

OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE
THE SUPREME COURT
OF THE
UNITED STATES

CAPTION: UNITED STATES, Petitioner, v. RAY MABUS

GOVERNOR OF MISSISSIPPI, ET AL. and

JAKE AYERS, ET AL., Petitioners, v. RAY MABUS,

GOVERNOR OF MISSISSIPPI, ET AL.

CASE NO: 90-1205 and 90-6588

PLACE: Washington, D.C.

DATE: Wednesday, November 13, 1991

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1 IN THE SUPREME COURT OF THE UNITED STATES

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3 UNITED STATES, :

4 Petitioner, :

5 v. : No. 90-1205

6 RAY MABUS, GOVERNOR OF :

7 MISSISSIPPI, ET AL. :

8 and :

9 JAKE AYERS, ET AL., :

10 Petitioners, :

11 v. : No. 90-6588

12 RAY MABUS, GOVERNOR OF :

13 MISSISSIPPI, ET AL. :

14 -----X

15 Washington, D.C.

16 Wednesday, November 13, 1991

17 The above-entitled matters came on for oral

18 argument before the Supreme Court of the United States at

19 10:00 a.m.

1 APPEARANCES:

2 ALVIN O. CHAMBLISS, JR., ESQ., Oxford, Mississippi, on
3 behalf of

4 the Private Petitioners.

5 KENNETH W. STARR, ESQ., Solicitor General, Department of
6 Justice, Washington, D.C., on behalf of the Federal
7 Petitioner.

8 WILLIAM F. GOODMAN, JR., ESQ., Special Assistant Attorney
9 General

10 of Mississippi, Jackson, Mississippi, on behalf of
11 the Respondents.

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| 5 | KENNETH W. STARR, JR., ESQ. | |
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| 7 | WILLIAM F. GOODMAN, JR., ESQ. | |
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1 PROCEEDINGS

2 (10:00 a.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument
4 first this morning in No. 90-1205, United States against
5 Ray Mabus, No. 90-6588 Jake Ayers v. Mabus.

6 Mr. Chambliss?

7 ORAL ARGUMENT OF ALVIN O. CHAMBLISS, JR.

8 ON BEHALF OF THE PRIVATE PETITIONERS

9 MR. CHAMBLISS: Mr. Chief Justice and may it
10 please the Court:

11 I propose to address historical linkage --
12 configuration title VI and Fourteenth Amendment. In 1844,
13 the State chartered the University of Mississippi for
14 white only. This began a long line of practices
15 minimizing the participation of black people in the system
16 of higher education. Alcorn State University was
17 established 23 years later, and for 50 years that school
18 was essentially a primary and secondary school.

19 During this time, from 1840 to 1940, the
20 majority population of State of Mississippi was black.
21 Thereafter, the State established four other white schools
22 with very broad scopes. When the State was given what is
23 now Jackson State University, its initial reaction was to
24 downgrade that college to a high school, and when it
25 reappeared again several years later, it, too, had a very

1 narrow educational offering.

2 The State freely admits in 1954 that it was
3 spending less money for its black institutions, and in
4 fact was sending its graduates off for graduate school
5 education 16 years after this Court's decision in the
6 Canada case.

7 It is interesting to note that in the seventies
8 and the eighties, now, when the State claims to have acted
9 positively, the State action reduced black undergraduate
10 enrollment by 14 percent and caused the number of degrees
11 received by blacks to decrease by almost 400 from back --
12 1990 -- from that in 1981, according to -- Government
13 published report. Today, the college-going and degree-
14 granting rates for blacks are on a downward trend, and
15 this is due to discrimination. This, Your Honor, is the
16 history Mississippi wants to walk away from.

17 The historical discrimination to black -- hurt
18 black people in five different ways. Equal access -- they
19 were shut out. It segregated them, and then when they got
20 in they got lesser programs, funding, facilities,
21 reputation. And it denied black people leadership
22 opportunities and employment opportunities in the five
23 white schools, which were the schools of choice, so to
24 speak.

25 But now, if this case is dismissed, I want

1 every -- I don't say -- if it's dismissed, but yet we show
2 clearly in seven short pages in our reply brief that black
3 people still are experiencing those harms, and the system
4 of -- rooted in the days of apartheid in Mississippi still
5 exist. Nothing has changed. You have the misuse of the
6 ACT. The university center dominated by (inaudible)
7 junior college, in addition to three white schools, still
8 stands in the shadow of Jackson State University.

9 You have black people still feeling hostility at
10 the University of Mississippi, and basically the system is
11 substantially intact from 1962 until now; 99 percent of
12 the white students go to white schools.

13 Now, the en banc court had an opportunity to deal
14 with the constitutional -- I mean, to not have this Court
15 deal with the constitutional question. It relegated our
16 title VI claim to a footnote, but to us this claim came
17 first, it's independent, and I think it's dispositive on
18 this record.

19 QUESTION: So you think the Court should resolve
20 the Title VI claim before it gets to the constitutional
21 claim?

22 MR. CHAMBLISS: Yes, Your Honor. I think that
23 in title VI we have a plan of compliance. We can measure
24 promises versus performance. For an example --

25 QUESTION: Is the test under title VI any

1 different than it would be under the constitutional claim,
2 do you think?

3 MR. CHAMBLISS: Well, Your Honor, I don't think
4 so. I think that title VI at least is not any narrower.
5 I think that -- but on title VI, you have examples. You
6 see, courts are very reluctant to get into areas they
7 don't know -- well, forgive me for that. They don't want
8 to get into areas that -- we must say higher education is
9 different, and we think --

10 QUESTION: Let me pursue this just --

11 MR. CHAMBLISS: Yes.

12 QUESTION: -- one minute with you. Does this
13 case turn basically on what are the appropriate remedies,
14 given this history? Does it turn on that?

15 MR. CHAMBLISS: I think so, Your Honor. I think
16 so.

17 QUESTION: And are the remedies any different
18 under title VI than they would be under the constitutional
19 claim?

20 MR. CHAMBLISS: I --

21 QUESTION: Is there any different standard
22 employed?

23 MR. CHAMBLISS: Yes. Well, the standard --
24 yes -- yes, it is, and I'll tell you the reason why, Your
25 Honor. Under title VI you -- they -- they're basically

1 three aspects that I think that this Court could look at
2 that would help the Court.

