Appellate Division, First Department

The Meredith Trial

A Historical Reenactment

Library of Congress, Prints & Photographs Division, NYWT&S Collection, LC- DIG-ppmsca-05544

Narrated by Judge Denny Chin and Kathy Hirata Chin, Esq.

Post-Trial Discussion and Q&A
with
Judge Chin and Professor Bennett Capers

February 24, 2025

6:00-7:30 pm

CLE Course Materials

HISTORICAL SOCIETY *of the* NEW YORK COURTS

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Cast of Characters
(in order of appearance)

Narrator 1	Hon. Denny Chin
Narrator 2	Kathy Hirata Chin
Constance Baker Motley	Hon. Dianne T. Renwick
Thurgood Marshall	Hon. Rowan D. Wilson
Clarion-Ledger Editor	Boris Levitis
Senator Edwin White	Kevin Culley
Senator James Eastland	Francesca Cocuzza
Myrlie Evers	Hon. Bahaati Pitt-Burke
Dugas Shands	Kevin Doyle
James H. Meredith	Hon. Eddie McShan
Judge Sidney C. Mize	Hon. John R. Higgitt
Robert B. Ellis	Jonathan Forstadt
R. Jess Brown	George Anthony Royall
Judge John Minor Wisdom	Hon. Peter Moulton
Charles Clark	Robert Patchen
Dean Katherine Rae	Hon. Kelly O'Neill Levy
Tally D. Riddell	Lauren Park
W.A. Bryant	Jennifer Watson
Governor Ross Barnett	Tai Aliya
Chief Judge Elbert Tuttle	Douglas Sullivan
Judge Richard Rives	Perry McCall
Judge Griffin Bell	Alan Gray
Judge John R. Brown	Peter Melamed
Judge Joseph C. Hutcheson	Vitaly Lipkansky
Judge Warren Leroy Jones	Timothy Nolen
Derrick A. Bell, Jr.	Hon. Robert R. Reed

Who's Who in the Cast (in order of appearance)

Hon. Denny Chin	Senior Judge, U.S. Court of Appeals, 2nd Circuit
Kathy Hirata Chin	Crowell & Moring LLP (Ret.)
Hon. Dianne T. Renwick	AD1, Presiding Justice
Hon. Rowan D. Wilson	Chief Judge of the Court of Appeals
Boris Levitis	AD1, Principal IT Network Specialist
Kevin Culley	AD1, Deputy Chief Atty., Atty. Grievance Comm.
Francesca Cocuzza	AD1, Principal Appellate Court Attorney
Hon. Bahaati Pitt-Burke	AD1, Associate Justice
Kevin Doyle	AD1, Special Project Counsel, Atty. Grievance Comm.
Hon. Eddie McShan	AD3, Associate Justice
Hon. John R. Higgitt	AD1, Associate Justice
Jonathan Forstadt	AD1, Principal Appellate Court Attorney
George Anthony Royall	AD1, Court Clerk
Hon. Peter H. Moulton	AD1, Associate Justice
Robert Patchen	AD1, Asst. Deputy Chief Appellate Court Attorney
Hon. Kelly A. O'Neill Levy	AD1, Associate Justice
Lauren J. Park	AD1, Appellate Court Attorney
Jennifer L. Watson	AD1, Principal Appellate Court Attorney
Tai Aliya	AD1, Appellate Court Attorney
Douglas C. Sullivan	AD1, Deputy Clerk of the Court
Perry McCall	AD1, Appellate Court Attorney
Alan R. Gray, Jr.	AD1, Principal Appellate Court Attorney
Peter Melamed	AD1, Principal Appellate Court Attorney
Vitaly Lipkansky	AD1, Deputy Chief Atty., Atty. Grievance Comm.
Timothy Nolen	AD1, Principal Appellate Court Attorney
Hon. Robert R. Reed	Supreme Ct Justice, Commercial Div., 1st District

Timeline

May 17, 1954	Brown v. Board of Education decision announced by the Supreme Court of the United States.
January 21, 1961	James Meredith requests an application from the Registrar at the University of Mississippi.
January 26, 1961	James Meredith writes to NAACP LDF.
January 31, 1961	James Meredith submits application for admission.
May 25, 1961	Registrar formally rejects application.
May 31, 1961	Complaint and application for preliminary injunction filed in S.D. Miss.
June 8, 1961	Deposition of James Meredith.
June 12, 1961	Hearing on preliminary injunction application commences.
June 27, 1961	Hearing on defense application for adjournment.
August 10, August, 11, August 15, August 16, 1961	Preliminary injunction hearing resumed and completed.
December 12, 1961	Judge Mize denies application for preliminary injunction. 199 F. Supp. 754 (S.D. Miss. 1961).
December 18, 1961	Plaintiff moves Fifth Circuit to expedite appeal and admit Meredith.
January 9, 1962	Oral argument on application.
January 12, 1962	Fifth Circuit affirms but remands for prompt hearing. 298 F.2d 696 (5th Cir. 1962).
January 24, 1962	Hearing on remand commences before Judge Mize.
February 3, 1962	Judge Mize rules, reaffirming his earlier decision and dismissing Meredith's complaint. 202 F. Supp. 224 (S.D. Miss. 1962).
February 5, 1962	Petition to Fifth Circuit for an injunction.

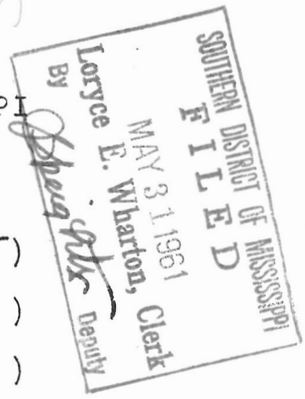
February 10, 1962	Oral argument on petition.
February 12, 1962	Petition denied. 305 F.2d 341 (5th Cir. 1962).
April 20, 1962	Oral argument on appeal.
June 25, 1962	Fifth Circuit reverses Judge Mize. 305 F.2d 343 (5th Cir. 1962).
July 27, 1962	Fifth Circuit vacates first of Judge Cameron's stays. 306 F.2d 374 (5th Cir. 1962).
August 31, 1962	DOJ files amicus brief with Supreme Court at request of Justice Hugo Black.
September 10, 1962	Justice Black sets aside Judge Cameron's stays and holds that the Fifth Circuit mandate should be obeyed.
September 13, 1962	Judge Mize enjoins University of Mississippi administrators from hindering James Meredith's admission.
September 13, 1962	Governor Barnett's proclamation on radio and TV that no school in the state will be integrated while he is governor.
September 28, 1962	Governor Barnett found guilty of civil contempt and ordered by Fifth Circuit to effect admission of Meredith or face arrest and fine. 313 F.2d 532 (5th Cir. 1962).
September 29, 1962	President Kennedy calls on government and people of Mississippi to cease and desist obstructing actions.
September 30, 1962	Rioting on campus of Ole Miss.
October 1, 1962	U.S. Army troops restore order. James Meredith registers.
June 12, 1963	Medgar Evers assassinated.
August 19, 1963	James Meredith graduates from University of Mississippi.

Complaint
(Filed May 31, 1961)

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

JACKSON DIVISION



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

Plaintiff,

v.

CIVIL ACTION

NO. 3130

CHARLES DICKSON FAIR, President of the Board of Trustees of State Institutions of Higher Learning of the State of Mississippi, Louisville, Mississippi,

and

EUCLID RAY JOBE, Executive Secretary of The Board of Trustees of State Institutions of Higher Learning of the State of Mississippi, Jackson, Mississippi,

and

EDGAR RAY IZARD, Hazlehurst, Mississippi; LEON LOWREY, Olive Branch, Mississippi; IRA LAMAR MORGAN, Oxford, Mississippi; MALCOLM METTE ROBERTS, Hattiesburg, Mississippi; WILLIAM ORLANDO STONE, Jackson, Mississippi; S. R. EVANS, Greenwood, Mississippi; VERNER SMITH HOLMES, McComb, Mississippi; JAMES NAPOLEON LIPSCOMB, Macon, Mississippi; TALLY D. RIDDELL, Quitman, Mississippi; HARRY GORDON CARPENTER, Rolling Fork, Mississippi; ROBERT BRUCE SMITH, II, Ripley, Mississippi and THOMAS JEFFERSON TUBB, West Point, Mississippi, MEMBERS OF THE BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING,

and

JAMES DAVIS WILLIAMS, Chancellor of the University of Mississippi, Oxford, Mississippi,

and

ARTHUR BEVERLY LEWIS, Dean of the College of Liberal Arts of the University of Mississippi, Oxford, Mississippi,

and

ROBERT BYRON ELLIS, Registrar of the University of Mississippi, Oxford, Mississippi,

Defendants.

C O M P L A I N T

1. The jurisdiction of this Court is invoked pursuant to provisions of Title 28, United States Code, §1343(3). This is an action authorized by law, Title 42, United States Code, §1983. This action is brought by the plaintiff to redress the deprivation, under color of state law, state custom, state regulation and state usage, of rights secured to him by the Constitution of the United States. The rights here sought to be secured are rights guaranteed by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States, as hereinafter more fully appears.

2. This is a proceeding for a declaratory judgment, pursuant to provisions of Title 28, United States Code, §2201, for the purpose of having this Court determine the question whether the plaintiff, and members of the class represented by plaintiff, as Negro citizens and residents of the State of Mississippi, have a right to attend the University of Mississippi and other state institutions of higher learning presently limited to white students, upon the same terms and conditions applicable to white citizens and residents of Mississippi.

3. This is a proceeding for a temporary restraining order without notice, a preliminary and permanent injunction, enjoining the defendants, and each of them, their agents, servants, employees, attorneys, successors,and all persons in active concert and participation with them, from:

a) refusing to consider and act expeditiously upon the application of the plaintiff, and members of his class, for admission to the University of Mississippi, and other state institutions of higher learning, solely because of race and color;

b) refusing to advise the plaintiff, and members of his class, as to the status of their applications and deficiencies with respect thereto, solely because of race and color;

c) refusing to admit plaintiff, and members of his class, to the University of Mississippi and other state institutions of

higher learning, solely because of race and color;

d) refusing to permit plaintiff, and members of his class, to matriculate as students at the University of Mississippi, upon the same terms and conditions applicable to white students; and

e) taking any action or doing any act which interferes with, defeats, or thwarts the right of plaintiff, and members of his class, to attend the University of Mississippi, and other state institutions of higher learning, upon the same terms and conditions applicable to white students, or which interferes with, defeats, or thwarts the lawful orders of this Court which are designed to secure rights of plaintiff, and members of his class, to attend the University of Mississippi and other state institutions of higher learning, upon the same terms and conditions applicable to white students.

4. This is a class action brought by plaintiff on behalf of himself and on behalf of all other Negro students in the State of Mississippi who are similarly situated and affected by the policy, practice, custom and usage complained of herein. Plaintiff and members of his class are Negro citizens and residents of the State of Mississippi who, by reason of their prior requisite education and citizenship status, have a right to apply for admission to and attend the University of Mississippi, and other state institutions of higher learning, upon the same terms and conditions applicable to white citizens similarly situated. The members of the class are too numerous to be brought individually before this Court and are not all known to the plaintiff, but there are common questions of law and fact involved, common grievances arising out of a common wrong, and a common relief is sought for this plaintiff and all other members of the class. Plaintiff fairly and adequately represents the members of the class on behalf of which he sues.

5. The plaintiff is James Howard Meredith, an adult Negro citizen of the United States and of the State of Mississippi, presently residing in Jackson, Mississippi. The plaintiff was born in Kosciusko, Attala County, Mississippi on the 25th day of June 1933. All of his

elementary and high school education, except for the last year, was received in Mississippi. Plaintiff's last year of high school education was received at Gibbs High School, St. Petersburg, Florida, from which he graduated in June 1951. During the period July, 1951 to July, 1960, plaintiff served most of this time in the armed forces of the United States and was honorably discharged from the Air Force on July 21, 1960. In September, 1960, plaintiff entered Jackson State College, Jackson, Mississippi and recently completed the sophomore year at that institution. While in the armed service, plaintiff attended the University of Kansas at Lawrence, Kansas, Washburn University at Topeka, Kansas and the University of Maryland, Far East Division, and earned some college credits. Plaintiff is eligible for immediate readmission to each of these institutions and his record meets the requirements of the program in the University for which he has applied.

6. The defendants are: The Board of Trustees of State Institutions of Higher Learning, the members of which are: Charles Dickson Fair, President; Euclid Ray Jobe, Executive Secretary; Edgar Ray Izard, Leon Lowrey, Ira Lamar Morgan, Malcolm Mette Roberts, William Orlando Stone, S. R. Evans, Verner Smith Holmes, James Napoleon Lipscomb, Tally D. Riddell, Harry Gordon Carpenter, Robert Bruce Smith, II and Thomas Jefferson Tubb. The other defendants are: John Davis Williams, Chancellor of the University of Mississippi; Arthur Beverly Lewis, Dean of The College of Liberal Arts of the University of Mississippi and Robert Byron Ellis, Registrar of the University of Mississippi.

7. Management and control of the University of Mississippi, and all other institutions of higher learning of the State of Mississippi are vested in the defendant Board of Trustees of State Institutions of Higher Learning. The members of said Board are appointed by the Governor with the advice and consent of the Senate. Said Board has the power and authority to elect the heads of the various institutions of higher learning and to contract with all deans and other members of the administrative staff of the institutions under its management and control. [Mississippi Constitution (1956), Article 8, §213-A; Miss. Code Ann. (1952), Title 24, §§6719, 6720, 6721, 6722, 6723 and 6724, as

amended.] The institutions of higher learning presently under the management and control of said Board are, in addition to the University of Mississippi (white), Mississippi State College (white), Mississippi State College for Women (white), Mississippi Southern College (white) and Delta State Teachers College (white), Alcorn Agricultural and Mechanical College (Negro), Mississippi Vocational College (Negro) and Jackson State College (Negro). The defendant Board is composed of twelve members appointed for twelve year terms in groups of four each every four years. One member is appointed for each Congressional District, one for each of the three Supreme Court Districts and two from the State-at-large. In addition to these twelve members, a member is appointed from DeSoto County, who is known as the LaBauve trustee, to serve for the University only. There are no ex-officio members. The Board selects its own president and appointed the defendant Chancellor as executive head of the University, the defendant Dean as the Dean of the College of Liberal Arts of the University of Mississippi and the defendant Registrar as Registrar of the University of Mississippi. The Board maintains offices in the City of Jackson, Mississippi. The various members of the Board are all citizens of Mississippi residing in various districts of the State of Mississippi.

8. On January 26, 1961, the defendant Registrar sent the plaintiff an application form for admission to the University of Mississippi instructions, and a General Information Bulletin. This application form was duly completed by plaintiff and mailed on January 31, 1961 to the Registrar. The application form requested information as to the applicant's race with which the plaintiff complied by stating that he is a Negro. He also advised the Registrar of his race in a letter date January 31, 1961 to the Registrar which accompanied his application. Plaintiff sought admission to the Liberal Arts College of the Universit of Mississippi for the Second Semester of the 1960-61 school year which was to commence February 6, 1961. His application indicated that he would be a transfer student with some advance standing and also indicated that he expected to be classified as a sophomore. The applicatio.

was received by the Registrar. Thereafter, on February 4, 1961, the Registrar advised the plaintiff by wire that applications for admission or registration for the Second Semester received after January 25, 1961 were not being considered. Subsequently, on February 20, 1961, plaintiff wrote the Registrar advising him that he would like his application considered a continuing application for the Summer Session beginning June 8, 1961, and requested the Registrar to inform him whether he, the Registrar, had received all transcripts and other information necessary to make plaintiff's application a complete one, and further requested immediate action on his application. The plaintiff did not receive a reply to this letter. Consequently, on March 18, 1961, plaintiff again wrote the Registrar requesting that his application be considered a continuing one for the Summer Session and for the Fall Session 1961 and again requested the Registrar to advise plaintiff of the completeness and status of his application. Again, the plaintiff did not receive a reply. On March 26, 1961, the plaintiff again wrote the Registrar requesting that he send plaintiff an evaluation of his credits as a transfer student and advise him of the extent to which his credits would be applied toward the degree sought by plaintiff in the College of Liberal Arts. With this letter, the plaintiff also forwarded to the Registrar five letters from five persons, citizens and residents of Mississippi, certifying to the plaintiff's good moral character and recommending his admission to the University. In connection with his original application, the plaintiff did furnish five such letters which did not specifically recommend his admission to the University as required by the University of Mississippi Bulletin but did attest to his good moral character. Plaintiff did not receive a reply to this letter. Thereafter, on April 12, 1961, plaintiff wrote a letter to defendant Arthur Beverly Lewis, Dean of the College of Liberal Arts to which plaintiff seeks admission, reviewed the steps taken by plaintiff to secure admission to the University, and complained of the Registrar's failure to reply to his application and several letters and stated that he, plaintiff, believed the Registrar's failure to reply was based upon race and color. Plaintiff requested

the Dean to review his case with the Registrar and to advise him what admission requirements, if any, he had failed to meet and to give him some assurance that his race and color were not the basis for his failure to gain admission to the University. The defendant Dean did not reply to this letter. However, on May 9, 1961, the Registrar wrote plaintiff and advised him that he, the Registrar, had seen plaintiff's letter of April 12, 1961 to the Dean and advised plaintiff that his application had been received and would receive proper attention. The Registrar further advised plaintiff that transcripts of credits from the colleges listed on the plaintiff's application (the colleges previously attended by plaintiff) had been received and that each showed a certificate of honorable dismissal or certification of good standing in accordance with the admission requirements. The Registrar advised plaintiff, in addition, that in accordance with the standards of the University of Mississippi plaintiff would receive a maximum credit of forty eight semester hours if his application for admission as a transfer student should be approved, and that Plaintiff offered a total of ninety semester hours credit obtained at other colleges, including Jackson State College. In his letter of May 9, 1961, the Registrar also requested plaintiff to advise whether he desired his application "to be treated as a pending application." The plaintiff replied to this letter on May 15, 1961 and advised that he desired his application to be treated as a pending application for admission to the Summer Session, First Term, June 1961, and requested the Registrar to advise him whether there was anything further the plaintiff needed to do in order to complete his application. Plaintiff did not receive a reply to this letter. Thereafter, on May 21, 1961, plaintiff again wrote the Registrar requesting information as to the status of his application so that he could make plans for attending the Summer Session. On May 26, 1961, plaintiff wired the Registrar requesting that he be advised whether he would be admitted to the Summer Session. On the same date, plaintiff received a special delivery letter from the Registrar denying plaintiff's admission on the ground that plaintiff attended a

non-accredited college and on the ground that he did not have the required citizen alumni certificates, and on other undisclosed grounds. ~~As of the time of the filing of this complaint, the Registrar had not replied~~.

