

EDWARD W. WADSWORTH
CLERK

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

NO. 19475

JAMES MEREDITH, ET AL

Petitioner

versus

CHARLES BIRCHES FAIR, ET AL

Respondents.

PETITION FOR A SUPPLEMENTAL ORDER OF INJUNCTION OR
AN INJUNCTION PENDING A HEARING AND DECISION BY THE DISTRICT COURT

Comes now the petitioners and move this Court to issue an order enjoin-
ing the enforcement of the writ of injunction issued by the Chancery Court
of Jones County, Mississippi, in vacation on September 19, 1962, and in sup-
port of this petition the Government shows the following facts.

On September 19, 1962, the Chancery Court of the Second Judicial Dis-
trict, Jones County, Mississippi, issued a writ of injunction enjoining
James Meredith, Members of the Board of Trustees of the University of
Mississippi, the United States Marshal for the Southern District of Mis-
sissippi, Robert F. Kennedy, Attorney General of the United States, Thomas
R. Etheridge, United States Attorney for the Northern District of Missis-
sippi, Robert Hauberg, United States Attorney for the Southern District of
Mississippi, and others from doing anything or performing any act, the
execution of which is intended to enroll and register James Meredith as a
student in the University of Mississippi. This injunction was issued ex
parte and required the defendants to show cause why the injunction should
not be made permanent on October 22, 1962.

On September 20, 1962, pursuant to the provisions of U.S.C. 1441 representatives of the United States Department of Justice removed the proceeding from the Jones County Chancery Court to the United States District Court for the Southern District of Mississippi. A copy of the removal papers are attached hereto and incorporated by reference.

On September 20, 1962, representatives of the United States Department of Justice presented to Judge Harold Cox and Judge Sidney Mize, both Judges of the United States District Court for the Southern District of Mississippi, a motion to vacate the injunction issued in the removed action.

Judge Cox and Judge Mize refused to vacate such injunction ex parte and set the motion to vacate for hearing in Meridian, Mississippi, on Monday, September 24, 1962, at 1:30 P.M.


This Court has jurisdiction to enter an order vacating the injunction issued by the State Court or issue such injunction pending a hearing in the District Court because of its order of July 26, 1962, in this case. That order, a copy of which is attached hereto, stated that pending such time as the District Court has issued and enforced the order required, namely, to issue an injunction ordering the immediate admission of James H. Meredith to the University of Mississippi, and until such time there has been full and actual compliance of such order the defendants were expressly ordered by this Court, apart from any order of the District Court, to admit James Meredith to the University of Mississippi. Thus the effect of the State Court injunction interferes with the order of this Court.


This Court also has jurisdiction to issue the order requested where, as here, the Court of Appeals has directed a District Court to issue an injunction. Toledo Scale Co. v. Computing Scale Co., 261 U.S. 339, 426; Quyer v. Dollar, 190 F.2d 623, 641-642 (U.S. D.C. vacated as moot, 344 U.S. 806).

This matter is one of much importance. The issuance of the State injunction and the refusal of the District Court to vacate the State injunction effectively frustrates the operation of this Court's order of July 28, 1962, and will in effect prevent the admission of James Meredith as a student at the University of Mississippi under the terms of this order.

Wherefore, it is respectfully requested that this Court enter an order supplementing its order of July 28, 1962, enjoining the enforcement of the writ of injunction issued by the Chancery Court of Jones County, Mississippi, on September 19, 1962, and enjoining all the defendants, their agents and all persons having notice of this decree, including the public officials of the State of Mississippi, from taking or refraining from any action which would interfere with or have the purpose or effect of interfering with, whether or not under the State Court injunction of September 19, 1962, the admission of James Meredith to the University of Mississippi.

The undersigned are authorized to represent to this Court that Mrs. Constance Motley, attorney for James E. Meredith, joins in this petition.



LOUIS GLAVIN


LOUIS GLAVIN
Attorneys
Department of Justice
Washington, D. C.

Research File

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With reference to Senate Bill 1501 passed by the Mississippi State Legislature and signed by Governor Ross Barnett of Mississippi early this morning, SAC Harry Maynor telephonically advised that the bill contains the following provisions.

SECTION I

That no person shall be eligible for admission to any institution of higher learning in the State of Mississippi, as defined under Section 313-A of the Constitution of Mississippi, who has a criminal charge of moral turpitude pending against him or her in any court in the State of Mississippi or in any Federal Court whether or not the process under such case may have been continued or stayed by the court of original jurisdiction or any other court, or any person who has been convicted of any criminal offense and not pardoned, shall not be eligible for enrollment as a student provided, however, that this act will not apply to any charge of conviction of traffic law violations, violations of State conservation laws, and State game and fish laws or manslaughter as a result of driving while intoxicated or under the influence of intoxicants, which are offenses are expressly excepted.

SECTION II

Any attempt by anyone to enroll in any of the institutions as enumerated in Section I while a criminal proceeding is pending or who has been convicted as set out in said section shall be guilty of a misdemeanor and punished by a fine not exceeding \$300 or one year in the county jail or both.

SECTION III

Anyone who aids or abets another person knowing at the time that there is a criminal case pending against such persons as stated in Section I, who knowing at the time that such student has a criminal charge pending against him, or who has been convicted as stated in Section I, shall be guilty of a misdemeanor and upon conviction be punished by fine of not more than \$300 or one year in the county jail or both.

SECTION IV

Section IV states, "This act shall take effect and be in force from and after its passage."

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SEP 25 1962
APPEALS & RESEARCH SECTION
CIVIL RIGHTS DIVISION

144-100-40-1
DEPARTMENT OF JUSTICE
25 SEP 20 1962
RECORDS SECTION
CIV. RIGHTS DIV.
Gen. Lit. Sec.

FILED

SEP 20 1962

No. 1501

JAMES MEREDITH, ET AL.

