Part ONE

**U.S. Supreme Court**
**UNITED STATES v. BARNETT, 376 U.S. 681 (1964)**
**376 U.S. 681**
**Decided April 6, 1964.**

This proceeding arose from the efforts of a Negro to gain admission as a student to the University of Mississippi. The Court of Appeals, sua sponte, appointed the Attorney General or his assistants to prosecute this criminal contempt proceeding under Rule 42 (b) of the Federal Rules of Criminal Procedure against the Governor and Lieutenant Governor of Mississippi for disobeying injunctive orders issued by the Court of Appeals and the District Court. The alleged contemners demanded trial by jury and the Court of Appeals, being evenly divided, certified to this Court the question whether they were so entitled.

Held: The alleged contemners are not entitled to a jury trial.

1. On the facts certified, there is no statutory right to trial by jury. Pp. 690-692.

2. On the facts certified, there is no constitutional right to trial by jury. Pp. 692-700.

MR. JUSTICE CLARK delivered the opinion of the Court.

This proceeding in criminal contempt was commenced by the United States upon the specific order, sua sponte, of the Court of Appeals for the Fifth Circuit. Ross R. Barnett, Governor of the State of Mississippi at the time this action arose, 1 and Paul B. Johnson, Jr., Lieutenant Governor, stand charged with willfully disobeying certain restraining orders issued, or directed to be entered, by that court. Governor Barnett and Lieutenant Governor Johnson moved to dismiss, demanded a trial by jury and filed motions to sever and to strike various charges. The Court of Appeals, being evenly divided on the question of right to jury trial, has certified the question 2 to this Court under the authority of 28 U.S.C. 1254 (3). 330 F.2d 369. We pass only on the jury issue and decide that the [376 U.S. 681, 683] alleged contemners are not entitled to a jury as a matter of right.

The proceeding is the aftermath of the efforts of James Meredith, a Negro, to attend the University of Mississippi. Meredith sought admission in 1961 and, upon refusal, filed suit in the United States District Court for the Southern District of Mississippi. That court denied relief, but the Court of Appeals reversed and directed the District Court to grant the relief prayed for. Meredith v. Fair, 305 F.2d 343. The mandate was stayed by direction of a single judge of the Court of Appeals, whereupon, on July 27, the Court of Appeals set aside the stay, recalled the mandate, amended and reissued it, including its own injunctive order "enjoining and compelling" the Board of Trustees, officials of the University and all persons having knowledge of the decree to admit Meredith to the school. On the following day the Court of Appeals entered a separate and supplemental "injunctive order" directing the same parties to admit Meredith and to refrain from any act of discrimination relating to his admission or continued attendance. By its terms, this order was to remain in effect "until such time as there has been full and actual compliance in good faith with each and all of said orders by the actual admission of [Meredith] . . . ." After a

series of further delays, the District Court entered its injunction on September 13, 1962, directing the members of the Board of Trustees and the officials of the University to register Meredith.

When it became apparent that the decrees might not be honored, the United States applied to the Court of Appeals on September 18 for permission to appear in the Court of Appeals in the case. This application was granted in the following terms:

*"IT IS ORDERED that the United States be designated and authorized to appear and participate as amicus curiae in all proceedings in this action before [376 U.S. 681, 684] this Court and by reason of the mandates and orders of this Court of July 27, 28, 1962, and subsequently thereto, also before the District Court for the Southern District of Mississippi to accord each court the benefit of its views and recommendations, with the right to submit pleadings, evidence, arguments and briefs and to initiate such further proceedings, including proceedings for injunctive relief and proceedings for contempt of court, as may be appropriate in order to maintain and preserve the due administration of justice and the integrity of the judicial processes of the United States."*

Meanwhile, the Mississippi Legislature had adopted an emergency measure in an attempt to prevent Meredith from attending the University, but on September 20, upon the Government's application, the enforcement of this Act was enjoined, along with two state court decrees barring Meredith's registration. On the same day Meredith was rebuffed in his efforts to gain admission. Both he and the United States filed motions in contempt in the District Court citing the Chancellor, the Registrar and the Dean of the College of Liberal Arts. After a hearing they were acquitted on the ground that the Board of Trustees had stripped them of all powers to act on Meredith's application and that such powers were in Governor Barnett, as agent of the Board.