9. Applications for admission to the College of Liberal Arts of the University of Mississippi, to which plaintiff seeks admission, are submitted to the Registrar. The Bulletin of the University of Mississippi requires each applicant to file with the Registrar five letters from responsible citizens who have known the applicant for at least two years, certifying to the applicant's good moral character and recommending his admission to the University. An applicant who resides in Mississippi must be recommended by citizens of his county who are University alumni, but applicants who reside in another state may secure the necessary recommendations from any five responsible citizens of his community. Plaintiff is not able to secure recommendations by citizens of his county who are University alumni for the reason that plaintiff is a Negro citizen and resident of the State of Mississippi and there are not now and never have been any Negro graduates of the University of Mississippi, a fact of common and historical knowledge recognized by the laws of Mississippi cited above establishing separate institutions of higher learning for Negroes. The plaintiff does not know any white alumni of the University of Mississippi who would recommend his admission in view of the segregation policy complained of herein and the State's official opposition to desegregation. Plaintiff alleges that the alumni certification requirement is unconstitutional as applied to him and other Negroes for the reason that it places a burden on Negroes seeking admission to the University of Mississippi which is not shared by white residents seeking admission to the University of Mississippi. The plaintiff alleges that the alumni certification requirement is unconstitutional because in operation and effect it bars the admission of qualified Negroes to the University of Mississippi solely because they are Negroes.

10. Plaintiff alleges that he meets all of the requirements for admission to the University of Mississippi as a transfer student; that he is ready, willing and able to pay all fees and tuition charges required of all other students; and that he is ready, willing and able to abide by all rules and regulations of the University of Mississippi which are applicable to white students similarly situated.

11. Plaintiff alleges that defendants, and each of them, have pursued and are presently pursuing a state policy, state practice, state custom and state usage of maintaining and operating separate state institutions of higher learning for the White and Negro citizens of Mississippi. The institutions of higher learning limited by policy practice, custom and usage to white students are: the University of Mississippi, Mississippi State College, Mississippi State College for Women, Mississippi Southern College, and Delta State Teachers College. The state institutions of higher learning limited by defendants to Negro students are: Jackson State College, the college attended by plaintiff during the past school year, Alcorn Agricultural and Mechanical College, and Mississippi Vocational College. Plaintiff alleges, on information and belief, that pursuant to said policy, practice, custom and usage, plaintiff's application was not treated in the same manner as applications of white persons for admission to the University of Mississippi; that plaintiff was not advised promptly concerning the status of his application or his ability or inability to meet requisite admission requirements; that plaintiff was never advised by the defendant Dean of the College of Liberal Arts, as requested by plaintiff, that plaintiff's race and color would not be considered by the University in passing upon his application and would not operate to bar his admission to the University of Mississippi; and that an applicant for admission to the University of Mississippi is required to state his or her race upon the application blank and this information is used to prevent the unwitting admission of Negroes. In this case, the plaintiff in making application to the University plainly stated his race and stated his race in his letter to the defendant Registrar which accompanied plaintiff's application.

Plaintiff alleges, on information and belief, that the policy of the State of Mississippi as clearly understood and interpreted by its officials and residents is that Negroes and whites are educated in separate institutions of higher learning. Pursuant to this policy Negroes do not generally apply for admission to the University of Mississippi or other institutions of higher learning maintained and operated for white persons only, although many Negro citizens and residents of the State of Mississippi are qualified by prior requisite education, citizenship and residence for admission to such institutions. Plaintiff alleges, on information and belief, that he has not been accepted as a transfer student to the University of Mississippi pursuant to said policy, practice, custom and usage and had been denied admission solely because of his race and color.

12. Plaintiff alleges that the policy, practice, custom and usage complained of herein has resulted and will continue to result in irreparable injury to him. Plaintiff has no other adequate or speedy remedy at law by which his right to attend the University of Mississippi for the 1961 Summer Session may be secured, except by this action for declaratory judgment and injunction. Any other remedy to which plaintiff might be remitted would be attended by such uncertainties and delays, in view of the state policy, practice, custom and usage complained of herein,as to result in further irreparable injury to the plaintiff and members of his class.

WHEREFORE, plaintiff prays that this Court will advance this case on the docket and order a speedy hearing of this cause and will grant the following relief:

1. Issue a temporary restraining order without notice, a preliminary injunction and a permanent injunction, enjoining the defendants, and each of them, their agents, servants, employees, successors, attorneys, and all persons in active concert and participation with them, from:

(a) refusing to act expeditiously upon the applications of plaintiff and members of his class for admission to the University of Mississippi, or any other state institution of higher learning presently limited to white students;

(b) refusing to expeditiously advise plaintiff and members of his class of the status of their applications for admission and of the requirements for admission which they fail to meet;

(c) requiring plaintiff or any member of his class to furnish certificates from alumni of the University of Mississippi;

(d) refusing to admit the plaintiff and members of his class to the University of Mississippi or any other state institution of higher learning presently limited to white students upon the same terms and conditions applicable to white students;

(e) making the attendance or matriculation of plaintiff and members of his class at any state institution of higher learning conditioned upon terms and conditions not applicable to white students similarly situated, and

(f) interfering in any manner with the right of plaintiff and members of his class to register at, matriculate in, or attend the University of Mississippi or any other state institution of higher learning limited to white students;

(g) taking any action or doing any act which will impair, frustrate, or defeat the orders of this Court securing plaintiff's rights or the rights of members of his class.

2. Issue a declaratory judgment declaring the rights and other legal relations of the parties to this action which will have the force and effect of a final judgment.

3. Grant the plaintiff his costs herein, and grant him such other, further, additional, or alternative relief as may appear to be required to secure his admission to the University of Mississippi without regard to his race and color.

R. Jess Brown

R. Jess Brown
1105½ Washington Street
Vicksburg, Mississippi

Constance Baker Motley

Constance Baker Motley
Thurgood Marshall
10 Columbus Circle
New York 19, New York

Attorneys for Plaintiff

Derrick A. Bell, Jr.
Of Counsel

V E R I F I C A T I O N

State of Mississippi)
) SS.:
County of Hinds)

James Howard Meredith, being duly sworn, deposes and says that he resides at 1129 Maple Street, Apartment 5-D, Jackson, Mississippi; that he is the plaintiff herein; that he has read the foregoing complaint and knows the contents thereof and that the same are true to the best of his knowledge and belief except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes them to be true.

James H Meredith

Sworn to before me this 31
day of May, 1961.

Margaret A. Lewis
Notary Public

MY COMMISSION EXPIRES APRIL 2, 1962

(SEAL)

United States Court of Appeals for the Fifth Circuit

James H. MEREDITH, on behalf of himself and others similarly situated, Appellant,
v.
Charles Dickson FAIR, President of the Board of Trustees of the State Institutions of Higher Learning, et al., Appellees.

No. 19394.

January 12, 1962

Appearances:

Constance Baker Motley, New York City, R. Jess Brown, Vicksburg, Miss., for appellant.

Dugas Shands, Asst. Atty. Gen., Charles Clark, Special Asst. Atty. Gen., for appellees.

Before:

TUTTLE, Chief Judge, and RIVES and WISDOM, Circuit Judges.

WISDOM, Circuit Judge.

James H. Meredith is a Mississippi Negro in search of an education. Mississippi is one of three states which have not yet allowed a Negro citizen to seek an education at any of its state-supported, 'white' colleges and universities.[1]

After graduation from high school at the age of seventeen, Meredith volunteered for the United States Air Force. He was honorably discharged nine years later. During his years in the service, he acquired thirty-four semester credits by attending night courses at the University of Maryland (Far Eastern Division, Tokyo), the University of Kansas, and Washburn University. His A's and B's at the University of Maryland show that he applied himself diligently.[2] In addition, over the years, Meredith attended numerous college level courses offered by the Armed Forces Institute. Jackson State College allowed him fifty-seven hours credit for the work he had taken at the Armed Forces Institute. After his discharge from the Air Forces in the summer of 1960, Meredith returned to Mississippi and enrolled in Jackson State College, a Negro college in Jackson. Throughout his years of seeking to improve himself, he elected to study demanding and challenging subjects indicative of a determined effort to obtain a solid education. In the early part of 1961, Meredith applied for admission to the University of Mississippi. At that time he had about ninety credits. When asked on the witness stand why he wished to transfer from Jackson State College to the University of Mississippi he said that he regarded Jackson State as 'substandard'.

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[1] The state-supported colleges in South Carolina and Alabama are also uniracial. The University of Alabama, however, is under order to admit negroes. Lucy v. Adams, N.D.Ala., 1955, 134 F.Supp. 235, affirmed 5 Cir., 228 F.2d 619, cert. denied, 351 U.S. 931; 350 U.S. 1 (1955).

[2] In the 1958-59 term Meredith was given the grade of B in each of five subjects. In the 1959-60 term he received 3 A's, 4 B's, and 1 F.

January 26, 1961, Meredith mailed formal applications for admission to the University of Mississippi. His letter of transmittal informed the registrar that he was a Negro; the forms required a statement of the applicant's race and also required him to attach a photograph. He furnished with his application five certificates from residents of Attala County, each certifying to his good moral character. Meredith's letter to the registrar stated: 'I will not be able to furnish you with the names (certificates) of six University Alumni (as required by University regulations for admission) because I am a negro and all graduates of the school are white. Further, I do not know any graduate personally.'

February 4, 1961, the registrar wired Meredith that it 'has been found necessary to discontinue consideration of all applications for admission or registration for the second semester which were received after January 25, 1961.' University officials stated that overcrowding at the University prompted its action.

February 20, 1961, Meredith wrote the registrar requesting that his application be considered 'a continuing application for admission during the summer session beginning June 8, 1961.' He asked that the registrar advise him whether his transcripts from other universities had been received and whether he had forwarded to the registrar all of the information necessary to make the application for admission complete. In answer, the registrar wrote him that since the University was 'unable to accept application for admission', the ten dollars for the room deposit was being returned.

February 23, 1961, Meredith wrote the registrar and again requested that he be considered for admission to the summer session. The registrar did not reply to this letter. March 18, Meredith wrote, requesting that his application 'be considered a continuing one for the Summer Session and the Fall Session, 1961'. Again he asked 'whether there remains any further prerequisites to admission'. Not having received a reply by March 26, he wrote the registrar calling attention to the statement in the Bulletin of the University of Mississippi, 1960 Catalog, that the registrar 'will provide each transfer student with an evaluation of the credits acceptable to the University', and asking that he be sent a copy of the evaluation of his credits. In the same letter he forwarded five amended certificates from the same Attala County residents who signed the original certificates, not only attesting to his good moral character, but specifically recommending his admission to the University.

Meredith received no answer from the registrar to any of these three letters. On April 12, 1961, he wrote the Dean of the College of Liberal Arts of the University of Mississippi. This letter requested the Dean 'to review the case with the registrar and to advise Meredith' which admission 'requirements, if any, (he) failed to meet, and to give (him) some assurance that (his) race and color are not the basis for (his) failure to gain admission to the University'. This letter produced a reply almost four weeks later. The registrar answered May 9, 1961, stating that the 'application had been received and will receive proper attention'. As for Meredith's credits, he stated that 'under the standards of the University of Mississippi the maximum credit which could be allowed is forth-eight semester hours' of the total of ninety according to the transcripts. Meredith wrote on May 15 and again on May 21, 1961 stating that he still wanted his application considered as pending.

May 25, 1961, the registrar closed his file on Meredith with the following letter:

> 'The University cannot recognize the transfer of credits from the institution which you are now attending since it is not a member of the Southern Association of Colleges and Secondary Schools. Our policy permits there transfer of credits only from member institutions of regional associations. Furthermore, students may not be accepted by the University from those institutions whose programs are not recognized.
>
> 'As I am sure you realize, your application does not meet other requirements for admission. Your letters of recommendation are not sufficient for either a resident or nonresident applicant. I see no need for mentioning any other deficiencies.'

May 31, 1961, Meredith filed a complaint in the United States District Court for the Southern District of Mississippi against the Board of Trustees of the State Institution of Higher Learning of the State of Mississippi, the Chancellor of the University of Mississippi, the Dean of the College of Liberal Arts, and the Registrar of the University. . . . The complaint in filed as a class action on behalf of Meredith and all other Negro students similarly situated.[3] It seeks to enjoin, at the University of Mississippi and other state institutions of higher learning, the practice of limiting admissions to white persons.

The particular phase of the litigation now before this Court is an appeal from an order of the district court denying Meredith's motion for a preliminary injunction enjoining the registrar at the University from denying appellant's admission solely on account of his race and color. The motion, which was filed with the complaint, asked for specific relief with regard to the summer term beginning June 8, 1961, but the pleadings and the hearings show that the plaintiff sought admission to the next available term, summer session or regular session. The hearing on the motion was set for June 12, 1961, four days after commencement of the first summer term. About 3:30 p.m. on the afternoon of the hearing the district judge stopped the hearing and continued the case, on the ground that he had set aside only one day to hear the case, because of his crowded docket. The case was continued until July 10, 1961, at which time, according to the court, the entire case would be heard since, in the interim, the answer would have been filed. The case could not be heard on July 10, however, because it conflicted with the trial of a special three-judge court case.

Since it was apparent that the first summer term would be over before the case would be heard, the appellant filed another motion urging the court to grant a preliminary injunction before commencement of the second term on July 17, 1961. The motion was fixed for hearing on July 11, 1961. On July 10, the chief counsel for the appellee, an assistant attorney general for the state, was ill. The case was therefore continued until August 10, 1961.

In the two months' interim between filing of the complaint and the hearing August 10 the plaintiff made five unsuccessful attempts to take the registrar's deposition. The first motion was denied on the ground that the deposition could not be taken before the expiration of twenty days

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[3] The complaint invokes the jurisdiction of the court and 28 U.S.C. § 1343(3), alleging deprivation of rights in violation of (1) the due process and equal protection clauses of the Fourteenth Amendment and (2) 42 U.S.C. § 1983.

from the filing of the complaint. The second was denied because of the assistant attorney general's ill health. The last three were denied on the grounds that the court was 'in the process of trial on plaintiff's motion for temporary injunction and in the exercise of (the) court's discretion'.

The plaintiff moved for the production of records of all students admitted to the February 8, 1961, term, the 1961 summer term, and the September 1961 term for inspection by the plaintiff's counsel. This motion, filed on June 20, was not heard until July 27, again because of the assistant attorney general's ill health. On August 1 the district judge entered an order allowing inspection of certain records, limiting the inspection, however, to applications for admission of 'regular undergraduate transfer students for enrollment in the 1961 summer session'.

The registrar filed his answer July 19, 1961, denying that any state law, policy, custom or usage limits admissions to the University of Mississippi to white persons and denying that Meredith had been refused admission solely because of race or color. The registrar averred that Meredith was denied admission because: (1) he had failed to submit the requisite alumni certificates; (2) he was not seeking admission in good faith; (3) under established rules of the Board of Trustees no institution is required to accept a transfer student unless the program of the transferring college is acceptable to the receiving institution and in this case the previous program of Jackson State College is not acceptable to the University because Jackson State College is not a member of the Southern Association of Colleges and Secondary Schools; and (4) for the reasons assigned in the registrar's letter of May 25, 1961 to Meredith.

On August 10, 1961, the hearing was resumed. August 11 it was continued until August 15 in order to allow the assistant attorney general to appear in another case. The hearing resumed August 15 and was concluded on August 16. . . . The last summer session was over on August 18. The first semester of the 1961-62 school year began September 28, 1961.

The district judge rendered his decision December 12, 1961, denying the plaintiff's motion for a preliminary injunction. The court set the case for trial on the merits on January 15, 1962.

In its opinion, which the district court treated as 'findings of fact and conclusions of law', the court made these findings: (1) Meredith never presented the alumni certificates required for admission; (2) denial of Meredith's admission in February 1961 was based on overcrowding at the University; (3) on May 15, 1961, the Committee on Admissions decided, without any attempt to discriminate, to raise scholastic standards by accepting 'credits only from institutions which are members of a regional accrediting association or a recognized professional accrediting association'; (4) Jackson State College was not a member of the Southern Association of Colleges and Secondary Schools[4] and, therefore, many of Meredith's credits were not acceptable

[4] The University regulation adopted May 15, 1961 provides that the University will 'accept credits only from institutions which are members of a regional accrediting association or a recognized professional accrediting association'.

Jackson State College is accredited by the Mississippi College Accrediting Commission and the Council on Study and Accreditation of Institutions of Higher Learning. The College Accrediting

to the University. The district court ruled that 'the overwhelming weight of the testimony is that the plaintiff was not denied admission because of his color or race'.

