

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF MISSISSIPPI, JACKSON DIVISION

JAMES HOWARD MEREDITH

VS.

(Civil Action 3130)

CHARLES DICKSON FAIR, ET AL

UNITED STATES OF AMERICA, AS AMICUS CURIAE & PETITIONER

Vs.

(Civil Action No _____)

JAMES DAVIS WILLIAMS,
ARTHUR BEVERLY LEWIS, and
ROBERT BYRON ELLIS

APPEARANCES:

Mrs. Constance Baker Motley and Mr. Jack Greenberg
10 Columbus Circle, New York, N. Y.; and
R. Jess Brown, Attorney, Vicksburg, Mississippi;

Appearing for Plaintiff.

Mr. Burke Marshall, Asst. Attorney General, Civil
Rights Division, Department of Justice,
Washington, D. C.; and

Mr. Robert Owen, Asst. Attorney General, Civil
Rights Division, Department of Justice,
Washington, D. C.;

Appearing for United States
of America.

Hon. Joe T. Patterson, Atty. General, State of
Mississippi;

Mr. Charles Clark, Special Asst. Attorney General;
Mr. Dugas Shands, Asst. Attorney General;
Jackson, Mississippi;

Hon. Fred B. Smith, Attorney, Ripley, Mississippi; and
Mr. Thomas H. Watkins, Attorney, Jackson, Mississippi;

Appearing for Defendants.

COURT REPORTER'S TRANSCRIPT of the ORAL TESTIMONY ONLY had upon

INDEX TO WITNESSES

	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
St. John Barrett	2	10	23	24
Hugh H. Clegg	25	29	32	
Frank Everett	33	37	40	

Findings of Fact & Conclusions of Law -- Page 43

the hearing of the above styled causes on a Petition to Show Cause Why the Defendants in Said Causes Should Not Be Held In Contempt of Court; heard before the Honorable Sidney C. Mize, United States District Judge for the Southern District of Mississippi, at 2:00 P.M. on the 21st day of September, 1962, in the Federal Courthouse Building, Meridian, Mississippi.

ST. JOHN BARRETT, called as a witness on behalf of the Government, having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. OWEN:

Q. Please tell the Court your full name.

A. St. John Barrett.

Q. How old are you, Mr. Barrett?

A. I'm 39 years old.

Q. Where do you work?

A. With the Department of Justice in Washington, D. C.

Q. What is your job?

A. I am an attorney in the Civil Rights Division of the department.

Q. Directing your attention to yesterday, did you have any contact with James Howard Meredith, the plaintiff in this case?

A. Yes, I did.

Q. Where was that?

A. I first saw Mr. Meredith yesterday in Memphis.

Q. For what purposes did you see Mr. Meredith?

A. I was assigned by the Department, along with three United States marshals, to go in a car with Meredith, transport him from his home in Memphis to the University of Mississippi campus in Oxford, Mississippi.

Q. Did you do that?

A. I did.

Q. Where did you go from Memphis?

A. We drove from Memphis south to Batesville. There we stopped at the office of the Mississippi State Highway Patrol where we met by prearrangement Colonel Birdsong of the Patrol and he provided an escort for us from there to the campus. He himself went along.

Q. Was Mr. Meredith with you at that time?

A. Yes, he was. He was in the car.

Q. After you met Colonel Birdsong, where did you go?

A. We drove directly to the campus -- on to the campus.

Q. Just tell the Court in your own words what happened from the time you got on the campus until you left the campus.

A. Yes, I will.

Q. First, were you with Mr. Meredith at the time you left Batesville?

A. I was riding in the same car with Mr. Meredith.

Q. Just tell the Court in your own words what happened after you got to the campus.

A. We stopped directly in front of the Lyceum Building on the campus, got out of the car, and we were directed into the

4

building by some people in front of the building.

Q. Speak up just a little.

A. Yes, I will. Colonel Birdsong told us we could get out of the car and go into the building, which we did --- that is, I did, Mr. Meredith did, and two U. S. marshals did. In the vestibule of the building we were there directed into a rather large room, and within a matter of minutes, a minute or two, a number of other men came into the room, among them Governor Patterson, who was introduced to each of us.

BY THE COURT: Governor Patterson, or General Patterson?

BY THE WITNESS: No, Governor.

BY THE COURT: You mean Governor Barnett?

BY THE WITNESS: Barnett. I beg your pardon.

Q. What happened after?

A. After they came in, I believe it was Governor Barnett who suggested that we be seated. There were, I would say, 20 rows of seats in there that would have provided seating for some 200 people. Mr. Meredith sat in the front row, I sat next to him, and Mr. McShane and the marshal sat next to me. At two tables in front of us there were some chairs on the other side, and Governor Barnett and a man whom I later learned ---- I mean, while I was there --- was Mr. Ellis, the registrar of voters, sat on the other side of the table.

Q. Registrar of voters?

A. Registrar of students at the University.

Q. Is that Mr. Ellis, the registrar at the University of Mississippi?

A. That is correct. Nothing was said for several minutes, I would say. Mr. Ellis then read from ^{what} appeared to be a typewritten statement. The gist of what he read was that the Board of Trustees of Higher Institutions of the State of Mississippi had adopted a resolution divesting him of his authority to register students of the University and had vested that authority in the Governor of the State and that, accordingly, he, Mr. Ellis, had authority to neither accept nor reject the application of Mr. Meredith. After Mr. Ellis read that statement, nothing was said for several seconds, and I believe I was the next to speak, and I asked him whether he understood that he was required by the orders of this Court, the Court of Appeals for the Fifth Circuit, and of the Supreme Court to register Mr. Meredith as a student. I believe Mr. Ellis said that he had nothing to add to his statement. I asked whether he understood that failure to register Mr. Meredith would be contempt of those courts. Again he gave an answer in the nature that he had nothing more to say or nothing to add to it. I believe it was at that point that I asked Mr. Ellis whether there was a representative of the Board of Trustees present. Governor Barnett answered; Mr. Ellis did not;--saying that he represented the Board of Trustees.

I asked Mr. Ellis whether there was a member of the Board present, whether the president of the Board of Trustees was present. He didn't answer, as I recall, and I believe that the Governor again repeated that he was there as the representative of the Board and was representing them. I asked Mr. Ellis if I could have a copy of the ---

BY MR. SMITH: So far, nothing has been said about Chancellor Williams or Dean Lewis being present, and, therefore, I am going to ask the Court to exclude all of this testimony insofar as it affects the Chancellor and the Dean, and I object to any further testimony from this witness relative to them, as all of this was not in their presence.

BY THE COURT: I reserve ruling on it.