EDWARD W. WADSWORTH
Petitioners CLERK

VERSUS

CHARLES ROBINSON BAYL, ET AL.

Respondents.

ORDER

This matter is now before this Court on Petitions for Orders supplementing this Court's Order of July 23, 1962, to (1) restrain the enforcement of S.B. 1501 enacted by the State of Mississippi on September 20, 1962; (2) restrain any compliance with or enforcement of the injunction issued by the Chancery Court of Jones County, Mississippi, dated September 19, 1962, which purports to restrain the petitioners and others from taking any steps to enroll James Meredith as a student in the University of Mississippi; (3) restrain the arrest of James Meredith on a conviction had in the Justice of the Peace Court in Jackson, Mississippi, on September 20, 1962, or any other person, including federal officials, for the purpose of interfering with the enrollment of James Meredith to the University of Mississippi pursuant to this Court's order.

It appearing that S.B. 1501; the aforesaid injunction issued by the State Court and the conviction of James Meredith each constitute an interference with and obstruction of this Court's injunction of July 23, 1962.

Subject to the further orders of this Court, IT IS ORDERED that the appellants-respondents, their agents, employees and persons acting in concert with them or persons having actual notice of this order, including law enforcement and public officials in Mississippi, State, County and Municipal, are enjoined and restrained from

(1) enforcing or taking any steps whatever to enforce the provisions of S.B. 1501 against James Meredith, or any other person, including federal officials

in connection with the admission and continued attendance at the University of Mississippi of James Meredith.

(1) taking any steps to effectuate the conviction and sentence on September 20, 1962, in the Justice of the Peace Court in Jackson, Mississippi, of James Meredith for false voter registration, including arresting him or causing him to be arrested; or arresting him or any other persons including federal officials or taking or refraining from taking any other action which has the purpose or effect of interfering with the enrollment of James Meredith as a student in the University of Mississippi or his continued attendance at the University.

(2) taking or refraining from taking any action to comply with or to enforce the injunction issued by the Chancery Court of Jones County, Mississippi, on September 19, 1962, in the case of A. L. Manders, et al, vs. James Meredith, et al, or any other acts which would have the purpose or effect of interfering with the enrollment and continued attendance of James Meredith as a student at the University of Mississippi.

(4) This order is not intended to limit the authority of the District Court to proceed with respect to the matters referred to in paragraphs (1) and (2) of this order.

ENTERED this the 20th day of September 1962.

~~/s/ JOHN B. FOSTER
U. S. CIRCUIT JUDGE~~

~~/s/ JOHN MURPHY WILSON
U. S. CIRCUIT JUDGE~~

~~/s/ GEORGE E. HILL
U. S. CIRCUIT JUDGE~~

Overruled

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

JAMES HOWARD MEREDITH, et al.,
Plaintiffs

v.

CIVIL ACTION NO. 3130

CHARLES DICKSON FAIR, et al.,
Defendants

UNITED STATES OF AMERICA, as
Amicus Curiae and Petitioner,

v.

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

MOTION TO STAY OR DISMISS
PROCEEDINGS ON CITATION FOR CONTEMPT.

Come now respondents in the above styled and numbered cause and move this Honorable Court to stay or dismiss the proceedings in this Court's citation of respondents for contempt, and in support hereof would show that Circuit Judge Ben F. Cameron has stayed all proceedings in the United States Court of Appeals and in this Court pending action upon petition for certiorari by the entire Supreme Court of the United States of America.

Such petition for a writ of certiorari has been duly filed and has not been acted on by said Supreme Court. The Honorable Mr. Justice Hugo L. Black has issued an order purporting to set such stays of Judge Cameron aside, but said Justice has not directed that his said order issue otherwise than in the due course

of procedure according to the rules of the Supreme Court of the United States, nor has he limited in any way the right of the respondents in the proceedings before him to file a petition for rehearing. The time for the filing of such a petition for rehearing under the rules of the Supreme Court has not expired for these reasons. Respondents respectfully submit that this Court should stay or dismiss this proceedings on this contempt situation.

RESPECTFULLY SUBMITTED.

JOHN DAVIS WILLIAMS
ARTHUR BEVERLY LEWIS
ROBERT BYRON ELLIS

BY: 19 Fred B. Smith
Their Attorney

BY: 19
JOE T. PATTERSON
Attorney General of the
State of Mississippi

Original carries certificate of personal
service September 21, 1962

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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;

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"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.

Division of Archives and
Records Administration

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 contrast between Robert E. Ellis and the Board of Trustees of the State Institutions of Higher

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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 10, 1962, certain excerpts from the minutes of the Board of Trustees, introduced in evidence by Defendant Exhibit No. 2, in short, invested in Honorable Ross E. Emmett, the Governor of the State of Mississippi, full power, authority,

Mississippi State
University of Trustees

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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. Wise, 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

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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, 1962, 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.

MINORITY TO MEMBERS
OF THE BOARD OF TRUSTEES
OF THE UNIVERSITY OF MISSISSIPPI

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The same is true with Chancellor Williams, except he 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 participants 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

ORIGINAL COPY OF
UNIVERSITY OF MISSISSIPPI
THE VICE PRESIDENT

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 of 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 6th 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, 1952, 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.

I conclude as a matter of law that the Defendant Ellis did not violate the terms of any provision of that injunction issued on the 18th of September, 1952, which I have already read into the record.

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, 1962.

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

WILLIAMS & SMITH
 1000 BROADWAY
 NEW YORK 10003


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

EDWARD W. WADSWORTH
CLERK
IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
No. 15475

JAMES E. HERRIN,
Appellant
v.
CHARLES DICKSON FAIR, et al.,
Appellees.