3 U.S. Exhibit No. 1, for an example, the first
4 exhibit is a plan of compliance, promises versus
5 performance. You can measure what the State basically
6 said it was going to do and what it actually did do.

7 But aside from that, you have a lot of
8 interpretative regulation. You have the revised criteria.
9 Now, it's not law, the regulations, which two co-equal
10 branches of Government expressed their views, but the
11 revised criteria -- on the executive branch, but the
12 revised criteria tells you -- for an example, it says,
13 when you go into higher education you want -- don't want
14 to put the burden of desegregation on the black colleges.

15 It talks in terms of how you could do various
16 recruiting mechanism and how you can put together programs
17 to overcome the prior effects of racial discrimination,
18 but yes, I think that regulation section 100-3(b)(6)(i),
19 Your Honor, is very instructive in this case.

20 QUESTION: Mr. Chambliss, I'm interested in
21 Justice O'Connor's question. Don't you think the two
22 issues, title VI and the constitutional issue, are so
23 intertwined that they may be handled together?

24 MR. CHAMBLISS: I --

25 QUESTION: I take it you don't?

1 MR. CHAMBLISS: Well, Your Honor, let me just
2 say it like this. The way I look at it, the -- title VI
3 is an independent claim, and even though you may say the
4 standards are the same, they're not coterminous in a sense
5 that under title VI the Government has a lot of regulation
6 that's specific and -- not on this regulation we don't
7 have to deal with intent.

8 But for an example, if you look at the Guardian
9 case you -- it was similar to the regulation, but it was
10 (b) (2), and of course, impact versus intent standing --
11 the Constitution, more or less, intent.

12 But we're not talking here, now, about impact or
13 intent. I guess what I'm saying is that when you start
14 looking at title VI in this area, for example, there are
15 some implications in terms of Governors and advisory
16 committees. Now, again, back in the old days -- I'm sorry
17 about that, but back in the earlier days, under
18 desegregation law they used to have advisory biracial
19 committees, but in higher education I'm not sure that
20 would work that way, but they do give examples of how you
21 can pull the community in.

22 So I guess to my mind it's a good possibility if
23 the Court decides the title VI you wouldn't bog the Court
24 down in a lot of stuff. And you've got the Department of
25 Education there that may want to get involved, and -- the

1 Louisiana case, which was different, but they went out and
2 got a master, and --

3 So I'm just saying I think that it would help
4 lower courts, and I think that if people look at the
5 constitutional standard the results under the Constitution
6 may -- in the long run I think the results are the same,
7 and that is to eliminate the vestiges of State-imposed
8 segregation, but I think that the means may be a little
9 different.

10 QUESTION: Mr. Chambliss, I'm interested in
11 what specific remedies you propose, and my quandary in
12 particular is this: do you want remedies that have the
13 effect of providing or leading to de facto integration, so
14 that the historically black universities won't be
15 overwhelmingly black and the historically white will not
16 be overwhelmingly white? Is that what you're looking for?

17 MR. CHAMBLISS: No, sir. What we looking for,
18 and I hope I answer the way you can --

19 QUESTION: Because I mean, if you're looking for
20 that, you would adopt a quite different remedy than, for
21 example, strengthening the curriculums in the historically
22 black schools from the -- if the de facto segregation that
23 now exists is largely -- is largely the result of personal
24 preference --

25 MR. CHAMBLISS: No -- no sir.

1 QUESTION: -- the worst thing to do would be to
2 establish a black university that is -- has the full
3 curriculum and is fully as good as what is now the
4 predominantly white university. That just invites the
5 society to segregate itself into everyone -- the blacks
6 going to one and the whites going to the other. Now, is
7 that the system you want, or do you want us --

8 MR. CHAMBLISS: No, sir.

9 QUESTION: You want us to destroy that system
10 and adopt policies that will --

11 MR. CHAMBLISS: Just -- oh, I'm sorry. Forgive
12 me. I didn't want to be rude.

13 QUESTION: Tell me -- tell me what you want.

14 MR. CHAMBLISS: Justice, I think that's a good
15 question; it's a very fair question, but I think we have
16 an adequate answer. You see, our objective -- and that's
17 why title VI is important. Our objective is better, more,
18 fair, desegregated education through a fair process. Now,
19 in my mind, you will always have some type of racial
20 identifiability in those campuses.

21 Of course, Bazemore said that's all right.
22 We -- but we do think that in our society black and whites
23 ought to go to the same school. You ought to have -- you
24 should not have, for an example, all of the
25 administrator -- in this record, for an example, 2 percent

1 of the white faculty is black, and 1 percent of the
2 administrators are black. It's one black, full-time
3 professor, the time of this record in the whole system.
4 In higher education, you are nothing unless you're tenured
5 and you're a professor and you vote. And yet the few
6 people there can't.

7 I'll reserve the rest of my time, if it please
8 the Court. Thank you.

9 QUESTION: Very good, Mr. Chambliss.

10 General Starr, we'll hear from you.

11 ORAL ARGUMENT OF KENNETH W. STARR

12 ON BEHALF OF THE FEDERAL PETITIONER

13 MR. STARR: Mr. Chief Justice, and may it please
14 the Court:

15 For many decades the State of Mississippi
16 created and then deliberately maintained a dual system of
17 higher education: one for whites, one for blacks.

18 There are, to our mind, at least three clear
19 signs that that system has not been dismantled. The first
20 is the way students enter the system: a discriminatory
21 admissions test that channels black students to
22 traditionally black institutions.

23 Secondly --

24 QUESTION: The test is applied to everybody,
25 blacks and whites, isn't it, General Starr?

1 MR. STARR: Yes, it is, Mr. Chief Justice.

2 QUESTION: You are talking about a
3 discriminatory impact?

4 MR. STARR: I am talking about a discriminatory
5 effect in view of this test having first been imposed in
6 the wake of James Meredith's attempt to enter Old Miss.
7 That was the first time that it was imposed, and it is
8 clear and undisputed that it was imposed initially out of
9 discriminatory intent.

10 Now how does it operate today? It operates
11 today by virtue of the different, minimum standards of the
12 traditionally white institutions versus the traditionally
13 black institutions, to channel black students to the
14 latter institutions, coupled with -- and this is what the
15 State of Mississippi will not be able adequately to
16 explain, and that is the use, Mr. Chief Justice, of that
17 test alone, in the face of advice to the contrary from the
18 ACT program itself, which says, do not use this test
19 alone.

