

officer came over and said something to one or two of the policemen and then they commenced to take some action to get the car out of there.

At that time I was constantly receiving reports from my men along the line as to the abuse they were receiving and as to the objects that were falling around them. I knew that at least 7 of my men were hit prior to the gas being thrown.

Between 7:00 and just before 8:00 when the gas was fired I remained constantly at my station in front of the Lyceum. Mr. Cameron was there at all times with me and we conferred on several occasions with Mr. McShane who was in and out of the Lyceum and up and down around the Lyceum.

Fifteen or twenty minutes before the gas went off I remember going to Mr. McShane and reporting to him about the situation. I expressed my opinion forcefully that we were going to have to move the crowd back with gas because it was obvious that the highway patrol was not going to do anything. Mr. McShane advised me that he did not want to take charge of the situation until it was finally apparent that the state police would do nothing and the mob was completely out of hand. I expressed the opinion that that time had already occurred. But Mr. McShane said that he was

going to wait and I went back to my position in front of the Lyceum at the edge of the curb in front of my men. My squad of men with gas guns were lined up just to the north of the front door of the Lyceum behind a Border Patrol Plymouth and a 6 x 6, and I would stand between the 6 x 6 and the Plymouth or out in the street in front of the Plymouth.

Shortly before the gas went off Forsht came around and he and I talked about it being time to move the people back by firing gas. Again I went to talk to Mr. McShane just before 8:00 p.m. Mr. McShane listened to us and said okay, it is all right to use the gas. So I gave the verbal signal to put on gas masks. Forsht at the same time gave the signal to his group down at the southeast corner of the Lyceum. This signal was given by hollering "gas". All of the men understood that this meant only that they were to put on their gas masks. Almost immediately a state policeman who was in the street in front of us said, "We can handle this." At that time the street was filled with people and there were maybe 15 or 20 state patrolmen scattered through the crowd in the street in front of the Lyceum but they weren't doing anything. However, when we put on our gas masks the crowd of students did move back some and some of

the state policemen did for a moment lightly attempt to move them back. At that point I stopped right there and watched to see if the local police would handle the situation. Of course we would not have fired anyway until we had gotten additional orders but when the crowd started to move back I raised my gas mask onto my forehead and observed them. Within three or four minutes, however, they surged right back and the policemen did nothing to stop them. The mob surged back into the street and up against the trucks and Border Patrol car in front of the Lyceum. I would say that there were 2,000 people in the street and in the grove behind them. Rocks and bottles were coming down all around me. I was hit on the leg by a Molotov Cocktail, which is a coke bottle filled with lighter fluid. At that time I was standing in the street just about between the front of the Border Patrol car and the 6 x 6 Army truck. The coke bottle broke but the lighter fuel did not ignite. I remember also that as the crowd moved back McShane said hold it. We waited and it was at that time that I reached up and raised my gas mask off my face. A couple of highway patrolmen had moved some of the students over toward the curb right in front of the Lyceum. I could not see what was happening down in the corners of the building. There were also a couple of state officials standing

there in civilian clothes. I remember saying something to this effect to the state police out in the street in front of me, "You all better keep these people back. I have had enough of this." One of the state policemen said to me, "Don't you get hard with me. I am a policeman." I said I have been a policeman for twelve years and I have never seen policemen acting like this. Then the crowd began to surge back and they came into the street and up against the car and truck. It was at that time that I heard that a Border Patrolman in that vicinity had been hit with a steel pipe and one of my men showed me the steel pipe that had come down on him. I saw this and learned that Mr. McShane had been told about it. McShane and Forsht were over to my right and I heard McShane say let them have it and yelled to my group to fire and I fired into the crowd. When I fired I fired down and at a point below the waist of the mob in the street. This is the way we have been taught to fire the tear gas. We didn't fire any type of projectile that night. As a matter of fact the marshals didn't have a projectile and have never had a projectile to fire. Since we have come back we have recommended the purchase of a projectile type of gas shell but we didn't have any at that time and no projectiles were used until prison guards arrived

The shell that we had in our 1.5 guns is a blast dispersion shell. There is no projectile in the gun at all. I have been asked about the state policeman who claims he was hit by a projectile. This could not have happened. I have heard that a state policeman tripped and fell and maybe a gas grenade exploded under him. If this occurred or if he was in the vicinity where several of the 1.5s were fired, and we did have a solid row of 1.5 guns behind me, he could have received a tremendous concentration of gas and if he took a big gulp and got a lung full, it would have made him very sick.

