

1 the last one that was made, is that there would not be and  
2 there wasn't intended for there to be any jury trials either  
3 in the Supreme Court or in a Circuit Court of Appeals and  
4 that Congress has provided no procedure and no method for  
5 holding jury trials in either of these two courts. I would  
6 like to suggest to this Court if it is to be held there  
7 should be a jury trial in a case tried by the Circuit Court  
8 of Appeals, then it should be held there must be a jury  
9 trial on any criminal contempt proceeding had in a case  
10 that involved a contempt of an order of the United States  
11 Supreme Court. There is no way to draw a distinction.

12 I thank the Court.

13 CHIEF JUDGE TUTTLE: We would normally take a short  
14 recess, if we are going to be much longer detained, Mr. Clark.

15 MR. CLARK: No, sir, I don't intend to be at all.  
16 Maybe three minutes.

17 CHIEF JUDGE TUTTLE: Let me inquire whether any  
18 party feels that further argument should be made on the  
19 points sought to be covered by the Mississippi briefs. If  
20 you do nothing more than rebut what has been said, --

21 MR. CLARK: We have filed the last brief. Does  
22 the Court want to know --

23 CHIEF JUDGE TUTTLE: No, no, no. In relation to  
24 Mr. Green's brief, is there any request for further oral  
25 argument beyond what you are going to say now?

1 MR. CLARK: No, sir, Your Honor. I do hope the  
2 Court will consider the brief Mr. Green submitted.

3 CHIEF JUDGE TUTTLE: We have said we would do that.

4 MR. CLARK: -- as amicus, and that is the only  
5 request that we made. And, if the Court would permit us to,  
6 we have been served with a brief by the Government and they  
7 with one by us. I got the Government's brief this morning,  
8 and they got mine this morning, although it was sent to  
9 Jackson yesterday. There might be a possibility that the  
10 Court could be served better by having us respond, but  
11 there again that is a matter for the Court to determine.  
12 We would, of course, be willing to undertake to answer or  
13 respond to their brief if the Court desired it.

14 CHIEF JUDGE TUTTLE: I would simply say that I  
15 think the Court will not delay considering the case awaiting  
16 any further briefing, but the Court may not resolve the case  
17 within a reasonable time during which you may actually file  
18 additional briefs. Therefore, you may, if you see fit,  
19 respond to any briefs that have already been filed, in  
20 typewritten form as you have heretofore, and if we have  
21 not concluded our study of the case and announced our  
22 decision on it, we will give every consideration to any addi-  
23 tional briefs that are filed.

24 MR. CLARK: I thank Your Honor. I will be  
25 extremely brief.

1            Responding principally to Judge Bell's questions  
2 with Mr. Jaworski, the Government, the United States  
3 Government, is now in the Supreme Court of the United States  
4 complaining because of the fact that they are not a  
5 respondent to the petition for certiorari. We styled that  
6 petition as Meredith vs. Fair and indicated that the United  
7 States was amicus curiae in the cause, and we made Meredith  
8 the respondent and served copies on his counsel in accord-  
9 ance with the United States Supreme Court Rules and mailed  
10 information copies to the Department of Justice, and the  
11 Solicitor General of the United States has now filed a  
12 motion, which we have opposed, in the Supreme Court of the  
13 United States, saying no, that is not it at all, we are the  
14 respondents in this case, we have got the moving cause here,  
15 and Meredith, the attorneys for Meredith, have filed a  
16 statement by telegram with the Court that they don't even  
17 care to be heard on the matter now pending on certiorari,  
18 and yet the Government wants to come in and take over the  
19 lawsuit in the Supreme Court. I don't think there is any  
20 question but what the Government is trying to become a  
21 party in the Meredith litigation, and I don't think there is  
22 any question but what they cannot do so and principally  
23 because of the fact that this Court sustained their right to  
24 come in and as amicus file pleadings and pursue remedies in  
25 the Meredith lawsuit, and it was for one purpose and one

1 purpose only, and on one ground and on one ground only, and  
2 that was on the basis that they were going to do something  
3 ancillary to Meredith.

4 JUDGE BROWN: That doesn't solve it for me. Assume  
5 that they have no standing other than as an adjunct to  
6 Meredith. The statute still accords the jury trial only to  
7 violations of orders of the District Court. Now how do  
8 you get this to be a District Court?

9 MR. CLARK: Judge, I would say this: as far as the  
10 statute is concerned, the only way -- the only contention  
11 that we make to Your Honors is that the statute relates not  
12 only to District Courts but to the courts of the District  
13 of Columbia, which includes Courts of Appeal, but I simply  
14 point out to Your Honors that on Judge Bell's theory that  
15 if this had been a District Court case, it would have been  
16 a proper case for determination and resolution by a jury,  
17 frankly, I think it is more important for a jury to be had  
18 here because of the lack of the right of review, regardless  
19 of what constitutional right --

20 JUDGE BROWN: Now we are not construing -- it is  
21 pretty difficult to construe a statute that says "District  
22 Court" to mean "Court of Appeals." You have to have a  
23 pretty powerful basis for that, and what is the basis?

