

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS
FILED

JUN 26 1962

EDWARD W. WADSWORTH
CLERK

NO. 19475

JAMES H. PERDITH,

VERSUS

CHARLES DICKSON FAIR, et al

MOTION THAT MANDATE ISSUE FORTHWITH

1. On June 25, 1962 this Court decided the above entitled case holding that appellant is entitled to be admitted to the University of Mississippi.
2. A summer term of said University commences on July 12, 1962 and appellant desires to commence attendance at the University at the commencement of said term.
3. If the mandate of this court is issued in the normal course of events it will be difficult if not impossible for appellant to commence attendance at this University for the forthcoming summer term.
4. Wherefore, appellant respectfully prays that the mandate of this court issue forthwith so that proceedings below can be taken in time to permit such attendance.

*denied 7/9/62
by dir. of JMW
to EW*

Respectfully submitted

/s/ CONSTANCE EAKER NOTLEY

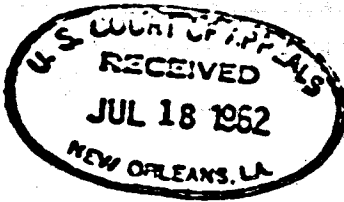
Constance Eaker Notley
Jack Greenberg
R. Jess Brown

I hereby certify that a copy of the above motion has been mailed by air mail special delivery to the Honorable Joe T. Patterson at his office, State Capitol, Jackson, Mississippi.

JUL 18 1962

EDWARD W. WADSWORTH
CLERK

*Filed July 18, 1962
at 9:50 A.M.
Ben C. Cannon
Circuit Judge*



UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JAMES EDWARD MEREDITH, on behalf of himself
and others similarly situated

)
) APPELLANT)

versus

No. 194

GUALES DICKSON FAIR, president of the Board
of Trustees of State Institutions of Higher
Learning, et al.

)
) APPELLEE)
)

ON CONSIDERATION OF THE APPLICATION of the Appellees

in the above numbered and entitled cause for a stay of the execution and enforcement of the mandate of this court therein, to enable appellees to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, IT IS ORDERED that the execution and enforcement of the mandate of this court in said cause be and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that certiorari petition and record have been filed. It is further ordered that ~~the stay shall terminate~~ *This stay shall be vacated* ~~conclude~~ upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

DONE AT Meridian, Miss this 18th day of

July, 1962.

27 (C)

IN THE
United States Court of Appeals
FOR THE FIFTH CIRCUIT

No. 19475

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

versus

CHARLES DICKSON FAIR, President of the Board
of Trustees of the State Institutions of Higher
Learning, Et Al.,
Appellees.

**ORDER VACATING STAY, RECALLING MANDATE,
AND ISSUING NEW MANDATE FORTHWITH.**

(July 27, 1962)

Before **BROWN** and **WISDOM**, Circuit Judges, and **De-
VANE**, District Judge.

WISDOM, Circuit Judge: In this case time is now of the
quintessence. Time has been of the essence since January
1961 when James Meredith, in the middle of his junior year
at Jackson State College (for Negroes), applied for admis-
sion to the University of Mississippi.

2 *James H. Meredith v. Charles Dickson Fair*

This Court heard three appeals of the case. In our opinion on the last appeal we concluded:

"... [F]rom the moment the defendants discovered Meredith was a Negro they engaged in a carefully calculated campaign of delay, harassment, and masterly inactivity. It was a defense designed to discourage and to defeat by evasive tactics which would have been a credit to Quintus Fabius Maximus. . . . We see no valid, non-discriminatory reason for the University's not accepting Meredith. Instead, we see a well-defined pattern of delays and frustrations, part of a Fabian policy of worrying the enemy into defeat while time worked for the defenders."

Chronology highlights this case. June 25, 1962, this Court reversed the district court and remanded the case with instructions that the district court grant the injunction prayed for in the complaint. Rule 32 of the Rules of the Fifth Circuit, in part, reads:

"Mandate shall issue at any time after twenty-one days from the date of the decision, unless an application for rehearing has been granted or is pending. If such application is denied the mandate will be stayed for a further period of ten days. No further stay will be granted unless applied for within the delay given above. A mandate once issued will not be recalled except by the court and to prevent injustice."

During the twenty-one day period the defendants did not

apply to this Court for a rehearing or for a stay of mandate. July 17 the mandate went down. Bright and early July 18, the attorney for the defendant presented to the Clerk for filing an order staying "the execution and enforcement of the mandate". The order, dated July 18 at Meridian, Mississippi, was signed by the Honorable Ben F. Cameron, United States Circuit Judge. Judge Cameron was not a member of the Court which heard any of Meredith's appeals. The Court which determined the cause was composed of Circuit Judges Brown and Wisdom and District Judge DeVane, sitting by designation. July 19 the Clerk, acting under instructions from this Court, telegraphed the parties through their counsel, requesting that they exchange and file, within five days, "statements of their positions with memorandum briefs for or against the granting of any stays, including the vacating of the stay entered by Judge Cameron, the issuance by this Court of injunctions pending further appeal, or other appropriate action". The Court has now received and considered the statements and their supporting briefs.

It is unnecessary to decide whether a judge who is not a member of the Court determining the cause is or is not "a judge of the Court rendering the judgment or decree" within the meaning of 28 U.S.C.A. § 2101 (f). Cf. *Application of Chessman*, 1954, 75 Cal. S. Ct. 85, 274 P. 2d 645.