The United States then moved in the Court of Appeals for a show-cause order in contempt against the Board of Trustees, based on the order of that court dated July 28. An en banc hearing was held at which the Board indicated that it was ready to admit Meredith, and on September 24 the court entered an order requiring the Board to revoke its action appointing Governor Barnett to act as its agent. The order also required the Registrar, Robert B. Ellis, to be available on September 25 to admit Meredith. [376 U.S. 681, 685]

On the evening of September 24, the United States filed an ancillary action to the Meredith v. Fair litigation seeking a temporary restraining order against the State of Mississippi, Governor Barnett, the Attorney General of Mississippi, the Commissioner of Public Safety and various lesser officials. This application specifically alleged that the Governor had implemented the State's policy of massive resistance to the court's orders, by personal action, as well as by use of the State's various agencies, to frustrate and destroy the same; that the Governor's action would result in immediate and irreparable injury to the United States, consisting of impairment of the integrity of its judicial processes, obstruction of the administration of justice and deprivation of Meredith's declared rights under the Constitution and laws of the United States. On the basis of such allegations and at the specific instance of the United States as the sole moving party and on its own behalf, the Court of Appeals issued a temporary restraining order at 8:30 a.m. on the 25th against each of these parties restraining them from performing specific acts set out therein and from interfering with or obstructing by any means its order of July 28

and that of the District Court of September 13. Thereafter the United States filed a verified application showing that on the afternoon of the 25th Governor Barnett, "having actual knowledge of . . . [the temporary restraining order], deliberately prevented James H. Meredith from entering the office of the Board of Trustees . . . at a time when James H. Meredith was seeking to appear before Robert B. Ellis in order to register . . . and that by such conduct Ross R. Barnett did wilfully interfere with and obstruct James H. Meredith in the enjoyment of his rights under this Court's order of July 28, 1962 . . . all in violation of the terms of the temporary restraining order entered by the Court this day." The court then entered a show-cause order in contempt against Governor Barnett requiring him to appear on September [376 U.S. 681, 686] 28. On September 26, a similar order was issued against Lieutenant Governor Johnson requiring him to appear on September 29. On September 28, the Court of Appeals, en banc and after a hearing, found the Governor in civil contempt and directed that he be placed in the custody of the Attorney General and pay a fine of $10,000 for each day of his recalcitrance, unless he purged himself by October 2. On the next day Lieutenant Governor Johnson was found in contempt by a panel of the court and a similar order was entered with a fine of $5,000 a day.

On September 30, President Kennedy issued a proclamation commanding all persons engaged in the obstruction of the laws and the orders of the courts to "cease and desist therefrom and to disperse and retire peaceably forthwith." 76 Stat. 1506. The President also issued an Executive Order dispatching a force of United States Marshals and a detachment of the armed forces to enforce the court's orders. On September 30, Meredith, accompanied by the Marshals, was moved into a dormitory on the University campus and was registered the next day. Although rioting broke out, order was soon restored, with some casualties, and Meredith carried on his studies under continuous guard until his graduation.

On November 15, 1962, the Court of Appeals, sua sponte, appointed the Attorney General or his designated assistants to prosecute this criminal contempt proceeding against the Governor and Lieutenant Governor pursuant to Rule 42 (b) of the Federal Rules of Criminal Procedure. On application of the Attorney General, the Court of Appeals issued a show-cause order in criminal contempt based on the Court of Appeals' temporary restraining order of September 25, its injunctive order of July 28, and the District Court's order of September 13. It is out of this proceeding that the certified question arises.

As we have said, the sole issue before us is whether the alleged contemners are entitled as a matter of right to a [376 U.S. 681, 687] jury trial on the charges. We consider this issue without prejudice to any other contentions that have been interposed in the case and without any indication as to their merits.

{the court found no right to a jury trial}

Part TWO

346 F.2d 99

**UNITED STATES of America v. Ross R. BARNETT and Paul B. Johnson, Jr.**

**United States Court of Appeals Fifth Circuit.**

May 5, 1965.

ORDER
Before TUTTLE, Chief Judge, and RIVES, JONES, BROWN, WISDOM, GEWIN, and BELL, Circuit Judges.
RIVES, JONES, GEWIN and BELL, Circuit Judges:
CIVIL CONTEMPT
1

This Court, in September 1962, entered its findings of fact, conclusions of law, and judgments of civil contempt adjudging Ross R. Barnett and Paul B. Johnson, Jr., in civil contempt of the temporary restraining orders of this Court entered September 25, 1962. There has since been substantial compliance with this Court's orders. It therefore appears that no further proceedings in civil contempt are needed, and that it is appropriate to enter an order formally terminating the civil contempt proceedings.
CRIMINAL CONTEMPT
2

