handled with great delicacy."

There is nothing delicate about this statement. It goes far beyond the legitimate functions of the federal government and its officials. This is direct financial intimidation.

Clarion-Ledger

Jackson, Miss.

Date: 11/13/62

Continued on Page 2

4. In the same interview the Attorney General said, "One of the troubles is that the University of Mississippi officials are weak men." I had thought that courage to disagree with men in high places denoted attributes far from weakness.

Name-calling goes far beyond the legitimate functions of the federal government and its officials. This is government by personal intimidation.

5. In another statement the Attorney General called all lawyers in Mississippi cowards when he said: "One of my great disappointments in our present effort to deal with the situation in Mississippi has been the absence of any expression of support from the many distinguished lawyers of that state"; "courage is a most important attribute of a lawyer," and "whether they agree or not, they still have their obligations as lawyers and they have remained silent."

The lawyers of Mississippi have spoken through Senators James O. Eastland and John C. Stennis, Congressional leaders and other members of the bar and will continue to speak whenever it is appropriate so to do.

They will not violate their convictions and consciences to curry favor in high places. They will not speak in favor of enforced conformity brought about by intimidation and name-calling.

They have spoken through the members of the bar who are at-

torneys for Governor Ross Barnett, Lieutenant Governor Paul Johnson and other state officials through pleadings, briefs and arguments filed in the Court of Appeals of the Fifth Circuit.

I speak today as a Mississippi lawyer in behalf of the lawyers of our state.

When the highest legal officer of the United States calls lawyers cowards because they disagree with him, this goes far beyond the legitimate functions of the federal government and its officials. This is government by personal intimidation.

KATZENBACH, TOO

6. On October 25 Deputy Attorney General Katzenbach at a meeting castigated Mississippi and other lawyers for their "failure to help win public acceptance of court decisions on school desegregation and other civil rights issues."

He accused the lawyers of Mississippi, Alabama and the South, and me personally, of "looking at

controversial issues only in the terms of the immediate effect on them as lawyers," and charged that the "silence of the state's lawyers" was a contributing factor to violence at the University of Mississippi.

He would destroy the right of every individual and the right of every state to invoke judicial processes and judicial defenses in pending litigation. He would destroy the right of lawyers to urge that a Court overrule decisions which they believe to be unsound, improper and against the public interest (the Brown integration decision was obtained in 1954 by this very process on the other side of the controversy).

It is the privilege of every lawyer to constructively criticize any decision of any court and to attempt to have such decision overruled.

It is the privilege of every citizen (and every state) to test the applicability of any decision to his own particular circumstances, and to ask the Court to differentiate those facts from facts upon which a former decision was based.

Yet Mr. Katzenbach accused lawyers of unprofessional conduct for selfish purposes and of contributing to violence when they carry out their professional duty of constructively disagreeing with and criticizing court decisions which they believe to be ill-founded, contrary to the plain meaning of the Constitution of the United States, and which they believe should be overruled.

This goes far beyond the legitimate functions of the federal government and its officials. This is

also government by personal intimidation.

It seems that the Attorney General of the United States and his deputy would accuse any lawyer of cowardice and unprofessional conduct who publicly or privately criticizes a decision of the Supreme Court of the United States. This would not permit lawyers to follow the admonition of Chief Justice Stone who once said:

"I have no patience with the complaint that criticism of judicial action involves any lack of respect for the courts. When the courts deal, as ours do, with great public questions, the only protection against unwisdom, and even judicial usurpation, is careful scrutiny of their action and fearless comment upon it."

They would repudiate the recent statement of Mr. Justice Brennan when he stated in the case of *In re Sawyer*, 348 U.S. 622: "The public attribution of honest error to the judiciary is no cause for professional discipline in this country."

They would also ignore the further statement of Mr. Justice Douglas in the same case when he said: "We start with the proposition that lawyers are free to criticize the state of the law."

Finally they would disregard the statement of Mr. Justice Sutherland in *Swift vs. Tyson*, 16 Pet. (U.S.) 1, 18, when he referred to decisions of the Court saying:

"They are often re-examined, reversed, and qualified by the Court themselves, whenever they are found to be either defective, or ill-founded, or otherwise incorrect."

LAWYER'S RIGHT

No lawyer has any duty to "help win public acceptance of court decisions on school desegregation and other civil rights issues" or any other issue. They have the right to remain silent or to publicly criticize such decisions. They have the right to attempt to have them overruled and to limit their application in every case to which it may be thought they apply.