20 One of the documents in the record --

21 QUESTION: You want -- whatever test you are
22 proposing, you would want to apply to all the
23 universities?

24 MR. STARR: Of course. It should, presumably
25 the --

1 QUESTION: Now there is a lower standard to get
2 into the so-called black university?

3 MR. STARR: That is correct, there is a lower
4 standard --

5 QUESTION: And a higher standard --

6 MR. STARR: That is correct --

7 QUESTION: And you would lower the standards for
8 all?

9 MR. STARR: At the remedy stage, that is
10 certainly one realistic possibility. In our --

11 QUESTION: What do you propose?

12 MR. STARR: What I am proposing is that they
13 take grades and other aspects of that student's background
14 into account.

15 QUESTION: Right across the board, at all
16 universities?

17 MR. STARR: Absolutely. It makes no sense --
18 now they are saying, well, we are worried about grade
19 inflation here in Mississippi, and that's what the
20 district court found. It falls apart. The record does
21 not support that. At page 18 of our brief we have record
22 citations that show that ACT studies in Mississippi show
23 that students are better, more fairly, more accurately
24 evaluated by taking something rather obvious into account:
25 high school grades.

1 QUESTION: Were there any district court
2 findings on these issues, General Starr?

3 MR. STARR: Yes, there were. The district court
4 found that there was no discriminatory intent at this time
5 in using this test --

6 QUESTION: Are you challenging that finding?

7 MR. STARR: I am, but more than that --

8 QUESTION: Because it is clearly erroneous?

9 MR. STARR: Yes, but I have a threshold problem
10 with what the district court did, Mr. Chief Justice. The
11 district court got it wrong in terms of the standard.

12 I don't have to survive a rule 52 challenge
13 because what the district court said was, all the State
14 has to do is to say, we adopt race-neutral admissions and
15 other operational policies, and that is wrong.

16 Judge Higgenbotham got it right in his dissent
17 when he said, as this Court has said, that standard is
18 dismantlement. You must dismantle --

19 QUESTION: I was asking you about what I thought
20 was a factual finding of the district -- whether this
21 particular test discriminates or was intended to
22 discriminate at the present time.

23 And I would think that a district court factual
24 finding on that would exist independently of what standard
25 it applied to say what the universities had to do.

1 MR. STARR: I think that the finding can stand,
2 but the finding, nonetheless, fails to take into account
3 the standard. I think this is a very important aspect
4 that may be dividing us.

5 And that is, if the standard, the legal standard
6 the court is applying is, is there an intent to
7 discriminate and there is a finding that there is no
8 intention to discrimination, then I am not here to
9 challenge that particular finding.

10 But I am here to challenge the standard.

11 QUESTION: You said there was such a finding in
12 this case?

13 MR. STARR: There was such a finding in this
14 case.

15 QUESTION: You are willing to leave that finding
16 as is --

17 MR. STARR: Correct.

18 QUESTION: -- but you are challenging what
19 consequences flow from it?

20 MR. STARR: I am also challenging again -- that
21 is one way of putting it. What I am trying to submit to
22 the Court is that it is the standard the Court applied,
23 which was not, is this a remnant of the prior system which
24 is having, in the way that it's being used, segregative
25 effect and it's easy to eliminate it and there is no

1 educational justification for its use of this particular
2 test.

3 That is one aspect of the -- our standard is
4 unfettered choice. That is the key, we agree. Bazemore
5 sets the standard. Another aspect of --

6 QUESTION: Well, General Starr, let me ask you a
7 little about that. Why is it you limit the duty of the
8 State to only removing the vestiges of discriminatory
9 State action that fetters student choice, if in fact, the
10 State has caused the constitutional violation in the first
11 place?

12 Why doesn't it have an obligation under Brown to
13 eliminate all vestiges of discrimination whether or not it
14 affects directly student choice? For instance, funding of
15 the black universities and that sort of thing?

16 MR. STARR: Well, we do think that this Court in
17 Bazemore said that where there is not State compulsion,
18 the State make the choice for you and assigns you to a
19 particular school, then the standard is voluntary and
20 unfettered choice.

21 That is to say, yes, dismantlement -- the two
22 are not in conflict, but --

23 QUESTION: Did Bazemore involve a situation
24 where it was determined that the State had caused the
25 discrimination?

1 MR. STARR: Yes. The State had in fact assigned
2 individuals to particular 4-H clubs on grounds of race.
3 This case involves a variety of educational services that,
4 as Judge Higgenbotham pointed out, when we look to, and
5 this comes to your point, Justice O'Connor, when we look
6 at two aspects -- the unnecessary program duplication that
7 the district court found was inefficient and wasteful.
8 And there are two institutions in the impoverished delta
9 of Mississippi that in our judgment powerfully shows the
10 problem.

11 Delta State, historically white; Mississippi
12 Valley, historically black. The facilities are quite
13 dissimilar. The library at one is twice the size of the
14 library at the traditionally black institution. The
15 problem with the failure to dismantle is that it is
16 unrealistic to expect persons with choice to choose to go
17 to an institution that has continued to suffer
18 deprivations of funding and facilities and where there is
19 unnecessary program duplication --

20 QUESTION: Isn't that a way of saying, Mr.
21 Starr, that that means that Bazemore is inapplicable to
22 this context?

23 MR. STARR: I don't think it's inapplicable. I
24 think it's just the standard --

25 QUESTION: I would have thought you would have

1 said that Bazemore involved 4-H clubs which are very
2 easily changed. The Mississippi university system
3 involves a very complex pattern of entrenched segregation,
4 with segregated faculties, segregated facilities, unequal
5 facilities.

6 MR. STARR: We do say that, exactly, that is our
7 submission. Our submission is the --

8 QUESTION: Then it seems to me that Bazemore is
9 not of much help.

10 MR. STARR: Well, it -- I don't -- argue with
11 the Court about the applicability of its own precedent.
12 The point that we draw from Bazemore is that the standard
13 is whether the State is introducing racial factors that
14 fetter choice.

15 I quite agree with your distinctions of the 4-H
16 situation and higher education, quite right. But the
17 standard is that of voluntary choice. Is the individual
18 able to choose free of racial factors that have been
19 introduced by the State?

