Filed
10-15-62

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 19,475

JAMES H. MEREDITH,

Appellant

vs.

CHARLES DICKSON FAIR, et al.,

Appellees.

UNITED STATES OF AMERICA,
Amicus Curiae and Petitioner,

vs.

STATE OF MISSISSIPPI, et al.,

Defendants.

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* Prepared by Vacca

MEMORANDUM ON BEHALF OF THE UNITED STATES

I

By its order of September 28, 1962, this Court found Ross R. Barnett in contempt of its restraining orders entered on September 25, 1962. This finding was

based upon evidence that Governor Barnett personally and through law enforcement officials of the state, acting under his direction, physically prevented James Meredith from entering the University of Mississippi as a student in accordance with the order of the Court of July 28, 1962.

Governor Barnett's conduct was found by this Court to have the deliberate and announced purpose of preventing compliance with the Court's order. Nevertheless, because the proceeding was in civil contempt and remedial in purpose, the Court gave Governor Barnett until October 2, 1962, to show that he was fully complying with the terms of the Court's restraining orders entered on September 25, 1962. The order of contempt provided that unless the Governor showed such compliance he should be committed to the custody of the Attorney General and pay a fine to the United States of $10,000 per day. In order to show full compliance, the Court required that the Governor show that he had stopped doing the acts which the court had enjoined, and that he had started to do what he should have done all along as Governor of the State of Mississippi, that is:

> ". . .that he [had] notified all law enforcement officers and all other officers under his jurisdiction or command:
>
> "(a) To cease forthwith all resistance to and interference with the orders of this Court and the District Court for the Southern District of Mississippi;

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

On October 2, Governor Barnett appeared before this Court for the first time through his counsel. In answer to questions from the Court, counsel stated that the Governor was in full compliance with the Court's order, and would fully comply with orders of the Court in the future to the extent he was physically able to do so. Counsel showed through representations to the Court that James Meredith had been permitted to enter as a student at the University without interference from Governor Barnett or other state officials, and that Governor Barnett had twice called upon the people of Mississippi in general terms to keep the peace.

There is no dispute that Governor Barnett had then ceased his affirmative interference with compliance with the Court's order of July 28, and was to that degree in compliance with the Court's orders of September 25 and September 28. He did in fact, between the contempt order of the Court on September 28, 1962, and the hearing on October 2, 1962, cease the physical resistance to the orders of the Court which he had previously undertaken personally and through other state officials. Law enforcement officials of the state did not interfere with the entrance of federal

law enforcement officers to the campus of the University of Mississippi on Sunday, September 30. Instead, by pre-arrangement with the Governor, the federal officials were met by state law enforcement officers and were escorted onto the campus. Statements were made to the federal officials that the state officers would cooperate with them in maintaining order. In addition, James Meredith was accompanied by state as well as federal officials when he personally entered the campus of the University and no attempt was made to interfere with that event.

The significance of this much compliance with the orders of the Court by Governor Barnett should not be underestimated. By reason of the Governor's arrangement to have Meredith enter the University on September 30 a conflict between state and federal law enforcement officials which had previously seemed inevitable was avoided.

Nevertheless, Governor Barnett has clearly not made a showing that he has purged himself of contempt as required by the September 28 order of this Court. He has shown a cessation of prior resistance to and interference with the order of the Court. He has not shown what instructions, if any, were given to the law enforcement officers of the state under subparagraph (b) of the order of September 28. All of the state court orders, the arrest warrants, the state court actions brought by the Governor, and the six

proclamations of September 13, 20, 24 and 25 are still outstanding as far as appears on the record.

This is not a failure of detail, or merely a lack of any showing of what specific instructions were given. There has been no showing that state law enforcement officers in fact made efforts to maintain law and order at the University or to cooperate with federal officers. During the height of the riot at Oxford on the night of September 30, no state police were present. The Court can notice that law and order was maintained on the night of September 30 and the morning of October 1 and since then only by several hundred deputized federal marshals and thousands of troops sent to Oxford at the command of the President of the United States to put down widespread civil disorder in that area.

Further, at the hearing on October 12 counsel for the Governor retracted their statements that the Governor intended in the future fully to comply with the orders of the Court. While the exact position of the Governor is now unclear, the Court must assume for the present that the Governor intends to comply only with such orders of the Court as he feels are consistent with the policies and laws of the State of Mississippi, and that the Governor will not notify law enforcement officers of the state, as required by the order of September 28, that they should maintain law and order at and around the University and cooperate

with federal officers to the end that James Meredith be permitted to remain as a student at the University under the same conditions as apply to all other students.

This being so, the Court would be justified in imposing upon the Governor the sanctions set forth in its order of September 28th.

Upon oral argument, counsel for the United States advised the Court that the Government did not believe that, in view of the important step taken by the Governor in ceasing interference with the Court's orders, the sanction of imprisonment would now serve a useful, remedial purpose. Law and order at the University, and the personal protection of Mr. Meredith, are still being achieved through a force of federal troops. The Government is presently unable to advise the Court when this will cease to be necessary.

On the other hand, the Governor has failed to show that he has purged himself of contempt. He has failed to show that he has or will exercise the basic responsibility of the Chief Executive Officer of the State of Mississippi to preserve both law and order within the borders of that state. Under these circumstances, we believe that the Court should impose the other sanction set forth by the order of September 28, and that the Court should continue to impose that sanction until the Governor has issued the instructions called for by the order of September 28.

It should be fully recognized that the Governor of a state can as effectively interfere with the desegregation order of a federal court by refusing to enforce the law as by active acts of obstruction. He controls the executive branch and the law enforcement machinery of the state government. It was accordingly proper for the Court in its order of September 28 to require the Governor, in order to purge himself, to show that he was not interfering with the Court's order by inaction as well as to show that he had ceased active defiance.

In the light of the remedial purposes of the proceeding, it is appropriate now for the Court to use the sanction of a fine to compel compliance with the affirmative provisions of the Court's order. The sanction of imprisonment would have been necessary if the Governor had not ceased his active and physical interference with compliance with the Court's order. It may again be necessary, and might also be appropriate as a punishment for criminal contempt. But what is required now is for the Governor to take affirmative steps in his capacity as Governor to maintain law and order in the vicinity of Oxford and to see that the orders of the Court are not interfered with by the citizens of Mississippi or anyone else. The use of fines for this purpose is fully in keeping with the United Mine Workers case, 330 U.S. 258, 304-305, upon which this Court based its order of September

28. For the principal restraining order which Governor Barnett has violated was sought by the United States as a friend of the Court, to protect the integrity of the processes of the Court. And it is the United States which has suffered immense financial as well as other harm from the course of action followed by the Governor since September 13, and from his failure to meet the requirements of subparagraph (b) of the order of September 28.