Q. Go ahead.

A. At that point, I asked Mr. Ellis if I could have a copy of the statement he had read, and he said "No." At about that time, he got up from the table and went to the rear of the room behind where we were seated and where a number of other men were, leaving the Governor alone at the front table. Nothing was said for a short space, and then the Governor, I believe, asked in effect, "What can I do for you?" Meredith said at that time, "I want to register." The Governor picked up a written proclamation, which he read to Meredith. When he finished reading it,

he handed it to Mr. Meredith and said that he wanted Mr. Meredith to keep that, and I believe he may even have shaken hands with him; I am not sure.

Q. Let me show you a document and ask you if you recognize it.

A. Yes, I do.

Q. What is that document?

A. This is the proclamation that I have just referred to that the Governor handed to Mr. Meredith.

Q. That is the proclamation that the Governor handed to Meredith?

A. That is correct.

BY MR. OWEN: I'd like to mark this document as Government's Exhibit Number 5 and introduce it into evidence.

BY THE COURT: Let it be marked and received in evidence.

(Same was received in evidence as Government's Exhibit No. 5.)

Q. After Governor Barnett gave Mr. Meredith that document, what happened?

A. I believe the Governor asked if anyone else wished to make a statement, and I said "Yes." I said that I felt it was only fair to Mr. Ellis and to the members of the Board of Trustees to state that it was the position of the Department of Justice that the proclamation which the Governor had read was of no legal effect and that Mr. Ellis and the members of the Board continued under their obligation to the United States Courts to enroll Mr. Meredith,

and that their failure to do so would constitute a contempt of those orders. I believe it was at that time that the Governor asked me whether I was holding these men in contempt, and I said, "No", that I was not. And he asked another question which I didn't quite understand and I didn't answer. I believe that concluded what conversation there was at that time.

Q. You stated earlier, Mr. Barrett, that Mr. Meredith asked to register. I may not have caught it. Was there any response to that request? Was there any response to that request, from Governor Barnett?

A. The Governor read the proclamation.

Q. Did he say anything else?

A. He said nothing else in response to Mr. Meredith's request to register.

Q. Did you leave the University at that time?

A. We left shortly after that.

Q. With Meredith?

A. With Mr. Meredith.

Q. While you were there, were you there with Mr. Meredith the entire time Mr. Meredith was on the campus?

A. I was with him the entire time.

Q. Was Mr. Meredith registered while you were there?

A. He was not.

Q. Did you see anybody else, other than Mr. Ellis and Governor Barnett while you were on the campus --- any officials of the University?

A. No one that I knew to be an official.

Q. Would you just describe after you left the campus what you saw and where you went?

A. After leaving the campus?

Q. After leaving the building in which Governor Barnett was present.

A. Well, Meredith walked out of the building between the two U. S. marshals. I was walking somewhat to the rear. The car with the third marshal was waiting out in front where we had been let out. There was a line of uniformed men, whom I believe were officers of the state Highway Patrol, directly across from the entrance of the building, standing shoulder to shoulder. Facing the building there were quite a number of apparently University students behind the officers, maybe four or five deep. They were hissing, booing, to a certain extent.

Q. Was the crowd under control or not under control?

A. I felt that it was very well under control.

MR. SMITH: We object as an opinion.

THE COURT: Overrule the objection.

Q. Go ahead and answer the question.

A. I felt that the crowd was very well under control.

Q. Where did you go after you left the campus?

A. We got back into the car and with the escort of the State Highway Patrol, we drove directly off the campus onto the highway. I don't know the number of the highway, but heading north. The escort remained with us for what must have been 20, 25 miles, at which time the escort

was discontinued and one of the highway patrol cars gave me a ride back to Oxford, while the car with Mr. Meredith proceeded north.

MR. OWEN: No further questions.

BY THE COURT: Any questions, Mrs. Motley?

MRS. MOTLEY: No, Your Honor.

CROSS EXAMINATION

BY MR. SMITH:

Q. Barrett, where do you live?

A. Chevy Chase, Maryland.

Q. Where were you reared?

A. In California --- Santa Rosa.

Q. How long have you been in the East?

A. I have been in the East since January, 1955.

Q. How long have you been connected with the Civil Rights Department of the Government?

A. Well, I have been a member of the Civil Rights Division since it was formed around December 1, 1957. I have been in the Department before that.

Q. You stated in the beginning of your testimony that Meredith came with you from his home in Memphis. Is that correct?

A. That is correct.

Q. And it is your understanding he lives in Memphis?

A. That is my understanding. No -- I beg your pardon. That is not my understanding. We referred to it -- I say "we"--

I mean, myself and the marshals who were in the car that brought him down, referred to it as his home when we were talking about picking him up, but I certainly do not know it to be his home. On the contrary, My understanding is that his home is in Mississippi.

Q. How did you happen to refer to it as his home on two occasions?

A. Because, as I say, we referred to it as his home, or maybe as the home, when we talked about picking him up and where he would be. It may be the home of a relative. I have that impression.

Q. Do you know the name of the relative?

A. I do not.

Q. How long had you been there before you started on your trip to Oxford?

A. In Memphis?

Q. Yes.

A. Well, I had been there since about midnight of the preceding night. I had come in the night before.

Q. How long had you been in the home where Meredith was?

A. I was never in it.

Q. You didn't go in the home?

A. No.

Q. Who did you go out there with?

A. Well, there were three men. James Chambley was driving; James McShane, who is the Chief of U. S. Marshals, was in the car; and another man from the marshal's office

in Washington. His name, first name, is Ellis, and I believe his last name may be Dooley, but I'm very uncertain of that.

Q. What time did you leave Memphis?

A. I would judge that we left Memphis sometime around 2:30 or maybe 3:00.

Q. Did you come directly to the University of Mississippi?

A. No, sir. As I said, we stopped at Batesville at the office of the State Highway Patrol.

Q. What was the object in making that stop?

A. Well, I understood that the State Highway Patrol was to provide our car an escort to the campus and that was in fact done.

Q. So you came down to get the escort?

A. Beg pardon?

Q. So you came down to get the escort at Batesville, and they came on with you, escorted you? Is that right?

A. That is right.

Q. How many cars escorted you?

A. I know there was one directly in front of us and one directly in back of us, and I believe there were one or two other cars.

Q. You had no trouble on the way?

A. None at all.

Q. Perfectly protected?

A. I would say yes.

Q. And the same was true when you left the campus to go away?

A. I would say yes.

Q. No incidents at all on the road that caused you any alarm?

A. None whatever.

Q. When you reached the Lyceum Building that you referred to, you made quite a description of the room, with seats ample for 200 people, and tables. You have been in quite a number of educational institutions, have you not?

A. I have been in some.

Q. There is nothing unusual to find a room that large in a large educational institution, with seats for 200 people?

A. Not at all.

Q. And a couple of tables?

A. Not at all.

Q. You didn't mean to indicate there was something unusual about the room, did you?

A. Oh, not about the room.

Q. If I understand you, when you went in and Meredith presented himself for registration, Mr. Ellis read a statement. See if you can recognize this as the statement he read you.