APPLICATION FOR ORDER REQUIRING CHARLES DICKSON FAIR, THOMAS JEFFERSON TABB, ROBERT BRUCE SMITH, HARRY GORDON CARPENTER, TULLY D. KIDWELL, JAMES HANCOCK LINDSEY, DR. VERNER SMITH HANCOCK, S. E. BROWN, WILLIAM CRANFORD STONE, MARGARET HUBBARD ROBERTS, IRA LEONOR MORGAN, EUGENE RAY LEWIS, LOUIS LEVORY, JOHN DAVIS WILLIAMS, ROBERT BYRON ELLIS, AND ARTHUR BEVERLY LEWIS TO SHOW CAUSE WHY THEY SHOULD NOT BE HELD IN CIVIL CONFINEMENT

United States of America, quibus juris locus, applies to the Court for an order requiring Charles Dickson Fair, Thomas Jefferson Tabb, Robert Bruce Smith, Harry Gordon Carpenter, Tully D. Kidwell, James Hancock Lindsey, Dr. Verner Smith Hancock, S. E. Brown, William Cranford Stone, Margaret Hubbard Roberts, Ira Leonor Morgan, Eugene Ray Lewis, Louis Levory, John Davis Williams, Robert Byron Ellis, and Arthur Beverly Lewis, respondents herein, to show cause, if any they have, why they should not be held in civil confinement of the order entered by this Court in this action on July 23, 1962, and as reason therefor states:

1. Each of the respondents above named is a defendant in this action.
2. On July 23, 1962, this Court entered its order in this action requiring the respondents, and each of them, to admit the plaintiff, James H. ... to the University of Mississippi, under his registration for

admission theretofore filed, prohibiting them from any act of discrimination relating to his admission, and requiring them to promptly evaluate and approve his credits without discrimination under a reasonable basis in keeping with the standards applicable to transfers to the University.

3. At all times herein mentioned, each of the respondents had actual and constructive notice of the terms of this Court's order of July 28, 1962.

4. On September 20, 1962, a day on which the respondents were registering and admitting students at the University of Mississippi, James E. Meredith presented himself for registration at the University of Mississippi. The respondents then and there failed and refused to admit him under his applications filed prior to the entry of this Court's order of July 28, 1962.

5. At all times since the entry of this Court's order of July 28, 1962, and at the present time, the respondents, and each of them, have failed and refused and are now failing and refusing, discriminatorily and unreasonably, to evaluate and approve the credits of James E. Meredith.

WHEREFORE, the United States asks the Court to issue an order requiring the respondents to show cause, at a date and time to be fixed by the Court, why they should not be held in civil contempt, and, should respondents fail to show such cause, to enter a further order adjudging them to be in contempt and remanding them to the custody of the Marshal to be held by him until they purge themselves of their contempt.

A true copy

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

New Orleans, Louisiana

Deputy

SEP 21 1962

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UNITED STATES, Attorney General

BY

Assistant Attorney General

UNITED STATES ATTORNEY

Attorney, Department of Justice

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 19475

JAMES E. MARSHALL,

Appellant

v.

CHARLES BENTON FAIR, et al.,

Appellees.

CHARLES BENTON FAIR, THOMAS JEFFERSON TABB, ROBERT BRUCE SMITH, II, HARRY GORDON CARPENTER, TULLY D. RICHALL, JAMES RAYMOND LIPSCOMB, DR. VERNER SMITH MALSON, S. E. BRUNS, WILLIAM ORLAND STONE, MALCOLM MATTHEW ROBERTS, IRA LAWRY MORGAN, HIGBY RAY TAYLOR, and LOREN LOWERY, TO SHOW CAUSE WHY THEY SHOULD NOT BE HELD IN CIVIL CONTEMPT

This Court having entered an order on July 23, 1962, requiring Charles Benton Fair, Thomas Jefferson Tabb, Robert Bruce Smith, II, Harry Gordon Carpenter, Tully D. Richall, James Raymond Lipscomb, Dr. Verner Smith Malson, S. E. Bruns, William Orlando Stone, Malcolm Matthe Roberts, Ira Lawry Morgan, Higor Ray Taylor, and Loren Lowery to admit the plaintiff, James E. Marshall to the University of Mississippi, under his applications for admission theretofore filed, prohibiting them from any act of discrimination relating to his admission, and requiring them to promptly evaluate and approve his credits without discrimination upon a reasonable basis in keeping with the standards applicable to transfers to the University, and

It appearing from the application of the United States, signed and filed this day that each of the defendants above named has failed and refused to comply with the terms of this Court's order of July 23, 1962, and are presently persisting in such failure and refusal,

IT IS ORDERED that Charles Dickson Fair, Thomas Jefferson Tubb, Robert Bruce Smith, II, Harry Gordon Carpenter, Tully B. Riddell, James Napoleone Lipscomb, Dr. Vernon Smith Holmes, S. E. Evans, William Orlando Stans, Malcolm Motts Roberts, Ira Lamar Morgan, Elmer Ray Dwart, and Leon Lowery appear personally before this Court on September 24, 1962, at 11:00 a.m. o'clock in the Courtroom of the United States Court of Appeals for the Fifth Circuit in New Orleans, Louisiana, to show cause, if any they have, why they should not be held in civil contempt.

The Court being advised that the District Court for the Southern District of Mississippi has ordered Robert Byron Ellis, James Davis Williams, and Arthur Beverly Lewis to show cause why they should not be held in contempt of an order entered by that Court on September 13, 1962, that their acts and conduct alleged to constitute the contempt are the source thereof alleged by the United States in its application to this Court, and that a hearing on the alleged contempt is to be held in the District Court today, the application of the United States as to Robert Byron Ellis, James Davis Williams, and Arthur Beverly Lewis is DENIED.

Entered at Hattiesburg, Mississippi, this 21st day of September, 1962.

/s/ JOHN R. BROWN
Circuit Judge

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

[Signature]
Deputy
New Orleans, Louisiana SEP 21 1962

/s/ JOHN HENRY WIEREN
Circuit Judge

/s/ GEORGE B. HILL
Circuit Judge

FILED

SEP 21 1962

EDWARD W. WADSWORTH
CLERK

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NO. 19473

JAMES H. MEREDITH,

Appellant

v.