We believe that it is within the discretion of the Court whether the full amount of the fine set forth in the order of September 28 should now be imposed for the period since October 2, 1962 until the hearing on October 12, 1962. The full amount of the fine is justified by the amount of damage -- financial and otherwise -- done the United States by the Governor's failure to uphold the law. Any ambiguity as to the requirements imposed by the Court for the period between October 2 and the hearing on October 12 is due entirely to erroneous representations made on behalf of the Governor at the October 2 hearing. In any event, however, we believe that the full amount of the fine of $10,000 per day should be imposed from the date of any further order issued by this Court until the Governor issues the required instructions.

A proposed order to accomplish these ends is attached to this Memorandum. The order also contains a paragraph designed to require, if the Court so

desires, that the Governor submit a signed statement to the Court on the steps taken by him in compliance.

II

In the event it should become necessary, this Court would, of course, have the power to order the arrest of Governor Barnett.

Federal courts have been held to have the authority to enter a judgment that a contemnor be imprisoned until he purges himself of contempt. See Uphaus v. Wyman, 360 U.S. 72, 81 (1959).

Since that is so, it follows that the Court has power to issue an order to a U.S. Marshal directing him to carry out its judgment of imprisonment by taking the contemnor into physical custody, and such orders have, in fact, been issued. United States v. Shipp, 214 U.S. 386, 483 (1909); In re Delgado, 140 U.S. 586, 587 (1891); Wilson v. United States, 65 F. 2d 621, 622 (C.A. 3, 1933); In re Allen, 13 Blatch C.C. Rep. 271 (D. Vt. 1876).

The power to arrest applies to the Governor of a state as to any other citizen. State officials are as amenable to federal process, orders, judgments and warrants as other litigants. Georgia Railroad & Banking Company v. Redwine, 342 U.S. 810 (1952); Ex Parte Young, 209 U.S. 123, 160 (1908); Cooper v. Aaron, 358 U.S. 1. (1958); cf. Bush v. Orleans Parish School Board, 188 Fed. Supp. 916, 922 (E.D. La. 1960), aff'd 365 U.S. 569. This must be so or the supremacy clause

of the Constitution (Art. VI, U.S. Constitution) would be largely meaningless. This rule applies to the governor of a state. Sterling v. Constantine, 287 U.S. 279, 393 (1932); Davis v. Gray, 16 Wall. 203 (1872).

The necessary corollary of decisions holding that a governor may be enjoined and is otherwise amenable to process is that, if he violates an injunction, he is subject to precisely the same judicial sanctions as are applicable to any other litigant in the federal courts.*/

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*/ Decisions dealing with the power of a state court to arrest a state governor (see Rice v. Draper, 207 Mass. 577, 93 N.E. 2d 821 (1911), State ex rel. Robb v. Stone, 120 Mo. 438, 255 S.W. 376 (1894); cf. Vicksburg Ry Co. v. Laury, 61 Miss. 102), are irrelevant. The considerations of separation of powers (and the anomaly of asking a state governor to exert the ultimate police sanction against himself) obviously have no application to the situation here.

At the hearings on both September 28 and October 12, the Court expressed concern at the amount of judicial time which was required to effect compliance with its orders. In this connection, it should be noted that the actual terms of the preliminary injunction asked by the Government are narrowly designed to prevent interference and obstruction of the Court's order so that there can be no real misunderstanding as to what kind of acts would violate the order. In any event, the procedure followed in the United States v. Shipp, 214 U.S. 471, is available both for further proceedings on this contempt proceeding and for any contempt matters which might arise under the preliminary injunction asked by the United States. In United States v. Shipp, 203 U.S. 563 (1906), an information for criminal contempt was filed in the Supreme Court against a number of persons who were charged with having violated an order of the Court allowing an appeal and requiring the safekeeping of the defendant in a state criminal proceeding. Certain preliminary questions of law were raised by the defendants and passed upon by the Court itself. 203 U.S. 563. However, the Court thereafter appointed a "commissioner" in the case, "to take and return the testimony in this proceeding, with the powers of a master in chancery, as provided in the rules of this court; but said commissioner shall not make any findings of fact or state any conclusions of law." 214 U.S. at 471.

Upon the basis of the testimony taken before the commissioner, the rule to show cause was made absolute as to a number of the defendants (214 U.S. at 425), and attachments for the bodies of the contemnors issued (214 U.S. at 483).

Respectfully submitted,

Burke Marshall
Burke Marshall
Assistant Attorney General

St. John Barrett
St. John Barrett
Attorney, Department of Justice

Harold H. Greene
Harold H. Greene
Attorney, Department of Justice

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Memorandum of Law on Behalf of the United States attached hereto has been sent by Airmail, postage prepaid, to each of the attorneys listed below, at the address indicated:

Thomas H. Watkins, Esq.
Suite 800, Plaza Building
Jackson, Mississippi

John C. Satterfield, Esq.
340 First National Bank Building
Jackson, Mississippi

Charles Clark, Esq.
P. O. Box 1046
Jackson, Mississippi

Garner W. Green, Sr., Esq.
800 Electric Building
Jackson, Mississippi

Honorable Joe T. Patterson
Attorney General, State of
Mississippi
Jackson, Mississippi

Constance B. Motley, Esq.
10 Columbus Circle
New York, New York

R. Jess Brown, Esq.
1105-1/2 Washington Street
Vicksburg, Mississippi

Dated this 13th day of October, 1962.

Harold H. Greene

Harold H. Greene
Attorney, Department of Justice

PROPOSED JUDGMENT AND ORDER OR CIVIL CONTEMPT
SUBMITTED ON BEHALF OF THE UNITED STATES

This Court having on September 28, 1962 adjudged Ross R. Barnett to be in contempt of its temporary restraining order entered on September 25, 1962 upon application of the United States, amicus curiae, and having provided that Ross R. Barnett should pay a fine of $10,000 per day and should be committed to and remain in the custody of the Attorney General unless on or before October 2, 1962 at 11:00 a.m. he showed the Court that he was fully complying with the terms of the restraining order and that he had notified all law enforcement officers and all other officers under his jurisdiction or command:

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

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

Ross R. Barnett on October 2, 1962 having

represented to this Court through his counsel that he was, so far as he could do so, fully complying with the orders of this Court, and that he would to the best of his ability maintain law and order and comply in the future with the orders of the Court; and the Court having in reliance upon that representation withheld imposing any sanction for contempt, and having put the matter over to October 12, 1962 for a further showing by Ross R. Barnett of his compliance with the order of this Court; and

This Court having regularly convened on October 12, 1962 to hear such further showing as Ross R. Barnett might have regarding his compliance with the prior order of this Court; and it appearing from statements of counsel for Ross R. Barnett and for the United States that Ross R. Barnett had in fact ceased his affirmative obstruction and interference with the orders of this Court with respect to the admission and attendance of James H. Meredith at the University of Mississippi; but Ross R. Barnett having made no showing that he had notified all law enforcement officers and all other officers under his jurisdiction and command that they should do the things set forth in subparagraphs (a) and (b) of this Court's order of September 28, 1962; and Ross R. Barnett through his counsel having represented to this Court, contrary to the representations made on October 2, 1962, that he would comply with the orders of this Court only when such compliance was in his judgment consistent with his duties as Governor of the State of Mississippi pursuant to the Constitution and laws of the State of Mississippi; and