(Reading:) " By action and authority of the Board of Trustees, I have been totally deprived of any power to take any action one way or the other in registering James Meredith. This results from a specific order of the Board of Trustees, to whom I am subordinate. All of the authority in connection with this registration has been reserved by the Board of Trustees, and since I am wholly without authority to act and not in a position to register him nor decline to register

him. If his registration is to be pursued, it should be pursued with the Board of Trustees. The Board maintains an office in the State Office Building in Jackson."

Do you recognize that as being the statement?

A. I recognize, I would say, virtually all of what you have read. My recollection was that the statement included a reference to the fact that the powers of the Board of Trustees with respect to registration had been vested in the Governor.

Q. Aren't you getting that confused with the proclamation?

A. I may well.

Q. You are correct in that. I am advised that a sentence was added to the statement which I had, that Governor Barnett had been vested with power by the Board of Trustees. Now, with that, that is a correct statement, so far as you ---.

A. I believe it is.

Q. And so this man told you, told Meredith, at the time he presented himself for registration, that he had been totally deprived of any power to take any action one way or the other, did he not?

A. I believe he did.

Q. Have you, as attorney for the Civil Rights Division, made any investigations to determine what the power and authority of Mr. Ellis was?

A. I personally have made no such investigation.

Q. Have you made any investigation to find out whether or not he was the employee and the servant of the Board of Trustees?

A. Well, I have made no investigation, no, sir.

Q. Then, so far as you know, the Board of Trustees had ample right and authority and power to deprive him of any authority to act in this case?

A. As far as I knew.

BY MR. OWEN: I object to this line of questioning because it seemed to me counsel was arguing the legal points of his case, and he has not qualified this man as an expert.

BY THE COURT: Overrule the objection.

BY MR. SMITH: If I may say this, Your Honor, this gentleman stated in his own testimony that he advised the people gathered there as to what their legal rights were and real obligations.

BY THE COURT: Well, I have overruled the objection, so you may proceed.

Q. Now, you recall in that statement that Mr. Ellis read that he said, "I am wholly without authority to act and I am not in a position to register him nor to decline to register him" and he read you the statement right there that he wasn't in a position to register him?

A. He read the statement.

Q. And that was in the statement?

A. I believe it was. I am quite sure it was.

Q. He directed you then and there as to how he should pursue

his effort for registration, didn't he, and told you the Board of Trustees had the authority and where the Board of Trustees was?

A. Well, Mr. Ellis gave no directions other than were contained in the statement which he read.

Q. Didn't he say, if his registration is to be pursued, it is to be pursued with the Board of Trustees?

A. I believe that was in the statement.

Q. He read that?

A. I believe that was in the statement, yes.

Q. Now, why were you with Meredith? In what capacity, or for what purpose?

A. I was with Meredith at the direction of the Department of Justice in connection with the Department's designation in the case, which resulted in the court order requiring the registration of Meredith. Our participation is *amicus curiae*. I say that is one capacity in which I feel I was there, and the other was to represent the interest of the United States in the due execution and the respect for the order of its courts.

Q. Now, when this suggestion was made about pursuing the registration further, did you advise Mr. Meredith to pursue it any further?

A. I did not.

Q. Did you advise him to abandon?

A. I gave him no advice whatever.

Q. You weren't along then to advise him?

A. I was not.

Q. I understand why you say you were along, but I am still in the dark as to what your purposes were. Were you there for the purpose of assembling testimony to be prepared to testify in this case? Was that your purpose?

A. Well, I wouldn't say that was my purpose, no. I think the purpose was, as I stated a few moments ago. I recognized, of course, that I might be called on to testify to anything that happened.

Q. And you feel that that was the primary purpose for which you were there?

A. No, I do not.

Q. Now, there was introduced by you a proclamation. You read the proclamation?

A. Yes, I did.

Q. Saw it and read it? And it says: (Whereupon Counsel read Government's Exhibit No. 5 to the witness.)

Now, Mr. Ellis told you in the writing which he submitted that he did not decline to register Meredith; that all authority in that regard was taken away; so the man who really declined to register Meredith was the Governor of Mississippi, wasn't it?

A. Well, I don't believe those were the words of the statement he read.

Q. That who read? That the Governor read?

A. I perhaps misunderstood. I thought you were referring to Mr. Ellis.

Q. No, sir. I said that Mr. Ellis in the statement which I read to you which you have admitted was correct stated, "nor do I decline to register," and the man who declined to register him was the Governor of Mississippi. Isn't that correct?

A. Well, Counsel, I am afraid I don't understand the question, really.

Q. Well, I will re-phrase it. It seems very simple. In the statement which you say Mr. Ellis read to you and which you say is correct ---

A. - That is correct.

Q. -- he says, "nor do I decline to register him." So he gave you a statement that he didn't decline to register him. The Governor read you a proclamation which said he declined to register him. So, it was the Governor of Mississippi who declined to register Meredith, was it not?

A. The statement you have read from each of the documents, I believe are accurate. I think those were the statements made at that time, that is correct.

Q. This gentleman who sits right here, Chancellor J. D. Williams, do you recall him being in the room?

BY THE COURT: Chancellor, stand up, so he may see him.

(Whereupon the same was done.)

Q. Do you recall him being in the room?

A. I don't recall him, but I am frank to say I doubt if I would recall by sight more than two or three or four people whom I saw in that room, and I am not sure I would recognize any other than the Governor and Mr. Ellis.

Q. I will put it this way: So far as you know, he was not in the room, was he?

A. I can't say whether he was there or not, that is correct.

Q. You wouldn't say he was?

A. I would not.

Q. Now, do you know Dean Lewis?

A. I do not.

Q. So far as you know, he was not there?

A. So far as I know. Or, I should say, I don't know whether I have ever seen Dean Lewis in my life.

MR. SMITH: Dean Lewis, will you stand?

(Whereupon the same was done.)

A. I can't say whether he was there or not.

Q. You can't say. If they were there, you do know who had something to say while you were there; you have told us?

A. I do.

Q. -- Have told us every word that was said and who said it.

So, then you know who said, what was said at that time

A. Well, I doubt I have told every word that was said.

Q. If you haven't told all of it, tell us what you have left out.

MR. OWEN: The witness merely said he doubts he told every word that was said. Obviously, he is trying to recollect.

BY THE COURT: If he recalls anything he hasn't stated, I will permit him to answer.

A. Since my direct examination, I have recalled some conversation that I haven't testified to, which your own question recalled in my mind, as to in what capacity I and two U. S. Marshals were there; and I gave the Governor the answer that I gave you here in the courtroom. I do recall that. There is no other conversation that I recall other than some informal conversation as the men left the room.