We fired the first volley and then the mob retreated. During the evening I felt that there was a necessity of dispatching a squad or parts of a squad into the grove to keep the mob dispersed. We were required to maintain security around the Lyceum. The wind was unfavorable, as it was blowing from the southeast. The gas we used dissipated very rapidly and therefore the mob would be able to return close enough to our lines to inflict damage by throwing rocks and bottles. So we would have squads follow the crowd as they dispersed and try to lay down a blanket of gas as far

in front of the marshals' lines as possible. In addition, as the evening wore on we came under sniper fire and we made several forays out into the grove to locate the sniper.

I don't believe any of my men ever fired their guns. There were no specific instructions as to the firing of guns but the men knew that they were not to use the firearms except where absolutely necessary to protect life or property. I did see one of our marshals fire at the fire truck as it went by.

As to lessons we learned that night, we found that if we are going to be spread out on a line we need better communications between a group commander and the men. This would permit us to work better together and to use less gas, and would permit us to keep a better eye on the men and keep them from getting over-anxious about going out into the grove on their own.

If we had had more men and wanted to leave the Lyceum we might have put a group or two out into the crowd to disperse it by use of our formations. The trouble with this was that we were not to do anything while the state police were there until they demonstrated that they could not hold

back the crowd. I know that it would not have done any good to use the stick as an offensive weapon and I know we didn't have enough men to extend our circle any farther than around the Lyceum.

It is standard procedure to have a loud speaker and we do have loud speaker equipment. This had been loaded with our gas supplies in a truck that was bringing the reserve load of gas and when we went by air the truck didn't catch up with us until about 9:00. However, the mob knew definitely that we were going to use gas and I personally told several state policemen that.

In thinking about lesser steps that we might have taken, it is important to remember that we are acting with limited authority until federal law has been violated or the federal court order has been interfered with. We are under instructions not to act and a crowd can stand across the street and just yell at us and we don't have the authority to disperse it, when state police were in the street between us and the crowd and the crowd is under some sort of control -- that is not committing acts of violence.

"Mississippi White
Paper" -

"The University of
Mississippi"
and Meredith

dated 11/15/62

sent to Mr. Doan
by Mr. Gush

3/4/63

Verne

Nicholas G. Katzenbach
Deputy Attorney General

November 26, 1962

Burke Marshall
Assistant Attorney General
Civil Rights Division

BR:JD:stj 9712
144-100-48-1

Preparation of matters growing
out of Meredith's entrance to
the University of Mississippi

For your information I am setting forth our preparation in connection with the various matters that grew out of Meredith's entrance to the University of Mississippi.

1. Victorial chronology of events around
the LORRAINE from 4:00 pm. to 8:00 pm,
September 29.

A notebook of pictures has been assembled and delivered to the Bureau with the request that the Bureau assemble all available pictures of the same type taken during the same period.

2. Victorial notebook of state law enforce-
ment activities at or around the University
from 4:00 pm. to 8:00 pm. September 29.

A notebook of pictures has been assembled and delivered to the Bureau with the request that it assemble all available similar pictures; identify all police officers and police cars portrayed in the pictures.

3. Victorial notebook of all Mississippi
police activities at or around the
University of Mississippi.

A notebook has been started and delivered to the Bureau with the request that it assemble all available pictures and identify all Mississippi police officers and police cars portrayed in the pictures.

cc: Records
Chrono
Dear
Trial File (1140)

4. Narrative chronology of events from September 10 from 12:00 noon to midnight.

A first draft of the noon to 1:00 p.m. chronology was prepared on November 23 and submitted to Justice Department officers who were at Oxford on September 30. A second draft is now being prepared incorporating additional information furnished by various Justice Department personnel.

5. Complete statements from all Justice Department personnel who were at Oxford on September 30.

Each of the Justice Department people who were at Oxford have been furnished the statement which they dictated at Oxford with the request that it be corrected. In addition, where the statement lacks detail as to conversations between University of Mississippi officials and/or State of Mississippi officials, we have requested that this statement be elaborated to include this. If no statement has yet been given, Justice Department personnel (Schlei and Reis) have been requested to prepare one.