The Court having this day entered a preliminary injunction which requires Ross R. Barnett to take the same action and refrain from the same action as required and forbidden in this Court's temporary restraining order of September 25, 1962:

NOW THEREFORE THE COURT FINDS that Ross R. Barnett has not purged himself of his contempt of this Court's order of September 25, 1962, as required by the order of September 28, 1962; and that Ross R. Barnett still is in contempt of the Court's order of September 25, 1962; and

IT IS ORDERED that Ross R. Barnett forthwith pay to the Clerk of this Court $10,000 per day on account of his contempt during the period October 2, 1962 to October 12, 1962, being a total amount of $100,000, and that he hereafter pay a fine of $10,000 per day until such time as he shall (1) issue to all law enforcement officers and all other officers under his jurisdiction or command the instructions required by subparagraphs (a) and (b) of this Court's order of September 28, 1962; and (2) submit to the Court a signed statement showing in detail in what manner he is complying and intends to comply with the orders of this Court of September 25, 1962, September 28, 1962, and this date.

Done this _____ day of October, 1962.

John Sirica

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

10/18/62

NO. 19,475

JAMES H. MEREDITH,

Appellant

vs.

CHARLES DICKSON FAIR, et al.,

Appellees

UNITED STATES OF AMERICA,

Amicus Curiae

vs.

STATE OF MISSISSIPPI, et al.,

Defendants.

RESPONSE OF THE STATE OF MISSISSIPPI AND GOVERNOR ROSS R. BARNETT AND LIEUTENANT GOVERNOR PAUL B. JOHNSON TO MEMORANDUM FILED ON OCTOBER 15, 1962, BY THE AMICUS CURIAE

The Memorandum on behalf of the United States as Amicus Curiae filed on Monday, October 15, brings in entirely new matters, and contains some incorrect statements of fact not of record herein. As these "facts" are asked to be considered by the Court as if they had been proved, we are filing this response in order that the Court may be fully informed and that justice may be done in this cause.

CORRECTION OF ERRORS IN MEMORANDUM FILED BY AMICUS CURIAE

On Page 3 of the Memorandum on behalf of the Amicus Curiae, reference is made to a showing by counsel to the Court concerning the registration of James Meredith and that Governor Barnett had twice called upon the people of Mississippi in general terms to keep the peace. Then, in the face of this statement, recognizing the effectiveness of a showing through representation by counsel, the Amicus Curiae undertakes (Page 5) to argue that during the height of the riot at Oxford on the night of September 30, no State Police were present and there is no showing that state law enforcement officers, in fact, made efforts to maintain law and order at the University, or to cooperate with federal officers.

Counsel for Amicus Curiae apparently, in the hurry of preparing the Memorandum, completely overlooked the showing to the Court made on Pages 6 and 7 of the Record of the Hearing of October 2, as follows:

> "MR. CLARK: The State Highway Patrol force is assuming to act at the request of the Governor in areas where perhaps there is some legal question as to their authority to act, but nevertheless, those forces have been used and ordered by the Governor at all times in compliance with the orders of this Court. There have been some news releases that might have indicated otherwise. That is positively untrue and I make that statement on the direct authority of the Governor of the State. At no time were they ordered by him to withdraw or quit the campus of the University. Two of the members of that force were struck in the back by tear gas projectiles, and at that time other members of the force were forced to withdraw from the campus because they did not have sufficient gas mask equipment to stay in the gassed area, but they were never ordered withdrawn by the Governor for the purpose of provoking any violation of the Court's orders, and, in fact, were never ordered withdrawn -- period -- and upon finding that they had left the scene, they were ordered by the Governor to return

sible for them to remain there."

In response to the statement by Mr. Clark, Judge Rives made the following statement, which appears on Page 7 of the Record:

> "JUDGE RIVES: If it is at all possible to do so, the Court is more interested in the maintenance of law and order in the future and in the compliance with the Court's orders in the future than it is with any controversy as to just what has occurred in the past, and, if it is possible to do so, I would like to avoid having any trial at this time as to just what has occurred in the past in the controversy, as to what has occurred in the meantime."

Nevertheless, for purposes which are necessarily beyond this case and have nothing to do with proper judicial proceedings or proper pleadings, the Amicus Curiae has gone outside the record to make statements not supported by any showing and which are incompetent, immaterial and irrelevant under the ruling of Judge Rives. The Amicus Curiae argues that by pre-arrangement with the Governor, the federal officers were met by state law enforcement officers who escorted them onto the campus. This infers that it was by authority of the Governor, which is untrue. Although the Governor had not instructed the Highway Patrol to escort James H. Meredith onto the campus, the Governor had instructed the Highway Patrol to use their discretion to assist in maintaining law and order and to perform their duties as traffic policemen. The Governor denies that there was any pre-arrangement to permit Meredith to enter upon the campus and be enrolled as a student at the University of Mississippi.

The facts as stated by the Amicus Curiae are wholly inaccurate. The fact is that the Governor of the State of Mississippi was advised by the Attorney General of the United States that the armed forces of the United States would be used to place James H. Meredith on the University campus on either Sunday afternoon, September 30, or Monday morning, October 1. The Governor advised the Attorney General that there was danger of violence, possibility of bloodshed, and that such an attempted procedure would be extremely dangerous to the

peace and safety of the citizens of Mississippi. The Attorney General was advised "cooling off" period was essential.

Nevertheless, the Attorney General of the United States gave the Governor of Mississippi an ultimatum that armed forces would be used on Sunday afternoon, September 30, or Monday morning, October 1. The Governor advised him, the Attorney General, that any such action and the consequences thereof were the sole responsibility of the federal government and the Governor assumed no responsibility whatsoever, but that there would be more danger on Monday than on Sunday. Nevertheless, he advised the Attorney General he would assist in preventing violence by ordering the state officers available to him to cooperate with the federal officers in maintaining order and preventing violence of any kind. However, the Mississippi National Guard already had been taken over by the federal government.

The statement in the Memorandum that "a conflict between state and federal law enforcement officers which had previously seemed inevitable was avoided", is very misleading. There had never been any possibility of armed conflict between state and federal law enforcement officials and such conflict had never seemed inevitable. The connotation necessarily inhereint in the statement is that the conflict referred to was an armed conflict between armed officers. In an attempt to prevent violence and to protect all parties involved and to prevent injuries to persons by an armed clash between state and federal officials, Governor Barnett ordered in each instance state and federal officers met, that all state officers should be unarmed and they were thus unarmed on September 30.

II.

THE POSITION OF THE STATE OF MISSISSIPPI AND ITS GOVERNOR AND LIEUTENANT GOVERNOR HAS BEEN CONSISTENT THROUGHOUT THIS PROCEEDING

The following statement appears on Page 5 of the Memorandum:

"Further, at the hearing on October 12 counsel for the Governor retracted their statements that the Governor intended in the future fully to comply with the orders of the Court. While the exact position of the Governor is now unclear, the Court must assume for the present that the Governor intends

to comply only with such orders of the Court as he feels are consistent with the policies and laws of the State of Mississippi...."