Attorney General Kennedy and Deputy Katzenbach ignore the fact that the Brown integration decision was obtained by a long campaign of criticism of five decisions of the Supreme Court of the United States (including *Plessy v. Ferguson* and *Gong v. Rice*) which upheld the "separate but equal" doctrine.

Attorneys and others prevailed upon the Supreme Court of the United States to change that doctrine (which the Court had upheld for more than seventy years), and persuaded it to overrule five of its own decisions and more than twenty-five decisions of Supreme Courts of the several states.

These men were not accused of being defiers of the Constitution and violators of the law. Nor were they accused of having breached their obligations as lawyers.

Now that the shoe is on the other foot, men in high places, in order to attain their own political ends, have indulged in fallacious and unjustified criticism of those who oppose them.

HASTE AND TRAGEDY

Why then did Deputy Attorney General Katzenbach thus attack me by name and the lawyers of

Mississippi, Alabama and the South by designation? Why did the Attorney General of the United States make the attacks I have recounted and also castigate "local newspapers, radio and television stations, politicians, businessmen, most of the clergy in Mississippi in connection with the tragic events which occurred at the University of Mississippi?"

There is an old saying: "A guilty conscience needs no accuser." This is the only explanation that I can have for men in high places taking advantage of their position to attack members of their own profession.

There can be no justification for such statements in the "or-

dered scheme of liberty" existing under our Constitution and laws, in the respect which every member of the legal profession should hold for every other member thereof, or in professional courtesy and proper relationship. Such action is a patent attempt to shift the blame for the tragedy at Oxford.

The Attorney General of the United States and his Deputy cannot escape the fact that the tragedy at the University of Mississippi (resulting in two deaths, the injury of many persons and heavy destruction of property) was precipitated by the unwillingness of Attorney General Robert F. Kennedy to await the completion of judicial processes which he had invoked and which, if permitted to continue, would have resulted in a final determination of the Meredith case and enforcement by regular judicial processes of whatever that determination might have been.

Neither Governor Ross Barnett nor Lieutenant Governor Paul B. Johnson were parties to the James Meredith case in the United States District Court. They were not parties to the appeal in the United States Court of Appeals nor parties to the petition for Writ of Certiorari (a request to be heard before the Supreme Court of the United States).

Neither they nor the State of Mississippi were joined until September 25, 1962, and then only as respondents to a restraining order issued without notice or hearing by the United States court of Appeals. Their rights and duties under the Mississippi Constitution and statutes had not been adjudicated.

At all times leading up to the tragedy the original Meredith case was before the Supreme Court on petition for writ of Certiorari.

When Governor Barnett and Lieutenant Governor Johnson personally denied admission to Meredith at the University, this provided the basis for a legal test as to whether the Governor and the Lieutenant Governor were bound by the Meredith suit to which they had not been joined as parties.

Additionally, it provided legal means to test the constitutional right of the Governor (under the Tenth Amendment to the Constitution of the United States) to enforce state statutes not considered by the Court in the suit between Meredith and the University of Mississippi officials and the Board of Trustees.

LEGAL TEST SET UP

On September 25 Attorney General Kennedy set up this legal test by obtaining from the Court of Appeals a restraining order and a citation of the Governor and Lieutenant Governor. The citation was heard on September 22. The Governor and the Lieutenant Governor were given until October 2 to determine whether they would permit registration of the applicant.

Also on September 25 a motion was filed by the State of Mississippi to dissolve the restraining order which raised for determination the legal rights of the new parties. This motion was set for hearing on October 1. The very nature of the case called for both the State of Mississippi and the Attorney General of the United States to pursue their legal remedies through the Court to their final completion.

However, the Attorney General of the United States was not willing to wait either the action of the Supreme Court on the original case or the outcome of the judicial processes which he had invoked against the Governor and the Lieutenant Governor.

He decided to rush in more than 25,000 troops on September 26 to force the registration of James Meredith at the University of Mississippi.

This registration was accomplished by force before the Octo-

ber 2 or the October 3 hearing could be held and before the Supreme Court had time to pass upon the Petition for Certiorari which was still pending in the original case. Not until eight days after the tragic events at Oxford did the Supreme Court consider the petition.

If the Attorney General had been willing to rely on judicial processes and not on unauthorized and illegal armed force, the Court of Appeals and the Supreme Court of the United States would have been given an opportunity to pass upon the rights of the Governor and of Mississippi as one of the sovereign states in the legal test set up by the Attorney General himself five days earlier.