Q. Then you can't say to the Court that Chancellor Williams was present or said a word, can you?

A. I cannot.

Q. You cannot say to the Court that Dean Lewis was present and said a word?

A. I cannot.

Q. You didn't go to the Chancellor's office with Meredith?

A. No, I did not.

Q. You didn't go to Dean Lewis' office with Meredith?

A. No.

Q. In other words, you have told us everything that transpired so far as you know?

A. I believe I have told you substantially all that transpired in that room, yes.

Q. Now, I believe you stated that there were a number of students there. It didn't impress you as being anything at all unusual that on the opening day of an institution of approximately 500 students there would be a lot of students there on the campus --- 5000, I mean. That didn't strike you as unusual?

A. The number of students who were collected in front of the building did not impress me as a number unusually large for enrollment in the state university, no.

Q. And I believe you said they were under control and well behaved?

A. I did not say they were well behaved. I said I thought they were well under control.

Q. And no violence to you or no violence to Meredith?

A. I don't believe any of us was touched.

Q. Well, you ought to know -- You were right there, and you know you weren't touched?

A. I know I was not.

Q. And you know Meredith wasn't touched?

A. I don't believe he was.

Q. Now, in your examination, you referred to "Governor Patterson," which is not unusual, and to "registrar of voters." You've been in a lot of cases of this kind, have you not, of various kinds, voter registration cases, cases in Alabama where

Governor Patterson is the governor?

A. Oh, yes.

Q. You have been involved in them, haven't you?

A. I have been, of course, assigned to civil rights cases in my work, that is correct.

Q. And don't you think that it was wholesome that this escort of highway patrol was arranged to prevent any possible violence that might have arisen?

A. I do indeed.

Q. You didn't object to that?

A. Not at all.

Q. Did you on that occasion ask to see Chancellor Williams?

A. I don't believe I did.

Q. Did Meredith ask to see Chancellor Williams?

A. I am quite sure he did not.

Q. Did you ask to See Dean Lewis?

A. I did not ask to see Dean Lewis; however, I believe I did ask where their offices were located in the building that we were in.

Q. Did you go to their offices?

A. I did not.

Q. Did you make any effort to go to their offices?

A. I made some effort, yes.

Q. What effort did you make?

A. I inquired where they were located.

Q. Then did you go try to find them after you inquired?

A. I did not learn where their offices were.

Q. Then you did not go to their offices?

A. I did not.

Q. Meredith didn't go to their offices?

A. He did not.

Q. From your experience in these matters in various states, if there had not been a prearrangement for the escort of highway patrolmen, do you have any idea how many marshals you would have brought with you?

A. I do not. I beg your pardon?

Q. How many U. S. marshals you would have brought with you if you hadn't had this prearrangement. You would have brought more than you did?

A. I don't know, frankly. You are asking what I would have done. Of course, I had no authority.

Q. Don't you believe from your ---

MR. OWEN: We object to this.

THE COURT: Sustain the objection.

BY MR. SMITH: That is all.

BY THE COURT: Any redirect?

REDIRECT EXAMINATION

BY MR. OWEN:

Q. With respect to the statement which counsel read to you and which you identified, a sentence which was left out, would you state again what you believe was left out of the statement he read with respect to the Governor?

A. Well, in substance, it was that the powers over the registration of students which Mr. Ellis said in his statement he had been divested of, had been placed in the Governor.

BY MR. OWEN: No further questions.

RECROSS EXAMINATION

BY MR. SMITH:

Q. Do you know how many marshals you had standing by up at Memphis?

BY MR. OWEN: We object.

BY THE COURT: Sustain the objection to that. I think it's immaterial.

(Whereupon the witness was excused)

BY MR. WATKINS: May we make a record on the objection just made which was overruled by the Court? At least, sustaining the Government's objection to our question.

BY THE COURT: Yes.

BY MR. WATKINS: We would like the record to show we believe we could prove that the Government had an unusually large number of U. S. marshals stationed temporarily in Memphis, Tennessee, for the purpose of bringing them into Mississippi because they anticipated violence as a result of bringing Meredith to the University and would have done so had the State of Mississippi not worked out arrangements and furnished the Highway Patrol escort.

We think that the anticipation of violence by the United States is important, and we should be permitted to show it.

BY THE COURT: Very well, I will adhere to the ruling.
(Whereupon the Government rested its case.)

(Defendants' Exhibits Nos. 1, 2, 3, 4, and 5 and 6 were marked and received in evidence.)

HUGH H. CLEGG, called as a witness and having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SMITH:

Q. State your name.

A. Hugh H. Clegg.

Q. Where do you live?

A. On the campus of the University of Mississippi.

Q. How long have you lived there?

A. Since February, 1954, a little over eight years.

Q. What was your occupation and connection prior to your going to the University of Mississippi?

A. I retired as Assistant Director of the Federal Bureau of Investigation, with headquarters in Washington, D. C.

Q. How long were you in that capacity?

A. Approximately 27½ years.

Q. Since you have been connected with the University of Mississippi, have you been familiar with Chancellor J. D. Williams?

A. I have been very well acquainted with him.

Q. Are you familiar with his educational background and the

positions that he has held?

A. I am.

Q. In educational institutions?

A. I am.

Q. State them to the Court.

A. In the field of education, Chancellor Williams, who is a native of Kentucky, was a graduate, with a Bachelor of Arts Degree, from the University of Kentucky. He also received his Master of Arts Degree from the University of Kentucky and his degree in Doctor of Education from Columbia University. He has been in education for approximately 38 years, since 1924. He has served as a director of education for the Tennessee Valley Authority. He has served as a member of the faculty of the University of Kentucky. He has served in high school education, elementary education. He was president of Marshall College immediately prior to coming to the University of Mississippi as its chancellor in 1946.

Q. Does he hold and has he held any positions with national educational organizations?

A. Chancellor is today the president of The National Association of State Universities. That is the organization composed of the presidents and chancellors of all state universities plus all of the land-grant colleges and universities in the United States. He is immediate past president of the State Universities Association. That is the association

of the officials, ranking officials, of the state universities other than land-grant colleges. Prior to that and at a fairly recent date, he was the national president of The National Association on Higher Education of the United States.

Q. Are you familiar with the educational background of Dean Lewis?

A. Only to a limited extent. I have seen it. I have seen his biographical sketch, but I do know when I came to the University of Mississippi he was listed as a member, along with some thirty-odd other members of our faculty, of the American Men of Science. He was chairman of the Department of Astronomy and Physics and is today the Dean of the College of Liberal Arts of the University of Mississippi.

Q. How long has he been at the University of Mississippi?

A. I am uncertain. I do not recollect that part of his biography. I know much longer than I have been there. I believe he is a native Mississippian and is the son of a minister, and I believe has been at the University probably as long as the chancellor. I do know that I have discussed with him his former affiliations with the National Bureau of Standards in Washington, D. C., as a scientist.