Throughout this case, there has been apparently some confusion in the minds of counsel, parties and, with deference, the Court as to the meaning and connotations of words used. Unfortunately, in the terminology of the law, when an individual or public official acts upon competent legal advice testing what he believes to be his legal and constitutional rights in relation to an order or decree of any court, the procedure testing those rights is called a "contempt" proceeding. In this case it is "civil contempt". The record of the first hearing reveals (by the response of Mr. Satterfield to Judge Rives) that the attorneys for the Governor advised him of their opinion of the law as such opinion is set forth in the motions and brief filed with this Court in behalf of the State of Mississippi and its officers. Throughout this entire proceeding, there has always been mutual respect between the executive branch of one of our states and the judicial branch of our federal government. The question is not one of respect or deference by the executive for the judiciary or by the judiciary for the executive. It is purely a question of what is technically and legally referred to as a "civil contempt" proceeding testing the constitutional and legal effect of judgments and orders entered in a judicial proceeding.

There also definitely appears to have been a misunderstanding between counsel for the State of Mississippi and the Court as to the connotation of "compliance" with orders of the Court as distinguished from the "purging of contempt" and the meaning of references by counsel to future orders of the Court.

Where one "purges" himself, it necessarily infers that such party was guilty of contempt. Although this Court has found at a preliminary hearing that the Governor and the Lieutenant Governor were guilty of contempt, nevertheless, whether or not they were thus guilty is a controverted issue, as revealed by the motions to dismiss and other pleadings and the briefs filed herein. The Governor and Lieutenant Governor have always contended they are not guilty of contempt, this Court having no jurisdiction. Actually, since this is a civil contempt proceeding and the remedial purpose has already been accomplished, it is immaterial at this point whether or not the Governor and Lieutenant Governor have, in the past, been guilty of contempt. It is immaterial

If this Court has jurisdiction to maintain this proceeding, the only issue here is whether there has been compliance with the temporary restraining orders of the Court by whatever means attained, whether this civil contempt proceeding is now moot and whether penalties of fine or imprisonment should be imposed in this civil contempt proceeding.

With all frankness and candor, it appears from the record of the hearing on October 2 and the hearing on October 12 (the record is not now available) that there has been a bona fide misunderstanding concerning the meaning of "compliance" with future orders of this Court. Future orders are unknown and unknowable. Every person, and particularly the Governor of a state, is entitled to believe and assume that orders of any Court will be within their jurisdiction and in accordance with the statutes, rules of court and precedents set up by judicial decisions. Every litigant has the right to assume that orders of every court will not be in conflict with the Constitution of the United States and the constitution of each of the several states in their proper relationship to each other. It is, and was on October 2 and October 12, our assumption as attorneys for the Governor and Lieutenant Governor, and is our present assumption as officers of the Court that any future orders of this Court will be consistent with such principles.

Nevertheless, neither this Court nor any court would wish in any way to cut off legal remedies and rights of any litigant however small or great he may be, whereby he may obtain a judicial determination of the effectiveness of orders hereafter granted. Again, may we say that future orders are unknown and unknowable. It is, therefore, with complete deference to this Court that we point out the misunderstanding demonstrated by comparison of the proceedings on October 2 and October 12 was one which occurred in all good faith of counsel and parties. It appears to have arisen in part from the connotation ascribed to words used and in part from certain particular and individual questions and answers as distinguished from a complete review of the record in its entire compass. We will not quote, at this time, as we wish to hold this response to the shortest space possible, the several discussions, questions and answers

tion to one of the final statements by Judge Wisdom, on Page 14 of the Record, reflecting the fact that the matter was unclear and the Governor would have a later opportunity to clarify it for the Court, as follows

> "JUDGE WISDOM: Of course, there is apparently an area of disagreement between the Government and the Governor of Mississippi insofar as the issue of compliance is concerned. Should we accept the recommendation of the Government, however, that we delay action for any time, if there is any doubt as to that area of disagreement we will have--the Governor will have some opportunity to vitiate that doubt."

For the convenience of the Court, we attach as an exhibit statement of Governor Barnett clarifying his position in this connection.

With complete deference to the understanding which the Court apparently received from the hearing on October 2 evidenced by the questions asked and proceedings on October 12, we respectfully submit that the State of Mississippi, its Governor and Lieutenant Governor have been consistent in their position before this Court.

We believe this is further clarified by the authorities cited to the Court by Mr. Clark on page 9 in the proceedings of October 2, being 50 So. 218, 17 C.J.S. 149, Section 109, and United Mine Workers case, 330 U.S. 258. A review of these authorities will aid in clarifying the numerous statements made throughout the rather extensive record of the hearing.

The position of the Governor of Mississippi and the Lieutenant Governor thereof that this Court is without jurisdiction and that they are not guilty of contempt is well stated in the motions which have been filed in their behalf by counsel, by the statements made to this Court by their counsel, and the briefs filed in behalf of the State of Mississippi and its Governor and Lieutenant Governor and the statement of the Governor attached hereto.

It should be particularly noted that the Governor states: "My position is that I have upheld the law and am not in contempt of any court." This has been his position from the first and is still his position. We do

not believe that question has arisen as to whether or not he has "purged himself" in these proceedings. The questions are as to whether or not this Court has jurisdiction and if so, whether the Governor and the Lieutenant Governor are in compliance with the existing orders of this Court as the results sought have been obtained "by any other means." The authorities cited by counsel for the State of Mississippi and its officers and in later briefs clearly demonstrate that civil contempt should be dismissed upon the obtaining of compliance "by other means".

RESPECTFULLY SUBMITTED,

Thomas H. Watkins
Suite 800, Plaza Building
Jackson, Mississippi

Garner W. Green, Sr.
800 Electric Building
Jackson, Mississippi

Charles Clark
Post Office Box 1046
Jackson, Mississippi

John C. Satterfield
340 First National Bank Building
Jackson, Mississippi

By John C. Satterfield

SPECIAL ASSISTANT ATTORNEYS GENERAL
OF THE STATE OF MISSISSIPPI

I have never taken the position that I have purged myself, nor have I authorized anyone to take such a position on my behalf. My position is that I have upheld the law and am not in contempt of any court.

It is my position that my first obligation, as the Governor of Mississippi, is to my oath of office to uphold the Constitution and laws of Mississippi and the Constitution of the United States, and to preserve law and order. The people of Mississippi built its University and other schools at great sacrifice. These properties and their control belong to the state and the Supreme Court of the U. S. has expressly so ruled in Waugh vs. University of Mississippi 237 U. S. 589.

All of the actions that I have taken were taken because of my duty to obey my oath as Governor and as long as I am the Governor of this state, all actions that I will take in the future will be in obedience to this oath.