The appellant filed his notice of appeal on December 14, the day the court below entered its formal order. December 18, appellant moved for an order advancing the date of the hearing of his appeal. This Court granted the motion and heard the appeal January 9, 1962.

I.

This case was tried below and argued here in the eerie atmosphere of never never land. Counsel for appellees argue that there is no state policy of maintaining segregated institutions of higher learning and that the court can take no judicial notice of this plain fact known to everyone. The appellees' chief counsel insists, for example, that appellant's counsel should have examined the genealogical records of all the students and alumni of the University and should have offered these records in evidence in order to prove the University's alleged policy of restricting admissions to white students.

We take judicial notice that the state of Mississippi maintains a policy of segregation in its schools are colleges.[5] Cf. United States ex rel. Goldsby v. Harpole, 5 Cir., 1959, 263 F.2d 71,

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Commission is a statutory body (Miss.Code 1942, § 6791.5). The registrar testified that he knew of his own knowledge that Jackson State College was accredited by that Commission.

[5] Mississippi's strong policy in favor of segregation is reflected in its statutes. Mississippi, in addition to enacting a resolution of interposition, enacted a statute requiring all members of the executive branch of the state government to prevent implementation of Brown v. Board of Education, 349 U.S. 294 and enforce segregation in the public schools and other public facilities 'by any lawful, peaceful and constitutional means' (Miss.Code 1942, § 4065.3). There is no statute limiting admissions to the University of Mississippi but Mississippi State College is limited to white males (Miss.Code 1942, § 6694); Alcorn Agricultural and Mechanical College was established in 1878 for the education of the colored youth (Miss.Code 1942, § 6703); Mississippi State College for Women is also limited to white students (Miss.Code 1942, §§ 6711 and 6714); Jackson State College for Negro Teachers, now known as Jackson State College, is the institution of higher learning which appellant now attends (Miss. Code 1942, §§ 6808-01, 6809). The Board of Trustees has statutory authority to provide graduate and professional instruction for Negro youth outside the State 'when such instruction is not available for them in the regularly supported Mississippi institutions of higher learning' (Miss.Code 1942, § 6726.5). Moreover, in 1959 the State Sovereignty Commission of Mississippi issued a report on the state's Negro and white schools, teachers and colleges. This report states the following:

The 1958-1959 allocation of state appropriated funds for Senior Colleges broken down on the basis of the amount allocated per student, is as follows:

1. Alcorn A. & M. College —(Negro) $747.65

2. Mississippi Vocational —(Negro) 725.09

3. University of Mississippi

cert. denied, 361 U.S. 838.

The existence of this policy is an important factor in determining the purposes and effects of statutes and actions superficially innocuous. The existence of the policy and its effect as a guiding force, however, do not relieve the plaintiff of the necessity of showing in this case that the policy was applied to him to produce discrimination on the ground of race. James Meredith, like any applicant for admission to a university, may be denied admission on non-discriminatory grounds.

II.

We hold that the University's requirement that each candidate for admission furnish alumni certificates is a denial of equal protection of the laws, in its application to Negro candidates. It is a heavy burden on qualified Negro students, because of their race. It is no burden on qualified white students.

The fact that there are no Negro alumni of the University of Mississippi, the manifest unlikelihood of there being more than a handful of alumni, if any, who would recommend a Negro for the University, the traditional social barriers making it unlikely, if not impossible, for a Negro to approach alumni with a request for such a recommendation, the possibility of reprisals if alumni should recommend a Negro for admission, are barriers only to qualified Negro applicants. It is significant that the University of Mississippi adopted the requirement of alumni certificates a few months after Brown v. Board of Education was decided.

In Ludley v. Board of Supervisors Louisiana State University of E.D. La., 150 F.Supp. 900, aff'd 5 Cir., 252 F.2d 372 (1958, cert. denied, 358 U.S. 819 (1958), a somewhat similar requirement was invalidated. There, a statute required for admission to state universities a

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—(white)	675.69
4. Delta State College—(white)	652.54
5. Miss. State College for Women—(white)	552.53
6. Jackson State College —(Negro)	476.47
7. Mississippi State University —(white)	454.67
8. Mississippi Southern College—(white)	387.10

Race Relations Law Reporter 467 (1959). There is a state constitutional provision and several state statutes requiring segregation in the public schools. E.g., Miss. Constitution 1956, Art. 8, § 207; Miss.Code 1942, § 6220.5, 6328-03.

certificate of good moral character addressed to the particular university by the principal of the high school from which the applicant was graduated. Negro high schools were furnished certificates addressed only to negro colleges. This Court held that the purpose and effect of the statute was to discriminate against Negroes. More recently, in Hunt v. Arnold, N.D.Ga., 1959, 172 F.Supp. 847, 849 (not appealed), the court held that an alumni certificate requirement of the University of Georgia adopted in 1953, was unconstitutional. In that case the court said: 'The Court takes judicial notice of the fact that it is not customary for Negroes and whites to mix socially or to attend the same public or private educational institutions in the State of Georgia, and that by reason of this presently existing social pattern, the opportunities for the average Negro to become personally acquainted with the average white person, and particularly with the alumni of a white educational institution, are necessarily limited.'

To the extent, therefore, that the University of Mississippi relied on the requirement of alumni certificates and recommendations, Meredith was discriminated against in violation of the equal protection clause of the Fourteenth Amendment and was unlawfully denied admission to the University.

III.

That holding does not dispose of the case. The state of the record is such that it is impossible to determine whether there were valid, non-discriminatory grounds for the University's refusing Meredith's admission. Considering the state of the record and considering that the trial on the merits, heretofore set for January 15, 1962, can be held at an early date, we feel that it would promote the proper disposition of the case if, in declining to reverse the denial of the preliminary injunction, we make the following observations for the guidance of the district judge presiding at the trial on the merits.

A. First, the transcript and the deposition taken in the presence of the trial judge show that the counsel for the defendants was allowed so much latitude while at the same time the counsel for the plaintiff was so severely circumscribed in the examination of witnesses, introduction of evidence, and argument that the record contains a welter of irrelevancies and, at the same time, a conspicuous omission of evidence that should be helpful to proper determination of the case.

B. The limitation of evidence to that pertaining to the summer session of 1961 is clearly erroneous. It is erroneous since the policy and practice of the University in admissions were at issue. It is erroneous because Meredith made it plain that his application for admission was intended as a continuing application to the regular term as well as to the summer term of the University.

C. In oral argument on appeal, counsel for both parties called to the attention of this Court that since the hearing below Jackson State College has been approved by the Southern Association of Colleges and Secondary Schools. This fact has a material bearing on the issue.

D. It is not clear from the record whether the University gave any effect to Meredith's credits from the Universities of Maryland, Kansas, and Washburn, and the twelve

acceptable credits from Jackson State College, although a letter of the Registrar seems to accept forty-eight credits.

E. It is not clear from the record whether the University's references to Jackson State College mean that Meredith was rejected simply because he had attended that college or he was rejected because the University would not accept all of Jackson State College's credits. (Apparently, although this too is unclear, the University accepted twelve credits Meredith submitted from Jackson State.)

A full trial on the merits is needed in order to clarify the muddy record now before us. Within proper legal bounds, the plaintiff should be afforded a fair, unfettered, and unharassed opportunity to prove his case. A man should be able to find an education by taking the broad highway. He should not have to take by-roads through the woods and follow winding trails through sharp thickets, in constant tension because of pitfalls and traps, and, after years of effort, perhaps attain the threshold of his goal when he is past caring about it.

Accordingly, the order of the district court denying appellant's motion for a preliminary injunction is affirmed. The motion of the appellant that this Court order the district court to enter a preliminary injunction in time to secure the appellant's admission to the February 6 term is denied. It is suggested that the district judge proceed promptly with a full trial on the merits and that judgment be rendered promptly, especially in view of the fact that a new term of the University of Mississippi begins February 6, 1962. The Court's mandate will be issued forthwith.

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CONSTANCE BAKER MOTLEY, JAMES MEREDITH, AND THE UNIVERSITY OF MISSISSIPPI

Denny Chin & Kathy Hirata Chin***

INTRODUCTION

In 1961, James Meredith applied for admission to the University of Mississippi. Although he was eminently qualified, he was rejected. The University had never admitted a black student, and Meredith was black.[1]

Represented by Constance Baker Motley and the NAACP Legal Defense and Educational Fund (LDF), Meredith brought suit in the United States District Court for the Southern District of Mississippi, alleging that the university had rejected him because of his race.[2] Although seven years had passed since the Supreme Court's ruling in *Brown v. Board of Education*,[3] many in the South—politicians, the media, educators, attorneys, and even judges—refused to accept the principle that segregation in public education was unconstitutional. The litigation was difficult and hard fought. Meredith later described the case as "the last battle of the

* United States Circuit Judge, United States Court of Appeals for the Second Circuit.

** Senior Counsel, Cadwalader, Wickersham & Taft LLP.

1. See Meredith v. Fair, 305 F.2d 343, 345–46 (5th Cir. 1962) (setting forth facts); Meredith v. Fair, 298 F.2d 696, 697–99 (5th Cir. 1962) (same). The terms "black" and "African American" were not widely used at the time the Meredith case was litigated. Although the phrase "African American" was used as early as 1782, see Jennifer Schuessler, The Term "African-American" Appears Earlier than Thought: Reporter's Notebook, N.Y. Times: Times Insider (Apr. 21, 2015), http://www.nytimes.com/times-insider/2015/04/21/the-term-african-american-appears-earlier-than-thought-reporters-notebook/ (on file with the *Columbia Law Review*); Jennifer Schuessler, Use of 'African-American' Dates To Nation's Earliest Days, N.Y. Times (Apr. 20, 2015), http://www.nytimes.com/2015/04/21/arts/use-of-african-american-dates-to-nations-early-days.html?smid=tw-share (on file with the *Columbia Law Review*), and the term "black American" appeared as early as 1818, id., the phrase was not commonly used until the 1980s when the Reverend Jesse Jackson led a movement to call blacks in America "African Americans," see Isabel Wilkerson, "African-American" Favored by Many of America's Blacks, N.Y. Times (Jan. 31, 1989), http://www.nytimes.com/1989/01/31/us/african-american-favored-by-many-of-america-s-blacks.html (on file with the *Columbia Law Review*). Historically, black Americans were referred to as "colored" until the term "Negro" was advocated by W.E.B. DuBois in the 1920s. See Brian Palmer, When Did the Word Negro Become Taboo?, Slate (Jan. 11, 2010), http://www.slate.com/articles/news_and_politics/explainer/2010/01/when_did_the_word_negro_become_taboo.html [http://perma.cc/7CQW-ASE9]. Starting in 1966, when Stokely Carmichael used the phrase "black power," the usage of "Negro" declined, and by the 1970s, the term "black" became the preferred term. Id. The transcripts of the court proceedings show that the participants in the *Meredith* case employed "Negro" and not "black" or "African American." In this Essay, we likewise employ the term "Negro" when the context makes clear that we are discussing events as they were viewed in the 1960s by the participants in the case.

2. See Meredith v. Fair, 199 F. Supp. 754, 754–55 (S.D. Miss. 1961).

3. 347 U.S. 483 (1954).

Civil War."[4] Eventually, Motley and Meredith prevailed, pushing open the door to integration in higher education in the Deep South.

In this Essay, we will tell the story of Constance Baker Motley, James Meredith, and their battle with the University of Mississippi, based on records of the court proceedings, other contemporaneous documents, and their memoirs. Transcripts of depositions and hearings[5] show the many challenges that Motley and Meredith faced. Judge John Minor Wisdom of the Fifth Circuit would later observe that the case was tried and argued "in the eerie atmosphere of never-never land."[6]

The case raises a number of issues, including: the role of lawyers and judges in bringing about societal change; the interplay between popular and cultural views and judicial decisionmaking; the implementation of court decisions and execution of court orders; and the importance of fair admission policies to educational institutions. These issues still resonate today, but close study of a case like this also provides a glimpse into the lives of the participants, the witnesses, the litigants, lawyers, and judges, who together create the kind of human drama that plays out in the courtrooms of this country every day. Individuals like these can make a difference, and the transcripts and court decisions tell their story in their own words.

Just the Beginning Foundation—A Pipeline Organization (JTB) is dedicated to developing and nurturing interest in the law among young persons underrepresented in the legal profession.[7] At the request of JTB, and with the assistance of the young attorneys of Cadwalader's Black and Latino Association and other Affinity Networks,[8] the authors of this Essay developed a reenactment of the *Meredith* case that was presented for the first time at JTB's national conference in New York City in September 2016 celebrating the legacy of Constance Baker Motley. The program was presented "on stage" at the Thurgood Marshall United States Courthouse in New York City, on September 15, 2016, by a cast of "actors" that included federal judges and lawyers using the words spoken in Missis-

4. James Meredith with William Doyle, A Mission from God: A Memoir and Challenge for America 117 (2012).

5. We are grateful to the Library Staff of the United States Court of Appeals for the Second Circuit for helping us locate transcripts and other court documents.

6. *Meredith*, 298 F.2d at 701.

7. See generally Just the Beginning—A Pipeline Org., http://jtb.org/ [http://perma.cc/VU55-K9E9] (on file with the *Columbia Law Review*).

8. See generally Black & Latino Ass'n, Cadwalader, http://www.cadwalader.com/about/diversity/cadwaladers-black-and-latino-association [http://perma.cc/FB3L-E9AD] (last visited July 31, 2017). Joel Motley provided special inspiration to the Cadwalader team as they started this project by sharing with the group a personal showing of his documentary about his mother, *The Trials of Constance Baker Motley*. The twenty-five-minute documentary premiered at the Tribeca Film Festival in 2015. See Dale Meghan Healey, Constance Baker Motley Is the Civil Rights Movement's Unsung Heroine, Vice (Apr. 17, 2015), http://www.vice.com/read/constance-baker-motley-is-the-civil-rights-movements-unsung-heroine-456 [http://perma.cc/Z2PP-F5KV].

sippi and Louisiana courthouses decades ago.[9] The program was presented again at Cadwalader in February 2017 as part of the firm's celebration of Black History Month.[10] This Essay draws on the reenactment to summarize the story of Constance Baker Motley, James Meredith, and their effort to integrate the University of Mississippi.

I. BACKGROUND

Constance Baker Motley started working at LDF in 1945 while she was still a law student at Columbia University.[11] As an LDF lawyer, she worked on all the major school desegregation cases supported by LDF, including *Brown v. Board of Education*, the landmark ruling in which the Supreme Court struck down segregation in public schools, ruling separate but equal schools unconstitutional.[12] With its small office and limited funds, implementing *Brown* was a major undertaking for LDF. Nevertheless, by 1961, Mrs. Motley had already worked on cases to desegregate higher education in Florida, Louisiana, and Alabama.[13] Derrick Bell, who

9. The cast included Judge Ann C. Williams of the Seventh Circuit; Judges Robert A. Katzmann, Denny Chin, and Raymond J. Lohier, Jr., of the Second Circuit; Judges Margo K. Brodie, Pamela K. Chen, William F. Kuntz, Sterling Johnson, Jr., and Kiyo A. Matsumoto of the Eastern District of New York; Judges George B. Daniels and Laura Taylor Swain of the Southern District of New York; Robert L. Capers, United States Attorney for the Eastern District of New York; Catherine O'Hagan Wolfe, Clerk of the Court, and Sally Pritchard, Director of Legal Affairs, of the Second Circuit; attorneys Kathy Hirata Chin, Natalie Lamarque, Heather Murray, Kelly D. Newsome, William Zaki Robbins, Zakiyyah T. Salim-Williams, John S. Siffert, and William J. Snipes; and Judge Motley's son, Joel Motley, Jr. Historic photographs were included in the presentation, developed into PowerPoint slides by David Weinberg of JuryGroup.

10. The Cadwalader presentation was recorded, and the video is available for viewing on the Cadwalader website. See Constance Baker Motley, James Meredith and the University of Mississippi, Cadwalader (Mar. 23, 2017), http://www.cadwalader.com/resources/videos/constance-baker-motley-james-meredith-and-the-university-of-mississippi (on file with the *Columbia Law Review*).

11. See Motley, Constance Baker, Fed. Judicial. Ctr., http://www.fjc.gov/history/judges/motley-constance-baker [http://perma.cc/6N3Z-QX2B] (last visited Aug. 1, 2017) (indicating that Motley began working at LDF a year before she received her law degree from Columbia) [hereinafter Fed. Judicial Ctr., Constance Baker Motley]. As the ninth of twelve children born to parents who came from Nevis to settle in New Haven, Connecticut, Constance Baker did not have the funds necessary for a college education until a white businessman heard her speak at a local African American social center that he sponsored. Clarence Blakeslee offered to finance her education, enabling her to go to college and eventually law school. Douglas Martin, Constance Baker Motley, Civil Rights Trailblazer, Dies at 84, N.Y. Times (Sept. 29, 2005), http://www.nytimes.com/2005/09/29/nyregion/constance-baker-motley-civil-rights-trailblazer-dies-at-84.html (on file with the *Columbia Law Review*).

12. 347 U.S. 483, 495 (1954).