CHARLES DICKSON FAIR, et al,

Appellees.

ORDER REQUIRING CHARLES DICKSON FAIR, THOMAS JEFFERSON TUBB, ROBERT BRUCE SAITH, II, HARRY GORDON CARPENTER, TALLY D. RIDDELL, JAMES NAPOLEON LIPSCOMB, DR. VERNER SMITH HOLMES, S. R. EVANS, WILLIAM ORLANDO STONE, MALCOLM METTE ROBERTS, IRA LEON MORGAN, EDGAR RAY INARD, and LEON LOWERY, TO SHOW CAUSE WHY THEY SHOULD NOT BE HELD IN CIVIL CONTEMPT.

This Court having entered an order on July 26, 1962, requiring Charles Dickson Fair, Thomas Jefferson Tubb, Robert Bruce Saith, II, Harry Gordon Carpenter, Tally D. Riddell, James Napoleon Lipscomb, Dr. Verner Smith Holmes, S. R. Evans, William Orlando Stone, Malcolm Mette Roberts, Ira Leon Morgan, Edgar Ray Inard, and Leon Lowery to admit the plaintiff, James H. Meredith, to the University of Mississippi, under his applications for admission theretofore filed, prohibiting them from any act of discrimination relating to his admission, and requiring them to promptly evaluate and approve his credits without discrimination and on a reasonable basis in keeping with the standards applicable to transfers to the University, and

It appearing from the application of the United States, ~~being~~ ~~which~~ filed this day that each of the defendants above named has failed and refused to comply with the terms of this Court's order of July 26, 1962, and are presently persisting in such failure and refusal,

IT IS ORDERED that Charles Dickson Fair, Thomas Jefferson Tubb, Robert Bruce Smith, II, Harry Gordon Carpenter, Tally D. Riddell, James Napoleon Lipscomb, Dr. Verner Smith Holmes, S. R. Evans, William Orlando Stone, Malcolm Matte Roberts, Ira Lamar Morgan, Rigar Ray Isard, and Leon Lowery ^{personally} appear before this Court on September 24, 1962, at 11 A m. o'clock in the Courtroom of the United States Court of Appeals for the Fifth Circuit in New Orleans, Louisiana, to show cause, if any they have, why they should not be held in civil contempt.

The Court being advised that the District Court for the Southern District of Mississippi has ordered Robert Byron Ellis, James Davis Williams, and Arthur Beverly Lewis to show cause why they should not be held in contempt of an order entered by that Court on September 13, 1962, that their acts and conduct alleged to constitute the contempt are the same as those alleged by the United States in its application to this Court, and that a hearing on the alleged contempt is to be held in the District Court today, the application of the United States as to Robert Byron Ellis, James Davis Williams, and Arthur Beverly Lewis is DENIED at this time.

Entered at Hattiesburg, Mississippi, this 21st day of September, 1962.

/s/ JOHN R. BROWN
Circuit Judge

/s/ JOHN MINOR WISDOM
Circuit Judge

/s/ GRIFFIN B. HELL
Circuit Judge

A true copy

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

New Orleans, Louisiana

SEP 21 1962

and as reasons therefor alleges:

1. That on July 28, 1962, this Court ordered all defendants to the action of Meredith v. Fair, et al., above, to enroll, register and admit James Howard Meredith to continued attendance at the University of Mississippi, commencing in September 1962, and promptly to evaluate and approve Meredith's academic credits in connection therewith, without racial discrimination:

2. That the order of this Court of July 28 provided that it should remain in full force and effect pending full and actual compliance in good faith with its requirements, i.e., until the plaintiff Meredith has been admitted to the University of Mississippi on a continued attendance basis without racial discrimination:

3. That on September 19, 1962, Robert F. Kennedy, the Attorney General of the United States, sent to respondent Euclid Ray Jobe, Executive Secretary of the Board of Trustees of State Institutions of Higher Learning of the State of Mississippi, in Jackson, Mississippi, the telegram set out below, and that a copy of the telegram was sent to each of the other respondents:

THE PURPOSE OF THIS TELEGRAM IS TO INFORM YOU AND THE BOARD OF TRUSTEES OF THE UNIVERSITY OF MISSISSIPPI OF THE GOVERNMENT'S VIEW ON THE LEGAL FORUM IN THE MEREDITH CASE. THE OFFICIALS OF THE UNIVERSITY, INCLUDING THE RECTOR, 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 REHABilitate MEREDITH AS A STUDENT THIS FALL AT THE UNIVERSITY. ALL MEMBERS OF THE BOARD OF TRUSTEES ARE COVERED BY THESE ORDERS. THE BOARD OF TRUSTEES IS FURTHER COVERED BY AN ADDITIONAL ORDER OF JUDGE BLACK OF THE SUPREME COURT OF THE UNITED STATES WHICH HAS THE CHARACTER OF EACH JUDGE OF THE SUPREME COURT, FROM TAKING ANY STEPS TO HINDER COMPLIANCE WITH THE ORDERS.

WE HAVE COOPERATED AND WILL CONTINUE TO COOPERATE WITH GOVERNMENT REQUEST AND OTHER STATE OFFICIALS IN MAKING EVERY EFFORT TO AVOID LAW VIOLATION. IT IS OUR PURPOSE TO SEE THAT THE ORDERS OF THE COURT ARE COMPLIED WITH IMMEDIATELY. HOWEVER, I AM IMPRESSED THAT MEREDITH HAS BEEN ABLE TO OBTAIN ANY COMMENTS FROM YOU OR THE BOARD SINCE HE WILL BE REHABilitated IN JACKSON WITHOUT HURRY OR DELAY IF HE CAN BE REHABilitated TO THE UNIVERSITY. I HAVE BEEN UNSUCCESSFUL IN OBTAINING ANY SUCH COMMENTS AS WELL.