Q. Are you familiar with the working background of Registrar Ellis?

A. Only to the extent that he is the registrar, was when I arrived at the campus, he still is, and is a graduate of the University of Mississippi.

Q. Are you familiar, Mr. Clegg, in a general way with the routine of the registration of students at the University of Mississippi and who has charge of that registration?

A. Yes, I am.

Q. State whether or not Chancellor Williams has anything whatever to do with the registration of students.

A. He does not.

Q. Has he ever participated or had anything to do with the registration of students?

A. Since I have been on the campus for over eight years, he has never participated. I have heard him say in years past he never at any time prior to that.

Q. Now then, as to Dean Lewis, does he have any duties or responsibilities relative to the registration of students?

A. None whatever.

Q. You heard the witness, St. John Barrett, testify, and describe the room where the incidents took place he testified about relative to the man Meredith. Where is that room?

A. That is in the Mississippi Center of Continuation Study building on the campus of the University.

Q. How far is that from the office of Chancellor Williams?

A. I would say about three, maybe four, hundred yards.

Q. How far is it from the office of Dean Lewis?

A. His office is in the same office as the chancellor. The same distance, then.

BY MR. SMITH: You may have the witness.

CROSS EXAMINATION

BY MR. OWEN:

Q. Mr. Clegg, what is your job at the University?

A. Director of Development at the University of Mississippi.

Q. What kind of work do you do?

A. It is engaged primarily, concerned primarily, with the standing and with improving the assets and resources, fund raising, obtaining gifts, bequeaths by wills and other resources, for the University of Mississippi.

Q. You testified that Chancellor Williams and Dean Lewis didn't have anything to do with registering students?

A. Yes.

Q. What is Chancellor Williams' job there?

A. He is the executive head of the University of Mississippi.

Q. What does that entail?

A. That entails meeting with the division heads, entails the general policies of administration that are referred to him for decision.

Q. Is Mr. Ellis under his direct supervision?

A. No, sir, he is not.

Q. Whose supervision is he under?

A. He is under the direct supervision of the Director of Student Personnel, Dr. Leston L. Love.

Q. Who is the chief administrative officer of the University?

A. Chief executive officer is the chancellor of the University.

Q. Dr. Love is responsible to the chancellor?

A. Yes.

Q. And to whom Mr. Ellis is responsible to?

A. That is correct.

Q. How about Dean Lewis? What kind of work does he do on the campus in connection with the running of the University?

A. He is the Dean of the College of Liberal Arts and performs those duties normally performed by any college or school within a university.

Q. Briefly, what does that entail?

A. Supervision over the faculty of that particular college or school. It includes the direction of the policies and the execution of the policies incident to that particular college or school. I see students in his office fairly frequently after registration is over, perhaps trying to change an assignment from one course in French to another in Spanish, perhaps. He approves such changes as that, but has no relationship to registration.

Q. Does he have anything to do with the evaluating of credits for applicants who apply to the University of Mississippi?

A. I do not believe he does. I never heard of him having such responsibilities.

Q. His job is mainly coordinating the students after they get there in their day to day life at the University?

A. After registration is over.

Q. Is that correct?

A. That is correct.

Q. When do classes open at the University of Mississippi?

A. I believe they open on the 21st, Friday. That is today.

Q. Do you know when registration was for this year?

A. I believe it began on Wednesday, the 19th, and continued to Thursday, the 20th. Wednesday was for old students returning to the campus who had been there previously, and Thursday was for the continuation of registration of former students, plus the registration of new students who arrived at the campus.

Q. This year where did those students register?

A. They usually register wherever the registrar designates.

There have been various places. I have seen long lines of this in front of the University Library, long lines of them in front of the gymnasium, at different places.

Q. How about this year? Where did you see the lines this year?

A. I did not see any of the lines this year. I did not leave my office to go in that direction. I have heard only where it was held.

Q. Are there a lot of students on the campus?

A. Yes, sir. Approximately 5000, or perhaps more today.

Q. And it is your understanding that most of them who were on the campus are registered and enrolled and ready to go to classes? Is that correct?

A. I expect most of them are. There are usually some late registrations.

MR. OWEN: That is all.

REDIRECT EXAMINATION

BY MR. SMITH:

Q. There has been introduced in evidence as Defendant's Exhibit 5 a copy of a telegram sent by Mr. E. R. Jobe, Executive Secretary of the Board of Trustees, to James H. Meredith on the 17th day of September, 1962, advising him where he should present himself in connection with his attendance at the University of Mississippi. It refers to a telegram of September 11 addressed to Mr. Ellis. Have you seen the telegram which Meredith sent to which that is a response?

A. I have.

Q. What did that telegram state?

A. The gist of it was, as I recall, it was from Gary, Indiana, the sending point, and it was addressed to the Registrar, and it expressed his intention of registering at the University, registering there, I believe, in September, and asked that the registrar advise him what day to report and to send the reply as to what date to report to a certain address that he listed at Kosciusko, Mississippi.

Q. And this telegram is in response thereto?

A. I had not seen this telegram before, but it obviously would be.

BY MR. SMITH: That is all.

(Whereupon the witness was excused.)

FRANK EVERETT, called as a witness and having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SMITH:

Q. Mr. Everett, where do you live?

A. Vicksburg, Mississippi.

Q. What is your occupation?

A. I am a lawyer.

Q. How long have you been practicing law there?

A. In Vicksburg, since 1941, except for 3 years I spent in the Navy.

Q. As a member and official of the alumni association of the University of Mississippi, were you on the campus on the 20th when the events which have been testified here took place up there?

A. Yes, I was on the campus, if Thursday was the 20th. I lost track of the days, but I think Thursday was the 20th.

Q. That was yesterday.

A. Yes, sir.

Q. Mr. Everett, were you in the room when Meredith presented himself as has been described by St. John Barrett, a witness here for the prosecution?

A. Yes, sir, I was.

Q. Do you know Chancellor J. D. Williams?

A. I certainly do.

Q. At the time Meredith presented himself at the time he was there, did you know when he came to the building?

A. Yes, sir, I was standing right at the door, when he came in, and saw him get out of the patrol car and be escorted to the door, and when he entered the room I followed him all the way into the conference room where the ultimate

application for registration would take place.

Q. Did you see him when he left?

A. Yes, I did.

Q. Did you see him at all times while he was there?

A. I wouldn't say every minute, but substantially I saw him most of the time he was in that building.

Q. During that time, state whether or not Chancellor Williams was in that room, near that room, or about that room in that building.

A. Chancellor Williams was not in that room or in that building. He had left some good while previous to that. There were students registering at the gymnasium. There were a number of calls being made upon him, and he left, and I saw him when he left the extension center stating that he was going to his residence, which was only a short distance away, and to his office, that he would be constantly available at either place. But he was not in or around the building anywhere or in the room at the time that Meredith presented himself for registration.