I conscientiously believe that it is my duty, as Governor, deliberately, solemnly, fully, and free from the control or interference of anyone, to exercise, according to my own judgment and my own discretion, the duties the people have entrusted to me as their Governor. I would not be faithful to my oath of office, should I surrender to any federal or other courts the right to exercise those discretionary powers the law has placed in me. To maintain law and order, to prevent a breach of the peace, violence or bloodshed, my discretion must remain free. I shall ever and eternally stand for the exercise of my own discretion in my own right and shall repudiate the right of anyone to take that discretion away from me and exercise it in my behalf.

The Constitutions of the United States and the State of Mississippi provide for the separation of the judicial, executive and legislative functions. The people have never given any right to any one of these

departments to act for the other.

If any act that I have done as Governor or any act that I shall do as Governor in the future causes any person to believe that I have violated his rights, the Courts are open to challenge my action in a proper court proceeding. Mississippi has not yet had her day in Court.

My position is based upon the Constitution of the United States and the Constitution and laws of Mississippi. My every decision in this matter has been formed after careful and deliberate consideration of what I believe to be the law. I have not changed my position in the slightest degree. I shall never apologize for anything I have said or done in this regard because I have acted in good faith in discharging the duties entrusted to me. My conscience is clear.

I am moved only by deep and abiding affection for the welfare of all the people of Mississippi. I shall ever keep the faith that the people of Mississippi have entrusted to me as their Governor.

CERTIFICATE

I, John C. Satterfield, one of the attorneys for the State of Mississippi herein, hereby certify that on the date shown below, I served the foregoing Brief on James H. Meredith, appellant, by mailing true copies thereof to Constance B. Motley, Esq., 10 Columbus Circle, New York, New York, air-mail, postage prepaid, and to R. Jess Brown, Esq., 1105-1/2 Washington Street, Vicksburg, Mississippi, by first class mail, postage prepaid (the distance being less than 500 miles), the Attorneys of Record for said Appellant; and on the United States, Amicus Curiae and Petitioner, by mailing a true copy thereof upon John Doar, Esq., U. S. Department of Justice, Room 1143, Washington 25, D. C., air-mail, postage prepaid.

Dated this 18th day of October, A.D., 1962.

John C. Satterfield

John C. Satterfield
Special Assistant Attorney General
of the State of Mississippi
340 First National Bank Building
Jackson, Mississippi

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 19,475

JAMES H. MEREDITH,

Appellant

vs.

CHARLES DICKSON FAIR, et al.,

Appellees.

UNITED STATES OF AMERICA,
Amicus Curiae and Petitioner,

vs.

STATE OF MISSISSIPPI, et al.,

Defendants.

FURTHER STATEMENT AND MEMORANDUM ON BEHALF OF THE UNITED STATES IN RESPONSE TO THE MEMORANDUM FILED ON BEHALF OF GOVERNOR ROSS R. BARNETT ON OCTOBER 18, 1962

In their response filed October 18, 1962 counsel for Governor Ross R. Barnett assert that the United States has made incorrect statements of fact to the Court (page 1), has been "wholly inaccurate" in describing an arrangement with the Government for the entrance of James Meredith upon the campus of the University of Mississippi on September 30

(page 3), and has done so "for purposes which are necessarily beyond this case and have nothing to do with proper judicial proceedings or proper pleadings" (page 3).

The United States has a responsibility as amicus curiae to inform the Court of material facts bearing upon the question what sanctions should be imposed now or in the future upon Governor Barnett because of his contempt of the order of this Court of September 25. This further memorandum and statement by the United States is filed pursuant to that responsibility.

1. The denial of any arrangement between the Governor and the United States for the entrance of Mr. Meredith on the campus of the University of Mississippi on Sunday, September 30, is without foundation. We reaffirm that the arrangement described in our previous memorandum was in fact made. To the extent that the counter-assertions of fact made in the response filed by the Governor are inconsistent with the existence of that arrangement, they are misleading.

In view of the importance of the issues in this case, and the gravity of the events that have occurred, the United States has under these circumstances a responsibility to advise the Court that if it deems the issue relevant to disposition of this matter, the United States stands ready to prove the details of the arrangement made and its context, and respectfully advises the Court that it should not, in the absence of such evidence, rely upon either the denial or counter-assertions of fact made on behalf of the Governor in the memorandum filed on October 18.

2. The response filed on October 18 on behalf of the Governor also to some degree raises an issue of fact as to the actions of the state police in the vicinity of the University of Mississippi on the night of September 30. The United States believes that resolution of this issue is not necessary to the determination which the Court is now required to make. The precise issue before the Court is not how the state police in fact acted that night, but what instructions the Governor had then and has since given the state police and other state officials, not only with respect to the maintenance of law and order, but also with reference to the various proclamations, law suits, and criminal proceedings and statutes which have constituted the pattern of attempted interference with the orders of this Court.

In our view Governor Barnett has still made no sufficient showing with respect to this important requirement.

In the event that the Court considers the question of the extent to which the state police did make an effort to enforce law and order at the University during the night of September 30 to be material to its present consideration, the United States is prepared to offer evidence on that point at any time.

Respectfully submitted,

Burke Marshall
BURKE MARSHALL
Assistant Attorney General

St John Barrett
St. John Barrett
Attorney, Department of Justice

I hereby certify that a copy of the foregoing Further Statement and Memorandum on Behalf of the United States attached hereto has been sent by Airmail, postage prepaid, to each of the attorneys listed below, at the address indicated:

Thomas H. Watkins, Esq.
Suite 800, Plaza Building
Jackson, Mississippi

John C. Satterfield, Esq.
340 First National Bank Building
Jackson, Mississippi

Charles Clark, Esq.
P. O. Box 1046
Jackson, Mississippi

Garner W. Green, Sr., Esq.
800 Electric Building
Jackson, Mississippi

Honorable Joe T. Patterson
Attorney General, State of
Mississippi
Jackson, Mississippi

Constance B. Motley, Esq.
10 Columbus Circle
New York, New York

R. Jess Brown, Esq.
1105-1/2 Washington Street
Vicksburg, Mississippi

Dated this 24th day of October, 1962.

John Doar

John Doar
Attorney, Department of Justice

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 19,475

JAMES H. MEREDITH,
Appellant

vs.

CHARLES DICKSON FAIR, et al.,
Appellees.

UNITED STATES OF AMERICA,
Amicus Curiae and Petitioner,

vs.

STATE OF MISSISSIPPI, et al.,
Defendants.

SUPPLEMENTAL MEMORANDUM ON BEHALF OF
THE UNITED STATES

On September 28, 1962, this Court determined that Governor Ross R. Barnett was in civil contempt of the Court's order of September 25 restraining the Governor and other state officials from interfering with the admission and continued attendance of James Meredith as a student at the University of Mississippi. The Court's order of September 28 gave the Governor until October 2 to purge himself of contempt by ceasing interference and instructing all state officials subject to the Governor's direction

to maintain law and order so as to permit the continued attendance of Meredith at the University on the same basis as other students.