Criminal contempt is a *sui generis* proceeding for the protection of the integrity of the Court. The criminal contempt proceedings against Ross R. Barnett and Paul B. Johnson, Jr., were instituted pursuant to the order and direction of this Court of November 15, 1962. (J. Gewin dissenting). Those proceedings are, therefore, within the control of the Court and the Court has the power and authority to order them dismissed.[1]
3

At the present time no sufficient reasons exist for the further prosecution of the proceedings against Barnett and Johnson. In the light of substantial compliance with the Court's orders, considerations of respect for the Court do not require the further prosecution of the criminal contempt proceedings. Nor does such further prosecution appear necessary for the purpose of deterring others from committing offenses like or similar to the alleged acts of contempt. The Civil Rights Act of 1964 has been generally recognized as creating a status under which the "law of the land" is now beyond question. Indeed there has been widespread, voluntary compliance with the provisions of said Act. It is highly improbable that other persons will hereafter commit acts similar to those herein charged.
4

The lapse of time since this Court ordered the criminal contempt proceedings to be instituted, and the changed circumstances and conditions have rendered the further prosecution of criminal contempt proceedings unnecessary. The rationale at least in part of Hamm v. City of Rockhill, 1964, **379 U.S. 306**, 315, 317, 85 S.Ct. 384, 391, 13 L.Ed.2d 300, where the Civil Rights Act of 1964 was applied retroactively to abate state sit-in prosecutions, was based on the purpose of the Act "to obliterate the effect of a distressing chapter of our history." It was held that no public interest was to be served in continuing the prosecution. And so it is here. In what we consider an appropriate application of restraint to judicial power, we close out another part of the same chapter.
5

It is fortunate that we can so conclude because there may be no fair alternative course. Jury trial as a matter of right has been ruled out by the Supreme Court. For reasons which need not

be stated, jury trial as a matter of discretion would not be granted by majority vote of this Court. For the same acts for which they stand charged with criminal contempt, the defendants have already been tried and adjudged by this Court to be in civil contempt.[2] This Court has already found against them on all of the elements of criminal contempt, excepting only that of intent, willfulness. That state of mind must be determined by inference from evidence, most if not all of which has been introduced and considered by the Court in the civil contempt proceedings. While we know that every judge of this Court would do his conscientious best to try the criminal contempt proceedings fairly and impartially, we are doubtful, to say the least, whether we and the other judges may not have formed a fixed opinion that the defendants are guilty.[3] Thus some, or all of the present membership of this Court may be disqualified from sitting on a trial on the merits of these criminal contempt charges.[4] The statute[5] makes no provision for any replacement judge to sit on this en banc court and we doubt whether one can properly be devised by judicial invention. It follows that a fair trial on the merits is the subject of doubt, and dismissal of the criminal proceeding is the only course open that is clearly consistent with fundamental fairness.
6

The civil contempt judgments will stand but no sanctions will be imposed. The criminal proceeding is dismissed for the reasons stated above.
7

It is so ordered.
8

TUTTLE, Chief Judge, and JOHN R. BROWN and WISDOM, Circuit Judges (dissenting).

TUTTLE, Chief Judge (dissenting):

With deference, I dissent. This Court, on January 4, 1963 commenced criminal contempt proceedings against Ross Barnett and Paul Johnson, Jr., upon the following assertions, among others:
10

"Probable cause has been made to appear from the application of the Attorney General filed December 21, 1962, in the name of and on behalf of the United States that on September 25, 1962, Ross R. Barnett, having been served with and having actual notice of this Court's temporary restraining order of September 25, 1962, wilfully prevented James H. Meredith from entering the offices of the Board of Trustees of the University of Mississippi in Jackson, Mississippi, and thereby deliberately prevented James H. Meredith from enrolling as a student in the University pursuant to this Court's order of July 28, 1962; that on September 26, 1962, Paul B. Johnson, Jr., acting under the authorization and direction of Ross R. Barnett, and as his agent and as an agent and officer of the State of Mississippi, and while having actual notice of the temporary restraining order of September 25, 1962, wilfully prevented James H. Meredith from entering the campus of the University of Mississippi in Oxford, Mississippi, and thereby

deliberately prevented James H. Meredith from enrolling as a student in the University, pursuant to the orders of this Court. * * *"
11

As the Court believed then I believe now: the charges were sufficiently grave to require a trial. The gravity of the charges was enhanced, not lessened, by the fact that they were against a governor and lieutenant governor of a state.
12

I agree that the Court now has full power to continue the prosecution or to dismiss it without more. I fully respect the judgment of those who believe the public interest, including the integrity of the judicial system, calls now for a dismissal. I do not share that judgment. As I believed then, I believe now, that the public interest requires that a trial be held and that the guilt or innocence of these two respondents be determined.