Q. Did you hear Meredith or any of his escorts or those with him inquire for the chancellor or try to reach the chancellor or make efforts to reach him?

A. I did not. No such effort was made in my presence, and I was there all the time.

Q. Are you acquainted with Dean Lewis?

A. Yes, sir, I know Dean Lewis.

Q. Do you know where his office is?

A. I believe Dean Lewis' office is in the Lyceum Building, but don't know that positively.

Q. Approximately how far is that from the building where this was taking place?

A. This was in the extension center building, a commodious and nice building in which this matter could be more easily handled for the accommodation primarily of those who were making the applications. Dean Lewis was in the Lyceum Building, which is across the big circle, and the little circle, which would be approximately half a mile or maybe a little more. It wasn't so long when I was a student, but it is a long way now. It is about a half or a quarter mile from the extension building.

Q. Was he present at any time at the place, or around or near the place, while Meredith was there and this was taking place?

A. No, sir, he was not.

Q. Was any effort made by Meredith or any of his associates or those with him to locate Dean Lewis?

A. No, sir, there was not.

Q. Any inquiry about Dean Lewis?

A. None that I heard or knew anything about.

Q. It has been testified here that there were quite a large number of highway patrolmen there. Would you have any idea how many there were?

A. There were a large number, but to give you a specific or estimate the number, I could see from the extension center building a long line of highway patrolmen standing pretty well shoulder to shoulder in front of the group

that was standing across the street from the extension center building. There were other highway patrolmen there at the entrances to the University campus that I had seen from time to time and at other points on the campus, but I could not estimate the number of them there. There were quite a few.

Q. Was there any evidence of tension?

A. I walked over the campus that morning prior to noon from the extension center building and alumni house to the administration building, the Lyceum Building. There was a large number of students congregated there, simply waiting, looking and interested. I then went from there to the gymnasium where the other students were being registered, and there were long lines of students there waiting to be registered, and some having finished registration. Classes had not started, and those who had finished and completed their registration or who were not scheduled for registration at that time were around on the campus. There was an air of tension on the campus; there were no evidences of misconduct, but there was certainly an air of tension and expectation, and there were numbers of students who were standing in groups primarily around the Lyceum Building, the gymnasium, and later around the extension center building. I would say there was an air of expectation, of curiosity and of some tension, but I will say that the conduct was excellent.

BY MR. SMITH: You may have the witness.

CROSS EXAMINATION

BY MR. OWNN:

Q. Mr. Everett, you say you are a Vicksburg lawyer in Vicksburg.

Do you have any official connection with the University?

A. No official connection with the University except for the fact that as past president of its alumni association, I am still on the board of directors of the alumni association, but that is no official connection with the University. I am an alumnus and an active alumnus.

Q. You were on the campus yesterday. Was there any particular purpose for your being there?

A. Yes. I was there for the purpose of rendering such assistance as I could to my friends at the University and to the alumni association, to the chancellor of the University, or any others who might be interested in discussing the situation.

Q. In connection with Mr. Meredith coming to register? Is that correct?

A. Yes, I would say there was a considerable anticipation that that would happen during the week.

Q. How many days were you there?

A. I went up there on Tuesday afternoon.

Q. Did you discuss Mr. Meredith's registration at all with the chancellor while you were there?

A. To some extent, but very little with Chancellor Williams.

Q. How about yesterday?

A. Very little with Chancellor Williams. I did see Chancellor Williams yesterday morning for brief periods. He had many duties to do. He had a meeting of his division heads. I saw him, I would say, two or three times up to maybe about

two o'clock, when he left.

Q. When did the chancellor expect Mr. Meredith to come?

A. The information was not very clear, and nobody knew exactly when to expect Meredith, but finally I believe that the word came through Mr. Clegg or some of the highway patrol that their information was that he would present himself at three o'clock. Then a later word came as the hour of three neared that there were some matters that he was attending to that delayed him, and that it would be probably four-thirty before he would arrive at the campus.

Q. Was it in terms of your being on the campus and discussing this problem with various campus officials, was it arranged that Mr. Meredith would go where he went to apply?

A. Arrangements were made to facilitate his being at the right place and having an opportunity to present himself in a proper manner.

Q. That is where you saw him go in and you followed him? Is that correct?

A. I was already in the building when he approached it and came to the building.

Q. But where you were was the place where he came to?

A. Where he came to.

Q. That was the place arranged?

A. That was the designated place and the agreed place where he would come.

Q. In connection with making the arrangements for Mr. Meredith to present himself in this particular building, did you have any discussion with Chancellor Williams about that?

A. I did not have any discussion with Chancellor Williams about that.

32
Q. In your discussions with him, was he aware that this was the arrangement?

A. That he would come to the extension center building?

Q. Yes.

A. I think he was aware of that.

Q. How about Dean Lewis?

A. I don't know as to Dean Lewis.

Q. Do you know who made the arrangements, who was in charge of the arrangements for Meredith going into this building?

A. There were many who were involved in those arrangements, not only from the University standpoint, but from Meredith's standpoint.

Q. But from the University's standpoint, who coordinated and made the arrangements?

A. Well, I would say that Mr. Hugh Clegg would be primarily the man through whom a great deal of the information that we could get. Information was very scarce and hard and difficult to come by as to what was going to be done, and the information, or the clearing house of information, most of it cleared through him.

BY MR. OWEN: That is all.

COURT: Any cross examination, Mrs. Motley?

MRS. MOTLEY: No, sir.

REDIRECT EXAMINATION

BY MR. SMITH:

Q. I believe you stated that you did not talk to Dean Lewis?

A. No, sir, I don't recall having any direct discussion with him about this matter.

Q. And just meager and incidentally with Chancellor Williams, you said?

A. Very sketchy with Chancellor Williams.

Q. In anything that was said between you and Chancellor Williams, did he intimate in any manner, shape or form that he was going to try to keep Meredith from registering or have anything to do with keeping him from registering or that he didn't want him to register?

A. Absolutely not.

BY MR. OWEN: We object. If the witness wants to say what the chancellor told him, it is all right.

BY THE COURT: Overrule the objection.

Q. Now, I will repeat the question because we were interrupted. In your sketchy conversation with the chancellor, was anything said or done or any intimation of any kind given by the chancellor that directly or indirectly intimated that it was not his purpose and intention to permit Meredith to register or that he was going to have anything to do with any effort preventing him from registering?

A. The chancellor's position was always that he was going to do and conduct himself in such manner as was lawful and proper and in the best interest of the University. That was his position, but he gave no indication whatever that he was going to take any steps, and he did not take any steps in dealing with the registration of Meredith at all.

(Whereupon the witness was excused.)

BY MR. CLARK: I would like to file a motion.

(The same was handed to the Court.)

BY THE COURT: Let the motion be filed, and it will be overruled.

