

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

NO. 19,475

JAMES H. MEREDITH,

Appellant

vs.

CHARLES DICKSON FAIR, et al.,

Appellees.

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

vs.

STATE OF MISSISSIPPI, et al.,

Defendants.

**SUPPLEMENTAL MEMORANDUM ON BEHALF OF
THE UNITED STATES**

On September 28, 1962, this Court determined that Governor Ross R. Barnett was in civil contempt of the Court's order of September 25 restraining the Governor and other state officials from interfering with the admission and continued attendance of James Meredith as a student at the University of Mississippi. The Court's order of September 28 gave the Governor until October 2 to purge himself of contempt by ceasing interference and instructing all state officials subject to the Governor's direction

to maintain law and order so as to permit the continued attendance of Meredith at the University on the same basis as other students.

On October 2 the Governor appeared before the Court through his counsel and represented to the Court that he was in compliance with the orders of the Court. While these representations were retracted in part by counsel for the Governor at a further hearing on October 12, it appears still to be the position of the Governor that he is in compliance with the Court's order, and that the Court should accordingly not impose on him either imprisonment to compel further steps in compliance with the Court's order, or the fines which were set forth in the Court's order of September 28 to be imposed on the Governor in the event that he did not cease his contemptuous conduct. The Governor did not present any evidence of what specific actions he had taken at either hearing.

Counsel for Meredith at the hearing on September 28 opposed giving Governor Barnett any additional time in which to purge himself. At the hearing on October 12 plaintiff's counsel represented to the Court that they did not believe that the Governor had purged himself of his contempt, and that the Court should accordingly impose at that time the sanction of imprisonment on the Governor. Counsel did not, however, introduce any evidence in support of their position, and did not specify what further steps the Governor should be compelled to take.

At the hearings on October 2 and October 12, counsel for the United States represented to the Court that the Governor had complied at least in part

with the orders of the Court by ceasing his interference with the admission and attendance of Meredith at the University. Accordingly, counsel stated that they did not believe that the Court should now order the imprisonment of the Governor, but that the Court should impose the sanction of the fines which the Court stated would run against the Governor in the event that he had not purged himself by October 2.

The basis for the position of the United States was that imprisonment of the Governor would not serve a remedial purpose at that time since his interference with the Court's order had ceased. On the other hand, the United States believed that since the Governor had not fully purged himself, the Court should levy upon him the sanction which the Court stated in its order of September 28 would be imposed -- that is, a fine of \$10,000 per day. This fine would be imposed because of his past failure to purge himself, and not for future coercive purposes such as would be necessary to justify the imposition of imprisonment.

The position of the Government was restated in its memorandum of October 15. Assertions of fact made by the Government were contradicted by counsel for the Governor in their memorandum of October 18, and on October 24, counsel for the Government represented again to the Court that the factual assertions made by counsel for the Government in court and in the memorandum of October 15 were accurate, and that any denials or contradictory assertions of fact made by counsel for the Governor were without foundation. Again, however, no evidence on

any of the controverted issues of fact was introduced for the benefit of Court. No response has been filed by counsel for the Governor to the October 24 memorandum filed by the United States.

At this stage of the proceedings, the parties are in dispute as to whether the Governor is or is not in compliance with the orders of the Court; as to whether the sanction of the fines imposed on the Governor by the order of the Court of September 28th should or should not be put into effect; and as to whether it is an appropriate coercive step for the future now to commit the Governor to the custody of the Attorney General until he takes further steps to purge himself of his contempt. A fundamental difficulty on the present record before the Court is the necessity of determining what further steps should be required of the Governor when the Court is not informed as to precisely what he has and has not done to comply thus far with the Court's orders. The Court is without an adequate factual record upon which to base its determination as to which of several possible courses it should follow. In addition, the Court is without the assistance of an adequate factual record upon which to make a determination whether criminal contempt proceedings should or should not be imposed on the Governor for his conduct in the past.

Upon the basis of the conflicting representations made by counsel for the Governor to the Court, and such facts as are available to the Government,

we adhere to the recommendations made to the Court at the hearing on October 12 and in the memorandum and proposed order submitted on October 15.

Nevertheless, neither the Court nor the Government has available at present a complete factual record upon which to base its determinations. This is also true of counsel for the plaintiff. Conflicting factual assertions have been made to the Court. Neither the Court nor the United States presently knows what, if any, instructions have in fact been given by the Governor to state officials with respect to the continued attendance of Meredith at the University.

In addition, within the past week, the factual situation has again been changed by the state highway patrol being made available, under terms and circumstances that are not clear, to maintain law and order at the University of Mississippi.

It is a matter of great public interest and national importance that whatever disposition is made of the pending charges against the Governor be accomplished upon the basis of as full a factual picture as possible. This is true not only as to the determination to be made by the Court, but also as to the recommendations to the Court which are to be made by the Government in the exercise of its grave responsibilities as amicus curiae.

Accordingly, we recommend to the Court that it appoint a master, in accordance with the procedure followed in the Shipp case, outlined in our memorandum

of October 15, to take whatever evidence the United States, the plaintiff, and the Governor may wish to present on his compliance with the orders of the Court; his arrangements with the United States for such compliance; the instructions given by him to the state highway patrol and other state officials; the conduct of the state law enforcement officials on September 30 and since that date; and his future intentions.

We believe that this course will best serve the vindication of the dignity of the Court, the national interest in careful resolution of a dispute between the United States and the Chief Executive Officer of one of the states, and the interest of the plaintiff in the effective realization of his constitutional rights. It will unavoidably mean further delay before the Court can resolve the issues before it. In the past such delay would have defeated the orders of the Court, which to be fully effective, required Meredith's admission and attendance at the University this semester. But that has been accomplished. The Governor has ceased overt interference with Meredith's attendance. Further interference has been enjoined by the Court's preliminary injunction issued October 19. The state law enforcement officials appear again to be available to enforce law and order on the University campus. Some disciplinary action has been and is being taken against University students responsible for continued demonstrations on the campus. And federal marshals and the military have insured the plaintiff's

continued attendance at the University and will continue to do so as long as is necessary. Under these circumstances we believe the advantages of a complete factual record significantly outweigh the disadvantages of further delay in ruling on the contempt action against the Governor.

Respectfully submitted,

Burke Marshall
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Supplemental Memorandum on Behalf of the United States has been sent by Airmail, postage prepaid, to each of the following attorneys listed below, at the address indicated:

Thomas H. Watkins, Esq.
Suite 800, Plaza Building
Jackson, Mississippi

John C. Satterfield, Esq.
340 First National Bank Building
Jackson, Mississippi

Charles Clark, Esq.
P. O. Box 1046
Jackson, Mississippi

Garner W. Green, Sr., Esq.
800 Electric Building
Jackson, Mississippi

Honorable Joe T. Patterson
Attorney General, State of
Mississippi
Jackson, Mississippi

Constance B. Motley, Esq.
10 Columbus Circle
New York, New York

R. Jess Brown, Esq.
1105-1/2 Washington Street
Vicksburg, Mississippi

Dated this 3rd day of November, 1962.