UNDER THE CIRCUMSTANCES, IT IS MEREDITH'S DUTY TO REHABilitate HIMSELF TO OBTAIN, IMMEDIATELY, TO REHABilitate ALONG WITH OTHER LAW AND HONORABLE CITIZENS.

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 THEREAFTER 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 FIRMLY AND FREQUENTLY DISAPPROVED WITH OR DISAPPROVED OF LAWS AND COURT DECISIONS BUT HAVE OBEYED THEM NEVERTHELESS. THE FEDERAL COURTS HAVE SPOKEN UNAMBIGUOUSLY 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.

4. 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:

5. 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:

6. That St. John Barrett of counsel for petitioners announced to the respondent Ellis that James Howard Meredith was presenting himself for registration and enrollment at the University of Mississippi pursuant to this Court's order of July 28, 1962 and pursuant to similar orders by the United States Supreme Court and the United States District Court for the Southern District of Mississippi, and that the failure and refusal of the respondents to enroll and register James Howard Meredith and to admit him immediately to continued attendance at the University of Mississippi constituted disobedience and contempt of this Court's order:

7. That the respondents persisted in their failure and refusal to register and admit James Howard Meredith to the University of Mississippi solely on account of his race:

8. That on September 20, 1962, the United States District Court for the Southern District of Mississippi ordered the respondents Williams, Lewis, and Ellis to show cause why they should not be held in civil contempt of that Court's order of September 13, 1962:

9. That on September 21, 1962, the Court ordered other defendants to the action Meredith, et al. v. Fair, et al., as respondents, to show cause why they should not be held in civil contempt of this Court's order:

10. That on September 21, 1962, the United States District Court for the Southern District of Mississippi held the respondents Williams, Ellis, and Lewis not to be in civil contempt of that Court's order of September 13, 1962, on the ground that the actions of other persons, including the other respondents to this cause, had divested respondents Williams, Ellis, and Lewis of the authority to comply with that Court's order and had relieved them of responsibility for compliance with that Court's order:

11. That this Court's order of July 28, 1962, continues to be flouted by all respondents including Williams, Ellis, and Lewis, who are principal officers of the University of Mississippi and who are directly responsible for the administration and execution of the policies adopted by the respondents who constitute the Board of Trustees of State Institutions of Higher Learning of the State of Mississippi:

12. That respondents Williams, Lewis, and Ellis are necessary parties to this action and ought to be made respondents thereto because of their disobedience of this Court's order and their ability to bring about compliance with its terms by registering and enrolling James Howard Meredith and admitting him to continued attendance at the University of Mississippi for the fall semester commencing September 1962.

CONCLUSION

WHEREFORE, the United States prays for an order

(1) That the respondents Williams, Lewis and Ellis and each of them

be joined with the remaining respondents in being ordered to show cause, if any they have, on September 24, 1962, at 11:00 A. M., in the courtroom of the United States Court of Appeals for the Fifth Circuit in the United States Post Office Building, 600 Camp Street, New Orleans, Louisiana, why they should not be held in civil contempt of the order of this Court of July 28, 1962:

(2) Remanding the respondents to the custody of the Attorney General until they agree in open court to:

(a) register forthwith for enrollment in the University of Mississippi and to admit forthwith to the University of Mississippi to continued attendance, 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

/s/ Burke Marshall

BURKE MARSHALL

Assistant Attorney General

C.

/s/ Louis LaCour

LOUIS C. LACOUR

United States Attorney

/s/ J. Harold Flannery

J. HAROLD FLANNERY

Attorney, Department of Justice

VERIFICATION

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

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.

/s/ J. Harold Fishery
J. Harold Fishery

Subscribed and sworn to before me
this 22nd day of September, 1962.

Edward W. Wadsworth
Clerk of the United States
Court of Appeals

By /s/ GILBERT F. GANUCHEAU
Deputy Clerk

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

By Gilbert F. Ganucheau
Deputy

New Orleans, Louisiana

SEP 22 1962

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS

FILED

SEP 22 1962

HERBERT, et al.,

Appellants

vs.

FAIR, et al.,

Defendants

UNITED STATES OF AMERICA
as Amicus Curiae and
Petitioner

vs.

FAIR, et al.,

Defendants

EDWARD W. WADSWORTH
CLERK

NO. 19,475

ORDER REQUIRING ADDITIONAL
RESPONSES TO SHOW CAUSE WHY
THIS CASE SHOULD BE HELD IN
CIVIL CONTEMPT.

It appearing from the verified petition of the United States of America, attached hereto, that 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, together with the other respondents named in this Court's order of September 21, 1962, have failed and refused, and are now failing and refusing, to comply with this Court's order of July 23, 1962, presently in full force and effect, by failing and refusing to enroll and register, and admit to continued attendance at the University of Mississippi, James Howard Meredith, solely on ground of his color, as required by the aforesaid order of this Court:

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, be made additional respondents to the show cause order of this Court of September 21, 1962, and that they show cause, if any they have, on September 24, 1962 at 11:00

A. M. in the Courtroom of the United States Court of Appeals for the Fifth Circuit, United States Post Office Building, 600 Camp Street, New Orleans, Louisiana, why they and each of them, together with the other respondents, should not be held in civil contempt by reason of their failure and refusal to obey the order of this Court of July 23, 1962, and the other orders of this Court requiring the respondents to register and enroll and admit to continued attendance at the University of Mississippi James Howard Meredith.

This Order shall be effective immediately.