6. Complete statements from marshals in command.

We are obtaining full and complete statements from McShane, Cameron, Doley, Butler and Forst who were the five marshals in command. None of these people has, to date, made a complete statement. Butler and Forst are in Florida but one or both of them will be in Washington this week and will be interviewed at that time.

7. Collection of statements of witnesses who are available for questioning on September 30.

These statements will be divided as follows:

- a. Marshals;
- b. Reporters and photographers;
- c. Faculty members;
- d. Others

Witnesses whose statements appear to be useful will be fully interviewed.

8. Collection of statements of witnesses
to the University of Chicago
concerning the activities of
Harold P. ...

These statements will be divided as follows:

- a. Marshals;
- b. Reporters and photographers;
- c. Faculty members;
- d. Others

Witnesses whose statements appear to be useful will be interviewed.

9. Collection of all evidence on persons
connected with the University of Chicago
concerning the activities of
Harold P. ...

I understand that the United States Attorney is handling all of these cases except the one involving Maj. Gen. Walter. However, because of the voluminous amount of material which we are sifting, we are cross-indexing all evidence on those people so that the Department will be in a position to assist the United States Attorney in preparing for grand jury presentations.

10. Collection of all materials turned over
to the University of Chicago
by ...

We are organizing and indexing this material so that we will have a record of disciplinary action taken against any student for his activities arising out of Meredith's admission to the University.

11. The activities of white citizens council
at the University of Chicago
concerning the activities of
Harold P. ...

We are preparing an FBI investigation to develop proof as to the activities of certain white citizens

council organizations and certain officials of white citizens councils in interfering with Meredith's right to go to the University of Mississippi.

13. Investigation of Governor Barnett's activities during September 1964.

The Bureau has been requested to conduct a full investigation on Governor Barnett's activities during September to be used in the criminal contempt proceedings.

cc: Assistant Attorney General
Criminal Division

Assistant Attorney General
Civil Division

US v. Barnett
~~US v. Meredith~~
my file

November 9, 1962

QUESTIONS AND ANSWERS
LAMB - MARSHALL

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

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

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

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

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

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

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

When the mandate issued Judge Cameron, who did not sit on the panel of the Court of Appeals, and did not have the record before him, and was not acquainted with the issues in the litigation, issued a stay of the mandate pending the State presenting a petition for certiorari to the Supreme Court of the United States. The panel of the Court of Appeals which had heard the case then recalled its mandate, set aside Judge Cameron's stay, and issued its own order against the University requiring the admission of Meredith in the semester starting in September, 1942.

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

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

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

Around the 20th or 23th of August, the clerk of the Supreme Court, at the request of Mr. Justice Black, called the Solicitor General of the United States, Mr. Archibald Cox, and requested that the Department of Justice file a memorandum on two of the three points that were presented. One was the power of Judge Cameron to issue the successive stays even though he was not a member of the panel who sat on the case and had no record before him, and the other was the power of Mr. Justice Black sitting as a single Justice when the Supreme Court was not in session, to set aside the stay of Judge Cameron.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The answer to that is that shortly after the marshals

got there and Meredith got there, at about quarter past seven in the evening, Senator Yarborough arrived from Jackson with a proclamation signed by the Governor purporting to put Senator Yarborough in charge of the State Highway Patrol. Senator Yarborough then informed Mr. Katzenbach that he was withdrawing the Highway Patrol from the area in order to help preserve the peace. Mr. Katzenbach told the Senator that he could not see how it would help preserve the peace to withdraw the state police at that time. The state police did withdraw for a while at that time. The Federal Government got in touch with the Governor and informed him of this fact. This was before the President made his television speech.

The Senator then talked to the Governor and for a while rescinded his order to withdraw the Highway Patrol. However, the Highway Patrol had withdrawn in part, and at that time were behind the crowd or were inside the crowd, and were not taking any steps at all to control the crowd.

It was the opinion of the professional law enforcement people there on behalf of the federal government that if the highway patrol had taken strong action during that period between seven and eight o'clock to keep the crowd under control, the bad rioting started later in the

evening would have been prevented. But the Highway Patrol were prevented from doing this for a while, and after they were called back, did not do it for one reason or another. Within the next hour they were withdrawn again from the area of the campus and never reappeared. A large number of them collected on the highway for most of the night, but did not participate in the efforts to control the rioting on the campus. There are a number of accounts by newspaper men and by observers who were not officially connected with either the federal government or the state of Mississippi that suggest that the Highway Patrol or individual members of that patrol at particular times assisted actively some of the rioters by using their flashlights in the eyes of the marshals, by helping with fire bombs, and other steps taken to destroy the military vehicles.