On October 2 the Governor appeared before the Court through his counsel and represented to the Court that he was in compliance with the orders of the Court. While these representations were retracted in part by counsel for the Governor at a further hearing on October 12, it appears still to be the position of the Governor that he is in compliance with the Court's order, and that the Court should accordingly not impose on him either imprisonment to compel further steps in compliance with the Court's order, or the fines which were set forth in the Court's order of September 28 to be imposed on the Governor in the event that he did not cease his contemptuous conduct. The Governor did not present any evidence of what specific actions he had taken at either hearing.

Counsel for Meredith at the hearing on September 28 opposed giving Governor Barnett any additional time in which to purge himself. At the hearing on October 12 plaintiff's counsel represented to the Court that they did not believe that the Governor had purged himself of his contempt, and that the Court should accordingly impose at that time the sanction of imprisonment on the Governor. Counsel did not, however, introduce any evidence in support of their position, and did not specify what further steps the Governor should be compelled to take.

At the hearings on October 2 and October 12, counsel for the United States represented to the Court that the Governor had complied at least in part

with the orders of the Court by ceasing his interference with the admission and attendance of Meredith at the University. Accordingly, counsel stated that they did not believe that the Court should now order the imprisonment of the Governor, but that the Court should impose the sanction of the fines which the Court stated would run against the Governor in the event that he had not purged himself by October 2.

The basis for the position of the United States was that imprisonment of the Governor would not serve a remedial purpose at that time since his interference with the Court's order had ceased. On the other hand, the United States believed that since the Governor had not fully purged himself, the Court should levy upon him the sanction which the Court stated in its order of September 28 would be imposed -- that is, a fine of $10,000 per day. This fine would be imposed because of his past failure to purge himself, and not for future coercive purposes such as would be necessary to justify the imposition of imprisonment.

The position of the Government was restated in its memorandum of October 15. Assertions of fact made by the Government were contradicted by counsel for the Governor in their memorandum of October 18, and on October 24, counsel for the Government represented again to the Court that the factual assertions made by counsel for the Government in court and in the memorandum of October 15 were accurate, and that any denials or contradictory assertions of fact made by counsel for the Governor were without foundation. Again, however, no evidence on

any of the controverted issues of fact was introduced for the benefit of Court. No response has been filed by counsel for the Governor to the October 24 memorandum filed by the United States.

At this stage of the proceedings, the parties are in dispute as to whether the Governor is or is not in compliance with the orders of the Court; as to whether the sanction of the fines imposed on the Governor by the order of the Court of September 28 should or should not be put into effect; and as to whether it is an appropriate coercive step for the future now to commit the Governor to the custody of the Attorney General until he takes further steps to purge himself of his contempt. A fundamental difficulty on the present record before the Court is the necessity of determining what further steps should be required of the Governor when the Court is not informed as to precisely what he has and has not done to comply thus far with the Court's orders. The Court is without an adequate factual record upon which to base its determination as to which of several possible courses it should follow. In addition, the Court is without the assistance of an adequate factual record upon which to make a determination whether criminal contempt proceedings should or should not be imposed on the Governor for his conduct in the past.

Upon the basis of the conflicting representations made by counsel for the Governor to the Court, and such facts as are available to the Government,

we adhere to the recommendations made to the Court at the hearing on October 12 and in the memorandum and proposed order submitted on October 15.

Nevertheless, neither the Court nor the Government has available at present a complete factual record upon which to base its determinations. This is also true of counsel for the plaintiff. Conflicting factual assertions have been made to the Court. Neither the Court nor the United States presently knows what, if any, instructions have in fact been given by the Governor to state officials with respect to the continued attendance of Meredith at the University.

In addition, within the past week, the factual situation has again been changed by the state highway patrol being made available, under terms and circumstances that are not clear, to maintain law and order at the University of Mississippi.

It is a matter of great public interest and national importance that whatever disposition is made of the pending charges against the Governor be accomplished upon the basis of as full a factual picture as possible. This is true not only as to the determination to be made by the Court, but also as to the recommendations to the Court which are to be made by the Government in the exercise of its grave responsibilities as amicus curiae.

Accordingly, we recommend to the Court that it appoint a master, in accordance with the procedure followed in the Shipp case, outlined in our memorandum

of October 15, to take whatever evidence the United States, the plaintiff, and the Governor may wish to present on his compliance with the orders of the Court; his arrangements with the United States for such compliance; the instructions given by him to the state highway patrol and other state officials; the conduct of the state law enforcement officials on September 30 and since that date; and his future intentions.

We believe that this course will best serve the vindication of the dignity of the Court, the national interest in careful resolution of a dispute between the United States and the Chief Executive Officer of one of the states, and the interest of the plaintiff in the effective realization of his constitutional rights. It will unavoidably mean further delay before the Court can resolve the issues before it. In the past such delay would have defeated the orders of the Court, which to be fully effective, required Meredith's admission and attendance at the University this semester. But that has been accomplished. The Governor has ceased overt interference with Meredith's attendance. Further interference has been enjoined by the Court's preliminary injunction issued October 19. The state law enforcement officials appear again to be available to enforce law and order on the University campus. Some disciplinary action has been and is being taken against University students responsible for continued demonstrations on the campus. And federal marshals and the military have insured the plaintiff's

continued attendance at the University and will continue to do so as long as is necessary. Under these circumstances we believe the advantages of a complete factual record significantly outweigh the disadvantages of further delay in ruling on the contempt action against the Governor.

Respectfully submitted,

Burke Marshall
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Supplemental Memorandum on Behalf of the United States has been sent by Airmail, postage prepaid, to each of the following attorneys listed below, at the address indicated:

Thomas H. Watkins, Esq.
Suite 800, Plaza Building
Jackson, Mississippi

John C. Satterfield, Esq.
340 First National Bank Building
Jackson, Mississippi

Charles Clark, Esq.
P. O. Box 1046
Jackson, Mississippi

Garner W. Green, Sr., Esq.
800 Electric Building
Jackson, Mississippi

Honorable Joe T. Patterson
Attorney General, State of
Mississippi
Jackson, Mississippi

Constance B. Motley, Esq.
10 Columbus Circle
New York, New York

R. Jess Brown, Esq.
1105-1/2 Washington Street
Vicksburg, Mississippi

Dated this 3rd day of November, 1962.

No. 661

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

THE STATE OF MISSISSIPPI, ET AL., Petitioners

v.

JAMES HOWARD MEREDITH, ETC., Respondent

(UNITED STATES OF AMERICA, Amicus Curiae)

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION TO MOTION OF THE UNITED STATES FOR LEAVE TO BE ADDED AS PARTY-RESPONDENT

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

MALCOLM B. MONTGOMERY
GARNER W. GREEN
Special Assistant Attorneys General
of the State of Mississippi
New Capitol Building
Jackson, Mississippi

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

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 661

THE STATE OF MISSISSIPPI, ET AL., PETITIONERS

v.