The Court is bigger than a single judge. Assuming, but without deciding, that Judge Cameron is indeed a judge of "the court rendering the judgment", we hold that the court determining the cause has inherent power to review the action of the single judge, whether or not the single judge is a member of the panel. *Rosenberg v. United States*, 1953,

346 U. S. 273, 73 S. Ct. 1152, 97 L. Ed. 1607, reconsideration denied, 346 U. S. 324, 73 S. Ct. 1171, 97 L. Ed. 1634, reconsideration denied, 346 U. S. 324, 73 S. Ct. 1178, 97 L. Ed. 1634. A contrary position would allow a judge in the minority, were he a member of the panel deciding the case, to frustrate the mandate of the majority. And, it is unthinkable that a judge who was not a member of the panel should be allowed to frustrate the mandate of the Court.

All of the members of this Court agree that when a mandate has been issued, it is logically and legally too late to stay it. Unless the Court should recall the mandate, the Court's control over the judgment below comes to an end after the mandate has been issued. That is the plain meaning of Rule 12. The authorities fully support the rule. *Omaha Electric Light & Power Co. v. City of Omaha*, 215 Fed. 848, setting aside on rehearing decree in 179 Fed. 455, which aff'd 172 Fed. 494, appeal dismissed 230 U. S. 123, 57 L. Ed. 1419, 33 S. Ct. 974; in re Nevada-Utah Mines & Smelters Corp., 204 Fed. 932, denying rehearing 202 Fed. 126. For this reason the purported stay is vacated and set aside.

Judge Brown and Judge Wisdom are also of the opinion that even if the law should give residual control to an appellate court over an issued mandate broad enough to support a stay in exceptional cases, here the stay order should be vacated and set aside on the ground that it was improvidently granted.

Judge Cameron did not sit on this case. He did not have the opportunity of a sitting judge to study the record, to

hear the argument, to discuss the facts and the law in the judges' conference on the case.

This is not a Chessman case. It is not a Rosenberg case. It is not a matter of life or death to the University of Mississippi, Texas University, the University of Georgia, Louisiana State University, the University of Virginia, other Southern universities are not shriveling up because of the admission of Negroes. There was no emergency requiring prompt action by a single judge. Apparently, however, there was a studied decision by the applicant's attorney not to ask the Court for a rehearing or for a stay.

In the matter of stays, this Court is not at all in the position of the Supreme Court. The Supreme Court, as the final arbiter of the ultimate answer to any question sought to be preserved by a stay, has greater latitude than the inferior appellate courts. Courts of Appeal have disciplined themselves to take a restricted view of the propriety of issuing stays. When time is of the essence to the successful party in the Court of Appeals, a stay should be predicated upon a doubtful question of law unresolved by earlier court decisions and there should be a reasonable likelihood of the Supreme Court finally deciding in favor of the applicant for a stay. See Rule 32 of the Rules of the Fifth Circuit Court of Appeals. As recently as October 26, 1961, The Fifth Circuit, sitting as a Court, following a meeting of the Judicial Council, with only Judge Hutcheson absent, rendered the following order:

"Stays of Mandates of the Court after the denial of a motion for rehearing are to be cautiously granted to avoid situations such as where the applicant was

the losing party in the trial court and there has been no grant of supersedeas.

Chief Justice Taft, in *Magnum Import Co. v. Coty*, 1923, 262 U. S. 159, 164, 43 S. Ct. 531, 67 L. Ed. 922, established guidelines for granting stays which have withstood the years:

"The petition should, in the first instance, be made to the circuit court of appeals, which, with its complete knowledge of the cases, may, with full consideration, promptly pass on it. That court is in a position to judge, first, whether the case is one likely, under our practice, to be taken up by us on certiorari; and second, whether the balance of convenience requires a suspension of its decree and a withholding of its mandate. It involves no disrespect to this court for the circuit court of appeals to refuse to withhold its mandate or to suspend the operation of its judgment or decree pending application for certiorari to us. If it thinks a question involved should be ruled upon by this court, it may certify it. If it does not certify, it may still consider that the case is one in which a certiorari may properly issue, and may, in its discretion, facilitate the application by withholding the mandate or suspending its decree. This is a matter, however, wholly within its discretion. If it refuses, this court requires an extraordinary showing before it will grant a stay of the decree below pending the application for a certiorari, and even after it has granted a certiorari, it requires a clear case and a decided

balance of convenience before it will grant such stay."

In *United States v. Louisiana*, 1960, 364 U. S. 500, 81 S. Ct. 260, 5 L. Ed. 2d 245 the Supreme Court was requested to grant a stay of a three judge court decision which nullified a series of Louisiana laws aimed at maintaining a state-wide policy of school segregation. In denying the request for a stay, pending appeal, the Supreme Court ruled, "The scope of these enactments and the basis on which they were found in conflict with the Constitution of the United States are not matters of doubt." Similarly, in *Evans v. Ennis*, 1960, 364 U. S. 802, 81 S. Ct. 27, 5 L. Ed. 2d 36, the Supreme Court denied a stay of a decision by the Court of Appeals for the Third Circuit holding a grade a year plan of desegregation invalid in the State of Delaware. *Evans v. Ennis*, 1960, 3 Cir., 281 F. 2d 385. On the same day, the Supreme Court denied a stay in a school segregation case from Houston, Texas, *Houston Independent School District v. Ross*, 1960, 364 U. S. 803, 81 S. Ct. 27, 5 L. Ed. 2d, 36, where, a district court rejected the school board plan and entered an order embodying its own grade a year plan. *Houston Independent School District v. Ross*, 1960, 5 Cir., 282 F. 2d 95. See also *Orleans Parish School Board v. Bush and Davis v. Williams*, 1960, 364 U. S. 803, 81 S. Ct. 27, 5 L. Ed. 2d 36. In *Lucy v. Adams*, 1955, 350 U. S. 1, 76 S. Ct. 33, 100 L. Ed. 3, the Supreme Court vacated a stay granted by a District Court of its order directing the admission of the first two Negroes to the University of Alabama pending appeal to the Fifth Circuit. The court there held that where the rights are personal and present and where the stay issue is coextensive with that on the merits, the stay should be denied. See also, *Cooper v. Aaron*, 1958, 358 U. S. at 27, 78 S. Ct. 1397, 3 L.