The question is whether a public statement made by Senator Yarborough that the Highway Patrol were never given instructions to withdraw is or is not accurate.

In my view, it is not accurate.

The question is how do we justify the expense incurred by the federal government in transporting Meredith by

government plane in connection with his admission to the University, and particularly the flights to and from New Orleans during the week before his admission.

The answer to that is that the Government had a responsibility to protect the integrity of the order of the Court and to preserve the due administration of justice in Oxford. That required the admission of Meredith into the University. Several times he was taken there in an effort to avoid what finally became unavoidable. At some times these were done by arrangement with University officials and with the Governor. The Government transported Meredith because it was the cheapest and most efficient way for the Government to fulfill its mission at that time.

The question is whether I can think of any parallel for such transportation in any other litigation. I will have to try to find an answer to that.

The question is whether there was mistreatment of students who were taken prisoner either Sunday night or Monday night.

The two specific allegations of mistreatment that are current is that one group was made to hold their hands above their heads for an inordinate amount of time, and that another group was denied the use of bathroom facilities

for an inordinate amount of time. On Sunday night the prisoners that were taken were all kept in the basement of the Lyceum Building. During that time, ^{there} was a very serious riot going on outside. During the riot 166 marshals were injured, and of those injured, 29 were injured by gunshots. It was at times very difficult to get vehicles in and out of the vicinity of the Lyceum Building. It was physically impossible on Sunday night to keep custody of prisoners any place other than the place where they were kept, and that was obviously not a suitable place for prisoners on a long-range basis, and involved inconvenience to both the marshals and the prisoners, but that was unavoidable.

As far as Monday is concerned, that was the job of the military. The military were dealing with the prisoners at that time, and were keeping them at a building near the airport. We will look into any specific charges of mistreatment. Again, the facilities were not designed for the use for which they had to be put. There is no federal place of custody that was available in Oxford at the time at all, and it may have been that there was inconvenience for that reason.

The question is why such short notice was given the University officials in connection with the contempt

proceedings in Meridian and later on, in New Orleans.

The answer to that is that the responsibility of the federal government was to see that the integrity of the court orders was preserved, and that they were made effective. The specific issue decided by both the Court of Appeals and the Supreme Court was that Mr. Meredith should be admitted to the University during the Fall Semester of 1962. If he was not admitted during that semester at the University, the court orders would have been frustrated by contemptuous action. Accordingly, time was of the essence. It had been stated to be of the essence by the Court of Appeals. The other side of that is that there are many people that believe that the Federal government wasted an inordinate amount of time in an effort to enforce those court orders without the use of the military.

The question is whether, nevertheless, it is due process to require them to appear for trial at which they might be sent to jail on less than twenty-four hours notice.

The answer is that every proceeding brought by the government was a civil contempt proceeding. They were all remedial in nature. The government stated in court in both Meridian and in New Orleans at the hearings against the University officials and the Board of Trustees that

the government was not seeking to punish anyone, that the purpose of the hearings was to make the court orders effective, and that the only thing that the government was seeking was a commitment by the University officials and by the Board of Trustees that they would obey the orders of the Court. At the hearing in Meridian the University officials made such commitment in open court. At the hearing in New Orleans on the next Monday, the Board of Trustees unanimously made such commitment in open court. That was satisfactory to the government and that is all it was seeking.

The question is why get the University officials on contempt twice, and wasn't the Meridian proceeding res judicata.

The Meridian proceeding was not res judicata, in a technical sense, because the order of the District Court for the Southern District of Mississippi was different in substance and as well as in language, from the order of the Court of Appeals, particularly in terms of requirements that Meredith's credits be evaluated by the Dean, which had not been done, and also in terms of the immediacy of the requirement of his admission. The reason why that had to

be done twice was that it was out best judgment, although as we stated to the Court of Appeals in New Orleans, we were not seeking to punish the University officials, and we were confident that they would obey the court order once they were permitted to do so, was that their presence as parties to that proceeding was necessary to full relief. In New Orleans I asked the Court of Appeals to defer taking any action with respect to the University officials until they had ascertained the intentions of the Board of Trustees with respect to it, and when the Board of Trustees agreed that they would comply with the orders of the court, the Government stated in Court publicly that it was confident that the University officials would do so also.

