

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 19475

" Filed July 18, 1962
at 9:10 am
Ben Z. Cameron
US Circuit Judge

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.

NOTICE OF APPELLEES FOR STAY OF THE EXECUTION
AND ENFORCEMENT OF THE MANDATE ISSUED IN
THIS CAUSE PENDING APPLICATION FOR WRIT
OF CERTIORARI

Come now the Appellees, Charles Dickson Fair,
et al, and respectfully move for the entrance of an order
under Section 2101(f) of Title 28 U.S.C., staying the
execution and enforcement of the mandate issued in this
cause pursuant to the opinion by a panel of the United
States Court of Appeals for the Fifth Circuit, comprised
of U. S. Circuit Judges John R. Brown and John Minor
Wideman (United States District Judge Bosier A. DeVane,
a member of said panel, dissenting) on the 21st day of
June, 1962, and in support of said motion would show the
following grounds:

1.

The authority for any single Judge of this Circuit
to act upon this stay is found under the terms and provisions
of Section 2101(f) of Title 28, U.S.C., as well as under the
broad and inherent powers possessed by this Court over its

own processes so as not to produce hardships and to do substantial justice.

2.

Appellant, James M. Meredith, applied for admission to the University of Mississippi as an undergraduate transfer student. His application was denied. No other applications were shown to have been made to and denied by any other school or schools.

3.

The Appellant immediately filed suit in the United States District Court for the Southern District of Mississippi on behalf of himself and other negro students similarly situated, for declaratory and injunctive relief via temporary restraining order, preliminary injunction and permanent injunction. In this suit he sought to have himself declared eligible to be admitted to the University of Mississippi, and to enjoin the alleged policy, practice, custom and usage of the State of Mississippi of allegedly limiting the admission to the University of Mississippi solely to members of the white race.

4.

The Temporary Restraining Order was denied and hearing on the preliminary injunction was commenced. Appellants filed their answer denying that there was any policy, practice, custom or usage of the State of Mississippi of restricting admission to the University of Mississippi to any particular race or color, and affirmatively averring that the Appellant's application for admission was denied on the grounds that he was not so qualified and that the Appellant was not entitled to any declaratory or injunctive relief. Appellant's qualification to seek class relief was also denied.

The hearing on the preliminary injunction was proceeded with to its final termination. The United States District Court for the Southern District of Mississippi issued its opinion and order denying Appellant's Motion for Preliminary Injunction. The Opinion of the District Court found, among other matters, that as a matter of law and fact that there was no policy, practice, custom or usage of denying negroes admission to the University of Mississippi; that the Appellant's application had been denied in good faith for lack of qualifications and had not been denied because of race or color. The court further found that the Appellant admitted he knew he was swearing falsely when he swore to the registrar of voters in Hinds County, Mississippi that he was a citizen of that county. A copy of the Opinion of the District Court is attached hereto as Exhibit (A).

6.

On appeal from this order (Exhibit A) this court refused to reverse the lower court's action. The matter was returned to the District Court for an expeditious hearing on the merits of the Permanent Injunction. A copy of said opinion of this court is attached hereto as Exhibit (B).

7.

After the hearing on the merits of the permanent injunction, the District Court entered its opinion holding that there was no policy, practice, usage or custom by the State of Mississippi of restricting admission to the University of Mississippi because of race or color at the time of its opinion or at the time of the rejection of Plaintiff's (Appellant's) application. The court refused to issue the permanent injunction.

since the Appellant had not met the burden of proving that Appellees had applied any policy, practice, custom or usage of the State of Mississippi to Appellant so as to produce an unconstitutional discrimination. Evidence was again introduced at this final hearing on the merits indicating Appellant's falsification of voter registration and poll tax exemption forms, and to show his false representations to signers of certificates as to his good moral character, psychiatric problems experienced by Appellant in the Air Force and his concealment of these problems from the University on his student health forms. The Court refused to make any findings of fact or even consider any other ground for denial of the Applicant's application which occurred or was discovered after the application was denied. A copy of said opinion is attached hereto as Exhibit (C).

8.

The Appellant applied for an immediate mandatory injunction pending appeal from the ruling of the District Court on the merits, but such application was denied by this court.

9.

The appeal on the merits of the lawsuit came on for hearing before this Court. This Honorable Circuit Court of Appeals acting through two judges of a three judge panel, with one judge dissenting, filed its opinion, reversing the District Court's Opinion, Findings of Facts and Conclusions of Law. A copy of said opinion with the dissent of Judge Byrnes is attached hereto as Exhibit (D). The mandate, issued pursuant to the said majority Opinion, should be stayed to permit Appellants to petition the Supreme Court of the United States for a writ of certiorari for the reasons set forth in the remaining paragraphs. Should said mandate not be so stayed, irreparable injury and injustice to these Appellants would result as shown in the remaining paragraphs hereof.