Ed. 2d 1. The Supreme Court also refused to reverse the action of Chief Judge Tuttle of the Fifth Circuit when he vacated a stay granted by the District Court, pending appeal, in the University of Georgia case. *Danner v. Holmes*, 1961, 364 U. S. 939, 81 S. Ct. 376, 5 L. Ed. 2d 371. In this case Judge Tuttle's order stressed the fact that it was unlikely that this Court would reverse the District Court's decision in a case in which there had been a trial on a motion for preliminary injunction and a final hearing on the merits where all the facts were aired in a lengthy trial and the judge made lengthy and careful findings of fact. See also, *Hawkins v. Board of Control*, 1958, 5 Cir., 253 F. 2d 752, where this Court issued its mandate forthwith when the District Court delayed further adjudication of Hawkins' right to enter the University of Florida after nine years of litigation through the state court. In *Tureaud v. Board of Supervisors of Louisiana State University*, 1953, 346 U. S. 881, the Supreme Court stayed this Court's reversal of the District Court's injunction order ordering the admission of a Negro student to L.S.U. As a result of the Supreme Court's stay pending certiorari, the injunction order of the District Court was reinstated and the applicant was able to enter the University.

The defendants have an absolute right to apply for a writ of certiorari — regardless of whether the mandate is stayed or issued. Denial of a stay is a minor inconvenience to the defendants. But to allow a stay would subject the successful litigant, Meredith, to the injustice of additional delays. Partly to avoid such a possibility, and to bring the case to a prompt ending after a full trial on the merits, this Court denied a preliminary injunction. Unfortunately, the wording of the mandate, "that an injunction issue as prayed for

in the complaint" was so loose as to defeat the intentions of Court. Accordingly, the mandate must be clarified by being recalled and amended.

There is no doubt as to the power of the court to recall its mandate. Thus, in *Wichita Royalty Co. v. City Nat. Bank of Wichita Falls*, 5 Cir., 1933, 97 F. 2d 249, the Fifth Circuit held: "[The Court has the] power to recall the mandate and rehear the case, though too late under our rules regularly to do so." The opinion was written by Judges Sibley, Holmes, and Mize. In that case the term at which judgment was rendered had not closed. It had not in this case. "[T]he power exists to recall the mandate and set aside the judgment even after the expiration of the term during which the judgment became final, but a court of appeals in the exercise of that power usually is guided by its own applicable rules, such as a requirement that good cause must be shown in order for a mandate to be recalled." 14 *Cyclopedia of Federal Procedure*, § 69.14. See *Hines v. Royal Indemnity Co.*, 6 Cir., 253 F. 2d 111. See also Judge Holmes's opinion for this Court in *Sun Oil Co. v. Burford*, 5 Cir., 1942, 130 F. 2d 10.

It is now ordered forthwith that the mandate and judgment of this Court be recalled and amended by making explicit the meaning that was implicit in this Court's conclusions as expressed throughout its opinion in this cause, dated June 25, 1962. To this end, the order will now read as follows:

The case is reversed and remanded with directions to the District Court forthwith to grant all relief prayed for by the plaintiff and to issue forthwith a

permanent injunction against each and all of the defendants-appellees, their servants, agents, employees, successors and assigns, and all persons acting in concert with them, as well as any and all persons having knowledge of the decree, enjoining and compelling each and all of them to admit the plaintiff-appellant, James H. Meredith, to the University of Mississippi under his applications heretofore filed, which are declared by us to be continuing applications. Such injunction shall in terms prevent and prohibit said defendants-appellees, or any of the classes of persons referred to from excluding the plaintiff-appellant from admission to continued attendance at the University of Mississippi. Pending such time as the District Court has issued and enforced the orders herein required and until such time as there has been full and actual compliance in good faith with each and all of said orders by the actual admission of plaintiff-appellant to, and the continued attendance thereafter at the University of Mississippi, this Court herewith issues its own preliminary injunction enjoining and compelling each and all of said parties to admit plaintiff-appellant to, and allow his continual attendance at the University of Mississippi, further prohibiting and preventing said parties or any of them from excluding said plaintiff-appellant from attendance to and continued attendance thereafter on the same basis as other students at the University of Mississippi.

Judge Cameron's stay order dated July 18 is forthwith vacated and set aside. The mandate in this cause is forth-

with recalled and amended as set forth herein. This Court's preliminary injunction against the defendants-appellees is forthwith issued.

JUDGE DEVANE concurs in the result.

W. P. Circuit Judge

ERNEST HONORABLE LEN F. CAMERON, JUDGE OF THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

IN RE: CASE #19475 IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JAMES HOWARD LEMEDIE, on behalf of
Himself and Others similarly situated,
Appellant,

U. S. COURT OF APPEALS
FILED

JUL 30 1962

V.

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

EDWARD W. WADSWORTH:
CLERK

A judgment was entered herein by the United States Court of Appeals for the Fifth Circuit on July 17, 1962, which judgment was and is subject to review by the Supreme Court on writ of certiorari and a certified copy of said judgment was, in conformity with the order of this Court dated February 13, 1953 (Page 44 of the Rules of this Court), transmitted as the mandate of this Court to the United States District Court for the Southern District of Mississippi, Jackson Division, and was received by said District Court on July 18, 1962. Before said mandate had been executed or enforced, the execution and enforcement thereof was, on July 18, 1962, stayed by the undersigned Judge of said Court of Appeals acting under authority vested in him by the Constitution and laws of the United States (cf. 28 U.S.C.A. Sec. 2101 and Rules 38 and 39 of the Supreme Court) and said stay was and is valid and in full force and effect.

