

# HEADNOTES



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# Constance Baker Motley's Greatest Legal Battle: James Meredith's Admission to Ole Miss

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In January 2022, President Biden reaffirmed his vow to appoint a Black woman to the Supreme Court—a promise later fulfilled with his nomination of Justice Ketanji Brown Jackson to fill the seat held by Justice Stephen Breyer.

January 2022 also saw the publication of a biography of the first Black woman appointed to a federal court: Constance

Baker Motley, who worked with Thurgood Marshall at the NAACP Legal Defense Fund (LDF). Motley served as a district judge in the Southern District of New York from 1966 to 2005. The book is *Civil Rights Queen* by Tomiko Brown-Nagin (Pantheon). Motley's autobiography, *Equal Justice Under Law*, was published in 1998 (Farrar, Straus and Giroux). Far and away the most riveting parts of each book describe Motley's representation of James Meredith in his effort to be admitted to the University of Mississippi.

In January 1961, Meredith, an Air Force veteran, sought the assistance of the LDF to gain his admittance. Marshall, soon to join the Second Circuit, thought Meredith was crazy. He believed Mississippi was in a class by itself among recalcitrant southern states. Indeed, he feared Meredith might not survive for long after suit was filed. If that weren't enough, he told Motley that a Black woman should handle the case because she would be less likely to face lynching than a man. With that ominous background, Motley went to work.

The lawsuit was filed in May 1961 and landed in the courtroom of Judge Sidney Mize, an avowed racist Motley knew well from prior litigation. There was much foot-dragging by Mize in scheduling a hearing. Then Motley was refused

straightforward discovery, like the deposition of the registrar of the college. And she was treated with outright disrespect by counsel for the state.

Mississippi's basic defense was that Meredith had not been rejected because of race—a dubious contention given that Ole Miss had never admitted a Black student. Rather, the state claimed Meredith's application was defective because he had not submitted the required five recommendation letters from alumni. But the registrar had to concede at the preliminary injunction hearing that whites had been admitted without the letters. And this "requirement" had been established after *Brown v. Board of Education* in order to thwart desegregation.

On December 12, 1961, Mize accepted the state's explanation and found Meredith's rejection attributable to an incomplete application. Incredibly, it took only one month for the Fifth Circuit to reverse. Judge John Minor Wisdom noted that the case had been tried in an "eerie atmosphere of never-never land" and that Motley had been "severely circumscribed from presenting her case."

The court of appeals concluded that Meredith had submitted a proper application and that the alumni letter requirement was a denial of equal protection.

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The panel also took judicial notice that Mississippi public education was racially segregated. But because the record before it was so incomplete, the court denied a preliminary injunction and remanded for further consideration.

The second hearing took place in January 1962. Once again, Mississippi officials denied they were motivated by race. Meredith was a “trouble maker,” the state claimed, though Motley pointed out that this was the classic charge made against Blacks trying to integrate southern colleges. The university’s counsel aggressively cross-examined Meredith, venting blatant racism and highlighting material from Meredith’s Air Force file that administrators had not even seen before rejecting him.

Mize again found no discrimination, and the Fifth Circuit again reversed. It specifically rejected the “trouble maker” rationale and ordered Mississippi to admit Meredith at the beginning of the fall semester.

In ordinary circumstances, that would have been the end of the story. But it was not to be that easy for Meredith and Motley.

Fifth Circuit Judge Ben Cameron, another avowed segregationist, entered an order staying the court’s decision. That was remarkable because Cameron had not been on the panel that had heard Meredith’s appeal. The real panel vacated Cameron’s order, but, undeterred, Cameron continued issuing stays barring Meredith’s admission. The panel with jurisdiction over the case, in turn, kept vacating Cameron’s orders. With astonishment, Judge Wisdom called it “unthinkable that a judge who was not a member of the panel should be allowed to frustrate the mandate of the Court.” Finally, Justice Hugo Black intervened, vacated all of Cameron’s stays, and ordered Meredith’s admission.

Undaunted, the state continued to wage all-out efforts to prevent Meredith from enrolling. Mississippi’s governor, Ross Barnett, vowed to resist the order and stood in the door of the main campus building to bar Meredith’s first registration attempt. Barnett’s grandstanding touched off mass protests from white Mississippians, including taunting and

jeering at Meredith, in which federal marshals and rioters were injured. President Kennedy was finally forced to nationalize the state guard. With the protection of federal marshals and 16,000 federal troops, Meredith was finally registered. He remained under federal protection the entire time he was a student at the university—from September 1962 to August 1963.

As a trial lawyer, Motley had stood firm before a federal judge who treated her with disrespect. She created a record sufficient for an appellate court to enter final judgment for her client. She had to deal with an out-of-control Fifth Circuit judge not even assigned to her case, successfully persuaded the Supreme Court to grant relief in her favor, listened to the president of the United States give a major TV address explaining why federal troops were being deployed to assist her client, and then witnessed those troops effectuate the order she won. No trial lawyer has come close to this remarkable experience. ■