13. See, e.g., La. State Bd. of Educ. v. Allen, 287 F.2d 32, 32–33 (5th Cir. 1961) (challenging Louisiana's refusal to admit African Americans to public trade schools); Hawkins v. Bd. of Control, 253 F.2d 752, 752–53 (5th Cir. 1958) (per curiam) (challenging denial of admission to University of Florida Law School solely because plaintiff was of "the Negro race"); Adams v. Lucy, 228 F.2d 619, 620–21 (5th Cir. 1955) (per curiam) (affirming the

later became the first tenured African American professor at Harvard Law School,[14] was one of the young LDF lawyers who assisted Mrs. Motley on the Meredith case. As he described it, when Mrs. Motley argued, courtrooms became "places of rich racial drama."[15]

> Whites on one side, exhibiting silent hostility, and blacks on the other side, barely able to restrain their pride. Here was a black woman, obviously better prepared than her white opponents, speaking firmly and with full knowledge of her case. The judge . . . usually ruled against her, but no matter! For these black people, many of whom had spent their lives in involuntary deference to whites, these hearings were priceless scenes . . . embellished at the barbershops and beauty parlors for weeks to come.[16]

In Mississippi, newspapers and politicians openly decried the decision in *Brown*. The Clarion-Ledger, a newspaper in Jackson, Mississippi, called May 17, 1954, the date *Brown v. Board* was decided, a "black day of tragedy."[17] State Senator Edwin White complained that *Brown* meant that "in a few centuries the races would become amalgamated. Thus to put

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district court's judgment holding the Dean of Admissions of the University of Alabama had denied African American plaintiffs equal protection of the law by refusing to admit them solely on account of their race and color). Motley and her colleagues from LDF brought numerous other challenges as well, including challenges to: racial restrictions in public housing, see, e.g., Heyward v. Pub. Hous. Admin., 238 F.2d 689, 691 (5th Cir. 1956) (challenging an alleged practice of racial segregation in public low-rent housing in Savannah, Georgia); Detroit Hous. Comm'n v. Lewis, 226 F.2d 180, 181 (6th Cir. 1955) (challenging defendants' alleged practice of racial discrimination in public housing in Detroit); racially based salaries for teachers, see, e.g., Bates v. Batte, 187 F.2d 142, 143 (5th Cir. 1951) (per curiam) (challenging lower teacher-salary schedules for "negro, than for white, teachers"); racially restricted membership in political parties, see, e.g., Baskin v. Brown, 174 F.2d 391, 393 (4th Cir. 1949) (challenging a rule limiting membership in the Democratic Party of South Carolina to "white persons," in an effort to exclude African American citizens from participating in elections); racially restricted eligibility to take competitive examinations for public employment, see, e.g., Davis v. Arn, 199 F.2d 424, 424–25 (5th Cir. 1952) (challenging the refusal of the Personnel Board of Mobile County, Alabama, "to permit the named plaintiffs, who are negroes, to take competitive examinations for policemen and firemen"); and racially restricted access to public swimming pools, see, e.g., Tonkins v. City of Greensboro, 276 F.2d 890, 891 (4th Cir. 1960) (per curiam) (challenging the City of Greensboro's sale of its municipal public swimming pool after African American residents demanded admission).

14. Fred A. Bernstein, Derrick Bell, Law Professor and Rights Advocate, Dies at 80, N.Y. Times (Oct. 6, 2011), http://www.nytimes.com/2011/10/06/us/derrick-bell-pioneering-harvard-law-professor-dies-at-80.html (on file with the *Columbia Law Review*).

15. Melissa Fay Greene, Pride and Prejudice, N.Y. Times Mag. (Dec. 25, 2005) (internal quotation marks omitted) (quoting Derrick Bell), http://www.nytimes.com/2005/12/25/magazine/pride-and-prejudice.html (on file with the *Columbia Law Review*); see also Martin, supra note 11 ("As a black woman practicing law in the South, she endured gawking and more than a few physical threats.").

16. Greene, supra note 15 (first alteration in original) (internal quotation marks omitted) (quoting Derrick Bell).

17. Charles W. Eagles, The Price of Defiance: James Meredith and the Integration of Ole Miss 74 (2009) (internal quotation marks omitted).

the Supreme Court's decision into effect would operate to violate God's creation and Law, and when any court decision violates His Law it is sinful, unholy and unworthy of obedience."[18] And U.S. Senator James Eastland[19] issued a call to arms to whites to fight the decision, stating that the Court's "campaign against segregation is based upon illegality"[20] and that the Court had been "brainwashed by left-wing pressure groups."[21]

Determined to resist integration, the State of Mississippi required all members of its executive branch to prevent implementation of *Brown v. Board*.[22] A "Sovereignty Commission" was established "to protect the sovereignty of the State of Mississippi and her sister states from encroachment thereon by the Federal Government."[23] And at the University of Mississippi, the trustees quietly changed the entrance requirements to include at least five letters of recommendation from alumni.[24] Given the racial composition of the Ole Miss alumni population, the trustees thereby created a requirement that would be close to impossible to satisfy for an applicant who was not white. Myrlie Evers, Medgar Evers's wife,[25] later commented on the new requirement as follows:

> It accomplished two important goals at one and the same time: it informed white people that it was really quite simple to outwit ignorant Negroes who didn't know their place and it let the Negroes know there wasn't a chance that such an application would ever be considered on its merits.[26]

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18. Id. at 75 (internal quotation marks omitted).

19. Years later, Senator Eastland would unsuccessfully oppose Mrs. Motley's confirmation as a federal judge. Martin, supra note 11.

20. Eagles, supra note 17, at 74–75 (internal quotation marks omitted).

21. William Doyle, An American Insurrection: The Battle of Oxford, Mississippi, 1962, at 54 (2001) (internal quotation marks omitted).

22. Meredith v. Fair, 298 F.2d 696, 701 n.5 (5th Cir. 1962).

23. Doyle, supra note 21, at 55 (internal quotation marks omitted).

24. Eagles, supra note 17, at 77–78.

25. Medgar Evers was a civil rights leader who was serving as field secretary for the NAACP when he was assassinated in the driveway of his home in Jackson, Mississippi, in 1963. See infra note 174; see also Ashley Southall, Paying Tribute to a Seeker of Justice, 50 Years After His Assassination, N.Y. Times (June 5, 2013), http://www.nytimes.com/2013/06/06/us/paying-tribute-to-a-seeker-of-justice-50-years-after-his-assassination.html (on file with the *Columbia Law Review*). "[H]e organized voter registration drives, economic boycotts, demonstrations and investigations to draw attention to discrimination." Id. Evers had served in Europe in World War II and was a graduate of Alcorn A&M College. Eagles, supra note 17, at 72. In January 1954 (before the Supreme Court's decision in *Brown*), he applied to the University of Mississippi Law School. After an extended review process, the Board of Trustees of the University declared that Evers had not complied with law school requirements regarding recommendation letters. Eagles, supra note 17, at 72–78. Myrlie Evers is a civil rights leader in her own right, and she eventually became chair of the national NAACP Board of Directors. Constance Baker Motley, Equal Justice Under Law 189 (1998) [hereinafter Motley, Equal Justice].

26. Eagles, supra note 17, at 78.

It was in the face of this segregationist strategy of so-called "massive resistance" to integration[27] that James H. Meredith determined to apply to the University of Mississippi. In January 1961, he wrote a letter to LDF in New York City.[28] As Constance Baker Motley recalled years later, Thurgood Marshall assigned the case to her in his own "highly informal" way.[29] He walked into her office and threw the letter down on her desk, stating that "[t]his man has got to be crazy."[30] The letter, in relevant part, read as follows:

> Dear Sir:
>
> I am submitting an application for admission to the University of Mississippi. I am seeking entrance for the second semester which begins the 8th of February 1961. I am anticipating encountering some type of difficulty with the various agencies here in the State which are against my gaining entrance into the school.
>
> I discussed this matter with Mr. Evers, the Mississippi Field Secretary for the NAACP, and he suggested that I contact you and request legal assistance from your organization in the event it is needed for I am not financially able to fight a legal battle against the State of Mississippi. I hope your decision on this request will be favorable. . . .
>
> I am a native Mississippian. All of my elementary and secondary education was received in this state, except my first year of high school which was completed in Florida. I spent nine years in the United States Air Force (1951–60) all of which were Honorable. I have always been a "conscientious objector" to my "oppressed status" as long as I can remember. My long preserved ambition has been to break the monopoly on rights and privileges held by the Whites of the State of Mississippi.
>
> My academic qualifications, I believe, are adequate. While in the Air Force, I successfully complete[d] [six] courses at four different schools conducting night classes. As an example, I completed 34 semester hours of work with the University of Maryland's Overseas Program. Of the twelve courses completed I made three A's and nine B's. I am presently enrolled at Jackson State College here in Jackson. I have completed one quarter of work and am now enrolled in a second quarter at Jackson. For the work completed, I received one A, three B's, and one C.
>
> Finally, I am making this move in, what I consider, the interest of and for the benefit of: (1) my country, (2) my race, (3) my family, and (4) myself. I am familiar with the probabl[e] difficulties involved in such a move as I am undertaking and I am fully prepared to pursue it all the way to a degree from the University of Mississippi.[31]

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27. See Doyle, supra note 21, at 61–63; Motley, Equal Justice, supra note 25, at 112–32.
28. Motley, Equal Justice, supra note 25, at 132.
29. See id. at 162–63.
30. Id. at 162 (internal quotation marks omitted).
31. Id. at 162–63.

Once Mrs. Motley had finished reading the letter, Marshall said to her, "That's your case," noting that she would be less subject to attack in the Deep South than a black man because, as he put it, in the Deep South "all white men had black Mammies."[32]

Mrs. Motley began corresponding with Meredith, and when he was denied admission, she traveled to Mississippi to launch his lawsuit, making the first of many dangerous trips to courthouses in the state.[33] On May 31, 1961, just six days after the registrar formally advised Meredith that his application had been denied, Meredith filed a class action in the U.S. District Court for the Southern District of Mississippi seeking to enjoin the University of Mississippi and other state institutions of higher learning from limiting admission to white persons.[34] The suit named as defendants university trustees and officials, including the registrar.[35] Meredith also filed motions seeking to enjoin the registrar from denying Meredith's admission because of his race and color and asking for relief with respect to the summer term beginning June 8.[36] The request for a temporary restraining order was denied, and the hearing on the preliminary injunction motion was set for June 12, 1961.[37]

II. THE INITIAL DISTRICT COURT PROCEEDINGS

A. *Discovery*

Discovery commenced immediately, at least for defendants. The court refused plaintiff's request to depose the registrar[38] but granted defendants' request to depose Meredith.[39] Meredith's deposition was taken on June 8 at the Federal Building in Meridian, Mississippi.[40] Meredith was represented by Mrs. Motley and Derrick Bell of LDF and by Jesse Brown of Vicksburg, Mississippi, one of the few black lawyers in the state, as local counsel.[41] The deposition was taken by Dugas Shands, first assistant to the

32. Id. at 163 (internal quotation marks omitted).

33. Id. at 163–64.

34. See Docket Sheet at 1, Meredith v. Fair, 202 F. Supp. 224 (S.D. Miss. 1962) (No. 3130) (on file with the *Columbia Law Review*); Motley, Equal Justice, supra note 25, at 162–63.

35. See Docket Sheet, supra note 34, at 1.

36. Meredith v. Fair, 199 F. Supp. 754, 754–55 (S.D. Miss. 1961); Docket Sheet, supra note 34, at 2.

37. *Meredith*, 199 F. Supp. at 754–55.

38. Docket Sheet, supra note 34, at 2 (denying plaintiff's motion to depose Robert B. Ellis at the second entry for 6-8-61).

39. Id. at 2 (allowing defendants to depose plaintiff at the third entry for 6-8-61).

40. Deposition of James H. Meredith on June 8, 1961, at 45–46 (using page numbers at bottom of page), *Meredith*, 199 F. Supp. 754 (No. 3130) (on file with the *Columbia Law Review*).

41. Brown opened a law office in Vicksburg, when there were no black lawyers there. Motley, Equal Justice, supra note 25, at 172.

Attorney General of Mississippi, known as the state's civil rights expert.[42] James Meredith later described him as a "master of the 'Nigger Treatment' tactic," aiming "to provoke the Negro, to frighten him, and then to break him down and cross him up. The aim is to imply that the Negro is dishonest, immoral, a thief by nature, and generally unworthy of being considered fully human."[43] Excerpts from the deposition transcripts show the tactic at work, and Mrs. Motley's and Meredith's efforts to combat it.

SHANDS: James, are you James H. Meredith?[44]

MEREDITH: That is right.

SHANDS: Speak loud enough, James, so they can hear you. What was your answer?

MEREDITH: Yes.

SHANDS: Are you the plaintiff in this lawsuit?

MEREDITH: That is right, sir.

SHANDS: James, do you understand what your function as a witness is in this lawsuit, as a party plaintiff?

MEREDITH: Probably I don't; I don't understand the question.

SHANDS: Do you understand that it is your duty as a witness to answer the questions that are asked you? Do you understand that?

MEREDITH: Yes, sir.

SHANDS: Do you understand that your answers are to be responsive to the questions that I ask you?

MEREDITH: Right, sir.

SHANDS: What is that?

MEREDITH: Yes, sir.

SHANDS: What is your understanding of what "responsive" is?

MEREDITH: That is to be a direct answer to the question asked.

SHANDS: Without rambling around?

MEREDITH: That is right.

SHANDS: Or making speeches?

MEREDITH: That is right, sir.

SHANDS: Do you understand that you are here under oath to tell the truth, the whole truth and nothing but the truth?

MEREDITH: Yes, sir . . . .[45]

SHANDS: Do you own a typewriter?

MEREDITH: Yes, sir.

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42. Eagles, supra note 17, at 241.

43. Id. at 242; see also Meredith, supra note 4, at 69.

44. For the questions and answers, the transcripts use designations of "Q." and "A." We have inserted the names of the individuals speaking.

45. Deposition of James H. Meredith on June 8, 1961, supra note 40, at 56–57 (using page numbers at bottom of page).

SHANDS: Where did you get it?

MOTLEY: We object to that on the ground it is not relevant and we instruct him not to answer.

MEREDITH: I won't answer that question.

SHANDS: You won't answer where you got your typewriter? Is that the typewriter you used to type these recommendations on?

MOTLEY: We object to that and instruct him not to answer on the ground it is not relevant.

MEREDITH: I won't answer that question.

SHANDS: Did you type these recommendations?

MEREDITH: Yes, sir.

SHANDS: Where?

MEREDITH: At my home.

SHANDS: On whose typewriter?

MEREDITH: My typewriter.

SHANDS: Where did you get it?

MOTLEY: We object to that and instruct him not to answer.

MEREDITH: I won't answer that question.

SHANDS: Where did you get the paper you typed it on?

MOTLEY: We object to that on the ground that it is not relevant.

SHANDS: Where did you get your paper?

MOTLEY: And instruct him not to answer.[46]

Later in the same deposition, Shands noticed the envelope Meredith used to keep his copies of correspondence and launched a new series of questions:

SHANDS: Where did you get it?

MEREDITH: I don't particularly recall but I imagine I got it somewhere during my time in the service.

SHANDS: Did you buy it from the government?

MEREDITH: I might have. They have a local purchase store; I have bought many items. I don't–

SHANDS: –Are those for sale?

MEREDITH: I don't know.

SHANDS: Army equipment for sale?

MEREDITH: I don't know. I don't know where I got it exactly.

SHANDS: Would Counsel have any objection to my seeing it?

MOTLEY: Yes. I think what you are trying to do is get something on this man by implying that he has stolen it from the government–

SHANDS: –I am not implying any such–

46. Id. at 87–88 (using page numbers at bottom of page).

> MOTLEY: –And I think that is not proper examination. You are now fishing and trying to get this man implicated in some kind of crime. I think that is very serious.
>
> SHANDS: I merely asked him where he got it.
>
> MOTLEY: You are trying to entrap this man and trying to show that he stole goods. You have asked him several times about this kind of things, and we object to that.
>
> MEREDITH: I have never stolen anything in my life.
>
> MOTLEY: If you have evidence he stole something–
>
> SHANDS: –I didn't say he did; I asked him where he got it. I didn't say he did; you used the word.
>
> MOTLEY: If you have any evidence he has stolen anything, the United States Attorney is probably right downstairs and you can give it to him.[47]

Shands did not go downstairs to the U.S. Attorney.[48] Mrs. Motley and Shands did agree earlier in the day to seek rulings from the court with respect to objections, and the Honorable Sidney Mize, U.S. District Court for the Southern District of Mississippi, interrupted the deposition to hear the arguments of counsel.[49] Judge Mize was a 1911 graduate of the University of Mississippi School of Law and had served as a District Judge since 1937.[50] Despite Mrs. Motley's precise and patient citation to and analysis of Supreme Court cases addressing the relevance of questions like those posed by Shands, Judge Mize overruled her objections and gave Shands license to continue with his questions:

> JUDGE MIZE: Upon the merits of the case I don't think the motive or his good faith would be material, but upon the question of citizenship, as to whether he is a bona fide citizen of this state, I think it would be competent to inquire into anything that would throw any light on that.[51]
>
> . . . .
>
> . . . If he is a man of good moral character, then the answers to these questions are not going to hurt him and I will exclude them for consideration certainly on the merits, upon motion, unless they are shown either in the record or at some future

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47. Id. at 141–42 (using page numbers at bottom of page). The transcript refers to the envelope as a "jacket" in which papers were kept. Id. at 140 (same).

48. See id. at 142–44, 156 (using page numbers at bottom of page).

49. Id. at 65, 88–105 (using page numbers at bottom of page).

50. Mize, Sidney Carr, Fed. Judicial Ctr., http://www.fjc.gov/history/judges/mize-sidney-carr [http://perma.cc/6XHU-4P9E] (last visited July 31, 2017). Judge Mize "fit the mold of southern federal judges who were bent on resistance" to desegregation. Fred L. Banks, Jr., The United States Court of Appeals for the Fifth Circuit: A Personal Perspective, 16 Miss. C.L. Rev. 275, 278 n.15 (1996).