It now appearing that a panel of said Court of Appeals has by its order and judgment of July 27, 1962 essayed to set aside said stay of mandate and to conduct further proceedings in this cause in violation and contravention thereof and has entered a judgment and order which have

been issued as further mandates in this cause and have been transmitted as such to said District Court; and that such proceedings were and are void and beyond the jurisdiction of said panel and in violation of said stay of July 18, 1962, and it appearing that the judgment and order of said Court dated July 27, 1962 are subject to review by the Supreme Court on writ of certiorari;

IT IS ORDERED that the execution and enforcement of the "Judgment" dated July 27, 1962, issued as and for the mandate of said Court on the same date and the "Order Vacating Stay, Recalling Mandate and Issuing New Mandate Forthwith" dated the same date be and the same are hereby stayed for a period of thirty days from the date of this Order; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of this Order there shall be filed with the Clerk of this Court the Certificate of the Clerk of the Supreme Court that Certiorari Petition and record have been filed. It is further ordered that this stay shall be vacated upon the filing of a copy of an Order of the Supreme Court denying the Writ, or upon the expiration of thirty days from the date of this Order, unless the above mentioned Certificate shall be filed with the Clerk of this Court within that time.

IT IS FURTHER ORDERED that the stay granted by the undersigned on the 18th day of July, 1962, be and the same is hereby extended until the expiration of thirty days from and after the date of this Order to enable Appellees to file with the Clerk of the Fifth Circuit Court of Appeals, the Certificate of the Clerk of the Supreme Court of the United States that the Certiorari Petition and certified record required under the rules of said Supreme Court have been filed therein. Said stay, under the terms of the Order granted by the undersigned on the 18th day of July, 1962, is to continue in force until the final disposition of the case by the said Supreme Court if said Petition and record are filed within said thirty day period.

DONE AT MERIDIAN, MISSISSIPPI this 28 day of July, 1962.

FILED

*Ben F. Cameron
Circuit Judge*

AUG 1 1962 BEFORE HONORABLE BEN F. CAMERON, JUDGE OF THE

EDWARD W. WADSWORTH UNITED STATES COURT OF APPEALS
CLERK

FOR THE FIFTH CIRCUIT

IN RE: CAUSE #19475 IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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

Appellant,

v.

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

Appellees.

Charles D. Fair and others have moved the under-
signed for the entry of an order amending the stay order
issued by the undersigned on the 28th day of July, 1962,
pursuant to 28 U. S. Code Section 2101(f), and it appearing
from said verified motion that the United States Court of
Appeals for the Fifth Circuit acted on the 28th day of July,
1962, to issue an amended or substitute order for and in
place of an order stayed by the undersigned on the 28th day
of July, 1962, and it further appearing that said motion is
well-taken and should be granted;

that the stay executed by me on July 28th and it is intended to cover said amended

IT IS THEREFORE ORDERED that the execution and enforce-
ment of the order dated the 28th day of July, 1962 by a Panel of
the United States Court of Appeals for the Fifth Circuit, styled No.
19,475, James H. Meredith, on behalf of himself and others similar-
ly situated, Appellant, vs. Charles Dickson Fair, President of

K

with this order

the Board of Trustees of the State Institutions of Higher Learning, et al, Appellees, which was issued for and as the mandate of said Court of Appeals on the same date, should be, and the same is hereby, stayed for a period of thirty (30) days from and after the 28th day of July, 1962; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty (30) days from the 28th day of July, 1962, there shall be filed with the Clerk of the Court of Appeals for the Fifth Circuit the Certificate of the Clerk of the Supreme Court that Certiorari Petition and record have been filed. IT IS FURTHER ORDERED that this stay shall be vacated upon the filing of a copy of the order of the Supreme Court denying the writ, or upon the expiration of thirty (30) days from and after the 28th day of July, 1962, unless the above mentioned Certificate shall be filed with the Clerk of said Court of Appeals within that time.

DONE at Meridian, Mississippi, this 31st day of

July, 1962.

Dan F. Cameron
UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 19,475

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

Appellant,

vs.

CHARLES DICKSON FAIR, President of the
Board of Trustees of the State Institutions
of Higher Learning, Et Al.,

Appellees.

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

(AUGUST 4, 1962)

Before BROWN and WISDOM, Circuit Judges, and DEVANE, District
Judge.

PER CURIAM:

On July 27, 1962 this Court entered its opinion and orders vacating the order entered by Judge Cameron on July 18, 1962 which stayed our judgments of July 17, 1962. Thereafter, on July 28, 1962, Judge Cameron entered a second order staying all orders of July 27, 1962 (as well as those of July 17, 1962). Subsequently, he entered a third stay order on July 31, 1962.

While it might appear to be unnecessary to enter any further orders, the Court now enters this order to make certain that the record is kept straight.

For the reasons pointed out in our opinion orders of July 27, 1962, the stay or stays granted by Judge Cameron on July 28 and July 31, 1962 were unauthorized, erroneous and improvident and each of them is hereby vacated and set

aside forthwith. All of our orders of July 17th, July 27th
and this date, therefore continue in full force and effect
and require full and immediate obedience and compliance.

3
Filed Aug 6. 1962

Ben F. Cameron,
Circuit Judge

BEFORE HONORABLE BEN F. CAMERON, JUDGE OF THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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

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

Appellants,

v.