The decree of this Honorable Court, it is respectfully submitted, transcends the constitutional and statutory powers vested in this Court as an appellate court under Title 26, U.S.C., Sections 1291 - 1294, inclusive, in that such decree goes beyond the findings of the District Court, which District Court is constitutionally and statutorily possessed of original jurisdiction to hear and determine the facts in this matter. The only jurisdictional powers possessed by this court are to review findings of fact made by the District Court and this power does not extend to the making of findings of fact for or in place of said District Court. If other or different facts should have been studied and findings made thereon by the District Court then the cause should have been reversed and remanded with directions to said fact finding court to make findings of fact on the conflicting issues presented to but not ruled on by said District Court.

Contrary to the jurisdictional limitations imposed by statute upon this Honorable Court, the said majority opinion purports to do and does act originally upon facts not considered or determined by the lower Court in reaching its opinion, to-wit, all facts which would or could affect the exercise of legal discretion by the Chancellor and Registrar of the University of Mississippi with regard to their actions on the application of Appellant, James H. Meredith, subsequently to the date said application was originally denied.

II.

There has been and can be under the mandate of this court no hearing, held in this cause to determine whether or not the facts contained in said record are all of the facts known to the defendant Registrar, Robert E. Ellis, as regards his action on the application of the Appellant, James H. Meredith, but the mandate of this Court requires the issuance

of an injunction enjoining the Appellees and other officials connected with the University of Mississippi to do and perform and refrain from doing and performing acts and actions with regard to admission as a student of the said James H. Meredith without competent proof or evidence of the present scholastic standing, attitude, or other factors of eligibility for admission.

12.

Although the record in this cause is devoid of any proof whatsoever as to the existence of or members of a class which Appellant purports to represent or that Appellant has been requested to represent such class the mandate nevertheless directs the issuance of an injunction demanding and requiring acts and actions by Appellees as to such unknown and unproven "class". Although this spurious class action is considered a permissive joinder device--in effect an invitation to join in this action--not one other person alleging or purporting to be a member of such class has sought at any time in the proceedings to join herein.

13.

The University of Mississippi, as all other institutions of higher learning in the State of Mississippi, is maintained for the education of the youth of this state and nation and not for the purpose of enabling men with "missions", (as the opinion of this court found Appellant to be) to advance their social theories or dissipate their psychoses or neurosis. The Appellant does not seek an education and is a manifestly improper applicant to such an educational institution. His admission there for his "missionary" and pseudoeducational purposes could and would be certainly calculated to cause irreparable harm and injury to the educational environment to the citizens of the State of Mississippi and its many students. A balance of equities requires the stay of this mandate until the Supreme

WHEREFORE, premises considered, your Appellees respectfully pray that the execution and enforcement of the Mandate issued by the United States Court of Appeals for the Fifth Circuit on the 17th day of July, 1962, be stayed for a reasonable time to enable the Appellees to obtain a Writ of Certiorari from the Supreme Court of the United States.

Appellees pray for general relief.

Respectfully submitted,

CHARLES DICKSON FAIR, ET AL, APPELLEES

BY JOE T. PATTERSON, ATTORNEY GENERAL
OF THE STATE OF MISSISSIPPI

DUGAS SHANDS, ASSISTANT ATTORNEY GENERAL
OF THE STATE OF MISSISSIPPI

PETER M. STOCKETT, JR., SPECIAL
ASSISTANT ATTORNEY GENERAL OF THE
STATE OF MISSISSIPPI

CHARLES CLARK, SPECIAL ASSISTANT
ATTORNEY GENERAL OF THE STATE OF
MISSISSIPPI

BY:

(S) *Charles Clark*

Charles Clark, Special Assistant
Attorney General of the State of
Mississippi

Address of Exh:

New State Capitol Building
Jackson, Mississippi

AFFIDAVIT

STATE OF MISSISSIPPI

COUNTY OF LAUDERDALE

Personally appeared before me, a Notary Public in and for the aforesaid State and County, the within named Charles Clark, who, after being duly sworn, states on oath that the matters, facts and things stated in the foregoing Motion of Appellants for Stay of the Execution of the Enforcement of the Mandate issued in This Cause Pending Application for Writ of Certiorari are true and correct as therein stated.

1st Charles Clark
Charles Clark

Sworn to and subscribed before me, this the 17th day of

July, 1962.
Ed

1st Claire Bass
Notary Public

My Commission Expires:

CERTIFICATE OF SERVICE

I, Charles Clark, Special Assistant Attorney General of the State of Mississippi, one of the attorneys of record for Appellees, do hereby certify that I have this day served the foregoing Motion for Stay upon R. Jess Brown and Constance Baker Motley by mailing true copies to their best known office addresses in accordance with the Federal Rules of Civil Procedure.

THIS the 18th day of July, 1962.

/s/ Charles Clark
Charles Clark, Special Assistant
Attorney General of the State of
Mississippi