51. Deposition of James H. Meredith on June 8, 1961, supra note 40, at 93 (using page numbers at bottom of page).

> proceeding in the record, why they would be excluded on motion at the time. So I think this is a case wherein a wide cross-examination is allowed . . . .[52]
>
> If you have any more problems to come up, I will be right down the hall.[53]

The deposition concluded at 4:30 p.m.[54] Earlier in the day, when the lawyers and Meredith recessed for lunch, Mrs. Motley inquired about places to eat.[55] Defense counsel mentioned some popular local restaurants, but Mrs. Motley and her team chose not to go to any of those whites-only restaurants, where they would have been required to take their lunches out the back door.[56] They looked instead for a so-called "colored" café.[57]

Throughout the deposition, and indeed throughout the proceedings of this case, Mrs. Motley and Meredith were unfailingly courteous and respectful when addressing the State's counsel. Mrs. Motley referred to opposing counsel as "Mr. Shands," even when objecting to his conduct;[58] Meredith addressed him as "sir."[59] Shands, on the other hand, addressed Meredith repeatedly as "James."[60] Similarly, Shands addressed attorney Jesse Brown as "Jess" or "Jesse," even in open court.[61] Shands

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52. Id. at 102–03 (using page numbers at bottom of page).

53. Id. at 105 (using page numbers at bottom of page).

54. Id. at 156 (using page numbers at bottom of page).

55. Eagles, supra note 17, at 241.

56. Id.

57. Id. Of course, it was difficult for African Americans traveling in the South in the 1960s to find places to eat and stay. In 1936, a New York company published a travel guide "to give the Negro traveler information that will keep him from running into difficulties, embarrassments and to make his trips more enjoyable." The Negro Motorist Green Book 1 (Victor H. Green & Co. 1949), http://www.autolife.umd.umich.edu/Race/R_Casestudy/87_135_1736_GreenBk.pdf [http://perma.cc/V92B-D6BT]. With the passage of Title II of the Civil Rights Act of 1964, Congress banned discrimination in places of public accommodation on the basis of race, color, religion, or national origin. In *Katzenbach v. McClung*, a case involving a restaurant in Birmingham, Alabama that "refused to serve Negroes in its dining accommodations," the Supreme Court held that Congress acted within its power in enacting Title II, concluding that Congress "had a rational basis for finding that racial discrimination in restaurants had a direct and adverse effect on the free flow of interstate commerce." 379 U.S. 294, 296, 304 (1964).

58. E.g., Deposition of James H. Meredith on June 8, 1961, supra note 40, at 48, 54, 60, 75 (using page numbers at bottom of page); see also Transcript of Proceedings of Jan. 16, 1962, at 284–85, 290–91, 306, Meredith v. Fair, 202 F. Supp. 224 (S.D. Miss. 1962) (No. 3130) (on file with the *Columbia Law Review*).

59. See, e.g., Deposition of James H. Meredith on June 8, 1961, supra note 40, at 56–59, 61, 66–67 (using page numbers at bottom of page).

60. See, e.g., id. at 56–57, 60, 66, 69, 79–80, 83, 106, 110, 121, 125, 129, 131–32, 135 (using page numbers at bottom of page).

61. See, e.g., id. at 51 (using page numbers at bottom of page). At a hearing before Judge Mize on August 1, 1961, Shands referred to Brown repeatedly as "Jesse," never once referring to him as "Mr. Brown." Transcript of Proceedings of Aug. 1, 1961, on Ruling upon Motion to Require Defendants to Produce Certain Records and upon Notice to Take

seemed to avoid calling Mrs. Motley by name at all, referring to her occasionally as "she," "her," "counsel," "plaintiff's counsel," or "counsel for plaintiff."[62] At least one local newspaper referred to Mrs. Motley as the "Motley woman."[63] Mrs. Motley did not object to the lack of courtesy displayed by counsel on the record; she responded only with meticulous professionalism.[64]

B. *The Preliminary Injunction Hearing*

The preliminary injunction hearing commenced four days later, on June 12, 1961.[65] The wide latitude given defendants at the deposition continued, while strictures placed on Mrs. Motley's presentation of her client's case were so narrow that even she was surprised. Mrs. Motley's first witness was the registrar of the University of Mississippi, Robert Ellis. Her request to depose him in advance of the hearing had been denied, but she had determined to put him on the stand nevertheless. As soon as Ellis took the stand, however, Shands objected to Motley's question on the ground that proper predicate had not been laid:

> MOTLEY: Did you receive a letter from Mr. Meredith early in January of 1961 requesting [an] application form for admission to the University of Mississippi?
>
> SHANDS: For the record purposes, this is one of the questions we anticipated for which proper predicate should be laid. Who J. H. Meredith is, this record is utterly silent about. Whether he is the man that wrote that letter or not, I don't know whether Mr. Ellis knows that or not . . . .

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the Deposition of Robert B. Ellis, Registrar of University of Mississippi, at 196, 201, 203, 205, Meredith v. Fair, 199 F. Supp. 754 (S.D. Miss. 1961) (No. 3130) (on file with the *Columbia Law Review*).

62. See, e.g., Deposition of James H. Meredith on June 8, 1961, supra note 40, at 47–48, 52–53, 58–59, 65, 92, 104–05, 134, 141, 154 (using page numbers at bottom of page); see also Transcript of Proceedings of Jan. 16, 1962, supra note 58, at 276, 281, 283, 289–290; Transcript of Testimony of Robert E. Ellis on Aug. 11, 1961, at 9, 15, 16 (using page numbers in upper right corner of page and noting that Robert B. Ellis and Robert E. Ellis are most likely the same individual), *Meredith*, 202 F. Supp. 224 (No. 3130) (on file with the *Columbia Law Review*). At one point during the January 16, 1962, hearing, Shands spoke directly to Mrs. Motley, asking her a question: "As to her remarks, do I understand you, counsel for the plaintiff, that as to Mr. L.D. Ferguson, . . . do you concede that subpoena is subject to being quashed, or is not [efficacious]?" Transcript of Proceedings of Jan. 16, 1962, supra note 58, at 290. At one hearing at which Mrs. Motley was not present, Shands referred to her as "Constance Motley" while referring at the same time to his colleagues as "Mr. Patterson," "Mr. Cates," and "Mr. Stockett." Transcript of Proceedings of June 27, 1961, on Defendants' Motions for Additional Time, at 65, *Meredith*, 202 F. Supp. 224 (No. 3130) (on file with the *Columbia Law Review*).

63. Eagles, supra note 17, at 243 n.13.

64. Id. at 243.

65. Motley, Equal Justice, supra note 25, at 166–67.

> JUDGE MIZE: I think I would have to sustain that objection until you prove Meredith wrote such a letter, and then I would require it to be proven. I think that objection is well taken.[66]

When every effort to reframe the question was met with the same objection, she had no choice but to ask the registrar to step down and proceed with Meredith as her next witness.[67] Shands objected throughout the testimony, and once given the opportunity to cross-examine, returned to the tactics used at Meredith's deposition:

> SHANDS: Now, James, do you consider you have had a good Army record?
>
> MEREDITH: Excellent.
>
> SHANDS: You are proud of your record?
>
> MEREDITH: Yes, sir.
>
> SHANDS: You think your papers show that you had a good record?
>
> MEREDITH: Yes, sir.
>
> SHANDS: Would you have any objection to authorizing the defendants in this case to examine your Army record . . . ? You are proud of it. What objection could you have? Do you have any? You probably don't. You don't have any?
>
> MEREDITH: I'm not giving that right, but I don't have any.
>
> SHANDS: You don't have any objection?
>
> MEREDITH: However, if I have the authority to give that right, I'm not giving that right, but I have no objection. I have records myself.
>
> SHANDS: Why won't you give that right if you have no objection to it?
>
> MEREDITH: Because I don't want to set – if I'm successful in getting in the University of Mississippi, I don't want to set a bad precedent to Negroes where they have to go through a special procedure to get that; that is, by showing all of these things I don't believe [are] required from a normal applicant.
>
> SHANDS: Are you here as a bonafide applicant or are you here as something else?
>
> MEREDITH: I am here as a bonafide applicant.
>
> SHANDS: You have no objection to our seeing your Army record?
>
> MEREDITH: No, sir.
>
> SHANDS: But you're not–
>
> MEREDITH: –But if I have the authority I'm not–

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66. Transcript of (Adverse) Cross-Examination of Robert B. Ellis on June 12, 1961, at 9 (using page numbers in upper right corner of page), *Meredith*, 199 F. Supp. 754 (No. 3130) (on file with the *Columbia Law Review*).

67. Id. at 9–12 (using page numbers in upper right corner of page).

> SHANDS: –But you are not going to authorize that to be done?
>
> MEREDITH: No, sir. As far as I know, you can do it anyhow, but I have no objection. If I have the authority, I don't see any reason, if it's called for. I have no objection.
>
> SHANDS: And as far as you are concerned, we can examine it?
>
> MEREDITH: I'm not saying that.
>
> SHANDS: You don't have an objection, but–
>
> MEREDITH: Yes, sir.
>
> MOTLEY: We object to this pressure on the witness in trying to get him to admit that he said something he hasn't said, and that he is trying to pressure him into authorizing the State to look into his Army record. We object to that and don't think it proper examination.
>
> JUDGE MIZE: Overrule the objection.
>
> SHANDS: James, you have nothing to hide in this matter, do you?
>
> MEREDITH: No, sir. I was just fixing to answer.
>
> MOTLEY: We object to that question; also, to that kind of tone of examination as if this man is hiding something. There is an attempt, I think, to entrap the man into saying something he does not intend to say. He said three times he would not authorize the State to have his record. He has no objection, but he would not authorize it unless it is required by the rules of the University.
>
> JUDGE MIZE: I will overrule the objection on this theory: I want him to have a full opportunity. He has answered, I think, fairly clearly; however, there is a rule of law that if a person has something in his possession and over which he has control and he declines to authorize that, then an unfavorable inference could be drawn that if he were to give permission an unfavorable inference can be drawn if it was examined it would be unfavorable. So I think it competent in cross-examination to question him fully, and I overrule the objection
>
> SHANDS: Upon reflection, James, do you still stick to that?
>
> MEREDITH: I will say that you have my permission to examine all my military records.[68]

Shands also returned to the topic of typewriters and paper:

> SHANDS: James, the paper that you wrote the letters of recommendation that are in evidence, you got that, according to the deposition, from what place? That is Army issue, isn't it?
>
> MEREDITH: What paper are you talking about?

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68. Transcript of Cross-Examination of James Meredith on June 12, 1961, at 93–95 (using page numbers in upper right corner of page), *Meredith*, 199 F. Supp. 754 (No. 3130) (on file with the *Columbia Law Review*).

MOTLEY: Your Honor, there is no testimony in the record as to what paper he has. He hasn't testified that that is Army issue.

SHANDS: I'll ask him where it is from.

JUDGE MIZE: If that is an objection, I'll overrule the objection. He is entitled to ask about it. As I understand, he is asking about the letters you introduced this morning, Exhibits 13, 14, 15, 16, and 17.

MOTLEY: And there was nothing on examination as to where the paper was from. He can't go on cross-examination on something which wasn't brought out on direct examination.

JUDGE MIZE: On trial he can. This is not taking a deposition. You're on a trial now for application for temporary injunction, and you put him on as a witness. He can cross-examine about anything relevant to the case.

MOTLEY: Yes, but he has to cross-examine him on something which has been brought out on direct testimony.

JUDGE MIZE: No, not on trial of the case. When you put a witness on the witness stand and ask him just one question, then opposing counsel can cross-examine him about anything that is relevant to the case.

MOTLEY: Then we object on the ground it is not relevant to this case what type of paper the letter was typed on, not relevant to the question of whether he was excluded because of his race.

JUDGE MIZE: Overrule the objection. I will state to you, the Rules of Civil Procedure provide that evidence shall be received under two rules: one is where made admissible under civil rules of federal law; another is if it is admissible under state law, and the Court shall follow that rule most favorable to the introduction of testimony. Well, I think the federal rule[69] is the same in this, but I know the rule in Mississippi is that when you put a witness on the witness stand, he is put on for all purposes and may be cross-examined about anything relevant to the issue. So under that rule of civil procedure, I will overrule the objection.

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69. Judge Mize was mistaken, at least as to the federal rule at the time. Historically, the general rule in the federal courts was that the scope of cross-examination was limited to matters the witness testified to on direct examination. See generally Robert Van Pelt, The Background of Federal Rules 611(b) and 607, 57 Neb. L. Rev. 898, 899 (1978) (citing, inter alia, Houghton v. Jones, 68 U.S. 702, 706 (1863) ("The rule has been long settled, that the cross-examination of a witness must be limited to the matters stated in his direct examination. [For] other matters, [the adverse party] must . . . call[] the witness to the stand in the subsequent progress of the cause.")). In time, the view that cross-examination should not be so limited became popular. See id. at 901–02; see also Fed. R. Evid. 611(b) advisory committee's notes to the 1972 proposed rules. In its present version, Rule 611(b) of the Federal Rules of Evidence gives the trial judge discretion, as the Rule provides: "Cross-examination should not go beyond the subject matter of the direct examination and matters affecting the witness's credibility. The court may allow inquiry into additional matters as if on direct examination." Fed. R. Evid. 611(b).

> SHANDS: James, I show you Plaintiff's Exhibit 9. Where did you get the paper that was written on?
>
> MEREDITH: I'm not sure. If this paper is military size paper, it could be military paper.
>
> SHANDS: Well, in fact, you know it is military paper? . . .
>
> MEREDITH: Yes, sir . . . .
>
> SHANDS: Did you buy it from the government?
>
> MEREDITH: No, sir.
>
> SHANDS: You knew it was government property?
>
> MEREDITH: Yes, sir, it was government—the government discarded this paper.
>
> SHANDS: What?
>
> MEREDITH: The government or its people had discarded this paper.
>
> SHANDS: Discarded it?
>
> MEREDITH: Yes, thrown it out, to be thrown away.
>
> SHANDS: Oh, they did?
>
> MEREDITH: Yes, sir . . . .
>
> SHANDS: You mean to charge the government with throwing away perfectly good paper?
>
> MEREDITH: Yes, sir . . . .
>
> SHANDS: Did they know they were throwing away good paper?
>
> MEREDITH: Yes, sir.
>
> SHANDS: You knew it was good paper, didn't you?
>
> MEREDITH: Yes, sir.
>
> SHANDS: Why didn't you return it to the government and say, "Here, here's some good paper that you all are throwing away?"
>
> MEREDITH: I did that on occasions before, but this was just a minor matter . . . .
>
> JUDGE MIZE: Very well, Gentlemen: It's 4:30, so I believe at this time I will recess this case until 10:00 A.M., July 10th . . . .[70]

Mrs. Motley had objected to this adjournment when it was first proposed by Judge Mize earlier in the day, pointing out that Meredith was seeking admission to the summer term and that by July, the summer session would be half over.[71] She reminded the court that the hearing was on his application for a preliminary injunction and that "his irreparable injury [was] abundantly clear."[72] Judge Mize indicated that continuing

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70. Transcript of Cross-Examination of James Meredith on June 12, 1961, supra note 68, at 128–32 (using page numbers in upper right corner of page), *Meredith*, 199 F. Supp. 754 (No. 3130) (on file with the *Columbia Law Review*).

71. Id. at 106–08 (using page numbers in upper right corner of page).

72. Id. at 107 (using page numbers in upper right corner of page).

the hearing sooner was impossible, and the hearing was duly adjourned to the next month.[73]

With hopes for the summer session fading, Mrs. Motley and her team pressed forward, making another preliminary injunction application and repeatedly seeking without success to take the registrar's deposition.[74] In the meantime, however, new obstacles arose. On June 27, Shands appeared before Judge Mize to request additional time to answer the complaint and adjournment of the registrar's deposition on the basis of his ill health.[75] Both requests were granted immediately.[76] Further delays followed. Mrs. Motley appeared before Judge Mize on July 10, determined to press forward.[77] She argued that Shands's ill health was not cause for further delay:

> MOTLEY: [A] man's constitutional rights can't be suspended because an assistant attorney-general is stated to be ill. A man must have some rights, and it's an immediate situation because he has already lost the opportunity to go to the February term, the first summer term; and now, because somebody is ill, his constitutional rights can't even be heard. We don't think that is justified at all, and that this state has enough money to hire a special attorney if necessary to hear these cases . . . .
>
> . . . [T]hey cannot come in now in good faith and say, "We are not prepared," because it is not a difficult and unusual case. There have been cases like this in every state in the South. They are reported; they have it available. A first year law student can try such a case, and I don't believe that these two lawyers are incapable of defending a case involving the admission of a Negro to a [] school, because the law books are filled with such cases.[78]

Judge Mize nevertheless re-set the matter for August 10.[79] Before then, Mrs. Motley made a total of five unsuccessful attempts to depose the registrar.[80] Decision on her request for documents was also delayed,

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73. Id. at 108, 132–33 (using page numbers in upper right corner of page).

74. Docket Sheet, supra note 32, at 3 (entries for 6-23-61, 6-27-61), 4 (entry for 7-15-61), 5 (entries for 7-25-61, 7-31-61, 8-1-61); see also Transcript of Proceedings of Aug. 1, 1961, supra note 61, at 181–85; Transcript of Proceedings of June 27, 1961, on Defendants' Motions for Additional Time, supra note 62, at 61–78.