24 MR. CLARK: The basis that I can come to you on  
25 myself when you get to this statute and say that "District

1 Court" can't encompass "Courts of Appeal" and reject the  
2 argument because it is accorded to Courts of Appeal of the  
3 District of Columbia and these people are not entitled to  
4 equal rights and immunities, I think you still come to the  
5 last section --

6 CHIEF JUDGE TUTTLE: We will take a short recess.  
7 (Whereupon, at the request of the  
8 reporter, a brief recess was granted  
9 by the Court.)

10 AFTER THE RECESS:

11 CHIEF JUDGE TUTTLE: I may say there is one thing  
12 about the Supreme Court that I think is excellent, that  
13 is, that all the Justices have their own doors. They can  
14 all come in at the same time. (LAUGHTER)

15 MR. CLARK: May it please the Court, unless the  
16 Court feels otherwise, I would really like to conclude. I  
17 have only this point to make in addition:

18 Judge Brown asked me before the recess why only  
19 District Courts were mentioned in these statutes, and  
20 considering further of it, as far as I would answer, I would  
21 say that I don't believe Congress ever conceived that we  
22 would be standing here today in a Court of Appeals trying  
23 a criminal contempt case, and I think Congress certainly  
24 intended for you to have contempt powers, civil contempt  
25 powers, that were necessary, to go as far as the power

1 needed to go to get your orders enforced, the least possible  
2 power to achieve the end desired, but I just don't believe  
3 that anybody in Congress ever conceived that today, for  
4 the first time in the history of the jurisprudence of the  
5 United States of America, we would be standing in a Court of  
6 Appeals on a criminal contempt matter.

7           And the Court was kind enough to give me a bouquet  
8 I want to say that I consider it a privilege to practice  
9 before the Fifth Circuit. I recall a number of decisions  
10 that I didn't participate in, and yet I know the Court is  
11 proud of, Lumbermen's Mutual vs. Elbert, Cox vs. Roth,  
12 decisions of that type where this Circuit has been a  
13 pioneer, where this Circuit -- and I don't mean to say --  
14 I am not trying to butter you up, because this Court  
15 doesn't belong to you, and someday I won't be here and you  
16 won't be here, but I believe that the Fifth Circuit will be  
17 here, and I talk just as much of the Court of Judge Holmes  
18 as I do of your Court, and Borah and Russell and McCord and  
19 the rest who have made the Fifth Circuit great through the  
20 years.

21           I know that this Court is going to give us careful  
22 and most mature consideration on the questions presented in  
23 the appeal. We have tried not to be frivolous, and I hope  
24 the Court hasn't -- although we have urged some propositions  
25 that some of you consider new or novel, I think this question

1 involves more than the litigants in this lawsuit. I think  
2 it has the most delicate elements of state and national  
3 relationships in it.

4 I appreciate the very lengthy time that you have  
5 indulged us, and the other attorneys on behalf of the  
6 Defendants join with me in thanking the Court for its  
7 attention.

8 CHIEF JUDGE TUTTLE: Is there anything else that  
9 needs to be said on behalf of either the Government or the  
10 Respondents? (NO RESPONSE)

11 Well, it will be fairly obvious that a number of  
12 legal questions have now been submitted to the Court. As  
13 we have attempted to do in other phases of this and asso-  
14 ciated cases, we will attempt to resolve these issues as  
15 soon as we possibly can. The Court cannot indicate when  
16 that will be, but, there being no further matters to come  
17 before the Court at this time, the Court will now stand  
18 adjourned until further order of the Court.

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20 ....Thereupon, the matter was submitted....

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C E R T I F I C A T E

I, Helen R. Dietrich, do hereby certify that the above and foregoing (Pages 1-203 of typewritten matter) is a true and correct transcription of the stenographic (Stenotype) notes of the proceedings herein, taken down by me, and by me transcribed, at the time and place hereinbefore noted, in the above-entitled and numbered cause now pending before the Fifth Circuit Court of Appeals of the United States.

  
Reporter

Reporter's Note: In further extension of an earlier note appearing in this record in connection with the oral argument by Mr. Montgomery, voluminous quotations, citations, etc. were not made available to the reporter, and were transcribed from the notes as they lay with frequent insertion of a point of interrogation. Readers of the record are respectfully referred to the source material.

May it be further understood that "Rule 42-b" as appearing in this record is correctly written "Rule 42 (b)."

H.R.D.