20 QUESTION: Here is the problem. You said it is
21 unreasonable to expect people to want to go those schools
22 that are under-funded, and I would say, yes, one would
23 expect them then to go to the better schools, to Old Miss
24 and the schools that have better funding.

25 So that is what is such a puzzlement, why have

1 not more of the blacks who are qualified to go to those
2 schools chosen to there, or the faculty? Once there has
3 been this finding that there is no discrimination against
4 faculty or students, one comes perhaps to the conclusion
5 that much of this is a question of personal choice and
6 personal preference.

7 And the solution that you propose, namely to
8 have duplicative offerings in various schools and not to
9 have one school that is less good than another one, will
10 produce just the opposite result of what I think you're
11 after.

12 Namely, it will simply reinforce the segregation
13 of the two institutions.

14 MR. STARR: Two points quickly, 70 percent is
15 not choice. That is to say, given the admission standards
16 of Old Miss and the other historically white institutions,
17 70 percent of black students do not qualify for automatic
18 admissions.

19 They don't have that choice in terms of
20 automatic admissions. You'll hear from Mr. Goodman
21 through the brief and probably through what he is going to
22 say about all the affirmative action programs and so
23 forth. *Dothard v. Rawlinson*, we think is the complete
24 answer to that.

25 With respect to program duplication, Justice

1 Scalia, our submission is not that there should be a
2 perfection of duplication. Seven States -- Georgia, South
3 Carolina -- you have an amicus brief from Tennessee, has
4 shown this can work. How can it work?

5 You can dismantle that old system by putting new
6 programs at the traditionally -- the historically black
7 institution. We not saying that there has to be any
8 particular answer. That is to say, what the State should
9 do is identify its own needs, and then it should focus on
10 how the historically black institutions can support those
11 needs.

12 QUESTION: How does the installation of programs
13 at those schools increase the black enrollment at Old
14 Miss?

15 MR. STARR: It -- that may not at Old Miss, but
16 we are trying to desegregate an entire system and
17 dismantle the entire system. Let me give you a specific
18 example. The president of Jackson --

19 QUESTION: Then we are right back to Justice
20 Scalia's problem. You -- all you are doing is saying that
21 you want better facilities at the all black schools and
22 that will tend to make them all black.

23 MR. STARR: No. Don't forget my ACT argument.
24 You give me my ACT point and I will have many more
25 qualified blacks ready to go to Old Miss. You give me

1 that. So that is one answer to Old Miss.

2 With respect to building up the black
3 institutions, testimony in this trial showed that the
4 Jackson -- the president of Jackson State said to the
5 board of trustees, give us the social work program. That
6 most fundamentally fits our mission here. We are not
7 asking for a change of mission. We have been designated
8 as the urban institution, give us that program.

9 Instead, the board of trustees says, thank you
10 very much, we are sending it to Hattiesburg, to the
11 University of Southern Mississippi.

12 What the Department of Education has done, what
13 the Civil Rights Division has done is worked with States.
14 Seven States have fulfilled the plans of compliance that
15 Mr. Chambliss was speaking to in U.S. Exhibit 1. They
16 agreed to that. They fulfilled their obligations under
17 that plan, and they have come out from under that:
18 Georgia, South Carolina -- seven States have fulfilled
19 their obligations.

20 Mississippi has chosen to say, no, all we have
21 to do is raise neutrality, that suffices for our purposes,
22 and that -- we are prepared to litigate to the hilt.

23 QUESTION: Do you have any problem with the
24 academic standards for matriculation at Old Miss?

25 MR. STARR: Not the academic standards. In

1 fact, the core curriculum requirement is imposed across
2 the board.

3 Our objection to the admissions standards -- we
4 are not trying to intrude, but we are saying that you can
5 effectively eliminate right away -- you can do what all
6 the other States do: take high school grades into
7 account.

8 And again, the inflation of grade points is
9 illegitimate. The ACT's own studies in Mississippi
10 refuted that. That is just wrong, if they use the ACT in
11 consultation with high school grades, that will make an
12 enormous difference in terms of the fairness of this
13 system and of dismantlement.

14 Our submission is this: There must be a
15 dismantlement. It is undisputed that there was a dual
16 system. It was de jure, and as Judge Higgenbotham so
17 eloquently put it in his dissent, history, the history of
18 State action has worn deep traces in the face of higher
19 education in Mississippi.

20 QUESTION: But you are not insisting on the
21 Green standard, is that it?

22 MR. STARR: That's correct. Justice White --

23 QUESTION: You want just to dismantle whatever
24 you identify as the vestiges that fetter choice?

25 MR. STARR: Exactly right. That's our

1 submission.

2 QUESTION: How do you know whether they do or
3 not? You don't go around and interview people, I don't
4 suppose. You just think we ought to be able to recognize
5 -- you could just recognize that kind of a vestige when
6 you see it on the street?

7 MR. STARR: There are two very quick ones. I
8 think that our ACT argument is unanswerable. With respect
9 to program duplication, it has historically been the
10 position of the United States that one of the telltale
11 signs of a de jure system that hasn't been dismantled is
12 unnecessary program duplication. And it abounds in this
13 system and the district court said, it's wasteful, it's
14 inefficient, it makes no sense, but it's not for me to
15 tell Mississippi that it can't do it.

16 Why did the district court come to that
17 decision? It came to it because it applied the wrong
18 standard. It said all that we have to look to, Justice
19 White, is race neutrality. We don't need to ask the
20 question, has the State of Mississippi dismantled. Has it
21 eliminated those fetters to choice?

22 QUESTION: What if -- what would you have done
23 if you hadn't identified and thought that it was proved,
24 these two vestiges that fetter choice? Absent those and
25 yet everything was -- and yet there were black colleges.

1 and white colleges.