75. Transcript of Proceedings of June 27, 1961, on Defendants' Motions for Additional Time, supra note 62, at 62–64, 73.

76. Id.

77. Transcript of Proceedings of July 10, 1961, on Dates for Filing of Answer and Argument of Motions at 79 (using page numbers in upper right corner of page), Meredith v. Fair, 199 F. Supp. 754 (S.D. Miss. 1961) (No. 3130) (on file with the *Columbia Law Review*).

78. Id. at 80, 83–84 (using page numbers in upper right corner of page).

79. Id. at 88 (using page numbers in upper right corner of page).

80. Docket Sheet, supra note 34, at 2 (entries for 6-5-61, 6-8-61), 3 (entries for 6-23-61, 6-27-61), 4 (entries for 6-29-61, 7-15-61), 5 (entries for 7-25-61, 7-31-61, 8-1-61), 6 (entries for 8-12-61, 8-15-61).

and then only limited documents were granted.[81] The registrar alone among the defendants answered the complaint and denied everything, including that Ole Miss was restricted to whites and that Meredith was a legal resident of the state.[82]

When the hearing finally resumed and Mrs. Motley finally had her opportunity to question the registrar, she was met with constant objections from Shands and responses from the registrar similar to this:

> MOTLEY: Mr. Ellis, have any Negroes ever been admitted to the University of Mississippi, to your knowledge?
>
> SHANDS: We object to that unless this witness knows the lineage of every person who has attended the University of Mississippi since the day it opened, whenever that was.
>
> JUDGE MIZE: I'll overrule the objection and let him answer if he knows.
>
> ELLIS: I don't know.
>
> MOTLEY: Does the application ask for race?
>
> ELLIS: Yes.
>
> MOTLEY: Since you have been registrar of the University of Mississippi, have you ever seen an application which indicated that a Negro was applying, in answer to the question "Race?"
>
> SHANDS: We object as to what the application indicated if counsel for plaintiff is accepting or offering that as proof of race.
>
> JUDGE MIZE: I will overrule the objection and let him answer if he knows.
>
> ELLIS: I have received applications that have indicated the Negro race on the application form . . . .
>
> MOTLEY: Since you have been registrar of the University of Mississippi, have any Negroes been actually admitted to the University?
>
> SHANDS: We object to that, if the Court please.
>
> JUDGE MIZE: If he confines it to transfer students, undergraduate students, I overrule the objection.
>
> SHANDS: And the further ground is that the question does not include whether the applicants were qualified or not, and the mere fact of whether they were or were not admitted is not, we think, a full and complete and proper question, and we think a reading of the question will clarify and support this objection.
>
> JUDGE MIZE: I'll overrule the objection and let him answer if he knows.

---

81. Id. at 3 (entry for 6-20-61), 4 (entry for 7-15-61), 5 (entry for 8-1-61), 6 (entry for 8-12-61), 8 (entries for 1-16-62); Transcript of Proceedings of Aug. 1, 1961, supra note 61, at 185–91.

82. Eagles, supra note 17, at 247–48.

> ELLIS: Counsel, I don't know all of the students who have entered the University since I have been registrar. I don't know the answer to your question.
>
> MOTLEY: Have you ever seen a Negro student at the University of Mississippi since you have been—
>
> SHANDS: We object.
>
> MOTLEY: Can I finish my question, please?
>
> SHANDS: Certainly. You may. Indeed, you may.[83]

Mrs. Motley put on the record her objection to Shands's time-consuming objections:

> MOTLEY: Excuse me, Your Honor. This is one of our objections. Now he has already said that over a fifteen minute period and we are objecting to counsel for defendants making a long-winded objection in which he repeats himself and repeats himself on the ground that it prejudices this plaintiff in this hearing because he is trying to get admitted to the next term. He has already missed three terms through delay, delay attributed to Mr. Shands, who is now up here making long-winded objections which are prejudicial to the plaintiff's interest in getting this hearing over with promptly, and we object to that.
>
> JUDGE MIZE: Counsel, I overrule that objection because that is for the court to determine, when he has heard enough argument. These questions are complicated and I am going to hear full arguments from you and from him, too, unless it becomes too extended and I will interrupt you when I have let each one of you complete your record, because I want the record to be complete when it is submitted . . . .
>
> [Addressing Shands] Have you finished for the record your grounds for objection?
>
> SHANDS: I had until she objected to something else in her last remark.[84]

Given this opportunity, Shands elaborated further.[85] When Judge Mize announced that he would cut the day's hearing short and resume the next week, Mrs. Motley objected again.

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83. Transcript of Proceedings of June 12, 1961, on Motion for Temporary Restraining Order and Preliminary Injunction at 280–82 (using page numbers in upper right corner of page), Meredith v. Fair, 199 F. Supp. 754 (S.D. Miss. 1961) (No. 3130) (on file with the *Columbia Law Review*). Ellis eventually testified that in the twelve years he had been on campus, he had seen "students with varying degrees of darkness of skin," but that he could not "tell you whether any of them were of the Negro race or not." Id. at 282–83.

84. Transcript of Cross-Examination of Robert E. Ellis on Aug. 11, 1961, at 14–15 (using page numbers in upper right corner of page), *Meredith*, 199 F. Supp. 754 (No. 3130) (on file with the *Columbia Law Review*).

85. Id. at 15–17 (using page numbers in upper right corner of page).

> MOTLEY: I certainly want the record to show we object to the continuance of this hearing on the ground it has been delayed a number of times and adjourned and continued. We are trying to get through with this hearing so the court can rule in time for the application of this student with respect to the September term, and, as Mr. Shands always says, I don't want the record to appear that we consent to this adjournment. We have been fighting and fighting and fighting to get the hearing through with, and I want the record to show we are prepared at 12:15 today to finish this case in the next few minutes . . . .
>
> JUDGE MIZE: You don't think the other side is entitled to be heard?
>
> MOTLEY: Yes, Sir, but I was just trying to get the record straight that we object to these delays and continuances and all of that sort of thing on a motion for preliminary injunction.[86]

The preliminary injunction hearing finally concluded the following week. In plaintiff's closing argument, Mrs. Motley maintained that Meredith had been denied admission solely because the university was "a segregated institution for whites only."[87] The defense claimed that the university did not consider race at all but denied Meredith admission for lack of "good moral character."[88] Judge Mize took the matter under advisement. The September enrollment deadline at Ole Miss passed.[89] Finally, almost four months later, the court ruled.

C. *The District Court's Decision*

On December 12, 1961, Chief Judge Mize denied the motion for a preliminary injunction.[90] He rejected defendants' argument that Meredith was not a citizen of Mississippi[91] but concluded that Meredith had "utterly failed" to prove that he was denied admission to the university "because of his race or color."[92] He wrote:

> There was a good deal of testimony introduced in the cause, but very little conflict, and the overwhelming weight of the testimony is that the plaintiff was not denied admission because of his color or race. The Registrar swore emphatically and unequivocal[ly] that the race of plaintiff or his color had nothing in the world to do with the action of the Registrar in denying his application. An examination of the entire testimony of the Reg-

86. Id. at 30–31 (using page numbers in upper right corner of page).

87. Eagles, supra note 17, at 254–55.

88. Id.

89. See Transcript of Cross-Examination of Robert E. Ellis on Aug. 11, 1961, supra note 84, at 30–31 (using page numbers in upper right corner of page).

90. Meredith v. Fair, 199 F. Supp. 754, 758 (S.D. Miss. 1961).

91. Id. at 757.

92. Id. at 758.

> istrar shows conclusively that he gave no consideration whatsoever to the race or the color of the plaintiff when he denied the application for admission and the Registrar is corroborated by other circumstances and witnesses in the case to this effect.[93]

Of course, there was a "conflict" in the evidence, as Meredith offered evidence that he met the requirements for admission to the university as well as evidence that the university had never admitted a Negro student.[94]

III. THE FIRST APPEAL

Meredith filed his notice of appeal the day the court entered its formal order[95] and on December 18 moved for an expedited appeal.[96] In marked contrast to the dilatory treatment accorded the matter by the District Court, the Fifth Circuit granted the request and heard oral argument on January 9, 1962.[97] The panel consisted of Judge John Minor Wisdom, Chief Judge Elbert Tuttle, and Judge Richard Rives,[98] three of the four judges who became known as "The Fifth Circuit Four" or simply "The Four"—the four judges of the Fifth Circuit who implemented desegregation in the Deep South.[99]

On January 12, 1962, just three days later, the circuit ruled.[100] Judge Wisdom, joined by Chief Judge Tuttle and Judge Rives, wrote as follows:

> James H. Meredith is a Mississippi Negro in search of an education. Mississippi is one of three states which have not yet allowed a Negro citizen to seek an education at any of its state-supported, "white" colleges and universities . . . .

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93. Id. at 757.

94. See Meredith v. Fair, 298 F.2d 696, 697–98 (5th Cir. 1962) (summarizing Meredith's qualifications and noting that the university had "not yet allowed a Negro citizen to seek an education").

95. Docket Sheet, supra note 34, at 7 (entries for 12-14-61).

96. *Meredith*, 298 F.2d at 700–01.

97. Id. at 701.

98. Id. at 697.

99. The fourth was Judge John R. Brown. "These four men joined forces to thwart massive resistance in the Deep South and see it meet an ignominious death in Mississippi in 1962. They were responsible, in retrospect, for averting a North–South split in the country like the one that had led to the Civil War." Motley, Equal Justice, supra note 25, at 134; see also Joseph A. Custer, Ideological Voting Applied to the School Desegregation Cases in the Federal Courts of Appeals from the 1960s and 1970s, 16 Scholar: St. Mary's L. Rev. Race & Soc. Just. 1, 23 & n.161 (2013) ("The Fifth Circuit Four were four staunch pro-civil rights judges . . . who helped drive desegregation through the Fifth Circuit."). Another observer has referred to "the small band of federal judges in the South . . . who fleshed out the bare bones of *Brown* and transformed it into a broad mandate for racial justice." Jack Bass, The 'Fifth Circuit Four,' Nation (Apr. 15, 2004), http://www.thenation.com/article/fifth-circuit-four/ [http://perma.cc/37CE-ALR3]. The four judges were dubbed "The Four" by their colleague Ben Cameron, a derogatory reference to "the Four Horsemen of the Apocalypse." David Marcus, Flawed but Noble: Desegregation Litigation and Its Implications for the Modern Class Action, 63 Fla. L. Rev. 657, 694 (2011).

100. *Meredith*, 298 F.2d at 696.

> This case was tried below and argued here in the eerie atmosphere of never-never land. Counsel for appellees argue that there is no state policy of maintaining segregated institutions of higher learning and that the court can take no judicial notice of this plain fact known to everyone. The appellees' chief counsel insists, for example, that appellant's counsel should have examined the genealogical records of all the students and alumni of the University and should have offered these records in evidence in order to prove the University's alleged policy of restricting admission to white students.
>
> We take judicial notice that the state of Mississippi maintains a policy of segregation in its schools and colleges.[101]

The court nonetheless affirmed the denial of Meredith's motion for a preliminary injunction because it concluded that "[a] full trial on the merits is needed in order to clarify the muddy record now before us."[102] The court admonished the trial judge that:

> *Within proper legal bounds,* the plaintiff should be afforded a fair, unfettered, and unharassed opportunity to prove his case. A man should be able to find an education by taking the broad highway. He should not have to take by-roads through the woods and follow winding trails through sharp thickets, in constant tension because of pitfalls and traps, and, after years of effort, perhaps attain the threshold of his goal when he is past caring about it.[103]

The court suggested that, on remand, the district court "proceed promptly with a full trial on the merits," particularly because a new term was to begin on February 6, 1962.[104]

IV. THE DISTRICT COURT PROCEEDINGS ON REMAND

On remand, although Judge Mize promptly scheduled a hearing for January 16,[105] the new proceedings did not differ substantially from the old. After some colloquy on January 16, the matter was adjourned to the

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101. Id. at 697, 701. It is debatable whether the Fifth Circuit could indeed take judicial notice that Mississippi had maintained a policy of segregation in its schools and colleges, as the university denied this factual assertion. In its present form, Rule 201 of the Federal Rules of Evidence provides that a court "may judicially notice a fact that is not subject to reasonable dispute because it . . . is generally known within the trial court's territorial jurisdiction; or . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b).

102. *Meredith*, 298 F.2d at 703.

103. Id.

104. Id. Judge Wisdom's "blistering rebuke" of Judge Mize's handling of the case "sent a blunt message to Mize (and the other district judges)"; he chose "particularly acerbic language so that no one could misinterpret the appellate court's outrage at the way in which Sidney Mize had handled this case." Joel Wm. Friedman, John Minor Wisdom: The Noblest Tulanian of Them All, 74 Tul. L. Rev. 1, 33–35 (1999).

105. See Transcript of Testimony Taken on Motion for Permanent Injunction on Jan. 16, 1962, at 259, Meredith v. Fair, 202 F. Supp. 224 (S.D. Miss. 1962) (No. 3130) (on file with the *Columbia Law Review*).

next day,[106] when, over Mrs. Motley's objections, Judge Mize granted a one-week postponement, although he took the time to hear testimony from three witnesses, including Shands's doctor, on why defendants were not able to proceed that day.[107]

The trial on the merits finally commenced on January 24, 1962.[108] Dugas Shands was replaced by Charles Clark, who had graduated from Ole Miss Law School in 1948.[109] He was hired in 1961 to help Shands with civil rights cases.[110]

Mrs. Motley called as her first witness Catherine Rae, the Ole Miss Dean of Women.[111] Rae denied that she had ever attended any meetings or participated in any conversations with university officials at which Meredith's application or the admission of Negroes generally was discussed.[112] When asked about the presence of Negroes at the university or in Alumni Association meetings, she acknowledged not seeing any at any time, including when she was a graduate student.[113]

On cross-examination, Clark's pronunciation of the word Negro became an issue. Mrs. Motley leapt to her feet to object:

> MOTLEY: May It Please The Court, I think that Mr. Clark ought to be able to pronounce the word "Negro". It is not Negro (pronounced N-i-g-r-a); it is Negro (Pronounced N-e-g-r-o), and I think you know enough to pronounce the word "Negro" correctly.
>
> CLARK: If It Please The Court I would like the record to show that I intend no discrimination or to impu[gn] anything at all by the pronunciation I used, and it is the pronunciation I am used to and have heard all of my life, and I object to counsel's

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106. Id. at 307–08.

107. See Transcript of Proceedings of Jan. 17, 1962, at 309, *Meredith*, 202 F. Supp. 224 (No. 3130) (on file with the *Columbia Law Review*); Transcript of Testimony of Charles Clarke on Jan. 17, 1962, at 310, *Meredith*, 202 F. Supp. 224 (No. 3130) (on file with the *Columbia Law Review*); Transcript of Testimony of Edward Cates on Jan. 17, 1962, at 330, *Meredith*, 202 F. Supp. 224 (No. 3130) (on file with the *Columbia Law Review*); Transcript of Testimony of Dr. Earl Fite on Jan. 17, 1962, at 335, 353, 360, *Meredith*, 202 F. Supp. 224 (No. 3130) (on file with the *Columbia Law Review*).

108. See Transcript of Proceedings of Jan. 24, 1962, at 361, *Meredith*, 202 F. Supp. 224 (No. 3130) (on file with the *Columbia Law Review*).

109. See Clark, Charles, Fed. Judicial Ctr., http://www.fjc.gov/history/judges/clark-charles [http://perma.cc/W6H2-HRNQ] (last visited Aug. 1, 2017) [hereinafter Fed. Judicial Ctr., Charles Clark]; see also infra note 183.

110. Clark was hired as a Special Assistant Attorney General for the State of Mississippi in 1961 to assist in the *Meredith* case as well as another case. See Transcript of Testimony of Charles Clark on Jan. 17, 1962, supra note 107, at 310, 314–16.

111. See Transcript of Testimony of Catherine Rae on Jan. 24, 1962, at 370, *Meredith*, 202 F. Supp. 224 (No. 3130) (on file with the *Columbia Law Review*).

112. Id. at 371–77.

113. Id. at 380–81.

> remark, and I will not confine my pronunciation to what she prefers unless this Court so orders me.
>
> JUDGE MIZE: Well, I understood you to say Negro. You might not have pronounced it as emphatically as she does, but I will let you proceed. Certainly I want you to be courteous and I know you mean no insinuation to the Negro or the Negro race.[114]

In fact, the *Clarion-Ledger* reported that Clark had used not "Nigra," but the even more offensive word "Niguh."[115]

Over the course of three days, Mrs. Motley called twenty-four witnesses, primarily university administrators and trustees, who denied that there were any discussions at Board meetings of Meredith's application or the enrollment of Negroes at the university.[116] As for the basic question of whether Negroes had ever been enrolled at the university, for the most part the witnesses were evasive. For example, when asked whether he knew of any Negroes admitted to the university since 1941, W.A. Bryant, Vice Chancellor of the University and a former Provost and Professor of English, testified: "I would say that since 1941 several thousand students have been enrolled to the University of Mississippi and I have not known the background of each one of those students sufficiently to answer your question, yes or no."[117]

Tally D. Riddell, an alumnus of the university and a member of its Board of Trustees since 1956, testified as follows:

> RIDDELL: The Board has never had the question of any distinction between whites and nigras at any time at any institution since I been on the Board. . . .
>
> MOTLEY: Have you ever known any Negroes to be enrolled in the University of Mississippi?
>
> RIDDELL: I'm not able to answer that question. If you'll tell me what you mean by Negro, I'll try to answer it.
>
> MOTLEY: Well, you know Negroes when you see them, don't you?
>
> RIDDELL: I couldn't say that I do always. Sometimes I think I do.

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114. Id. at 385.