JAMES HOWARD MEREDITH, ETC., RESPONDENT

(UNITED STATES OF AMERICA, AMICUS CURIAE)

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION TO MOTION OF THE UNITED STATES
FOR LEAVE TO BE ADDED AS PARTY-RESPONDENT

The Solicitor General correctly states in his motion that the United States was not served as a respondent at any time in the subject proceedings. At no time has the United States been a Party-Respondent to these proceedings. They never occupied any status in the court below other than the court delineated status of an amicus curiae. No application has been made to this court by the United States to be permitted to continue to participate in this case in this court as amicus curiae. The motion by the United States is improper and should be denied.

POINT I.

AN AMICUS CURIAE IS NOT A PARTY

This rule has been clearly defined by the United States Court of Appeals for the Fifth Circuit in the case of City of Winter Haven, Fla. v. Gillespie, 84 F.2d 285; cert. den. Hartridge-Cannon Co. v. Gillespie, 229 U.S. 606, 57 S.Ct. 232, 81 L.Ed. 447. The court, in its opinion, used the following language:

> ". . . in view of their appearance in the cause not as parties, but as amici curiae a preliminary question arises as to whether the appeal should be entertained or dismissed.
>
> "We held in Normandy Beach Dev. Co. v. United States ex rel. Brown-Crummer Inv. Co., 69 F. (2d) 105, that the only proper parties to a mandamus suit are the relators who seek to compel performance of a duty, and those on whom the duty is imposed by law, and that intervening taxpayers, like these here, have no standing to appeal. Though this is a suit for injunction, it is for a mandatory one, and in its nature it is a suit for mandamus to direct officials of a city to proceed as they ought to do, and it may be questioned whether intervening taxpayers could any more appeal from a judgment in this suit than they could in that. We do not decide that question, however, for these appellants did not come into the cause as intervenors. They came in by a pleading and order specifically fixing their status as and limiting it to, that of 'friends of the court.' They thus have no status except to advise, or, as they themselves put it, to 'suggest.' They are not named in, they are not parties to, and they are not bound by, the decree. They are without standing here to appeal. Hughes Federal Practice, vol. 1, § 37, p. 37; American Jurisprudence, vol. 2, p. 679. §§ 4-6 and 7."

The Winter Haven case was cited with approval by the Seventh Circuit in the case of Clark v. Sandusky, 205 F.2d 915, in support of the proposition that an amicus was not a party. To the same effect are the following state court decisions:

> Second Nat. Bank, for Use of Federal Reserve Bank of Philadelphia v. Faber, 332 Pa. 124, 2 A.2d 747, 749.
>
> State v. City of Albuquerque, 31 N.M. 576, 249 P. 242, 248.
>
> In re Perry, 83 Ind.App. 456, 148 N.E. 163, 165.

2 Am.Jur. 680, Amicus Curiae, § 4, states the rule in this language:

> "It seems clear that an amicus curiae cannot assume the function of a party in an action or proceeding pending before the court, and that ordinarily, he cannot file a pleading in a cause. An amicus curiae is restricted to suggestions relative to matters apparent on the record or to matters of practice. His principal function is to aid the court on questions of law."

3 C.J.S. 1046, Amicus Curiae, § 1, defines the status of amicus curiae in the following language:

> "An 'amicus curiae,' literally meaning a friend of the court is one who, as a standerby, when a judge is doubtful or mistaken, may inform the court. The term is also sometimes applied to a person who is not a proper or necessary party, but who is allowed to appear to protect the interest of a party he represents."

"Distinguished from intervention. Leave to appear as amicus curiae differs from intervention in that the intervener becomes a party to the litigation, and is bound by the judgment, while, as stated in § 3 c infra, an amicus curiae does not become a party to the proceedings."

In § 3 a of the same work, it is stated:

"The office of an amicus curiae cannot be subverted to the use of a litigant in the case, and it has been held that it is beyond his office to involve the action of the court upon issues of fact not confined to jurisdictional matters."

§ 3 c states:

"As an amicus curiae is not a party to the suit and cannot assume the functions of a party; he cannot take upon himself the management of the suit as counsel, being without any control over it whatsoever, and he has no right to institute any proceedings therein. He must take the case as he finds it, with the issues made by the parties."

The only respondent in this matter has waived the filing of any reply to the Petition for Certiorari in this cause (telegram of counsel dated January 2, 1963). The amicus curiae below, who has not even been admitted to such status in the proceedings before this court, has no right to assume the direction and control of the litigation on appeal. In 3 C.J.S. 1051, Amicus Curiae, § 3 e (8), that text points out the following rules governing the function of an amicus on an appeal matter:

". . . no person can prosecute an appeal or writ of error unless he is a party or privy, or in some way aggrieved by the judgment, an amicus curiae has no right to prosecute an appeal or writ of error or to maintain a bill of review or a bill in the nature of a bill of review, and the court cannot appoint an amicus curiae to represent it on appeal. Moreover, an amicus curiae has no authority to give notice of appeal or suggest a diminution of the record, and questions raised by him and not by parties to the litigation will not be considered on appeal. He has no right to move to strike out the statement of facts. A citation on appeal issued to him by direction of the court is insufficient to bring any of the parties into court."

In the case of Knetsch v. U.S., 364 U.S. 361, 81 S.Ct. 132,5 L.Ed. 128, this court announced that an amicus curiae could not supply a point omitted in the briefs and positions taken by the parties and that where a point was made only in a brief filed by an amicus curiae, it would not be considered by the court.

In the later case of Universal Oil Products Co. v. Root Refining Co., 328 U.S. 575, 66 S.Ct. 1176, 90 L.Ed. 1447, rehearing denied 329 U.S. 823, 67 S.Ct. 24, 91 L.Ed. 700, this court ruled that the fact that an amicus curiae might be asked by the court to plead or to take other proceedings properly taken by parties, does not serve to change the relationship of the amicus to the court. The court stated:

"The relationship of these lawyers to the court,

after it recognized them as amici, remain throughout only that of amici."

In the case of Walker County Lumber Company v. Edmonds, (Tex.Civ.App.) 298 S.W. 610, 612, the court, referring to the office of amicus curiae, stated:

"This office is to aid the court and for its personal benefit and cannot be subverted to the use of a litigant in the case."

POINT II.

THE UNITED STATES CANNOT USE THE OFFICE OF AMICUS CURIAE, TO WHICH IT HAS BEEN ADMITTED IN THE COURT OF APPEALS, AS A DEVICE TO ENABLE IT TO BECOME AN ACTIVE PARTY-RESPONDENT ON THIS APPEAL IN LIEU OF THE REAL RESPONDENT HEREIN

This court has pointed out that it will not sanction an impermissible action because it is cleverly or uniquely performed. The court has said that it matters not whether a scheme is "ingenuous" or "ingenious", or whether it is "sophisticated" or "simple-minded"; devices which are used to accomplish ends that are not permissible will be prohibited. The United States cannot use the high and time-honored office of amicus curiae to assume direction and control of individual litigation asserting 14th Amendment rights. Shelley v. Kraemer, 344 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161, and Hague v. C.I.O., 307 U.S. 496, 59 S.Ct. 954, 83 L.Ed. 1423, clearly provide that 14th Amendment rights, which form the basis of the liti-

gation involved in the present appeal, are personal and individual rights belonging to natural persons alone. The United States cannot, as amicus curiae or otherwise, assert claimed violations of the individual respondent's 14th Amendment rights.