The question is, why not stall admission of Meredith until the Supreme Court had ruled on the petition for certiorari.

The answer to that is that the Supreme Court and the Court of Appeals, and then the District Court for the Southern District of Mississippi had determined and ordered that he be admitted at the beginning of the September term. The Executive Branch of the Federal Government, the President of the United States, and the Attorney General do not have any discretion to decide whether or not to enforce these orders.

The question was why not register Meredith in the Federal Building at Jackson on Tuesday. Why go to the State Office Building?

The answer to that is that we did arrange for the registration of Meredith at the Federal Building in Jackson on Tuesday but that the Governor and a state legislative investigation committee made it impossible. We were informed that it was made physically impossible for Mr. Ellis, the Registrar, to leave the State Office Building to go to the Federal Building in accordance with our arrangements with the Board of Trustees and the Registrar that that would be done, and further, ^{we} were informed that Mr. Ellis was physically held as more or less a prisoner in the State Office Building in order to prevent him from going out to register Meredith anywhere else. That was done at the instructions of the Governor in order that he could set up his public confrontation with Meredith for public and political purposes in the State Office Building. He had it set up there with a public address system, with television coverage, and that was the purpose of it. That was contrary to our arrangements with the University, but apparently the University was physically prevented from complying with the arrangement.

The question is why didn't we wait until his detention ceased.

The answer to that is that we tried to wait as long as we could, but Mr. Ellis took the position on advice of his counsel that if he could not register Meredith by 4:00 that afternoon, he was under no further obligation to register him in Jackson, and it was apparent that his physical detention would have continued at least until four in the afternoon.

The question is why the registration was so important. Why was that a ministerial act which the Court could order the University to consider having been done whether it was done or not.

The answer is that it was a ministerial act; that I told the court that several times; that the problem was not simply getting him registered but in accordance with the orders of the Court, having registration and continued attendance as a student at the University, so there was never any dispute over that, and that was never the main thing as far as the government was concerned.

The question is whether there is a legal basis for the searches made in Oxford without martial law having been declared.

The answer to that is that as a legal matter, under the Proclamation issued by the President and the instructions given to the military by the President, the military had the duty and the legal power to do what was necessary in order to quell widespread civil disorder in the area. The searches that were made were not made for the purposes of collecting evidence or anything, but for the purpose of preventing a recurrence or a continuation of the civil disorder. They were made in the same sense that any police force might have to temporarily put a cordon around a part of a city to control a mob or to keep them away from a fire. The searches proved to be in fact necessary because a very large number of weapons were found being brought into Oxford on Monday -- Monday had been publicly considered to be the day when there would be a confrontation between the federal government and the state of Mississippi, and accordingly, most of the outsiders that came in response to General Walker's statements, and in response to the situation on the whole, had planned to come there for Monday, and many of the people from out of the state and from other parts of the state came into Oxford on Monday had

weapons and very dangerous weapons.

The question is why General Walker was shipped off to a mental institution so fast and under such heavy bond.

The answer to that is that in the first place -- at the time when he was sent to Springfield -- he was not sent there because it was a mental institution. He was sent there because there was no appropriate place in Oxford to retain his custody. There were no federal or really even local jail facilities available for the General, and he was sent to Springfield at the direction of the Director of the Bureau of Prisons, whose discretion it is to put a prisoner under federal charge wherever he considers to be the most convenient place. Springfield was as convenient a federal institution as there was available.

The reason for the size of the bond was that the charges placed against General Walker were extremely serious charges. They were insurrection and sedition, and participation in armed conspiracy against the United States. The mental examination was not ordered until the next day. It was ordered because the public activities of General Walker at that weekend and the

activities of General Walker during preceding months and his army medical record indicated to the psychiatrist who was in charge of handling these matters for the Bureau of Prisons that there was a serious question as to General Walker's competence. Accordingly, it was the duty of the government under those circumstances to ask for a mental examination to determine his competency.

The question is why was he sent to Springfield when some of the other prisoners were kept in Memphis.

I do not know of any prisoners being kept in Memphis.

Springfield is as close a federal penal institution as there is. The only other thing we could have done would have been to have had a state institution hold him for a while, but if he had to be moved out of Oxford, Springfield was as convenient a penal institution as there was available, and that's where the Director of the Bureau of Prisons, without any consultation with the Attorney General, decided that he would send him.