2 MR. STARR: There is no constitutional
3 impediment to a racially identifiable institution. There
4 may be other indicia of State action that is fettering
5 choice, including (inaudible) funding --

6 QUESTION: So if Mississippi does what you think
7 it ought to do, and there is still black colleges and
8 white colleges --

9 MR. STARR: We have no quarrel.

10 I thank the Court.

11 QUESTION: Thank you, General Starr.

12 Mr. Goodman, we'll hear now from you.

13 ORAL ARGUMENT OF WILLIAM F. GOODMAN JR.

14 ON BEHALF OF THE RESPONDENTS

15 MR. GOODMAN: Mr. Chief Justice, and may it
16 please the Court:

17 We feel like we come with a little extra baggage
18 because of our past. But we don't come that way today.
19 We recognize that one of the reasons you granted a writ is
20 that at one point in history Mississippi created public
21 colleges for whites and separate public colleges for
22 blacks. And you granted a writ to review whether today -
23 - today, there having been years of affirmative efforts to
24 overcome the past, you granted a writ to decide whether
25 today more than real freedom of choice is required.

1 When I listen to my friends, I wonder if they
2 recall that there has been a trial in this case. There
3 has been a full trial which dealt with Mississippi's good
4 faith affirmative efforts in higher education for some two
5 decades. And there's been a careful review by an en banc
6 court of appeals.

7 I've got a lot to try to cover. I would like to
8 cover first the contention that choice is not enough. I
9 would like to, second, speak to what is the legal
10 standard, what it is and what it is not. And I hope I
11 have time, thirdly, to respond to the petitioners' attempt
12 here to argue factual questions for the third time,
13 factual questions that have been resolved against them
14 right in the teeth of findings below, and that is the
15 issues that they continue to raise about admission
16 standards and university program offerings.

17 But first, what is the case about? You would
18 expect a case like this to turn on whether qualified black
19 students can today freely choose from among the respective
20 universities, whether they are large or small, whether
21 they are urban or rural. And so it should turn on there.
22 But happily, access to higher education in Mississippi is
23 an accomplished fact. And it has been for a long time.

24 Over one-third of the black university students
25 are in the five predominantly white institutions.

1 Mississippi University for Women, with the highest of our
2 woefully low admissions standards, is 19 percent black.
3 The University of Southern Mississippi, 14 percent black.
4 Mississippi State University, 13 percent black. The
5 University of Mississippi, 9 percent black.

6 Thousands of blacks have attended Delta State,
7 which petitioners emphasize is fairly close to Mississippi
8 Valley State University. Delta State University is 23
9 percent black. There are as many black students in the
10 five --

11 QUESTION: May I just ask about those figures?
12 Are those the figures shown by the record or are those
13 current figures?

14 MR. GOODMAN: They're current and they're almost
15 the same.

16 QUESTION: But the ones in the record don't show
17 those figures, do they?

18 MR. GOODMAN: They're awfully close to that,
19 Your Honor.

20 QUESTION: Well, I had a figure, the latest
21 figure for the University of Mississippi was 5.9 percent
22 black, in the record. Is there a later figure in the
23 record higher than 5.9 percent?

24 MR. GOODMAN: I'm sure there is, Your Honor.
25 That don't sound right to me. I thought the lowest was 7.

1 I could be wrong about that. Today's is 9.

2 QUESTION: Well, how are we going to verify that
3 today's figures, to be sure they're right?

4 MR. GOODMAN: We'll verify them however we need
5 to.

6 QUESTION: You criticize your opponent for
7 trying to retry the case and now you're giving us facts
8 that I understand are not part of the record.

9 MR. GOODMAN: Well, I apologize for that.

10 QUESTION: What does the record show?

11 MR. GOODMAN: The record shows that at the time
12 of the trial there was as many black students in the five
13 predominantly white schools as there are in Alcorn State
14 University and Mississippi State University combined.

15 The record shows that approximately one-third of
16 the black students that are in 4-year institutions are in
17 what's called a predominantly white institution. Another
18 approximate third is in Jackson State University. And the
19 final third is in Alcorn, or in Alcorn and Mississippi
20 Valley.

21 But choice is no longer the bottom line issue.
22 Let's be candid. The debate here today centers not on
23 choice, but on the three predominantly black universities.
24 There is and there has been substantial black presence in
25 the predominantly white institutions. The debate is

1 whether any institution can claim a constitutional right
2 to be a certain size or to offer certain programs or to be
3 the flagship.

4 Now the United States said in its opening brief
5 that it's students and not colleges who have equal --
6 entitlement to equal protection. And I'm not clear right
7 this minute whether the Government has changed its
8 position on that point or not.

9 We are not disputing the existence of excellent
10 cultural and societal reasons for preservation of the
11 black college. There are. We are not discounting
12 Mississippi's commitment to the enhancement of its
13 predominantly black institutions. The commitment is on
14 the record.

15 And this is right from the record. Jackson
16 State University has received mission enhancement for the
17 past 25 years. The United States expert went so far as to
18 put Jackson State in the forefront of predominantly black
19 institutions in this country. Jackson State is far better
20 resourced than Delta State or Mississippi University for
21 Women. Alcorn State is better resourced than Mississippi
22 University for Women.

23 The United States expert testified straight out
24 that the three predominantly black institutions have
25 received equitable facilities funding for 30 years. All

1 funding is based on genuine educational criteria, except
2 for one fact. The schools that are underfunded, the
3 schools that are treated the least favorably, financially,
4 according to their mission, are the three comprehensive
5 predominantly white institutions, but which incidentally,
6 collectively, are 12 percent black.

7 QUESTION: What do you mean by the term
8 "underfunding," "underfunded"?

9 MR. GOODMAN: That's a good question, sir. And
10 that's what we hear. The candid fact is that all of our
11 institutions are underfunded in the sense that they do not
12 receive --

13 QUESTION: You just used the term in argument a
14 moment ago. I want to know what you meant by it when you
15 used it.

16 MR. GOODMAN: When I think that all of our
17 institutions are underfunded because they don't get enough
18 to do the job we would like for them to do, the ones most
19 underfunded are the three predominantly white --

20 QUESTION: You still haven't told me what you
21 mean by the word "underfunded."

22 MR. GOODMAN: Insufficient money in the eyes of
23 educators to adequately do the best job with the programs
24 you have for the students.

25 QUESTION: So it's kind of -- not being

1 underfunded would be kind of an educational ideal?

2 MR. GOODMAN: Yes, sir.

3 QUESTION: You have enough money to --

4 MR. GOODMAN: Yes, sir. Our petitioner is
5 saying that disproportionate amounts of money should
6 follow black students. If so, a large part of that money
7 should be directed to the five predominantly white
8 institutions because there are many blacks enrolled there.