115. Eagles, supra note 17, at 257–58.

116. See generally Vol. III at Index, Transcript of Record, Meredith v. Fair, 305 F.2d 343 (5th Cir. 1962) (No. 19475) (listing the individuals who testified and the location of the transcripts for each testimony) (on file with the *Columbia Law Review*); Vol. IV at Index, Transcript of Record, *Meredith*, 305 F.2d 343 (No. 19475) (continuing the list of individuals who testified and the location of the transcripts for each testimony) (on file with the *Columbia Law Review*).

117. Transcript of Testimony of W.A. Bryant on Jan. 24, 1962, at 426, Meredith v. Fair, 202 F. Supp. 224 (S.D. Miss. 1962) (No. 3130) (on file with the *Columbia Law Review*).

> MOTLEY: In your observations of people, have you seen any who appear to be Negroes?
>
> RIDDELL: Through the years I have seen a number of people on the University campus – I assume that is what you're asking?
>
> MOTLEY: That's right.
>
> RIDDELL: – and I'm making the answer as if you did ask it—who were all of all colorings, all—As to what their blood lines, anthropology is, I have no way of knowing.
>
> MOTLEY: Can you name any you know of to be Negroes, of your own knowledge?
>
> RIDDELL: I can't answer your question.[118]

The defense relied solely upon the registrar and upon certain new documents obtained by the attorney general two weeks earlier: Meredith had previously provided five references—not from alumni—and four of the five had been persuaded to repudiate their earlier letters.[119] Judge Mize overruled Mrs. Motley's objection to this belated modification of Meredith's admission file.[120]

Closing arguments were delivered in a special Saturday session, on January 27, 1962.[121] Judge Mize issued his decision on February 3rd:

> The proof shows on this trial, and I find as a fact, that there is no custom or policy now, nor was there any at the time Plaintiff's application was rejected, which excluded qualified Negroes from entering the University. The proof shows, and I find as a fact, that the University is not a racially segregated institution. . . . The proof in the instant case on this hearing fails to show that the application of any Negro or Chinaman or anyone of any other race has been rejected because of his race or color . . . .
>
> . . . I have weighed the testimony carefully in the light of the decision of the Court of Appeals and have rejected, in weighing it, the evidence to the effect that he had failed to furnish certificates of the alumni, and have taken judicial notice of the statutes affecting the custom of segregation, and am of the

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118. Transcript of Testimony of Tally Riddell on Jan. 25, 1962, at 497, 501–02, *Meredith*, 202 F. Supp. 224 (No. 3130) (on file with the *Columbia Law Review*).

119. After the plaintiff rested, the defendants moved to exclude all of plaintiff's evidence and for a "directed verdict." Transcript of Colloquy on Jan. 26, 1962, at 645–46, *Meredith*, 202 F. Supp. 224 (No. 3130) (on file with the *Columbia Law Review*). The court denied the motions. Id. at 646–47. Defendants then offered into evidence Meredith's deposition, parts of the testimony of other witnesses, and various exhibits. Id. at 647–50. The defense then re-called Ellis, the registrar. Id. at 651. The defense then offered affidavits from four of the five individuals who had written letters on behalf of Meredith. Id. at 657–69. There was a fifth affidavit—from Meredith's cousin—which was not signed. Id. at 669.

120. Id. at 657–61; see also Eagles, supra note 17, at 259.

121. Transcript of Colloquy on Jan. 27, 1962, at 720, *Meredith*, 202 F. Supp. 224 (No. 3130) (on file with the *Columbia Law Review*).

> opinion, and find as a fact, that he was not denied admission because of his race.[122]

V. THE SECOND APPEAL

Two days later, on February 5, 1962, Judge Mize entered an order dismissing the complaint.[123] The same day, Mrs. Motley filed a notice of appeal[124] and petitioned the Fifth Circuit for an injunction to prohibit the University of Mississippi from refusing to admit James Meredith.[125] A panel consisting of Judges Richard Rives, Elbert Tuttle, and John Minor Wisdom heard argument on Saturday, February 10.[126] They rejected the request for an injunction but ordered an expedited appeal.[127] Oral argument on the merits appeal was heard on April 20 by Judge Wisdom, Judge John R. Brown (another member of "The Four"), and District Judge Dozier DeVane.[128] On June 25, 1962, Meredith's birthday, the court ruled for Meredith, in a 2-1 decision.[129] Judge Wisdom wrote for the majority:

> A full review of the record leads the Court inescapably to the conclusion that from the moment the defendants discovered Meredith was a Negro they engaged in a carefully calculated campaign of delay, harassment, and masterly inactivity. It was a defense designed to discourage and to defeat by evasive tactics which would have been a credit to Quintus Fabius Maximus.[130]
>
> . . . .
>
> There are cases when discrimination is purposeless but unlawful because of its effect. In this case the essence of the complaint is purposeful discrimination against Negroes as a class. The inquiry into purpose makes it especially appropriate for the Court:

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122. *Meredith*, 202 F. Supp. at 227.

123. Docket Sheet, supra note 34, at 9 (entry for 2-5-62).

124. Id.

125. See Meredith v. Fair, 305 F.2d 343, 351 (5th Cir. 1962); Meredith v. Fair, 305 F.2d 341 (5th Cir. 1962) (per curiam). The Supreme Court denied certiorari on October 8, 1962. See Fair v. Meredith, 371 U.S. 828 (1962).

126. *Meredith*, 305 F.2d at 341.

127. Id. at 342. Chief Judge Tuttle dissented from the denial of an injunction, concluding: "I think the record already submitted, without the benefit of the record in the trial on the merits, calls for our granting the injunction pending appeal." Id.

128. See Eagles, supra note 17, at 263; see also *Meredith*, 305 F.2d at 343.

129. See Eagles, supra note 17, at 265–67.

130. Quintus Fabius Maximus, also known as Quintus Fabius Maximus Verrucosus, was a Roman military commander and statesman who was known for his cautious delaying tactics. "Fabianism or Fabian strategy has come to mean a gradual or cautious policy." Patrick Hunt, Quintus Fabius Maximus Verrucosus: Roman Statesman and Commander, Encyclopedia Britannica, http://www.britannica.com/biography/Quintus-Fabius-Maximus-Verrucosus [http://perma.cc/BXH3-2QVR] (last visited July 31, 2017).

> (1) to study the case as a whole, weighing all of the evidence and rational inferences in order to reach a net result;
>
> (2) to consider the immediate facts in the light of the institution's past and present policy on segregation, as reflected not only in the evidence but in statutes and regulations, history and common knowledge;
>
> (3) to measure sincerity of purpose against unreasonable delays and insubstantial reasons asserted for the institution's actions;
>
> (4) to compare the actions taken with regard to the plaintiff with actions taken with regard to others in the same category;
>
> (5) to pierce the veil of innocuity when a statute, regulation, or policy necessarily discriminates unlawfully or is applied unlawfully to accomplish discrimination.
>
> The defendants fail the test. There are none so blind as those that will not see.[131]

Judge DeVane dissented:

> The one defense that leads me to dissent is the fear expressed by the appellees that Meredith would be a troublemaker if permitted to enter the University of Mississippi . . . .
>
> . . . .
>
> In my opinion Judge Mize was correct in finding and holding that appellant bore all the characteristics of becoming a troublemaker if permitted to enter the University of Mississippi and his entry therein may be nothing short of a catastrophe.[132]

VI. ENFORCEMENT

The Fifth Circuit thus granted an injunction requiring the university to admit Meredith. His actual enrollment at Ole Miss, however, came only after prolonged and remarkable disputes between the federal government and the State of Mississippi and among the judges of the Fifth Circuit. Judge Benjamin F. Cameron of the Fifth Circuit had never accepted *Brown* and believed that the Tenth Amendment reserved powers to the states to reject the Supreme Court's decisions.[133] When the state's

131. *Meredith*, 305 F.2d at 344, 360.

132. Id. at 361–62 (DeVane, J., dissenting).

133. Judge Cameron was "a force for the segregation cause and a thorn in the side of the 'Fifth Circuit Four.'" Custer, supra note 99, at 23. He

> considered states' rights "the bedrock of our constitutional system" and believed his fellow judges were destroying the social order of the world he knew. Many white Southerners felt the same way about "The Four." Friends shunned them. Their wives received threatening phone calls at home. But the judges never complained.

lawyers asked him to intervene, Judge Cameron issued a series of extraordinary stays of the injunction, each promptly vacated by the panel that had decided Meredith's appeal, including Judge DeVane.[134] A clearly exasperated Judge Wisdom wrote for the now unanimous panel on July 27, 1962:

> In this case time is now of the quintessence. Time has been of the essence since January 1961 when James Meredith, in the middle of his junior year at Jackson State College (for Negroes), applied for admission to the University of Mississippi . . . .
>
> Chronology highlights this case. June 25, 1962, this Court reversed the district court and remanded the case with instructions that the district court grant the injunction prayed for in the complaint . . . .
>
> . . . July 17 the mandate went down. Bright and early July 18, the attorney for the defendant presented to the Clerk for filing an order staying "the execution and enforcement of the mandate." The order, dated July 18 at Meridian, Mississippi, was signed by the Honorable Ben F. Cameron, United States Circuit Judge. Judge Cameron was not a member of the Court which heard any of Meredith's appeals . . . .
>
> . . . [I]t is unthinkable that a judge who was not a member of the panel should be allowed to frustrate the mandate of the Court . . . .
>
> This is not a Chessman case.[135] It is not a Rosenberg case.[136] It is not a matter of life or death to the University of Mississippi. Texas University, the University of Georgia, Louisiana State University, the University of Virginia, other Southern universities are not shriveling up because of the admission of Ne-

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Bass, supra note 99; see also Sharp v. Lucky, 252 F.2d 910, 915–16, 919 (5th Cir. 1958) (Cameron, J., dissenting) (referring to the Civil Rights Statutes as "the so-called Civil Rights Statutes").

134. Judge Cameron issued his first stay on July 18, 1962. Docket Sheet, supra note 34, at 11 (entry for 7-19-62). Cf. Note, The Powers of the Supreme Court Justice Acting in an Individual Capacity, 112 U. Pa. L. Rev. 981, 1003 (1964) ("Meredith, a Negro, sued for admission to the University of Mississippi, and the Fifth Circuit held that he was entitled to the relief which he sought. A merry-go-round of contrary orders ensued." (footnote omitted)).

135. Caryl W. Chessman was convicted of seventeen counts of robbery, kidnapping, and rape in California in 1948 and sentenced to death. The case and the imposition of the death penalty generated extensive publicity, but he was executed nevertheless on May 2, 1960. See Lawrence E. Davies, Chessman Loses 2 Crucial Pleas, N.Y. Times, Feb. 18, 1960, at 20 (on file with the *Columbia Law Review*); UPI, Execution Stirs Anti-U.S. Rallies, N.Y. Times, May 3, 1960, at 23 (on file with the *Columbia Law Review*); see also Chessman v. Teets, 354 U.S. 156, 165–66 (1957) (reversing and remanding with instructions to the lower court on a writ of habeas corpus).

136. Julius and Ethel Rosenberg were convicted of espionage in New York in 1951. They were executed in 1953. See United States v. Rosenberg, 195 F.2d 583, 609 (2d Cir. 1952) (affirming convictions and death sentences); Jake Kobrick, Fed. Judicial Ctr., The Rosenberg Trial 1–10 (2013), http://www.fjc.gov/sites/default/files/trials/Rosenberg_Trial.pdf [http://perma.cc/7AZG-NJJU].

> groes.[137] There was no emergency requiring prompt action by a single judge.[138]

Judge Wisdom went on to recall and clarify the court's earlier mandate, striving to make the order more explicit and including the Fifth Circuit's own preliminary injunction requiring defendants to admit Meredith and allow his continued attendance.[139] When Judge Cameron promptly issued a second stay, which was immediately vacated, and then a third and finally a fourth stay,[140] Mrs. Motley asked Justice Hugo Black of the Supreme Court to set aside all the stays.[141] Justice Black asked the Department of Justice for its views, the Department filed an amicus brief in its first official action in the matter, and Justice Black vacated the stays on September 10, upholding the Fifth Circuit's mandate.[142]

On September 14, as directed by Justice Black, Judge Mize filed an order prohibiting university officials from doing anything to hinder Meredith's admission.[143] At 7:30 that evening, Governor Ross Barnett spoke in a live radio and television broadcast:

> [N]o school in our state will be integrated while I am your Governor . . . . [T]here is no sacrifice which I will shrink from making to preserve the racial integrity of our people and institutions . . . . [W]e will not surrender to the evil and illegal forces of tyranny![144]

The next night, Meredith was hanged in effigy in front of the student union.[145] The sign on the figure read: "Hail Barnett. Our Governor will not betray Mississippi . . . . We are proud that our Governor stands for constitutional sovereignty."[146]

Mrs. Motley later recalled that shortly after the Governor's proclamation, she prepared papers to hold defendants in contempt.[147] Medgar Evers picked her up in his car in Jackson to drive her to Meridian, Missis-

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137. As Judge Motley would later recall:

> [D]esegregation of the Deep South continued from one federal courthouse door to the next. All of the public universities in the Deep South (except in Alabama), including the University of Virginia and Clemson College in South Carolina (the state school), were open to blacks by late 1962 or early 1963.

Motley, Equal Justice, supra note 25, at 140.

138. Meredith v. Fair, 306 F.2d 374, 375–76 (5th Cir. 1962).

139. Id. at 378. A certified copy of the Fifth Circuit's judgment was filed in the district court on July 28, 1962. See Docket Sheet, supra note 34, at 12 (entry for 7-28-62).

140. See Docket Sheet, supra note 34, at 12 (stay issued 7-28-62), 16 (stay issued 7-31-62), 18 (stay issued 8-6-62).

141. See id. at 19 (entry for 9-12-62); Eagles, supra note 17, at 273.

142. Doyle, supra note 21, at 35–36; Eagles, supra note 17, at 272–75.

143. Docket Sheet, supra note 34, at 19–20 (entry for 9-14-62).

144. Eagles, supra note 17, at 283 (internal quotation marks omitted).

145. Id. at 284.

146. Id.

147. Motley, Equal Justice, supra note 25, at 180.

sippi, where Judge Mize was sitting at the time.[148] Suddenly, he warned her to stop working and hide her legal pad in the newspaper.[149] They were being followed by the state police.[150] They arrived at their destination without incident, and the trooper drove on.[151] Mrs. Motley did not sleep that night.[152]

When Mrs. Motley appeared before Judge Mize the following morning, sitting beside him was newly appointed Judge William Harold Cox, set to succeed Judge Mize as the full-time district judge for the Southern District of Mississippi.[153] When a lawyer from the Department of Justice tried to take the lead on the contempt application, Judge Mize refused to listen to him and turned to Mrs. Motley.[154] In her autobiography, she described what happened:

> I told Judge Mize that I had a motion to hold the university officials in contempt and handed it to him. Judge Cox grabbed the papers before Judge Mize could take them. In a split second, he threw them across the table at me and said, "Look at this. It says 'Order.'" My secretary inadvertently had typed the word "Order" instead of "Motion." We also had prepared a proposed order. At this point, Judge Mize, who was sitting right next to Judge Cox at the head of his table, put his hand on Cox's hand and said, "Judge Cox, it's all over." Judge Cox never got the message. We filed the motion.[155]

Shortly thereafter, the Fifth Circuit ordered that the motions for contempt be heard before the court of appeals. By that time, Meredith had already tried and failed to register, despite an escort of Justice Department lawyers and U.S. Marshals.[156] A remarkable series of hearings followed before the full circuit court, sitting en banc and making findings

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148. Id.

149. Id.

150. Id.

151. Id.

152. Id.

153. Id. at 180–81. Judge Cox was a graduate of the University of Mississippi as well as its law school. See Cox, William Harold, Fed. Judicial Ctr., http://www.fjc.gov/history/judges/cox-william-harold [http://perma.cc/FH62-89D4] (last visited Aug. 1, 2017).

154. Motley, Equal Justice, supra note 25, at 180–81.

155. Id. at 181. "In other words, [Judge Mize] was telling Judge Cox, blacks are going to the University of Mississippi, don't carry on, you can't treat them like this, they've won." Constance Baker Motley, Reflections on Justice Before and After *Brown*, 32 Fordham Urb. L.J. 101, 106 (2004) [hereinafter Motley, Reflections].

156. Meredith testified in a hearing before the Fifth Circuit on September 29, 1962, that he went to the university on September 26, 1962, to enroll as a student pursuant to the orders of the court and was refused admission. Transcript of Testimony of James Meredith on Sept. 29, 1962, at 21–23, United States v. Barnett, 330 F.2d 369 (5th Cir. 1963) (No. 20240) (on file with the *Columbia Law Review*). He had also attempted to register on September 20, 1962, and was refused admission. Id. at 24. He tried to register, unsuccessfully, four times in late September 1962. Eagles, supra note 17, at 299.

of fact.[157] On Friday, September 28, with eight judges participating,[158] the court conducted an evidentiary hearing on the Justice Department's motion to hold Governor Barnett in contempt.[159] Instead of remanding to the district court to conduct a hearing or appointing a special master to take evidence, the court heard testimony itself from three witnesses.[160] It then heard from Mrs. Motley.