Whatever judgment such Courts entered would have been ultimately carried. If the judgment were adverse, all legal remedies having been exhausted, registration would have been obtained by the use of available legal processes. On the other hand, if the Governor and the Lieutenant Governor had been permitted to be heard as new parties to the suit, they might have been successful and obtained a judgment in their favor.

JUDICIAL PROCESS

Before the decision was made by the Attorney General to use unauthorized and illegal armed force to obtain an immediate registration of Meredith, the Governor and Lieutenant Governor had exercised the sovereign right of the State of Mississippi to prevent such registration and thereby invoked judicial processes which would have resulted in a final judicial determination.

Every element of this case required the exhaustion of every legal remedy by all parties to the suit. Precipitate action by the use of armed force was destructive of due process of law and of the proper relationship of federal government to each of its sovereign states.

That the case was a close one and its determination on the original merits was doubtful, has been lost sight of in the violent action taken by the Attorney General and the violence which it precipitated.

In fact, as the original case had progressed, the University of Mississippi officials and its Board

of Trustees had found that Meredith was not qualified to become a student at the University. The United States District Court had upheld these officials after a full hearing.

On the appeal, one of the members of the three-judge panel of the Court of Appeals found that Judge Mize was correct in holding that Meredith was not qualified to become a student at the University. However, as two of the panel held contrary to the District Court, the finding of the Court of Appeals was against the University.

The University officials then petitioned the Supreme Court of the United States for a writ of certiorari. This was pending undischarged of on the docket of the Supreme Court. Thereafter the proceedings were invoked against the Governor and Lieutenant Governor of Mississippi.

All pending proceedings were interrupted by the use of armed marshals and troops with resulting death, injury, destruction of property and expense to the taxpayers of the United States estimated by Senator John C. Stennis to exceed \$3,000,000.

This is neither the time nor the place to discuss the contrived and obscure details of those tragic events which occurred at the University of Mississippi.

There is one incontrovertible fact which should never be forgotten. There was no disturbance, no injury, no death, so long as Governor Barnett was permitted to be responsible for law and order in Mississippi.

There has never been a clash between armed officers of the State and armed officers of the federal government. Whenever they met, the state officers were unarmed. Governor Barnett whose total force of State Highway Patrolmen available for duty as traffic officers through the entire State numbers less than 225 officers maintained peace and order at Ole Miss and Jackson as long as he was permitted to do so.

Prior to the sending of armed marshals to the University campus, the President had federalized the National Guard and they were not available to the Governor for use in maintaining law and order. It was only when the federal authorities took over that violence, injury, death and destruction of property resulted.

The main source of trouble of the many which have been made was that of President Kennedy, quoted in the "Nation" Report" as saying: "The U. S. Marshals were in a jam and blundered in their use of force. It was a very sad day."

TODAY AND TOMORROW

During recent weeks and months every action of Governor Barnett concerning the University of Mississippi has been in support of the administrative

authorities of the University, while acting in accordance with their own free will and discretion.

The action taken by him and by the Board of Trustees of the Institutions of Higher Learning in connection with the registration of James H. Meredith was in direct support of the affirmative finding of the administrative officials of the University of Mississippi that Meredith was not qualified as a student.

It constituted support of and interference with the administration of the University. The only interference with the administration of the University of Mississippi has been by the federal government, and that interference is continuing.

The University of Mississippi is a great educational institution. It has a distinguished record of service to Mississippi and to education in the United States. The administration of the affairs of the University of Mississippi, under the general supervision of the Board of Trustees of the Institutions of Higher Learning, is vested in Chancellor J. D. Williams and his administrative organization including the Student Judicial Council, within its functions.

It is the obligation of the students of the University of Mississippi to carry out fully and completely the rules and regulations of the administration of the University of Mississippi. These include regulations prohibiting any form of violence, the use of obscene and profane language, the throwing of firecrackers or other objects and other similar actions.

Violation of such regulations injures and does not help the State of Mississippi, its University and its public officials.

Among the rights guaranteed to all of us under the Constitution of the United States and the Constitutions of the several states is the right of freedom of speech, freedom of assembly, freedom of association and the right to petition for a redress of grievances.

All of these rights, however, are subject to the statutes adopted by proper legislative authority and the rules and regulations laid down by University officials or other authorities within their jurisdiction.

This does not mean in any sense that in our free America, with the right of liberty under the law, any person does not have the full, free and complete right to choose his associates, to evidence his disagreement or displeasure with any person or persons at any time or in any manner which is legal and lawful action and within applicable rules and regulations of the duly constituted authorities.