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

Appellees.

ORDER

This cause came on to be heard on the motion of Charles D. Fair, et al, for an order extending the stay orders previously granted by me to encompass and include a document rendered by the United States Court of Appeals for the Fifth Circuit on the 4th day of August, 1962, and to stay the execution and enforcement of Orders, Judgments and Mandates of said Court previously stayed by Orders entered by me pursuant to Title 28 U. S. Code, Section 2101(f); and it appearing to me as a Judge of said Court that said document rendered August 4, 1962, is in direct conflict with the considered, appropriate and statutory stay orders entered by me on July 18, 1962, July 28, 1962, and July 31, 1962, and it further appearing that each and all of the Orders, Judgments and Mandates previously stayed by me on said dates were Judgments, Orders and Mandates of the United States Court of Appeals for the Fifth Circuit, which could be reviewed by the Supreme Court of the

M

It further appearing that the document dated the 4th day of August, 1962, is similarly a judgment or decree which may be reviewed by said Supreme Court of the United States within the meaning of said statute;

IT IS, THEREFORE, ORDERED that the said statutory stay orders previously granted by me should be and the same are hereby extended to encompass and include the document rendered by the United States Court of Appeals for the Fifth Circuit on the 4th day of August, 1962, and pursuant to the authority vested in me by Title 28, U. S. Code, Section 2101(f), the execution and enforcement of said document rendered on the 4th day of August, 1962, and the Orders, the Judgments and the Mandates of said United States Court of Appeals for the Fifth Circuit issued, entered, or rendered on July 17, 1962, July 27, 1962, and July 28, 1962, previously stayed by me, should be and the same are hereby stayed for a period of thirty (30) days from and after July 28, 1962; the stay to continue in full force until the final disposition of the case by the Supreme Court of the United States, provided that within thirty (30) days from the 28th day of July, 1962, there shall be filed with the Clerk of the Fifth Circuit Court of Appeals the Certificate of the Clerk of the Supreme Court of the United States that Certiorari Petition and Record have been filed. IT IS FURTHER ORDERED that this stay shall be vacated upon the filing of a copy of an Order of said Supreme Court of the United States denying the Writ of Certiorari or upon the expiration of thirty (30) days from and after the 28th day of July, 1962, unless the above mentioned Certificate shall be filed with the Clerk of said Fifth Circuit Court of Appeals within said time.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 19,475

JAMES H. MEREDITH,

Appellant,

v.

CHARLES DICKSON FAIR, et al.,

Appellees.

ORDER DESIGNATING UNITED STATES OF AMERICA
AS AMICUS CURIAE

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

IT IS ORDERED that the United States be designated and authorized to appear and participate as amicus curiae in all proceedings in this action before this Court and by reason of the mandates and orders of this Court of July 27, 28, 1962, and subsequently thereto, before the District Court for the Southern District of Mississippi to accord each court the benefit of its views and recommendations, with the right to submit pleadings, evidence, arguments and briefs and to initiate such further proceedings, including proceedings for injunctive relief and proceedings for contempt of court, as may be appropriate in order to maintain and preserve the due administration of justice and the integrity of the judicial processes of the United States.

N

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

September _____, 1962.

/s/ JOHN R. BROWN
JOHN R. BROWN,
Circuit Judge.

/s/ JOHN MINOR WISDOM
JOHN MINOR WISDOM,
Circuit Judge.

/s/ GRIFFIN B. BELL
GRIFFIN B. BELL,
Judge.

FILED

No. 19475

SEP 20 1962

JAMES MEREDITH, ET AL.,

EDWARD W. WADSWORTH

Petitioners

CLERK

versus

CHARLES DICKSON FAIR, ET AL.,

Respondents.

ORDER

This matter is now before this Court on Petitions for Orders supplementing this Court's Order of July 28, 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 28, 1962.

Subject to the further orders of this Court, IT IS ORDERED that the appellees-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 persons, including federal officials

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

(2) 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.

(3) 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. Meadors, 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 R. FROST
U. S. CIRCUIT JUDGE

/s/ JOHN EDGAR WISDOM
U. S. CIRCUIT JUDGE

/s/ CHRISTOPHER E. WELLS
U. S. CIRCUIT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 19473

JAMES E. MEREDITH,

Appellant

v.

CHARLES DIXSON FAIR, et al,

Appellees.

ORDER REQUIRING CHARLES DIXSON FAIR, THOMAS JEFFERSON
TUBB, ROBERT BRUCE SMITH, II, HARRY GORDON CARPENTER,
TALLY D. RIDGELL, JAMES NAPOLEON LIPSCOMB, DR. VERNER
SMITH HOLMES, S. R. EVANS, WILLIAM ORLANDO STONE,
MALCOLM METTE ROBERTS, IRA LAMAR MORGAN, EDGAR RAY ISAARD,
and LEON 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
Dixon Fair, Thomas Jefferson Tubb, Robert Bruce Smith, II, Harry Gordon
Carpenter, Tally D. Ridgell, James Napoleon Lipscomb, Dr. Verner Smith Holmes,
S. R. Evans, William Orlando Stone, Malcolm Mette Roberts, Ira Lamar Morgan,
Edgar Ray Isaard, and Leon Lowery to admit the plaintiff, James E. Meredith,
to the University of Mississippi, under his applications for admission
thereof 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, amicus curiae,
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, Tally D. Riddell, James Napoleon Lipscomb, Dr. Verner Smith Holmes, S. E. Evans, William Orlando Stone, Malcolm Matte Roberts, Ira Lamar Morgan, Edgar Ray Izard, and Leon Lowery appear personally 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 REVISED.