General Walker did have special treatment in the sense that as a former Major General of the United States Army, a citizen who had served his country for 30 years, and as a prominent citizen, he

deserved special treatment. The alternative would have been to keep him with student prisoners under the same conditions.

The question is whether it is correct that the marshals used the tear gas before any real trouble started -- hastily -- in an effort to provoke an incident.

The answer to that is that eight marshals had already been wounded, one of them quite seriously, before any tear gas was used. The tear gas was not used as long as the crowd was being kept at a significant distance from the marshals, despite the fact that rocks and bottles and other heavy missiles were being thrown out of the darkness at the marshals and efforts were being made to hurt them. But when the State Highway Patrol withdrew, even temporarily, and ceased trying to keep a distance between the mob and the marshals, and the mob got very close and these eight marshals had been injured (one was hit in the head with a two inch iron pipe), and at that time it was the judgment of those in charge under very difficult circumstances that they had to take steps to drive the mob back far enough so that they could not injure any more marshals, and that is why it was done.

The question is why there hasn't been a published report about the results of the examination of the marshals' guns.

The answer to that is that the examination has not been completely finished. It will be finished within a few days. The results to date have all been negative and the evidence is overwhelming that neither person killed was killed by a bullet from a marshal's gun.

The question is why the National Guard was called out to be used against local Mississippi people.

There are two answers to that. One is that the experience of the past with other governors who were intent on defying federal law for political purposes was that that would be necessary in order to avoid any possible use of the National Guard by the Governor to assist in the defiance of the federal law.

The other answer is that the people of Mississippi along with the people of all other states, have an obligation under the Constitution of the United States as well as under their local laws, to participate in the enforcing of the law of the land, not defying it.

The question is whether the interview given by the Attorney General to Henry Brandon of The London Times

was accurate insofar as it suggested that pressure was put on the businessmen by the federal government during the Mississippi crisis.

The answer to that is that I haven't seen the Brandon story, but that it would be wholly inaccurate to say that there was any pressure put by the federal government on any businessmen in Mississippi, and that accordingly, I am sure the Attorney General didn't say that.

The Attorney General, as well as other people in and out of the federal government who were concerned with the preservation of law and order in the state of Mississippi, did discuss the matter with anyone that they felt they could discuss it with in order to explain the situation to as many people as possible in the state.

Memorandum

TO : John Doar
First Assistant
Civil Rights Division

FROM : Frank E. Schwelb
Attorney

DATE: 11/26/62
FES:ach
144-40-254
11,901

SUBJECT: Conduct of State Troopers during Oxford Crisis

Not specific

You have requested me to investigate the conduct of the State Highway Patrol and other state officers during the Oxford riot. My reading of the various accounts of the Oxford Riot - and particularly those of the Marshals, Border Patrolmen, and Bureau of Prisons personnel - indicates that the Mississippi law enforcement officers on the scene did not arrest a single rioter and, except for some slight effort for a very brief period when the crowd first built up, never really tried to control the crowd. It is evident from the Yarbrough-Katzenbach conference and from the monitoring of the State Police radio that the police was withdrawn intentionally and that the plan to withdraw the police in the middle of the rioting was formed at a high level before the violence even began. In view of the apparent complicity of Mississippi deputy sheriffs in the arrival and activities of General Walker and his supporters (see particularly the statement of Reporter Rogers of the Denver Post) and in the light of the telephone calls made by Judge Moore and by William J. Simmons to outsiders, it seems reasonable to postulate that the State Government was party to a plan to create a riot and to do nothing to control it.

The degree to which we will be able to substantiate such complicity may become more evident upon the completion of the FBI investigation of the Citizens' Council's role in the Oxford riot. Even prior to the completion of that investigation, however, we can establish, on the basis of statements already in our files, not only lack of helpfulness on the part of State officers, but also numerous hostile acts on their part. Set forth below is a synopsis of these acts, together with the names of witnesses able to testify with respect to such acts.

1. Prior to the firing of the tear gas, when the mob was engaged in hurling missiles at the marshals, a number of the Highway Patrolmen shone their lights at the marshals, which not only gave the mob lighted targets at which to fire, but also had the effect of impairing the marshals' vision. In the words of Marshal Delmer E. Anglin, who is from Louisiana ("I am a southern boy myself and I don't blame them for some things, for the way they felt about it."), the conduct of the State Police was as follows:

The State Police shined their lights on me there so the kids could see. We told the State Police to turn the lights out, to take the lights off me. They had the lights right straight on me so the kids could throw at me.