SUPPORT OLE MISS

As citizens of Mississippi we should do everything possible to preserve our educational system and to support the University of Mississippi, its administrative officials and the Board of Trustees of the Institutions of Higher Learning. They are devoted and capable men who have the best interests of our State at heart.

If we differ with any decision which they make or any action which they take in the discipline of students or otherwise, we must recognize that they are acting within the scope of their authority and that the action they take is deemed by them to be to the best interests of the University, the students and the State of Mississippi.

Under these circumstances, if we feel any such decision is incorrect and that it should be reconsidered or modified, such action should be sought from the administration or the Trustees by and through the duly constituted channels.

We must help in every way we can to maintain the educational atmosphere so necessary to a great university such as ours. We must not allow a situation to arise which might result in loss of its accreditation or its standing as a great educational institution.

You may be assured Governor Barnett, Lieutenant Governor Johnson and all of the officials of the State of Mississippi will pursue every legal and lawful means to a final conclusion in order to maintain the sovereignty of our State and the right of the State of Mississippi to administer its own educational institutions.

There is not now and never will be a change in that policy or the determination of your leaders to carry it out. These are matters which should and must be handled by the duly constituted authorities of the State, in behalf of all people of the State and in accordance with the personal and official convictions and principles of each officer.

This will be done by them for you and the other citizens of Mississippi.

When a contest arises between a sovereign state and the federal government, the responsibility for maintaining the constitutional principles in which we all believe rests upon the public officials, with the support for their actions by private citizens whose rights may be affected.

In this tragic hour, I hope that all of us will keep our heads, that we will refrain from name-calling, and that we will not impugn the motives of those with whom we disagree.

Those who disagree with us in one direction are not necessarily diabolical nor anarchists — those who disagree with us in the other direction are not necessarily Communists nor disloyal to the United States. We must be able to disagree without being disagreeable.

BY THE COURT: The parties to this litigation having rested and the Court having heard full arguments in this matter, now makes the following Findings of Facts and Conclusions of Law:

This Court on the 13th of September, 1962, issued a permanent injunction against all defendants that were named in the cause styled James Howard Meredith vs. Charles Dickson Fair, et al, Number 3130 Civil, enjoining the defendants and each of them in the following language -- not quoting the entire matter, but part of it:

"Their agents, servants, employees, successors, attorneys and all persons in active concert and participation with them be and they are hereby 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 same 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 discriminating 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."

On September 20, 1962, this Court issued a fiat to the three defendants named here to appear here today and show cause, if any they could, why they had not carried out the injunction that I had heretofore issued. The defendants, and the only three defendants involved in this action, are James Davis Williams, Arthur Beverly Lewis, and Robert Byron Ellis; and the fiat required them to be here on September 21, 1962, at 1:30, and that they should appear here and show why they should not be held in civil contempt by reason of their failure and refusal to obey the order of this Court of September 13, 1962.

At the beginning of the proceedings today an objection was made by the defendants proceeding in this cause unless criminal action, or petition, also be heard at the same time. The Court, thinking it was a proper case for the consolidation of a criminal and civil action -- for a criminal violation of the injunction, as well as a civil contempt violation for violation of the injunction -- stated into the record that he would regard the criminal petition to be in substantially the same language as were the charges in the civil contempt proceeding, and consolidated the two for trial. They have been tried, and the criminal action has heretofore been dismissed during the argument of the Government.

On the 20th of September, 1962, the Governor of the State of Mississippi invoked the doctrine of interposing and invoking the police powers of the State of Mississippi in order to secure the people of the State of Mississippi and for protection of all the citizens of the State of Mississippi and all others who may be within the confines of the State of Mississippi, and on that date notified James Howard Meredith that he was refused admission as a student at the University of Mississippi, and any other person or persons who, "in my opinion, by such admission, would lead to a breach of the peace and be contrary to the administrative procedures and regulations of the University of Mississippi and the laws of the State of Mississippi."

In that document he advised Meredith that he would refuse admission. The contract between Robert R. Ellis and the Board of Trustees of the State Institutions of Higher Learning was entered into on the 2nd of July, 1962, which is

A renewal of contracts theretofore entered into, and it is shown Mr. Ellis had been one of the teachers at the University of Mississippi for years.