9 QUESTION: May I inquire? If the evidence
10 established that, at least historically, the predominantly
11 black universities were underfunded, perhaps not today,
12 but historically, with the result that there may be
13 deficiencies there in physical plant and other areas that
14 still remain today from that historical underfunding, and
15 if the facts showed that that was caused by State action,
16 do you think the remedy then has to address itself to
17 those present deficiencies that might have been caused by
18 prior discriminatory funding?

19 MR. GOODMAN: No, I do not.

20 In the first place --

21 QUESTION: I would have thought maybe that's
22 what our cases would have required in terms of remedy.

23 MR. GOODMAN: In the first place, the fact that
24 an institution is smaller and receives less money does not
25 mean that it is not an adequate institution.

1 A lot of us went to colleges that were very
2 small and did not think that we got an inadequate
3 education. The whole concept of higher education is built
4 on diversity. Larger schools, smaller schools, rural
5 schools, urban schools.

6 And the attempt that's coming now in this
7 lawsuit is an attempt to somehow say that every
8 institution is entitled to be a certain size or to have a
9 certain number of facilities or a certain number of
10 programs. And we dispute that.

11 QUESTION: Mr. Goodman, is there any distinction
12 between a school that is small or underfunded for -- as a
13 result of educational reasons in the past and a school
14 that is small and underfunded as a result of prior
15 segregation?

16 MR. GOODMAN: I don't know that I can -- that I
17 quite follow that, sir.

18 QUESTION: Well, your argument is that you
19 cannot or this Court cannot make judgments or individuals
20 cannot expect to attend fully-funded or better-funded
21 schools. And you give as examples Delta State being
22 underfunded.

23 My question is if a school is underfunded as a
24 result of prior segregation policies, is there any
25 difference between that school and its current condition

1 and the school that has never been discriminated against?

2 MR. GOODMAN: In today's world, no, because we
3 have absolute, genuine freedom of choice.

4 QUESTION: So your argument then would have been
5 that 20 years ago you had freedom of choice?

6 MR. GOODMAN: No, sir. That's not my argument.

7 But today we have freedom of choice and we've
8 had that finding. And we've had it for almost 20 years.

9 What the issue boils down to --

10 QUESTION: Let me follow up on Justice Thomas'
11 question.

12 Is it your position, then, that if the State of
13 Mississippi on a particular day in the 1960's says from
14 now on there are no racial barriers to going to any of our
15 schools, there's a uniform admission test, we are
16 presently not discriminating, nothing more is required of
17 it even though in the past the -- there were historically
18 black schools by law and by custom?

19 MR. GOODMAN: No, and not in the slightest.

20 And one of the things that I came up here to try
21 to say, and I'm glad you asked the question, is that good
22 lawyers who appeal cases often like to say for you what
23 your position is. And these gentlemen say that that is
24 our position. And that is not our position.

25 QUESTION: This is what the court of appeals

1 said your position was.

2 MR. GOODMAN: I don't think so.

3 QUESTION: It's page 26(a) of your -- that you
4 satisfy your constitutional obligation, quote, "by
5 discontinuing prior discriminatory practices and adopting
6 and implementing good faith, race-neutral policies and
7 procedure." But there is no affirmative action
8 obligation.

9 That last is my statement.

10 MR. GOODMAN: Yes, sir. And I don't agree with
11 that.

12 QUESTION: Oh, you don't defend that rationale
13 for the court of --

14 MR. GOODMAN: I do defend what the court of
15 appeals -- I don't think that's fairly stated as being the
16 sole rationale for what the court of appeals did.

17 QUESTION: If it were the sole rationale, would
18 you agree it's unacceptable?

19 MR. GOODMAN: No, sir, I would not. If I can
20 explain that because I think that's why we are here.

21 In the first place, factually, Mississippi has
22 never hidden her open access light under a bushel. What
23 this trial was about was the affirmative efforts that went
24 along with the process of doing away with discriminatory
25 practices, discontinuing those and adopting and

1 implementing new ones.

2 So as a matter of fact, there's anybody who
3 contends that all we did, and that we say that all in the
4 world we had to do, was wake up one day and announce that
5 we have new policies. Anyone who says that, candidly, has
6 not read this record and is, in effect, challenging the
7 integrity of the district court and, indeed, the en banc
8 court of appeals, because that's what we had a trial
9 about.

10 What we did -- let's talk about duty because
11 that's what, perhaps, the case is about. By what standard
12 is Mississippi's conduct to be judged? Certainly the
13 standard can't be dependent upon a certain statistical
14 racial balance at institutions within the system. And I
15 believe both of the petitioners concede that, although
16 they open their reply briefs with a statistical predicate.

17 The standard cannot be to put an obligation on
18 the State to control student choice. Surely the State is
19 not obliged to compel students to go to college one place
20 or another. Surely the State is not required to go to the
21 outer limit of having to exhaust every alternative to
22 maximize integration, including restructuring the higher
23 education system today because of discrimination 20 or
24 25 years ago.

25 Here's what I think the duty is.

1 QUESTION: Do you know, counsel, what the
2 purpose of having this particular admission policy that
3 the United States objects to? Why does the university
4 have that?

5 MR. GOODMAN: Yes, sir. I know exactly why.
6 And the record is filled with testimony on that.

7 The standard that exists today came about in
8 1976. It didn't come about in 1962. It came about in
9 1976. Yes, we had an ACT in 1962. If there's something
10 wrong with having one today --

11 QUESTION: But you have a different admission
12 policy for these so-called black universities than for the
13 other, the white universities.

14 MR. GOODMAN: We do. And I'll --

15 QUESTION: What's the purpose of that?

16 MR. GOODMAN: The purpose of that is that in
17 1976 it was felt that to raise the standard at those
18 particular universities any higher would, in effect,
19 perhaps put them out of business.

20 QUESTION: You mean to raise the black
21 universities any higher?

22 MR. GOODMAN: Yes, sir.

23 QUESTION: But in '76 you did the raise the
24 admissions to where the other universities --

25 MR. GOODMAN: No, sir, they were already at a

1 15, and they were kept at a 15.

2 QUESTION: Well, how long had they had the --
3 had the discriminatory or the different -- different
4 admission policies been in existence?