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

/s/ JOHN P. STANTON
Circuit Judge

/s/ JOHN VANCE WISDOM
Circuit Judge

/s/ CHRISTOPHER S. WALKER
Circuit Judge

(ORIGINAL FILED - SEPTEMBER 21, 1962)

S
E
P
T

2
4

SEP 22 1962

MEREDITH, 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
RESPONDENTS TO SHOW CAUSE WHY
THEY SHOULD NOT 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 Missis-
 sippi, 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 21,
 1962, presently in full force and effect, by failing and refusing to en-
 roll and register, and admit to continued attendance at the University of
 Mississippi, James Edward 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 respond-
 ents 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. N. 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 Edward Meredith.

This Order shall be effective immediately.

/s/ JOHN R. BROWN JMW

John R. Brown, Judge

/s/ JOHN MINOR WISDOM

John Minor Wisdom, Judge

/s/ GRIFFIN B. BELL JMW

Griffin B. Bell, Judge

September 22, 1962

NO. 10,475

EDWARD W. WARD, JR.,
COUNSEL

JAMES HOWARD MEREDITH, et al.,

Appellants,

vs.

CHARLES DIXSON FAIR, et al.,

Appellees.

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

vs.

CHARLES DIXSON FAIR, et al.,

Respondents.

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

Before ~~WALKER~~, Chief Judge, HUTCHINGS, RIVES, JONES, ENGLISH,
WILSON, GIBLIN and ELLI, 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, Tolly B. McCall, 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 1:00 P. M. on

R

September 23, 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 23, 1962, including, but not limited to, the following:

(a) Rescind 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 applicant, James H. Meredith, and taking the said responsibilities and authority unto themselves as a Board of Trustees.

(b) Rescind 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, admission and attendance of James H. Meredith as a student in the University.

(c) 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 23, 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, 1952 for the purpose of the registration of the said James H. Farodith 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. Farodith 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 3:00 P. M., September 25, 1952, as to the actions he has taken to comply with the foregoing order.

Dated: September 24, 1952.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS

FILED

SEP 25 1962

EDWARD W. WALSWORTH
CLERK

JAMES H. MEREDITH,

Appellant,

v.

CHARLES DICKSON FAIR, et al.,

Appellees.

NO. 19475

UNITED STATES OF AMERICA,
Amicus Curiae and Petitioner,

v.

STATE OF MISSISSIPPI, et al.,

Defendants.

TEMPORARY RESTRAINING ORDER

This Court having entered its order in this action on July 28, 1962, and the District Court for the Southern District of Mississippi having entered a similar order on September 13, 1962, pursuant to the mandate of this Court, requiring the defendant officials of the University of Mississippi and the defendant members of the Board of Trustees of the Institutions of Higher Learning of the State of Mississippi to enroll James Howard Meredith as a student in the University of Mississippi, and

It appearing from the verified petition of the United States, Amicus Curiae herein, that the State of Mississippi, Ross B. Barnett, Governor of Mississippi, Joe T. Patterson, Attorney General of Mississippi, T. B. Birdsong, Commissioner of Public Safety of Mississippi, Paul G. Alexander, District Attorney of Hinds County, William R. Lamb, District Attorney of Lafayette County, J. Robert Gilfoy, Sheriff of Hinds County, J. W. Ford, Sheriff of Lafayette County, William D. Rayfield, Chief of Police of the City of Jackson, James D. Jones, Chief of Police of the City of Oxford, Walton Smith, Constable of the City of Oxford, the classes consisting of all district attorneys in Mississippi, the classes consisting of the sheriffs of all counties

in Mississippi, the classes consisting of all chiefs of police in Mississippi, and the classes consisting of all constables and town officials in Mississippi, threaten to implement and enforce, unless restrained by order of this Court, the provisions of a Resolution of Interposition adopted by the Mississippi Legislature, the provisions of Section 4065.3 of the Mississippi Code, and a Proclamation of Ross R. Barnett invoking the doctrine of interposition with respect to the enforcement of the orders of this Court in this case; that Paul G. Alexander has instituted two criminal prosecutions against James Howard Meredith on account of the efforts of James Howard Meredith to enroll in the University of Mississippi pursuant to the orders of this Court; that A. L. Meador, Sr., and the class of persons he represents, on September 17, 1962, instituted in the Chancery Court of the Second Judicial District of Jones County, Mississippi, a civil action against James Howard Meredith to prevent him from attending the University of Mississippi; that on September 20, 1962, James Howard Meredith, while seeking to enroll at the University of Mississippi in Oxford, Mississippi, pursuant to the orders of this Court, was served with a writ of injunction issued by the Chancery Court of Lafayette County, Mississippi, at the instance of Ross R. Barnett, enjoining James Howard Meredith from applying to or attending the University of Mississippi; that on September 20, 1962 the State of Mississippi enacted Senate Bill 1501, the effect of which is to punish James Howard Meredith should he seek enrollment in the University of Mississippi; that the effect of the conduct of the defendants herein named in implementing the policy of the State of Mississippi as proclaimed by Ross R. Barnett will necessarily be to prevent the carrying out of the orders of this Court and of the District Court for the Southern District of Mississippi; and that the acts and conduct of the defendants named in the petition will cause immediate and irreparable injury to the United States consisting of the impairment of the integrity of its judicial processes, the obstruction of the due administration of justice, and the deprivation of rights under the Constitution and laws of the United States.