> MRS. MOTLEY: May it please the Court, the Appellant respectfully suggests to this Court that there is nothing further that this Court can do to enforce the orders in this case against the Governor of Mississippi. The Appellant believes that, in view of this, this Court should advise the President of the United States of the inability to get its orders enforced against the Governor of Mississippi in this case, in order that the President may use whatever power is necessary.
>
> [CHIEF] JUDGE TUTTLE: Mrs. Motley, the Court calls on the Marshal to enforce the orders and on the United States Attorney. We don't call on the President. The Court looks to the Department of Justice to enforce its orders. I suppose you mean through channels for us to report where we normally report.
>
> MRS. MOTLEY: Yes, you would.
>
> CHIEF JUDGE TUTTLE: To ask that the Court's orders be enforced.
>
> MRS. MOTLEY: Yes. What I want to make clear is that the Appellant does not believe that the Court can take any further action itself.
>
> JUDGE BROWN: Well, now, is that exactly true? At the present stage, defiance by Barnett would not permit, would it, a Marshal to take Barnett into custody as such? He might push him out of the way but he couldn't put him in custody, could he? . . .
>
> MRS. MOTLEY: Well, if I understand the question, at the present stage of the proceedings the Marshal could not go out and

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157. During the course of the hearing on September 28, 1962, Chief Judge Tuttle remarked: "I think all parties will recognize that the Court in this rather unprecedented act of holding two en banc hearings in connection with this already, has given every indication that we are aware of the gravity of the litigation." Transcript of Proceedings of September 28, 1962, on Hearing on Order to Show Cause Why Governor Ross R. Barnett Should Not Be Cited for Civil Contempt at 85–86, *Barnett*, 330 F.2d 369 (No. 20240) (on file with the *Columbia Law Review*).

158. The judges were: Chief Judge Elbert P. Tuttle and Circuit Judges Joseph C. Hutcheson, Jr., Richard T. Rives, Warren L. Jones, John R. Brown, John Minor Wisdom, Walter P. Gewin, and Griffin B. Bell. Id. at 1–2.

159. See generally Transcript of Proceedings of September 28, 1962, on Hearing on Order to Show Cause Why Governor Ross R. Barnett Should Not Be Cited for Civil Contempt, supra note 157.

160. Id. at 10–43.

get him, no, because the Court has not adjudged him in contempt . . . .

. . . I don't think that any further orders directed to the Governor to do this, that or the other before this Court adjudges him in contempt and imposes a sanction–

JUDGE RIVES: If I understand the Department of Justice, they haven't asked that, haven't asked that we adjudge him in contempt and impose the sanctions, but say that they are imposed upon condition, that if he purges himself by Monday night or Tuesday morning, that the sanctions will not apply.

MRS. MOTLEY: Well, this is what we disagree with, I believe.

JUDGE BELL: You take a different position from the Department of Justice?

MRS. MOTLEY: On this issue, yes.

JUDGE BROWN: On contempt you have to give him a chance to purge himself before the sanctions apply.

JUDGE BELL: She is not taking the same position that they are taking.

MRS. MOTLEY: What I am saying, Your Honor, is that I think every reasonable effort has been made to get the Governor to comply with the order of this Court, and what he seeks to avoid– maybe we are not saying exactly how it should be done, but what we seek to avoid in either event is any further delay in the admission of Mr. Meredith to the University of Mississippi, and that is all I am trying to get across to this Court . . . .

JUDGE HUTCHESON: You mean we ought to quit going through this play business of directing Meredith to go up there somewhere to be registered, to meet the Governor? I think you are right. I don't think we should do that again.

MRS. MOTLEY: Yes, sir, yes, sir. I think that Mr. Meredith has gone there four times or he has attempted to go four times. That fourth attempt was not brought out here, his attempt of yesterday . . . .

. . . [W]hat I am trying to get at is that I think this Court ought to advise whoever is required to be advised that that order admitting him must go forward immediately and not await the purging or the opportunity given to the Governor to purge himself, because Mr. Meredith already lost a week of school. If we wait until after that time, after the Governor has been given that opportunity, it will be next Friday before you can bring him in again, if he should refuse to purge himself, and he will have lost two weeks of schooling, so that–

JUDGE BELL: What more orders could we get out than have been gotten out?

> MRS. MOTLEY: I say you should not get any further orders out. You should only say to the Marshal or the Department of Justice that this Court feels that further orders would be useless.
>
> JUDGE JONES: How can we speak, except through lawyers and decrees and judges? What other voice does the Court have?
>
> MRS. MOTLEY: Well, I think or at least my understanding is that this Court could say to the Marshal by some direction–
>
> JUDGE JONES: Say it out loud?
>
> MRS. MOTLEY: No, sir, in writing, if necessary, by some direction from this Court that it appears from the evidence today that it is impossible to get this Court's order enforced, and, therefore, the Marshal should see that the order is enforced by the use of whatever force may be necessary to presently secure the admission of the Appellant . . . .[161]

At the end of the hearing, the court found Governor Barnett in contempt and levied a $10,000-a-day fine but gave him until 11 AM on Tuesday to clear the charge and avoid jail by admitting Meredith.[162] Over the weekend, Meredith arrived on campus with U.S. Marshals.[163] He was in his dorm room when a mob of students and campus visitors attacked the Marshals standing in front of the Lyceum,[164] triggering a call for federal troops to quell the violence.[165] Before peace was restored, a journalist and a local civilian had been shot and killed.[166] Meredith registered and attended his first class on Monday, October 1, 1962, only a few hours later.[167]

VII. THE AFTERMATH

James Meredith graduated from the University of Mississippi on August 18, 1963.[168] During the year he spent at Ole Miss, federal marshals had to sleep in his room, and he could not go anywhere on campus without marshals.[169] A few years later, on June 6, 1966, on a highway south of Hernando, Mississippi, he was shot while leading a march.[170] He

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161. Id. at 90–95.

162. Meredith v. Fair, 313 F.2d 532, 533 (5th Cir. 1962).

163. Eagles, supra note 17, at 352; Motley, Equal Justice, supra note 25, at 183.

164. The Lyceum, the construction of which was completed in 1848, is the principal administration building at the University of Mississippi. Its front columns still bear bullet marks from the violence in 1962 when Meredith enrolled. Oxford Campus and University Buildings, Univ. of Miss., http://catalog.olemiss.edu/university/buildings [http://perma.cc/Z3YD-27PT] (last visited Aug. 1, 2017).

165. Eagles, supra note 17, at 352–70.

166. Id. at 360, 364–65.

167. Id. at 371.

168. Meredith, supra note 4, at 188–94; Motley, Equal Justice, supra note 25, at 185.

169. See Motley, Reflections, supra note 155, at 102.

170. Motley, Equal Justice, supra note 25, at 186.

survived and went on to earn a law degree from Columbia University and became an entrepreneur, speaker, and political activist.[171] He still lives in Jackson, Mississippi.[172]

Mrs. Motley once called the day Meredith graduated from Ole Miss the most thrilling in her life.[173] Sadly, Medgar Evers, who had provided critical support to both Mrs. Motley and James Meredith, did not live to see Meredith graduate. He was assassinated by a sniper hiding in bushes near his home in June 1963.[174] Mrs. Motley was devastated by his death. She had made twenty-two dangerous trips to Mississippi herself for the Meredith case, always accompanied by Evers and often staying overnight across the street from his home.[175] She understood the risks, and had once even warned Evers of the danger posed by the bushes,[176] but his death made her wonder whether the price was too high.[177] She did not return to Mississippi until 1983, when she attended a conference held by the university to commemorate the twentieth anniversary of Meredith's graduation.[178]

As noted above, Judge Wisdom became known as one of "The Four"—four judges who implemented desegregation in the Deep South.[179] The other members of "The Four" also played important roles

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171. Id. at 185–87; see also Eagles, supra note 17, at 434–35.

172. See James Meredith: Civil Rights Activist (1933–), Biography.com, http://www.biography.com/people/james-meredith-9406314 [http://perma.cc/KQL3-HNXC] (last updated Mar. 31, 2016).

173. Martin, supra note 11.

174. In 1994, more than three decades later, Byron De La Beckwith, an ardent segregationist, was convicted of murdering Evers and sentenced to life imprisonment. See David Stout, Byron De La Beckwith Dies; Killer of Medgar Evers Was 80, N.Y. Times (Jan. 23, 2001), http://www.nytimes.com/2001/01/23/us/byron-de-la-beckwith-dies-killer-of-medgar-evers-was-80.html (on file with the *Columbia Law Review*). Beckwith was charged after the shooting and went to trial twice in 1964, but both times all-male and all-white juries failed to reach a verdict. Id. It was only after new evidence was uncovered that the case was reopened and Beckwith was convicted in 1994. Id. The third prosecution was spurred in part by the disclosure in 1989 that officials of the Mississippi Sovereignty Commission, which had been created to resist desegregation, see Doyle, supra note 21, at 55, had helped screen potential jurors in Beckwith's two trials. The revelations led to the discovery of new witnesses who had heard Beckwith boasting over the years about killing Evers. See Ronald Smothers, 30 Years Later, 3d Trial Begins in Evers Killing, N.Y. Times (Jan. 28, 1994), http://www.nytimes.com/1994/01/28/us/30-years-later-3d-trial-begins-in-evers-killing.html (on file with the *Columbia Law Review*).

175. Motley, Equal Justice, supra note 25, at 166, 188; see also Motley, Reflections, supra note 155, at 101.

176. Motley, Equal Justice, supra note 25, at 171.

177. Id. at 189.

178. Id. at 190. Judge Motley returned in 1989, when Ole Miss held its first civil rights conference. Id. She was joined there by Judges Wisdom and Tuttle in what she later called a "thrilling reunion for those of us who had participated in the long legal battle to open the university." Id.

179. "The Four" heard cases that went beyond the initial, limited scope of *Brown*:

in the *Meredith* case: Judges Tuttle, Brown, and Rives.[180] Judge Wisdom received boxes of hate mail, two of his dogs were poisoned, and a rattlesnake was thrown in his courtyard.[181] The Fifth Circuit building was renamed after him in 1994.[182] Charles Clark, who clashed with Mrs. Motley over his pronunciation of the word Negro, became a judge on the Fifth Circuit in 1969, ultimately serving as Chief Judge.[183]

Ole Miss continues to struggle with the issues that led to the deadly riot on its campus in Oxford, Mississippi. The university erected a statue of James Meredith, but in February 2014, under cover of darkness, three University of Mississippi students tied a noose and a Confederate flag around its neck.[184] After they were identified, all three withdrew from

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> The Four recognized that the courts alone could not get the job done, that it would take a commitment by all three branches of government. In applying the due process and equal protection clauses of the Fourteenth Amendment to unprecedented circumstances, however, they developed principles that Congress would incorporate into the landmark 1964 Civil Rights Act and 1965 Voting Rights Act, legislation that granted enforcement power to the executive branch and had a lasting social, economic and political impact on the American South.

Bass, supra note 99; see also Custer, supra note 99, at 23.

180. Motley, Equal Justice, supra note 25, at 190.

181. See Rupert Cornwell, Obituary: John Minor Wisdom, Independent (June 3, 1999), http://www.independent.co.uk/arts-entertainment/obituary-john-minor-wisdom-1097913.html [http://perma.cc/P2GH-3ZBM].

182. See Tracy O. Joseph et al., Louisiana's Historic Courthouses: A Look at the Past and the Present, 64 La. B.J. 28, 31 (2016) (discussing the history of the John Minor Wisdom courthouse and its name). Judge Wisdom has been described as follows:

> A man of towering intellect, steadfast conviction, and unwavering integrity, Wisdom's multilayered career as attorney, soldier, political activist, scholar, teacher, legislative draftsman, and, most notably, judge, produced a wide-ranging, and, in many regards, revolutionary impact on the American political and legal landscape. Though born to a family of privilege and social position, John Wisdom had a keen awareness of the obstacles faced by those who, unlike him, did not inherit or otherwise have unfettered access to the bounties of life. Instead of blindly following convention and selfishly promoting personal advantage, Wisdom courageously pursued his sincerely and deeply felt commitment to the principles of fair play and equality under the law. And, in doing so, he dramatically and permanently altered the lives of millions of Americans, a feat made more remarkable when considered in relation to the normal expectations of someone of his breeding and background. For these reasons, history will recognize this New Orleans born-and-bred son of the Old South as one of the primary architects of the New South.

Friedman, supra note 104, at 1–2.

183. See Fed. Judicial Ctr., Charles Clark, supra note 109. Clark was nominated by President Nixon and confirmed by the Senate in 1969, and he served as Chief Judge from 1981 to 1992. Id.

184. Eagles, supra note 17, at 440–41; (Jackson, Miss.) Clarion-Ledger, Ex-Ole Miss Student Sentenced for Noose on Statue, USA Today (Sept. 17, 2015), http://www.usatoday.com/story/news/nation/2015/09/17/ex-ole-miss-student-sentenced-noose-statue/72376068/ [http://perma.cc/Y8ML-VNHD].

school, their fraternity closed its chapter, and two of the students pleaded guilty to federal civil rights crimes.[185] Ole Miss issued a statement declaring that the "university does not tolerate hateful behavior."[186]

After the *Meredith* case, Mrs. Motley went on to become a New York State Senator, Manhattan Borough President, and, when she was confirmed as a United States District Judge in the Southern District of New York in 1966, the first African American woman and the first woman of color to serve as a federal judge in the country.[187] She became the Chief Judge for the Southern District in 1982, the first woman to serve in that capacity, and assumed senior status in 1986.[188] She died at the age of eighty-four on September 28, 2005, while still serving as a Senior Judge.[189]

CONCLUSION

The battles Judge Motley fought as a young lawyer may not be over, but the importance of the legal proceedings she brought on behalf of James Meredith and their aftermath on the campus of Ole Miss should not be underestimated. As Meredith had recognized, in many respects this was "the last battle of the Civil War,"[190] and Judge Motley agreed that "[t]he *Meredith* case effectively put an end to massive resistance in the Deep South."[191] Against all odds, Constance Baker Motley and James Meredith integrated Ole Miss.

Derrick Bell's comments about Judge Motley's autobiography provided a fitting conclusion to the first presentation of the case reenactment on which this Essay is based, especially as they were spoken by Judge Motley's son, Joel Motley:

> [Her story] reminds us how one courageous and persistent individual can make a difference. Her belief in the law and in the ability of people to overcome their fears and move toward ac-

185. One was sentenced to six months in prison and the other to twelve months' probation. Erin Edgemon, Second Ex-Ole Miss Student Sentenced for Tying Noose on James Meredith Statue, Ala. Media Group (July 22, 2016), http://www.al.com/news/index.ssf/2016/07/second_ex-ole_miss_student_sen.html [http://perma.cc/WG6Q-FUWH].

186. Susan Svrluga, Former Ole Miss Student Pleads Guilty to Hanging Noose Around Statue Honoring the First Black Student, Wash. Post (Mar. 24, 2016), http://www.washingtonpost.com/news/grade-point/wp/2016/03/24/former-ole-miss-student-pleads-guilty-to-hanging-noose-around-statue-honoring-the-first-black-student/ (on file with the *Columbia Law Review*).

187. Motley, Equal Justice, supra note 25, at 214 ("I was the first black woman appointed to the federal bench."); Jonathan K. Stubbs, A Demographic History of Federal Judicial Appointments by Sex and Race: 1789–2016, 26 Berkeley La Raza L.J. 92, 104 (2016) ("Johnson nominated the first woman of color, Constance Baker Motley, to the federal bench on January 26, 1966, and the Senate confirmed her on August 30, 1966."). At the time, only four other women were federal judges. Motley, Equal Justice, supra note 25, at 214.

188. See Fed. Judicial Ctr., Constance Baker Motley, supra note 11.

189. Id.

190. Meredith, supra note 4, at 117.

191. Motley, Equal Justice, supra note 25, at 187.

> tion [was] unshakable. Hers [was] a voice of reason, compassion, and uncompromising commitment to justice and equality.[192]

The same words provide a fitting conclusion to this Essay. Individuals can make a difference. Individuals engineer social change, and individuals who participate in the legal system, whether as lawyers or judges or parties, are uniquely situated to make a difference. As Judge Mize demonstrated, a trial judge's power over his calendar can place an effective damper on the exercise of civil rights.[193] A single circuit judge's refusal to recognize Supreme Court precedent can have the same impact. To work, the judicial system needs resourceful and determined counsel and litigants, and judges willing to follow the law wherever it may lead.[194] "The last battle of the Civil War" was fought and won in courthouses in the Deep South by courageous individuals such as James Meredith, Constance Baker Motley, and the judges known as "The Four."[195]

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192. Derrick Bell, Book Jacket to Motley, Equal Justice, supra note 25.

193. As Judge Wisdom observed in commenting on the delays in the trial court:

> The net effect of all these delays was that the February 1961 term, the two summer terms of 1961, and the two regular terms of 1961–62 slipped by before the parties litigant actually came to a showdown fight. Some of these delays, as in any litigation, were inevitable. Some are attributable to continuances of doubtful propriety and to unreasonably long delays by the trial judge. . . . We draw the inference that not a few of the continuances and the requests for time in which to write briefs were part of the defendants' delaying action designed to defeat the plaintiff by discouragingly high obstacles that would result in the case carrying through his senior year. It almost worked.

Meredith v. Fair, 305 F.2d 343, 351–52 (5th Cir. 1962).

194. In a sense, Judges Mize and Cameron and "The Four" were activist judges in that they seemed to have an agenda. The Four's agenda, however, was to implement the law, as determined by the Supreme Court in *Brown*, while Judges Mize and Cameron were apparently determined to thwart it.

195. Judge Motley made note of the "critical role played by the Fifth Circuit Court of Appeals in implementing *Brown* in the Deep South," making particular mention of Chief Judge Tuttle, Judge Wisdom, Judge Rives, and Judge Brown. Motley, Equal Justice, supra note 25, at 190–91. As she put it, "The task before them, particularly from 1960 to 1968, was one the federal Courts of Appeal had never anticipated. They never expected to be on the front line of the last battle of the Civil War." Id.

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