Likewise, on the 2nd of July, 1962, a contract was entered into between the Board of Trustees of State Institutions of Higher Learning and John D. Williams to the position of Chancellor. The evidence shows, and I find it a fact, that Chancellor Williams had been chancellor since 1948, I believe, to say the least, for many years prior to that date, and the presumption and inference is that the same terms of contract were entered into prior thereto with the exception, possibly, of salaries, because the contract provided that the salary could be changed from year to year.

The contract between Robert B. Ellis and the Board of Trustees of the State Institutions of Higher Learning heretofore referred to named him to the position of registrar.

The contract between the Board of Trustees of the State Institutions of Higher Learning and Arthur B. Lewis was entered into on the 2nd day of July, 1962, and presumably was renewal of contracts theretofore entered into between the parties, as the testimony shows, and I find as a fact that Arthur B. Lewis had been employed at the University by similar contracts for several years.

On September 20, 1962, certain excerpts from the minutes of the Board of Trustees, introduced in evidence by Defendants' Exhibit No. 2, in short, invested in Honorable Ross E. Barnett, the Governor of the State of Mississippi, full power, authority,

right and discretion of the Board of Trustees to act upon all matters pertaining to or concerned with the registration or non-registration or with reference to the admission or non-admission and/or attendance or non-attendance of James H. Meredith at the University of Mississippi, and that a certified copy of the resolution, together with copies of the conflicting injunctions of Honorable S. C. Mize, dated September 13, 1962, and Chancellor L. B. Porter, dated September 19, 1962, previously served upon the members of the Board, be furnished to the Governor in his capacity as Chief Executive Officer of this state, the representative of this Board, and the repository of its full rights, power, authority and discretion for such course of action as the Governor shall deem legal, fit and proper in the premises.

Exhibit No. 1 of the Defendants was an excerpt of the minutes of the Board of Trustees of the State Institutions of Higher Learning passed on September 4, 1962, which is headed "Amended Order as to the Application of James Howard Meredith." This document reads as follows, omitting the formal parts: (Whereupon the Court read Defendants' Exhibit No. 1.)

I find as a fact that that document withdrew all power from any and every official of the University of Mississippi to act upon the application of James Howard Meredith and vested it entirely in the Board of Trustees.

I find as a fact that Chancellor Williams, Dean Lewis, and former Registrar Ellis had no power whatsoever to pass upon the application as to the admission or rejection one way or the other. The power was vested exclusively and completely in the

Board of Trustees of State Institutions of Higher Learning of the State of Mississippi. I find as a fact that particularly the power of the registrar Ellis by that document was fully and completely withdrawn, and that as to his power, and he had absolutely none, it was not transferred but was by that document completely and fully withdrawn.

I find as a fact that on the 20th of September, 1932, James Howard Meredith presented himself at the University of Mississippi and was directed by the United States Marshal and the Highway Patrolmen to present himself at the Continuation Center Building, and that he did thereupon present himself, and present on that occasion and at that time were Governor Barnett and the former Registrar Ellis, and that at that time Ellis read to James Howard Meredith a copy of the resolution, and handed one to him and Ellis declined to act one way or the other. He did not refuse to accept him; he did not accept him; but, simply acting under the resolution heretofore read into the records, declined to act one way or the other upon the ground and theory that his power was completely and fully withdrawn.

On that same occasion and at the same time, Chancellor Williams nor Dean Lewis were present. At no time did Chancellor Williams or Dean Lewis have any power or any authority to register applicants. It was no part of their duty to do so. Dean Lewis' appointment was under his contract that of Dean of the College of Liberal Arts and Professor of Physics and Astronomy, and at no time by his contract was he authorized to act as a registrar of students. By virtue of his contract he had no authority to so act.

The same is true with Chancellor Williams, except his was as Chancellor of the University of Mississippi, and as such chancellor the contract did not authorize him to act as registrar of students and he never did at any time act as registrar of students.

At the hearing above-mentioned when James Howard Meredith presented himself for registration, Governor Barnett took over and was in complete charge, by virtue of the resolution vesting it in him granted by the Board of Trustees of passing upon the registration, acceptability or rejection of James Howard Meredith, and Governor Ross Barnett did advise James Howard Meredith that his application was rejected. Neither of the defendants on trial here participated in any way in the rejection or acceptance of James Howard Meredith. Neither of them interfered in any way whatsoever with his admission, nor did they attempt to influence anybody in rejecting his application. They were guilty of no conduct that could be construed as aiding, abetting or assisting in the rejection of the application of James Howard Meredith. They were particeps criminis in no respect as a matter of fact whatsoever. They under the facts in the present case had no duty to perform with reference to James Howard Meredith at the time on the 20th of September, 1962, when he presented himself for acceptance, but this whole power, the entire power, had been vested in the Governor of the State of Mississippi.