/s/ JOHN R. BROWN JWV
JOHN R. BROWN, CLERK

/s/ JOHN MIBOR WISDOM
JOHN MIBOR WISDOM, CLERK

/s/ GRIFFIN B. BELL JWV
GRIFFIN B. BELL, CLERK

September 22, 1962

FOR THE FIFTH CIRCUIT

NO. 19475

JAMES E. MENDITE,

Appellant

versus

CHARLES DICKSON FAIR ET AL,

Appellees

**MOTION TO QUASH SUBPOENA DUCES
DECIU ADDRESSSED TO EUCLID RAY JOBE**

Come now the Defendant-Appellee Euclid Ray Jobe and respectfully moves this Honorably Court to quash the subpoena duces tecum previously served upon him, dated the 21st day of September, 1962 for the reason that said subpoena is unreasonable and oppressive.

Respectfully submitted,

Charles Dickson Fair

CHARLES DICKSON FAIR ET AL
Members of the Board of Trustees
of State Institutions of Higher
Learning of the State of Mississippi

Joe T. Patterson

Joe T. Patterson
Attorney General of the
State of Mississippi

CERTIFICATE OF SERVICE

A true copy of the foregoing has been personally delivered to the Attorney of Record for the United States of America this 14th day of September, 1962.

Charles R. Cook

FOR THE FIFTH CIRCUIT

NO. 19478

JAMES H. BENEDETH,

Appellant

versus

CHARLES DEWSON FAIR ET AL,

Appellees

MOTION

Come now the members of the Board of Trustees of Institutions of Higher Learning of the State of Mississippi and ask this Honorable Court for the convenience of the parties and witnesses in this cause and in the interest of justice to change or remove the place of the sitting of this Honorable Court to hear this action to the United States courtroom in the City of Jackson, Mississippi where the said Court might have originally chosen to sit to hear this cause.

Respectfully submitted,

CHARLES DEWSON FAIR ET AL
Members of the Board of Trustees
of State Institutions of Higher
Learning of the State of Mississippi

By Joe T. Patterson
Joe T. Patterson
Attorney General of the
State of Mississippi

CERTIFICATE OF SERVICE

A true copy of the foregoing has been personally delivered to the Attorney General for the United States of America this 23rd day of September, 1951.

By Charles Dewson Fair

FOR THE FIFTH CIRCUIT

NO. 19475

JAMES H. MENDITH,

Appellant

VERSUS

CHARLES DICKSON FAIR ET AL.,

Appellees

MOTION TO DISMISS OR IN THE ALTERNATIVE TO
TRANSFER TO THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

Now come those defendant-appellees who are members of the Board of Trustees of Institutions of Higher Learning of the State of Mississippi in their individual capacity as such members of said Board of Trustees and move this Honorable Court to dismiss this cause or in the alternative to transfer this cause to the United States District Court for the Southern District of Mississippi, Jackson Division, and in support hereof would show:

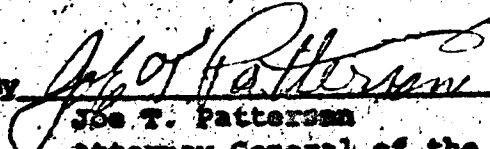
1. This Court has no jurisdiction to hear or determine this citation for civil contempt. Such jurisdiction is vested exclusively in the United States District Court for the Southern District of Mississippi for the reason that said cause has been finally remanded to said U. S. District Court and said U. S. District Court has issued its permanent injunction in strict accordance with said mandate and has promptly undertaken all the proceedings brought and instituted in that Court to properly enforce said injunction.

2. The only proper venue for the trial of any action or citation for civil contempt such as here alleged lies in the Jackson Division of the United States District Court for the Southern District of the State of Mississippi.

its Attorney General has no power, duty or authority in his status as amicus curiae or otherwise to file or prosecute any application or action for civil contempt of these individual members of said Board of Trustees in this proceeding, for the reason that the Plaintiff-appellee in this action has presently filed a motion upon which a citation has been issued by this Court and is presently pending charging as violations or civil contempts the identical acts and actions as covered by the said application and citation of the United States of America.


Respectfully submitted,

CHARLES DICKSON FAIR ET AL
Members of the Board of Trustees
of State Institutions of Higher
Learning of the State of Mississippi

By 
Joe T. Patterson
Attorney General of the
State of Mississippi

CERTIFICATE OF SERVICE

A true copy of the foregoing has been personally delivered to the Attorney of Record for the United States of America this 24th day of September, 1962.

By: 

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

NO. 19475

JAMES HOWARD MEREDITH,

Appellant

versus

CHARLES DICKSON FAIR, ET AL,

Appellees

*** * * ***

**MOTION OF JOHN DAVIS WILLIAMS, ARTHUR BEVERLY LEWIS,
AND ROBERT BYRON ELLIS, TO DISMISS THE ACTION AGAINST THEM**

1.

COME NOW John Davis Williams, Arthur Beverly Lewis, and Robert Byron Ellis, respondents in the above styled cause, and move the Court to dismiss the action or proceedings against them, and each of them, and as ground for this Motion would show that insofar as they are concerned, each and every issue involved in this cause, and each and every charge and allegation against them, has been duly, legally and completely adjudicated by a Court of competent jurisdiction, and this proceeding should be dismissed, as to these Respondents, under the doctrine of Res Judicata.

2.

That on the 20th day of September, 1962, there was duly filed in the United States District Court for the Southern District of Mississippi, Jackson Division, by the plaintiff herein, a petition against these respondents making the same charges and allegations, and in the same substance and in virtually the identical language as the petition filed in this Court on September 22, 1962, bringing these respondents in as respondents to this action, which action in said Court prayed for an order holding these respondents in civil contempt, being the same relief here prayed for, a true and exact copy of which petition in said Court is hereto attached as Exhibit "A" hereto, and

in words and figures; that upon the filing of said petition, Judge Sidney C. Misc, the Judge of said District Court, having full, complete and exclusive jurisdiction in the matter, ordered these respondents to show cause, at 1:30 o'clock p.m. on September 21, 1962, in the United States District Courtroom in the Federal Building in Meridian, Mississippi, if any they had, why each of them should not be held in civil contempt for failure and refusal to do and perform the very same acts and things as charged in this cause, a true and exact copy of which order is hereto attached as Exhibit "B" hereto, and asked to be taken and considered as a part hereof as fully as if written herein in words and figures.