A study of the legislative history of recent civil rights legislation shows a concerted endeavor to secure statutory authorization for the federal government to litigate on behalf of individuals claimed violations of their constitutional rights; and, with the single exception of the Civil Rights Act of 1957 (42 U.S.C. § 1971 (c)), this history discloses that the Congress has refused to grant such authority. See the testimony of Attorney General Brownell reported in 1957 "Hearings before the Subcommittee on Constitutional Rights of the Committee on the Judiciary of the U. S. Senate," 85th Congress, First Session, commencing on page 1, on page 46 and on page 180. To the same effect is the testimony of Attorney General Brownell before Subcommittee No. 5 of the Committee on the Judiciary of the House of Representatives, 85th Congress, First Session.

At no point does the record in this matter indicate that the situation was one in which the authority of the court was being threatened or abused because of the apathy of the private litigants. On the contrary, the record discloses that

the respondent immediately moved to file contempt proceedings and secure injunctive orders, both to secure his alleged rights and to secure compliance with the decrees of the court.

The motion of the United States to intervene in this appeal as a Party-Respondent is improper and should be denied.

THE STATE OF MISSISSIPPI, ET AL.,
Petitioners

BY: JOE T. PATTERSON, Attorney General
DUGAS SHANDS, Assistant Attorney General

MALCOLM B. MONTGOMERY
GARNER W. GREEN
Special Assistant Attorneys General

By 

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

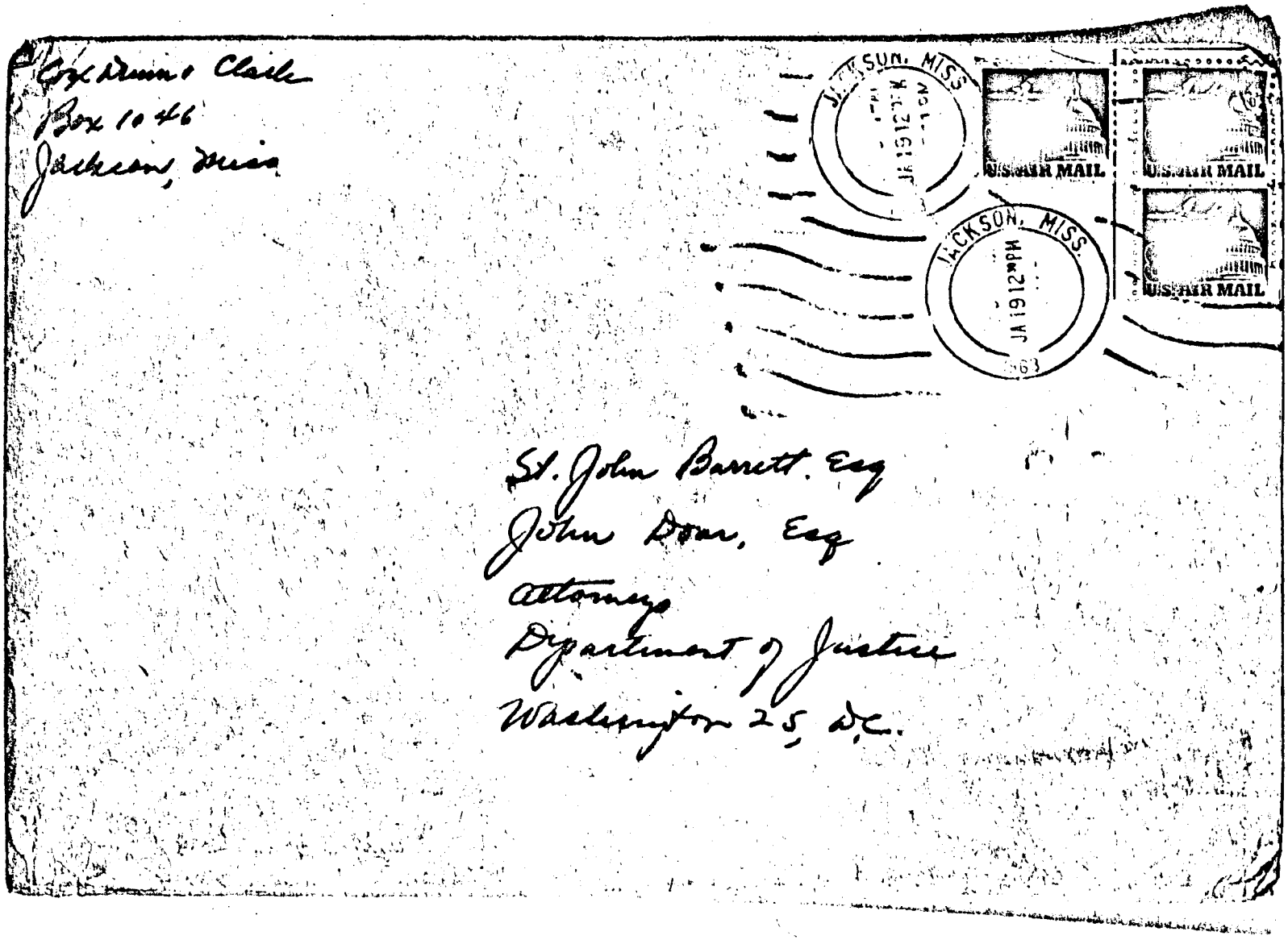
CERTIFICATE OF SERVICE

I, CHARLES CLARK, one of the attorneys for petitioners herein and a member of the bar of the Supreme Court of the United States, hereby certify that on the date shown below I served the foregoing BRIEF IN OPPOSITION TO MOTION OF THE UNITED STATES FOR LEAVE TO BE ADDED AS PARTY-RESPONDENT on James H. Meredith, Respondent, by mailing true copies thereof to: Constance B. Motley, Esq., 10 Columbus Circle, New York 19, New York, airmail postage prepaid; to R. Jess Brown, Esq., 1105½ Washington Street, Vicksburg, Mississippi, by first class mail postage prepaid (the distance being less than 500 miles), the attorneys of record for said respondent; and on the United States, Amicus Curiae, by mailing true copies thereof to: Burke Marshall, Esq., Assistant Attorney General; St. John Barrett, Esq.; and John Doar, Esq., Attorneys, Department of Justice, Washington, D. C., airmail postage prepaid, the attorneys of record for said Amicus Curiae.

DATED this 19th day of January, 1963.

Charles Clark

CHARLES CLARK
Attorney for Petitioners
Address: P. O. Box 1046
Jackson, Mississippi


Ox Drum Clerk
Box 1046
Jackson, Miss.
JACKSON, MISS.
JA 1912 PM
U.S. AIR MAIL
U.S. AIR MAIL
U.S. AIR MAIL
St. John Barrett. Esq
John Doar, Esq
attorneys
Department of Justice
Washington 25, D.C.