As to the members of the Board of Trustees and the Governor or any other persons who might have participated in any way, is not

before this Court now. The only three are Chancellor Williams, Robert B. Ellis, and Dean Lewis.

I conclude as a matter of law that the authority to operate the University of Mississippi is vested in the Board of Trustees by the constitution, as well as by acts of the legislature. The constitution provides that the administration, operation, of the state institutions of higher learning should be vested in a board of trustees to be appointed by the governor and approved by the senate. That is shown by one of the exhibits wherein the Honorable Joe T. Patterson, Attorney General of the State of Mississippi, quotes that section 213-a of the Constitution of the State of Mississippi, which provides that "The State Institutions of Higher Learning now existing in Mississippi, . . . , shall be under the management and control of a Board of Trustees to be known as The Board of Trustees of State Institutions of Higher Learning. . . .". That is a valid provision as a matter of law of the constitution as the state when it operates public education has the right and the power to determine and in whose jurisdiction matters shall come, provided, of course, that there shall be no difference or no distinction because of race against anybody. But the constitution here does not mention the question of race, but simply provides in what authority the power to operate the institutions of higher learning rests, and that is a valid provision of law.

I conclude as a matter of law that the resolution of September 4th withdrawing all power from any employee, agent, or servant of the University of Mississippi was a valid exercise of the powers of the Board of Trustees, and that when they withdrew

that power from anyone, except vesting it in the Board of Trustees of Institutions of Higher Learning, withdrew the power of the registrar, Ellis, to register or refuse to register. He was powerless to do anything, and, not having done anything in active concert with anybody who did take action, he is not guilty of violating the terms of the injunction. A different situation would have been presented if the evidence had shown that he solicited, participated in, or that he advised this course and instigated this course. Then he would have been in active participation with those who actually took action. The evidence is absolutely silent, and there is not a scintilla of evidence that he participated in the drawing of these resolutions or instigated these resolutions; but, under his contract, the Board of Trustees had the power to withdraw any duties they had given to him, and in the resolution referred to the power was completely withdrawn from him and was vested in the Board of Trustees of the Institutions of Higher Learning in the State of Mississippi. I conclude as a matter of law, therefore, that the Defendant Ellis did not violate the terms of any provision of that injunction issued on the 18th of September, 1962, which I have already read into the record. He has interfered in no manner, has taken no action in the matter, has not refused to admit the applicant, and he has not joined in anything in any way whatsoever that would connect him as being particeps criminis; and that, therefore, he has violated no provision of the injunction.

As to Chancellor Williams and Dean Lewis, the evidence has shown very clearly that they took no action, they had no power even if the resolution had not been passed, and with the passage of the resolution heretofore referred to, all powers were withdrawn from them, and they therefore did not have any power or authority under their contract, or from any other source, to take any action, and that they have not participated in any way. There is no evidence, not a scintilla of evidence, that they instigated, procured, cooperated in the preparation of the resolution heretofore referred to and that they therefore did not violate any of the provisions of the injunction issued on the 13th of September, 1942.

I conclude as a matter of law that the trustees did not order any of these defendants to do anything, but, as heretofore stated, it simply withdrew all power from these defendants to do anything whatsoever.

I conclude as a matter of law -- and I do this in response to argument of Mr. Smith -- that while it was permissible and there was no objection to argument as to the high standing and as to the detriment it would do to them for this conviction, I conclude as a matter of law that that argument was immaterial. I have not taken it into consideration, but have passed upon this free of any sympathy or bias and strictly upon the law as I see it.

So I conclude as a matter of law that each of the

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defendants is not guilty of violation of the injunction of September 13, 1962, in any way whatsoever, and that they should be discharged from any civil contempt.

An order may be drawn in accord herewith, and the court now stands in recess.

COURT REPORTER'S CERTIFICATE

I, D. B. JORDAN, Official Court Reporter for the United States District Court, Southern District of Mississippi, do hereby certify that the foregoing pages constitute a TRUE AND CORRECT transcript of that part of the proceedings in this cause so transcribed here, had upon the 21st day of September, 1962, before the Honorable Sidney C. Mize, United States District Judge for the Southern District of Mississippi,

This the 23rd day of September, 1962.


D. B. JORDAN