Anglin was wounded during the riot. Marshal Herschel Garner, of Little Rock, Arkansas, stated that

the state patrolmen, who were off at an angle of about 45 degrees on our right, would shine their flashlights in our eyes which would blind us and hamper us in our efforts to dodge the rocks and bricks being thrown at us.

The statements of Mr. Dolan of the Department of Justice, of Marshal James E. French of Pensacola, Florida (who was Garner's squad leader) and of Inspector Holahan of Laredo, Texas are to the same general effect.

2. According to Border Patrolman Donald L. Albert of Del Rio, Texas, the State Police not only failed to arrest the trouble-makers in the crowd but, in one case took a rioter from the marshals and returned him to the student lines, remarking that they would not let the marshals arrest or harm him. This incident was also witnessed by Miss Sidna Brower, editor of the student newspaper, and by Marshal Nolan Douglas of Texas. Marshal Edward T. Bartholomew also relates an incident which may be the same one, but does not describe it in as much detail.

3. When the Highway Patrolmen made their mass exit from the scene of the riot, they evidently made a serious attempt to run some of the Marshals down with their cars. The apparent victim of one such incident, Senior Patrol Inspector Henry of Key West, Florida, said of the Highway Patrol that

They made a mass exodus at about, I would say at 9:45 to 10:00 p.m. There appeared to be 12 to 15 cars loaded with five men in each vehicle and as I was attempting to move them out of the traffic circle one of them floor-boarded the accelerator and tried to run me down. However, I was able to jump out of the way.

This incident is confirmed by Marshals Garner, Holohan, and Lowe.

4. Another example of conduct on the part of the State Police which went beyond mere inaction in the face of violence was the furnishing of instructions on how to inflict the most serious damage to Government property. In the words of Patrol Inspector Brewer,

I overheard one highway patrolman tell a youth who was standing in front of the line in front of me, that if he cut the stem of the tire close to the rim of those Army trucks that it would be difficult to repair. The youth did this and flattened the tires on the Army trucks.

Carrell J. Sigmon of Charlotte, North Carolina, one of the seriously wounded marshals, saw three troopers stand around as a student let the air out of the tires of an Army truck.

In addition, Marshal Garner saw a slap jack (or sapper handle) sticking out of the pocket of a student and confiscated it. The student told him this weapon was given to him by a Highway Patrolman. Patrol Inspector French is aware of this, and in his statement of October 3, 1962 advised that Garner still has the instrument. There is obviously a hearsay problem here, but the weapon could be important if it bears any State Police markings.

5. Almost every Marshall present during the riot will testify that the State Police did little or nothing to control the violence and, in fact, laughed and joked with the rioters. To illustrate the attitude displayed I have selected a few colorful examples:

(a) Chief Patrol Inspector Clark states that a man came to him and asked him to help a man who was being beaten up by the mob in his car (probably Gordon Yoder - F.E.S.). A state trooper asked the man what he wanted and on being told, said: "Let them kill the nigger?" and demanded where the man was from.

(b) Patrol Inspector French went to the State police and asked them to move because tear gas would be fired. The troopers responded with curses, expressions of hatred, and threats to kill the Marshals. Marshal Bartholomew quotes one trooper as saying: "If y'all hurt one of those students I am going to take this magnum I have and kill every god damn one of you."

(c) During the rioting, after seeing a man with his face bloody, Jennifer Harmon, an 18-year old Ole Miss. student, ran to the State police and said that someone would be killed if they didn't do something about it. A policeman invited her to tell her "federal buddies" about it and someone told her to go on the state. In a similar incident, one Highway Patrolman said, according to Marshal Felix Aycock, "Let 'em do it" when told the rioters were setting an Army truck on fire.

In view of all the above, it is not surprising that Marshal Russell Jordan of Louisiana heard the crowd yell of the troopers that "they're on our side." I believe that the evidence summarized above, and further evidence along the same lines which is certain to turn up as our investigation proceeds, contains the makings of a strong case for the proposition that even before the Highway Patrol's indefensible departure from the scene of the riot, the troopers engaged in active, albeit often minor, harassment of the Marshals in their attempts to control the crowd.