5 MR. GOODMAN: Well, in 1976, when the school
6 officials took a hard look at the admissions standards,
7 there then existed some for the comprehensive
8 universities. But what they found was that under all
9 sorts of unenforced exception policies there were people
10 in those schools who had made 2's, 3's, 4's, 5's on ACT
11 tests, and it was felt that this should be a system that
12 would somehow operate to have people going to college who
13 were to some degree ready for a college education.

14 Now, please understand, it's almost embarrassing
15 to talk about our admission standards because they're so
16 low. The 15 is barely reading at a college level, but
17 every institution permits exceptions down to a 9 --

18 QUESTION: Well --

19 MR. GOODMAN: Which is barely reading at a
20 junior high school level.

21 QUESTION: Let me put another -- let me put my
22 question at another way. Why does the university -- why
23 does the State oppose adopting the admissions policy that
24 the United States suggests?

25 MR. GOODMAN: The United States expert declined

1 at trial to suggest a policy.

2 QUESTION: Well, I know, but I -- you've heard
3 in this -- you've heard the Solicitor General say that you
4 should have a different admissions policy.

5 MR. GOODMAN: I've heard what he said.

6 QUESTION: And he's urging that, and why --
7 why -- why does the State oppose that? What bad result --

8 MR. GOODMAN: He says -- he says the State
9 should use grades. If he means by that that an applicant
10 should make a certain score on a test and achieve a
11 certain grade point average in high school, then he wants
12 to -- and up the standards -- and by the way they should
13 be upped. But we do use grades, you see.

14 QUESTION: Well, do you -- do you -- why don't
15 you just answer my question --

16 MR. GOODMAN: I'm sorry, sir.

17 QUESTION: - that -- why do you oppose adopting
18 the admissions standards that -- that General Starr thinks
19 you should adopt? You understand what he's saying, I
20 suppose?

21 MR. GOODMAN: He is criticizing what we have.
22 I'm not sure that he is proposing an alternative standard.
23 But he didn't do that at trial, and I don't think he's
24 doing it here now. He's simply --

25 QUESTION: You don't think you can find in his

1 brief the suggestion that -- for a specific alteration of
2 your admissions policy?

3 MR. GOODMAN: As a matter of fact, I think it
4 is -- it is unbecoming of the United States Government to
5 stand up here and --

6 QUESTION: Well, that may be so, but as
7 unbecoming as it might be, why does the State oppose that
8 particular admissions policy? What result would ensue
9 that the State doesn't want to ensue?

10 MR. GOODMAN: I don't think any. I don't think
11 any. What the State is doing is defending the practice
12 that it had at the time of trial, and defended it at
13 trial, and defended it into the court of appeals, and
14 defends it here.

15 QUESTION: Your position, then, is if the
16 present policy of the State satisfies constitutional
17 requirements, you shouldn't be required by a court to
18 change to the Solicitor General's proposed policy --

19 MR. GOODMAN: Yes, sir.

20 QUESTION: -- even though it might not have any
21 educational disadvantages?

22 MR. GOODMAN: Yes, sir. That's exactly right.

23 QUESTION: You were going to tell us what the
24 measure of your duty is. It's not to assign by race.
25 It's not to use every last means to cause --

1 MR. GOODMAN: To maximize integration.

2 QUESTION: But it is -- and then that's where
3 you were stopped. What is --

4 MR. GOODMAN: It is to disestablish segregation
5 imposed by law. It is to discontinue prior discriminatory
6 practices. It is to adopt wholly racial-neutral
7 admissions policies. It is to make whatever opportunities
8 the State affords equally available to all. There is to
9 be no racial exclusion of individuals. There must be
10 freedom to choose, and all of this must be done genuinely
11 and in good faith. Now --

12 QUESTION: May I interrupt again just for one
13 second? Is there any obligation in your view on the part
14 of the State to take affirmative action to overcome the
15 effects of prior discrimination?

16 MR. GOODMAN: Yes.

17 QUESTION: That's something beyond what you've
18 described up to now.

19 MR. GOODMAN: I was going to try to address that
20 right now. Thank you, sir.

21 In my view, with due deference, it is pure
22 semantics to suggest that the words "positive steps," or
23 "affirmative steps," or "overcoming effects," or any of
24 those words mean more or require more of the State than
25 what I just said. I think we're saying the same thing by

1 using different words.

2 QUESTION: Well, the words sound like the
3 rhetoric of the Bazemore 4-H analysis, and I guess I share
4 Justice Stevens' perplexity. I don't understand, as you
5 explain the standard, exactly what those steps beyond
6 Bazemore 4-H might be.

7 MR. GOODMAN: Well, in -- on this record -- on
8 this record we proved that for years and years, and
9 altogether --

10 QUESTION: Sir, I don't -- I don't want to
11 interrupt you unduly, but before -- before you get into
12 the facts, could you help me out at least and try to
13 explain in what respect the standard that you have just
14 enunciated places somehow a higher or a different
15 obligation on you from what the Bazemore 4-H standard
16 would apply, and then tell me how you've done it?

17 MR. GOODMAN: I think that the Bazemore standard
18 is all that we have to meet. If, indeed, we have to do
19 more than the way some people interpret the Bazemore
20 standard, we did, and the proof is there. And either way
21 you want to define the standard, Mississippi has met the
22 standard. Do you --

23 QUESTION: Well, Mr. Goodman, wasn't Bazemore
24 grounded in the fact that the segregation in those clubs
25 was not attributable to the State? I mean, wasn't that

1 fundamentally what was going on in that case, and we have
2 a different situation here.

3 MR. GOODMAN: We have the same situation here,
4 with deference. We have a situation where at one time
5 there were all white and all black clubs, but then we had
6 absolute, genuine freedom of choice, and so the continuing
7 racial identifiability was not deemed to be a continuation
8 of the prior discriminatory practices.

9 QUESTION: Justice O'Connor can protect her own
10 question, but it seems to me you haven't answered it. The
11 proposition was that in this case we have racial
12 identifiability caused by the State, and what we're asking
13 is whether or not that doesn't imply an affirmative,
14 positive, a mandatory duty on the part of the State to
15 correct it?