Joe T. Patterson, T. B. Birdsong, Paul G. Alexander, William R. Lamb, J. Robert Gilfoy, J. W. Ford, William D. Rayfield, James D. Jones, Walton Smith, the class consisting of all district attorneys in Mississippi, the class consisting of the sheriffs of all counties in Mississippi, the class consisting of all chiefs of police in Mississippi, and the class consisting of all constables and town marshals in Mississippi, their agents, employees, officers, successors, and all persons in active concert or participation with them, be temporarily restrained from:

1. Arresting, attempting to arrest, prosecuting or instituting any prosecution against James Howard Meredith under any statute, ordinance, rule or regulation whatever, on account of his attending, or seeking to attend, the University of Mississippi;

2. Instituting or proceeding further in any civil action against James Howard Meredith or any other persons on account of James Howard Meredith's enrolling or seeking to enroll, or attending the University of Mississippi;

3. Injuring, harassing, threatening or intimidating James Howard Meredith in any other way or by any other means on account of his attending or seeking to attend the University of Mississippi;

4. Interfering with or obstructing by any means or in any manner the performance of obligations or the enjoyment of rights under this Court's order of July 28, 1962 and the order of the United States District Court for the Southern District of Mississippi entered September 13, 1962, in this action, and

5. Interfering with or obstructing, by force, threat, arrest or otherwise, any officer or agent of the United States in the performance of duties in connection with the enforcement of, and the prevention of obstruction to, the orders entered by this Court and the District Court for the Southern District of Mississippi relating to the enrollment and attendance of James Howard Meredith at the University of Mississippi; or arresting, prosecuting or punishing such officer or agent on account of his performing or seeking to perform such duty.

IT IS FURTHER ORDERED that Paul G. Alexander and J. Robert Gilfoy be temporarily restrained from proceeding further, serving or en-

IT IS FURTHER ORDERED that A. L. Meador, Sr., be temporarily restrained from taking any further action or seeking to enforce any judgment entered in the case of A. L. Meador, Sr. v. James Meredith, et al.

IT IS FURTHER ORDERED that Ross R. Barnett be temporarily restrained from enforcing or seeking to enforce against James Howard Meredith, any process or judgment in the case of State of Mississippi, Ex Rel Ross Barnett, Governor vs. James H. Meredith

/s/ ELBERT P. TUTTLE
Circuit Judge

/s/ RICHARD T. RIVES
Circuit Judge

/s/ JOHN HIGDON HIGDON
Circuit Judge

Signed this 25th day of
September, 1962, at 8:30 P. A.M.

A true copy
Test: EDWARD W. WADSWORTH
Clerk, U. S. Court of Appeals, Fifth Circuit
By [Signature]
Deputy

New Orleans, Louisiana
Sep. 25, 1962

FILED

SEP 25 1962

IN THE UNITED STATES COURT OF APPEALS

EDWARD W. WADSWORTH
CLERK

FOR THE FIFTH CIRCUIT

JAMES H. MEREDITH,
Appellant,
v.
CHARLES DICKSON FAIR, et al.,
Appellees.

NO. 19675

UNITED STATES OF AMERICA,
Amicus Curiae and
Petitioner,
v.
STATE OF MISSISSIPPI, et al.,
Defendants.

**ORDER REVENUE PAGE 2. PERMIT
TO PRINT ON QUALITY
PAPER**

This Court having entered an order on July 28, 1962, and the District Court for the Southern District of Mississippi having entered an order pursuant to the mandate of this Court on September 13, 1962, requiring officials of the University of Mississippi and the members of the Board of Trustees of Institutions of Higher Learning of the State of Mississippi to register and admit James H. Meredith as a student in the University of Mississippi, and

This Court having, on September 24, 1962, instructed Robert B. Ellis, Registrar of the University of Mississippi, James Davis Williams, Chancellor of the University, Arthur

T

Beverly Lewis, Dean of the College of Liberal Arts of the University, and the defendant members of the Board of Trustees of Institutions of Higher Learning, what action they were required to take in order to comply with the order of this Court, and having particularly directed Robert B. Ellis to be available at Jackson, Mississippi at the office of the Board of Trustees of Institutions of Higher Learning from 1:00 p.m. to 4:00 p.m. on September 25, 1962 for the purpose of the registration of James H. Meredith and his actual admission to the University on the same basis as other students, and this Court having entered a temporary restraining order at 8:30 a.m. this day restraining Ross R. Barnett from interfering with or obstructing by any means or in any manner the performance of obligations or the enjoyment of rights under this Court's order of July 28, 1962, and the order of the United States District Court for the Southern District of Mississippi of September 13, 1962, and

It appearing from the verified application of the United States, amicus curiae herein, that on the afternoon of this day Ross R. Barnett, having been served with a copy of the temporary restraining order referred to above and having actual knowledge of the terms of that order, deliberately prevented James H. Meredith from entering the office of the Board of Trustees in Jackson, Mississippi at a time when James H. Meredith was seeking to appear before Robert B. Ellis in order to register as a student in the University, and that by such conduct Ross R. Barnett did wilfully interfere with and obstruct James H. Meredith in the enjoyment of his rights under this Court's order of July 28, 1962 and did wilfully interfere with and obstruct Robert B. Ellis in the performance of his obligations under this Court's order of July 28, 1962, all in violation of the terms of the temporary restraining order entered by the Court this day,

IT IS ORDERED that Ross R. Barnett appear personally be-

in the court room of the United States Court of Appeals for the Fifth Circuit, at 600 Camp Street, New Orleans, Louisiana, to show cause, if any he has, why he should not be held in civil contempt of the temporary restraining order entered by the Court this day.

The Marshal is directed to serve a copy of this order upon Ross R. Barnett, forthwith.

Signed this September 25th, 1962, at 5 26

o'clock 1 .m.