BY MR. SMITH: We rest.

BY THE COURT: Anything in rebuttal, Mrs. Motley?

BY MRS. MOTLEY: No, sir.

BY THE COURT: Do you have anything, Mr. Owen?

BY MR. OWEN: We don't have anything in rebuttal.

BY THE COURT: Before both sides rested, there were two matters on which I reserved ruling. One was objection on behalf of Chancellor Williams and Dean Lewis as to the conversation that was carried on in the room between Governor Barnett and the plaintiff and those present there, as to what was said and done at that time, on the grounds that Chancellor Williams and Dean Lewis were not present. I sustain that objection.

42.
It has no probative force whatsoever as to those two defendants.

At the conclusion of the Government's testimony, the defendants made a motion to exclude the evidence and discharge the defendants. I reserved ruling on that until all the evidence was in, and as to the motion made at the time when the Government rested, it will be overruled, and the case will be heard now and argued and considered upon the entire record, since both sides have rested.

(Whereupon the Court allowed thirty minutes to the side for argument.)

(Whereupon the Court made the following Findings of Fact and Conclusions of Law:)

BY THE COURT: The parties to this litigation having rested and the Court having heard full arguments in this matter, now makes the following Findings of Facts and Conclusions of Law:

This Court on the 13th of September, 1962, issued a permanent injunction against all defendants that were named in the cause styled James Howard Meredith vs. Charles Dickson Fair, et al, Number 3130 Civil, enjoining the defendants and each of them in the following language -- not quoting the entire matter, but part of it:

"Their agents, servants, employees, successors, attorneys and all persons in active concert and participation with them be and they are hereby permanently restrained and enjoined from:

"(1) Refusing to admit plaintiff, James Howard Meredith immediately to the University of Mississippi and that they shall each of them be, and they are hereby required to admit him to the University of Mississippi upon the same terms and conditions as applicable to white students;

"(2) From interfering in any manner with the right of plaintiff, James Howard Meredith, to matriculate in, or attend the University of Mississippi;

"(3) From taking any action or doing any act or being guilty of any conduct which will impair, frustrate or defeat his right to enter the University of Mississippi;

"(4) Refusing to admit the plaintiff, James Howard Meredith to the University of Mississippi upon his applications heretofore filed, all of which are continuing applications.

"It is further ordered that said defendants, or any of the classes of persons referred to, are prohibited and enjoined from excluding the same James Howard Meredith from admission to continued attendance at the University of Mississippi.

"It is further ordered that the defendants, their servants, agents, employees, successors and assigns, and all persons acting in concert with them, are enjoined to admit the plaintiff, James Howard Meredith to the University of Mississippi upon his applications heretofore filed and they are enjoined from excluding the said James Howard Meredith from admission to continued attendance at the University of Mississippi or discriminating against him in any way whatsoever because of his race.

"It is further ordered that a copy of this order and injunction be served by the United States Marshal on each of the defendants herein."

On September 20, 1962, this Court issued a fiat to the three defendants named here to appear here today and show cause, if any they could, why they had not carried out the injunction that I had heretofore issued. The defendants, and the only three defendants involved in this action, are James Davis Williams, Arthur Beverly Lewis, and Robert Byron Ellis; and the fiat required them to be here on September 21, 1962, at 1:30, and that they should appear here and show why they should not be held in civil contempt by reason of their failure and refusal to obey the order of this Court of September 13, 1962.

At the beginning of the proceedings today an objection was made by the defendants proceeding in this cause unless criminal action, or petition, also be heard at the same time. The Court, thinking it was a proper case for the consolidation of a criminal and civil action -- for a criminal violation of the injunction, as well as a civil contempt violation for violation of the injunction -- stated into the record that he would regard the criminal petition to be in substantially the same language as were the charges in the civil contempt proceeding, and consolidated the two for trial. They have been tried, and the criminal action has heretofore been dismissed during the argument of the Government.

On the 20th of September, 1962, the Governor of the State of Mississippi invoked the doctrine of interposing and invoking the police powers of the State of Mississippi in order to secure the people of the State of Mississippi and for protection of all the citizens of the State of Mississippi and all others who may be within the confines of the State of Mississippi, and on that date notified James Howard Meredith that he was refused admission as a student at the University of Mississippi, and any other person or persons who, "in my opinion, by such admission, would lead to a breach of the peace and be contrary to the administrative procedures and regulations of the University of Mississippi and the laws of the State of Mississippi."

In that document he advised Meredith that he would refuse admission. The contract between Robert B. Ellis and the Board of Trustees of the State Institutions of Higher Learning was entered into on the 2nd of July, 1962, which is

a renewal of contracts theretofore entered into, and it shows Mr. Ellis Had been one of the teachers at the University of Mississippi for years.

Likewise, on the 2nd of July, 1962, a contract was entered into between the Board of Trustees of State Institutions of Higher Learning and John D. Williams to the position of Chancellor. The evidence shows, and I find it a fact, that Chancellor Williams had been chancellor since 1946, I believe, to say the least, for many years prior to that date, and the presumption and inference is that the same terms of contract were entered into prior thereto with the exception, possibly, of salaries, because the contract provided that the salary could be changed from year to year.

The contract between Robert B. Ellis and the Board of Trustees of the State Institutions of Higher Learning heretofore referred to named him to the position of registrar.

The contract between the Board of Trustees of the State Institutions of Higher Learning and Arthur B. Lewis was entered into on the 2nd day of July, 1962, and presumably was renewal of contracts theretofore entered into between the parties, as the testimony shows, and I find as a fact that Arthur B. Lewis had been employed at the University by similar contracts for several years.

On September 20, 1962, certain excerpts from the minutes of the Board of Trustees, introduced in evidence by Defendants' Exhibit No. 2, in short, invested in Honorable Ross R. Barnett, the Governor of the State of Mississippi, full power, authority,

right and discretion of the Board of Trustees to act upon all matters pertaining to or concerned with the registration or non-registration or with reference to the admission or non-admission and/or attendance or non-attendance of James H. Meredith at the University of Mississippi, and that a certified copy of the resolution, together with copies of the conflicting injunctions of Honorable S. C. Mize, dated September 13, 1962, and Chancellor L. B. Porter, dated September 19, 1962, previously served upon the members of the Board, be furnished to the Governor in his capacity as Chief Executive Officer of this state, the representative of this Board, and the repository of its full rights, power, authority and discretion for such course of action as the Governor shall deem legal, fit and proper in the premises.

Exhibit No. 1 of the Defendants was an excerpt of the minutes of the Board of Trustees of the State Institutions of Higher Learning passed on September 4, 1962, which is headed "Amended Order as to the Application of James Howard Meredith." This document reads as follows, omitting the formal parts: (Whereupon the Court read Defendants' Exhibit No. 1.)