3.

That at said time and place, as named in said order, said matter was duly and fully heard on pleadings, proof and argument by said District Court, and the opinion of the Court was duly rendered acquitting these respondents and each of them, dismissing said charges of contempt as set forth in the petition, a true and exact copy of which opinion is hereto attached as Exhibit "C" to this Motion and asked to be taken and considered as a part hereof as fully as if written herein in words and figures; that, however, as shown by said opinion of the Court it went further than is stated in the petition of the plaintiff herein, and further held as a fact that neither the respondents John Davis Williams nor Arthur Beverly Lewis ever had an opportunity to register in or admit into the University of Mississippi, the said James Howard Meredith, and said Court further held that neither of those respondents had any duty, obligation or authority, in their positions and under their employment, to register or admit the said Meredith into said institution.

4.

That pursuant to said hearing and opinion the said United States District Court did on the _____ day of September, 1962, duly sign and enter the judgment of said Court wholly acquitting and dismissing these respondents

copy of which order is hereto attached as Exhibit "D" to this Motion and asked to be taken and considered as a part hereof as fully as if written herein in words and figures.

5.

That the opinion and order of said Court was rendered on factual issues joined, and on proof in Open Court, and after argument of counsel of the parties in interest, and that no motion has been filed to set aside the order of said Court, nor has an appeal been taken, and therefore, the full and exclusive jurisdiction of said matter, as to these respondents, is still fully and exclusively vested in that Court.

6.

That said District Court, with full and complete jurisdiction of all matters and things here involved, heard, decided and adjudicated the identical issues now before this Court as between the same identical parties, and therefore this action, insofar as it concerns these respondents should be dismissed under the doctrine of Res Judicata.

7.

That the petitioners participating in this action, having instituted the action in said District Court, and having fully participated therein, are, in equity and good conscience, estopped from further pursuing this action.

WHEREFORE, the Respondents move the Court to dismiss this action against them, and each of them, for the grounds and reasons heretofore set forth.

RESPECTFULLY SUBMITTED,


J. H. Smith
Demotac, Mississippi


Oona H. Smith
Corinth, Mississippi


Chester Curtis

NOTICE

TO:

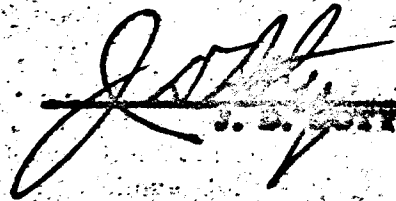
**Honorable Burke Marshall
Assistant Attorney General
Of Counsel for the United States Government
in the above entitled matter
New Orleans, Louisiana**

**Please take notice that John Davis Williams, Arthur Beverly
Lewis, and Robert Byron Ellis, Respondents in the above entitled and
captioned cause, will bring the within Motion to Dismiss on for hearing before
the United States Court of Appeals for the Fifth Circuit, at the Courtroom
in the United States Post Office Building, on Monday, September 24, 1962,
at 11:00 a. m. o'clock, or as soon thereafter as counsel can be heard.**

CERTIFICATE OF SERVICE

**I, J. D. Doty, one of the attorneys of record for the Respondents
herein, certify that I have this day personally delivered a true and exact copy
of the foregoing Motion to Dismiss to the Honorable Burke Marshall and the
Honorable Constance Baker Motley, Attorneys for the Appellant herein.**

Witness my signature on this 25th day of September, 1962.



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

NO. 19475

JAMES HOWARD MEREDITH,

Appellant

versus

CHARLES DICKSON FAIR, ET AL,

Appellees

**UNITED STATES OF AMERICA,
As Amicus Curiae and Petitioner**

versus

CHARLES DICKSON FAIR, ET AL,

Respondents

• • • • •

MOTION FOR SEVERANCE

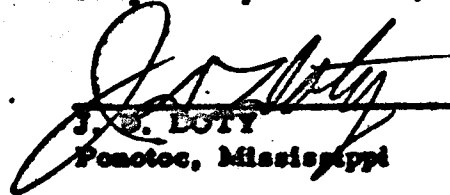
COME NOW John Davis Williams, Chancellor of the University of Mississippi, Arthur Beverly Lewis, Dean of the College of Liberal Arts of the University of Mississippi, and Robert Byron Ellis, Registrar of the University of Mississippi, respondents, and each of them, and respectfully move this Honorable Court to grant them a severance from Charles Dickson Fair, et al, in this cause, for the following reasons, to-wit:

1.

The evidence and facts to be presented in behalf of the movants are entirely separate and different from that to be presented on behalf of the other respondents, and in addition, these respondents have been separately proceeded against in a contempt proceedings in the U. S. District Court, Southern District, Meridian, Mississippi, on September 21, 1961.

These movants are employees of the other respondents, constituting the Board of Trustees of State Institutions of Higher Learning of the State of Mississippi, and are subject to the instructions and orders of said Board and without authority to act in connection with the operation of the University of Mississippi, except by the express direction and orders of the said Board.