15/ Richard T. Biles
CIRCUIT JUDGE

13/ John M. Woodson
CIRCUIT JUDGE

14/ Walter F. Gering
CIRCUIT JUDGE

Certified to be a true copy

Test: Edward W. Madsworth

Edward W. Madsworth, Clerk
U. S. Court of Appeals

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS
FILED

SEP 25 1962

NO. 19475

EDWARD W. WADSWORTH
CLERK

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

Appellant,

versus

CHARLES DICESON FAIR, President of the
Board of Trustees of the State Institutions
of Higher Learning, Et Al.,

Appellees.

NOTION TO ADD GOVERNOR AS PARTY DEFENDANT

Comes now the plaintiff, by his attorneys, and moves pursuant to Rule 21 of the Federal Rules of Civil Procedure, to add as a party defendant to the above entitled action in this Court, Ross R. Barnett, Governor of the State of Mississippi, and as reasons therefor states the following:

1. On September 28, 1962 while the above entitled case was pending before this Honorable Court, said Ross R. Barnett, Governor of the State of Mississippi, applied for and obtained an injunction against appellant herein in the Chancery Court of the First Judicial District Court of Hinds County, Mississippi before W. T. Norton, Chancellor, restraining appellant from applying to register at, and from attending the University of Mississippi. Said injunction is but the latest in a series of calculated maneuvers by said Governor to frustrate the jurisdiction of this Court, including but not limited to a proclamation of

U

September 13, 1962 issued by said Governor to the same effect as the Chancery order herein above referred to, and order by said Governor in the purported capacity as registrar of appellant and appellant alone at the University of Mississippi and public exhortations by the Governor of all state officials to frustrate the orders of this Court in this case.

2. The jurisdiction of this Court and the effectiveness of its judgments and orders cannot be preserved unless said Governor Ross R. Barnett is added as a party to this litigation.

Constance Baker Motley

Constance Baker Motley
Jack Greenberg
Derrick A. Bell, Jr.
10 Columbus Circle
New York 19, New York

R. Jess Aram
1105 1/2 Washington Street
Vicksburg, Mississippi

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS

FILED

SEP 25 1962

EDWARD W. WADSWORTH
CLERK

NO. 19473

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

Appellant

versus

CHARLES DICKSON FAIR, President of the
Board of Trustees of the State Institutions
of Higher Learning, Et Al.,

Appellees.

TEMPORARY RESTRAINING ORDER

Upon the application of appellant herein, appended hereto, and made a part hereof, which specifies the irreparable injury to the appellant, Ross R. Barnett, Governor of the State of Mississippi, and J. R. Gilfoy, Sheriff of Hinds County, Mississippi are hereby restrained and enjoined from taking any actions or doing any act calculated to or which does interfere with the admission, registration, or attendance of appellant at the University of Mississippi.

1. Said Governor and Sheriff are hereby specifically enjoined from taking any action to enforce or serve the injunction obtained by the Governor on September 23, 1962 in the Chancery Court of Hinds County, Mississippi, First Judicial District, against registration and attendance of appellant at the University of Mississippi.

2. Said Governor and Sheriff are specifically enjoined from taking any action to enforce any other injunction obtained in the State Courts of

...ppa, or any of its officials, or employees, which has the effect of interfering with the registration, enrollment, or continued attendance of appellant at the University of Mississippi.

3. Said Governor and all other officials, agents, or employees of the State of Mississippi are specifically enjoined from making application for any future injunctions in the state courts of Mississippi, or any other courts, directed against the appellant, his agents and attorneys, or officials and employees of the University of Mississippi, which are designed to impede and obstruct the registration and attendance of appellant at the University of Mississippi.

4. Said Governor also is enjoined from ordering the state police of Mississippi or any state officials, or employees, or other persons, to arrest, obstruct, or otherwise interfere with the freedom of movement of appellant.

It is further Ordered that:

1. Governor Ross R. Barnett appear before this Court in the City of New Orleans, Old Post Office Building, on ^{October} ~~September~~ 5, 1962, at 10 O'Clock, A.M. and show cause why he should not be made a party in this case and why a preliminary injunction should not issue.

2. This temporary restraining order shall apply to the Governor, his agents, attorneys and any other persons acting in concert and participation with him or who shall have actual notice of this order.

3. Service of this order shall be made upon the Governor and service of this order upon the Attorney General of the State of Mississippi shall constitute service upon the parties to this case and all other officials, employees, or agents of the State of Mississippi. A copy of this order shall also be served on Thomas Watkins, attorney for the Governor in the Hinds County injunction action of September 26, 1962 referred to herein. Service upon the Governor, the Attorney General and Thomas Watkins shall be made by the United States Marshal.

There is insufficient time to give notice and to have a hearing before the issuance of this order. Unless this order is issued without notice and hearing at this time, appellant will not be admitted to the University of Mississippi as directed by the orders of this Court resulting in further irreparable injury to him.

Edwin S. Wilkins
John Minor Wilkins
United States Marshal

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 19475

JAMES E. MURPHY, on behalf of himself
and others similarly situated,

Appellant,

versus

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

Appellees.

ORDER

Appellant has moved this Court for an order directing Ross
E. Barnett, Governor of Mississippi, to show cause why he should
not be adjudged in contempt of orders issued by this Court in this
action. On consideration of that motion, presented to this Court on
the 25th day of September, it is now ordered:

1. That Governor Ross E. Barnett be, and is, required to show
cause, if he has any, before this Court in the City of New Orleans, Old
Post Office Building, on the 28 day of September 1962 at N. O.,
why he should not be adjudged in contempt of the orders issued by
this Court.

2. Service of this order is to be made by United States Marshal.

Elliot P. LITTLE
United States Circuit Judge

John R. Brown
United States Circuit Judge

John Minor Wisdom
United States Circuit Judge