I find as a fact that that document withdrew all power from any and every official of the University of Mississippi to act upon the application of James Howard Meredith and vested it entirely in the Board of Trustees.

I find as a fact that Chancellor Williams, Dean Lewis, and former Registrar Ellis had no power whatsoever to pass upon the application as to the admission or rejection one way or the other. The power was vested exclusively and completely in the

Board of Trustees of State Institutions of Higher Learning of the State of Mississippi. I find as a fact that particularly the power of the registrar Ellis by that document was fully and completely withdrawn, and that as to his power, and he had absolutely none, it was not transferred but was by that document completely and fully withdrawn.

I find as a fact that on the 20th of September, 1962, James Howard Meredith presented himself at the University of Mississippi and was directed by the United States Marshal and the Highway Patrolmen to present himself at the Continuation Center Building, and that he did thereupon present himself, and present on that occasion and at that time were Governor Barnett and the former Registrar Ellis, and that at that time Ellis read to James Howard Meredith a copy of the resolution, and handed one to him and Ellis declined to act one way or the other. He did not refuse to accept him; he did not accept him; but, simply acting under the resolution heretofore read into the record, declined to act one way or the other upon the ground and theory that his power was completely and fully withdrawn.

On that same occasion and at the same time, Chancellor Williams nor Dean Lewis were present. At no time did Chancellor Williams or Dean Lewis have any power or any authority to register applicants. It was no part of their duty to do so. Dean Lewis' appointment was under his contract that of Dean of the College of Liberal Arts and Professor of Physics and Astronomy, and at no time by his contract was he authorized to act as a registrar of students. By virtue of his contract he had no authority to so act.

The same is true with Chancellor Williams, except his was as Chancellor of the University of Mississippi, and as such chancellor the contract did not authorize him to act as registrar of students and he never did at any time act as registrar of students.

At the hearing above-mentioned when James Howard Meredith presented himself for registration, Governor Barnett took over and was in complete charge, by virtue of the resolution vesting it in him granted by the Board of Trustees of passing upon the registration, acceptability or rejection of James Howard Meredith, and Governor Ross Barnett did advise James Howard Meredith that his application was rejected. Neither of the defendants on trial here participated in any way in the rejection or acceptance of James Howard Meredith. Neither of them interfered in any way whatsoever with his admission, nor did they attempt to influence anybody in rejecting his application. They were guilty of no conduct that could be construed as aiding, abetting or assisting in the rejection of the application of James Howard Meredith. They were particeps criminis in no respect as a matter of fact whatsoever. They under the facts in the present case had no duty to perform with reference to James Howard Meredith at the time on the 20th of September, 1962, when he presented himself for acceptance; but this whole power, the entire power, had been vested in the Governor of the State of Mississippi.

As to the members of the Board of Trustees and the Governor, or any other persons who might have participated in any way, is not

before this Court now. The only three are Chancellor Williams, Robert B. Ellis, and Dean Lewis.

I conclude as a matter of law that the authority to operate the University of Mississippi is vested in the Board of Trustees by the constitution, as well as by acts of the legislature. The constitution provides that the administration, operation, of the state institutions of higher learning should be vested in a board of trustees to be appointed by the governor and approved by the senate. That is shown by one of the exhibits wherein the Honorable Joe T. Patterson, Attorney General of the State of Mississippi, quotes that section 213-a of the Constitution of the State of Mississippi, which provides that "The State Institutions of Higher Learning now existing in Mississippi,, shall be under the management and control of a Board of Trustees to be known as The Board of Trustees of State Institutions of Higher Learning.....". That is a valid provision as a matter of law of the constitution as the state when it operates public education has the right and the power to determine and in whose jurisdiction matters shall come, provided, of course, that there shall be no difference or no distinction because of race against anybody. But the constitution here does not mention the question of race, but simply provides in what authority the power to operate the institutions of higher learning rests, and that is a valid provision of law.

I conclude as a matter of law that the resolution of September 4th withdrawing all power from any employee, agent, or servant of the University of Mississippi was a valid exercise of the powers of the Board of Trustees, and that when they withdrew

that power from anyone, except vesting it in the Board of Trustees of Institutions of Higher Learning, withdrew the power from the registrar, Ellis, to register or refuse to register. He was powerless to do anything, and, not having done anything in active concert with anybody who did take action, he is not guilty of violating the terms of the injunction. A different situation would have been presented if the evidence had shown that he solicited, participated in, or that he advised this course and instigated this course. Then he would have been in active participation with those who actually took action. The evidence is absolutely silent, and there is not a scintilla of evidence that he participated in the drawing of these resolutions or instigated these resolutions but, under his contract, the Board of Trustees had the power to withdraw any duties they had given to him, and in the resolution referred to the power was completely withdrawn from him and was vested in the Board of Trustees of the Institutions of Higher Learning in the State of Mississippi. I conclude as a matter of law, therefore, that the Defendant Ellis did not violate the terms of any provision of that injunction issued on the 13th of September, 1962, which I have already read into the record. He has interfered in no manner, has taken no action in the matter, has not refused to admit the applicant, and he has not joined in anything in any way whatsoever that would connect him as being particeps criminis, and that, therefore, he has violated no provision of the injunction.

As to Chancellor Williams and Dean Lewis, the evidence has shown very clearly that they took no action, they had no power even if the resolution had not been passed, and with the passage of the resolution heretofore referred to, all powers were withdrawn from them, and they therefore did not have any power or authority under their contract, or from any other source, to take any action, and that they have not participated in any way. There is no evidence, not a scintilla of evidence, that they instigated, procured, cooperated in the preparation of the resolution heretofore referred to and that they therefore did not violate any of the provisions of the injunction issued on the 13th of September, 1962.

I conclude as a matter of law that the trustees did not order any of these defendants to do anything, but, as heretofore stated, it simply withdrew all power from these defendants to do anything whatsoever.

I conclude as a matter of law -- and I do this in response to argument of Mr. Smith -- that while it was permissible and there was no objection to argument as to the high standing and as to the detriment it would do to them for this conviction, I conclude as a matter of law that that argument was immaterial. I have not taken it into consideration, but have passed upon this free of any sympathy or bias and strictly upon the law as I see it.

So I conclude as a matter of law that each of the

defendants is not guilty of violation of the injunction of September 13, 1962, in any way whatsoever, and that they should be discharged from any civil contempt.

An order may be drawn in accord herewith, and the court now stands in recess.

COURT REPORTER'S CERTIFICATE

I, D. B. JORDAN, Official Court Reporter for the United States District Court, Southern District of Mississippi, do hereby certify that the foregoing pages constitute a TRUE AND CORRECT transcript of that part of the proceedings in this cause so transcribed here, had upon the 21st day of September, 1962, before the Honorable Sidney C. Mize, United States District Judge for the Southern District of Mississippi,

This the 23rd day of September, 1962.


D. B. JORDAN

.....