Respectfully submitted,


J. B. LOTY
Ponotoc, Mississippi

OMA R. SMITH
Corinth, Mississippi

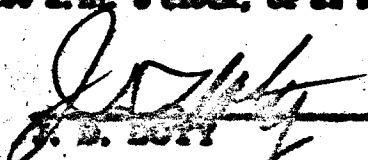
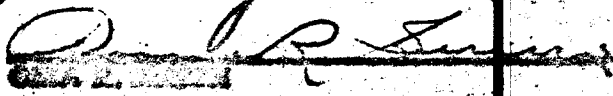
CHESTER CURTIS
Clarksdale, Mississippi


WILLIAM BARBOUR
Yazoo City, Mississippi

NOTICE

TO: The Honorable Burke Marshall
Assistant Attorney General
Of Counsel for the United States Government
in the above entitled cause
New Orleans, Louisiana

PLEASE TAKE NOTICE that John Davis Williams, Arthur Beverly Lewis, and Robert Byron Ellis, Respondents in the above entitled and captioned cause will bring the within Motion for Severance on for hearing before the United States Court of Appeals for the Fifth Circuit at the Courtroom in the United States Post Office Building, New Orleans, Louisiana, on Monday, September 24, 1962, at 11:00 a. m. o'clock, or as soon thereafter as counsel can be heard.

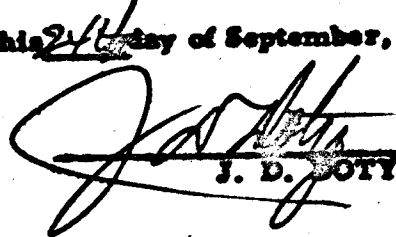

J. B. LOTY

OMA R. SMITH

CHESTER CURTIS
WILLIAM BARBOUR

CERTIFICATE OF SERVICE

I, J. D. Doty, one of the attorneys of record for the Respondents herein, certify that I have this day personally delivered a true and exact copy of the foregoing Motion for Severance to the Honorable Burke Marshall and the Honorable Constance Baker Motley, Attorneys for the Appellant herein.

Witness my signature this 24th day of September, 1962.


J. D. DOTY

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 19,475

JAMES HOWARD MURKIN, et al.,

Appellants,

vs.

CHARLES DICKSON FAIR, et al.,

Appellees.

UNITED STATES OF AMERICA, as
Amicus Curiae and Petitioner,

vs.

CHARLES DICKSON FAIR, et al.,

Respondents.

Appeal from the United States District Court for the
Southern District of Mississippi.

Before TUTTLE, Chief Judge, HOFFMANSON, RIVES, JONES, BROWN,
WISDOM, GIBBS and HALL, Circuit Judges.

BY THE COURT:-

This cause coming on to be heard on this date the Court proceeded to hear the testimony and to receive the evidence offered by the parties to this proceeding and to hear argument of counsel, whereupon the President of the Board of Trustees of Higher Learning announced in open Court on behalf of himself and twelve Members of the Board that the Board was now ready and willing to fully perform all things ordered and directed by the former orders of this Court and Board Member, Gully B. Riddell, Esquire, through his counsel, announced that he would comply with the Court's orders as soon as he was physically able to do so; and the Registrar of the University of Mississippi having announced in open Court that he would be available in Jackson, Mississippi not later than 1935 P. M. of

September 25, 1962, for the purpose of registering and admitting as a student of the University of Mississippi James H. Meredith in accordance with the orders of this Court, and all of said parties having requested the Court to inform them of the things to be done and the action to be performed in compliance with the orders of the Court, it is therefore ORDERED:

That the respondents shall fully and completely comply with all of the terms of the order of this Court dated July 28, 1962, including, but not limited to, the following:

(a) Revoke and rescind the action of the Board taken on September 4, 1962, relieving certain named University Officials of authority as to the registration and admission of appellant, James H. Meredith, and taking the said responsibilities ^{unto} and authority ~~unto~~ themselves as a Board of Trustees.

(b) Revoke and rescind the action of the Board taken on September 20, 1962, appointing Ross R. Barnett, the Governor of the State of Mississippi, as the agent of the Board to act upon all matters pertaining to the registration and admission of James H. Meredith.

(c) Prepare and thereafter without delay send to all employees on the campus of the University notification that the orders of this Court are to be complied with in connection with the registration, ~~and~~ admission and attendance of James H. Meredith as a student in the University.

(d) Instruct James Davis Williams, Chancellor, Arthur Beverly Lewis, Dean of the College of Liberal Arts, and Robert Byron Ellis, Registrar of the University, to register and receive James H. Meredith for actual admission to, and continued attendance thereafter at, the University in accordance with the order of this Court of July 28, 1962.

(e) Registrar, Ellis, shall be available at Jackson, Mississippi at the office of the defendant, Board of Trustees, from 1:00 P. M. to 4:00 P. M., September 25, 1962 for the purpose of the registration of the said James H. Meredith and his actual admission to, and the continued attendance thereafter at, the University on the same basis as other students; and if the said James H. Meredith does not appear during said hours the said Registrar shall continue to be available at his office at the University of Mississippi during usual business hours for the purpose of effecting such registration, admission and attendance.

Each respondent is directed to notify this Court either directly or through Charles Clarke, Esquire, not later than 4:00 P. M., September 25, 1962, as to the actions he has taken to comply with the foregoing order.

ENTER:

Dated: September 24, 1962.

FOR THE FIFTH CIRCUIT

NO. 19475

JAMES H. MURDITH,

Appellant

versus

CHARLES DICKSON FAIR ET AL,

Appellees

ENTRY OF SPECIAL AND LIMITED APPEARANCE

Come now the Defendant-Appellees, who are Members of the Board of Trustees of Institutions of Higher Learning of the State of Mississippi, in response to the citation for civil contempt previously served upon them in the State of Mississippi to respectfully enter in this Court their special and limited appearance solely for the purpose of challenging the jurisdiction and venue of this Court to hear or determine said citation for civil contempt.

Respectfully submitted,

Charles D. Fair

CHARLES DICKSON FAIR ET AL
Members of the Board of Trustees
of State Institutions of Higher
Learning of the State of Mississippi

Joe T. Patterson

Joe T. Patterson
Attorney General of the
State of Mississippi

CERTIFICATE OF SERVICE

A true copy of the foregoing has been personally delivered to the Attorney of Record for the United States of America this 24th day of September, 1938.

Charles Crank