16 MR. GOODMAN: Yes, sir, and we've done that.

17 QUESTION: And that -- but that's not Bazemore.

18 MR. GOODMAN: Well, that's where I simply
19 disagree, because I think we are engaged to some degree,
20 with deference, in a semantical exercise, because to me,
21 when you really analyze it, if you say, not hiding your
22 light under a bushel, but being candid, if you discontinue
23 what you used to do, if you indeed adopt new policies and
24 practices, and if you indeed implement those, and if
25 everybody knows it and are encouraged to participate, then

1 to me that's the same thing as saying well, you have an
2 affirmative duty to do something about the past.

3 QUESTION: Isn't there a racial identifiability
4 caused by the State in Bazemore?

5 MR. GOODMAN: Yes, sir, that's the way I read
6 it. Precisely.

7 QUESTION: But isn't the difference that -- and
8 I'm -- I may be wrong on this, but I thought the crucial
9 difference was that after the Bazemore policies had been
10 modified there wasn't a kind of administrative structure
11 in place which, by continuing to reflect the old policies,
12 encouraged their continuation.

13 A 4-H club is not structured with all of the
14 administrative and organizational baggage of a university.
15 Isn't that the difference?

16 MR. GOODMAN: Well, I think that -- that
17 whatever was required for 4-H clubs to genuinely
18 discontinue the past and implement new procedures for the
19 future had to be done, and here what --

20 QUESTION: Well, that's true by definition,
21 isn't it? I mean, I don't -- that doesn't tell me
22 anything.

23 MR. GOODMAN: Well, I'm sorry, because -- as I
24 see it, and maybe I'm being entirely too simplistic, as I
25 see it, Bazemore of course is an answer to this case, but

1 it doesn't have to be the only answer, because if we want
2 to read all of your precedents -- and we're concerned
3 about the fact that we do have a duty, and no question
4 about that, and we do have an obligation. The point is,
5 we've undertaken, and whether we define where we come out
6 at the end, in Bazemore language, or whether we define
7 it -- define it in other language such as affirmative
8 efforts, we reach the same point.

9 QUESTION: May I -- may I ask you one other
10 question about your position?

11 MR. GOODMAN: Yes.

12 QUESTION: At what point in time, in your
13 understanding of your obligation under title VI and also
14 under the Constitution were you in complete compliance
15 with the law? At what date would you say?

16 MR. GOODMAN: That's a good question.

17 QUESTION: I'd like the answer.

18 MR. GOODMAN: We certainly were at the time of
19 trial. We certainly were --

20 QUESTION: No, I'm trying to understand the --
21 your theory, and your answer will help me understand your
22 theory.

23 MR. GOODMAN: After the new policies, the
24 affirmative effort --

25 QUESTION: Give me a date. Give me a date. I

1 can figure out from the date you give me what was in
2 effect at that time.

3 MR. GOODMAN: By -- by 1980.

4 QUESTION: That's the earliest date.

5 MR. GOODMAN: No, sir, I don't think so.

6 QUESTION: What is the date on which you believe
7 under your theory of the case you became in compliance
8 with the law?

9 MR. GOODMAN: Mid-to-late 1970's.

10 QUESTION: Thank you.

11 MR. GOODMAN: In a nutshell, the duty is met if
12 choice is there. The duty is directly tied to the degree
13 of choice individuals enjoy.

14 I think when you read carefully what the United
15 States says, when all is said and done the United States
16 acknowledges that the duty to disestablish is met when in
17 fact prior discrimination ceases and nondiscriminatory
18 policies are in place.

19 If racial identifiability is an unlawful effect
20 or vestige or remnant, then the schools themselves are the
21 effect. If you are convinced -- and I don't think you
22 are -- that the predominantly white institutions must lose
23 their racial identity to be legal, then the same is true,
24 as well, for the predominantly black institutions
25 maintained by the State.

1 What I did not get to cover, but it's very
2 crucial, and I don't want to sit down without being sure
3 that we all understand it's very crucial: that the crux
4 of this case is not about choice at all. It's not about
5 the careful definition of duty.

6 The crux of this case is a belief by the
7 petitioners that predominantly black institutions are
8 entitled to be enhanced at the hands of the State -- not
9 about choice at all, not about duty. That's the crux of
10 this lawsuit.

11 And the fact is that the black college in this
12 country will be preserved. It will be preserved by
13 alumni, friends, legislators, private support -- it will
14 be preserved because it ought to be preserved, but it
15 cannot be preserved by judicial decree.

16 With all deference, what to do now that freedom
17 of choice is a fact, what to do now about further
18 enhancing black -- predominantly black institutions, if
19 the State can afford it and if it makes educational sense,
20 is up to the -- candidly, is up to the executive branch of
21 Government, and the legislative branch of Government, and
22 is none of your --

23 QUESTION: Would you say that if it were
24 perfectly clear to you that the facilities, for example,
25 at these so-called black colleges were nowhere as near

1 equal to the facilities at the so-called white
2 universities?

3 MR. GOODMAN: I would, as a matter of law, but
4 the record will show that the facilities are very good at
5 all of the institutions.

6 I thank the Court.

7 QUESTION: Thank you, Mr. Goodman.

8 Mr. Chambliss, you have 3 minutes remaining.

9 REBUTTAL ARGUMENT OF ALVIN O. CHAMBLISS

10 ON BEHALF OF THE PRIVATE PETITIONERS

11 MR. CHAMBLISS: Your Honor, the facilities talk
12 about as the grand jury condemned, Mississippi Valley
13 State has two buildings -- and it's in my record -- that
14 just stand -- look so good from the highway. When Brown
15 talked about stigmatization, he -- they talked about -- if
16 you're going to get an education, you're in a room with
17 showers. I mean, you've got shower -- hot -- you don't
18 have air conditioning. But we're not getting into that.

19 Somebody here -- and I think you want to know
20 some facts about, what fetters choice. Our definition of
21 fetters is a factor which prevents choice or promote
22 racial choices. Now, what is the fetter here?

23 (1) We've got the ACT. Those are finding,
24 intentional discrimination. We've got Underwood here,
25 Hunter v. Underwood that say even though it -- well, I

1 don't have to tell you about that. We have the staff
2 makeup, and the programs' disparities.

3 Now, when you talk about staff makeup, he talks
4 about 30 percent of the black students, but he don't want
5 to talk about the 98 percent white faculty. He don't want
6 to talk about the 1 percent black administrator. He don't
7 want to talk about apartheid, because you -- in higher
8 education, if you can't vote you just don't -- and you've
9 got to be tenured, and you've got to be full professor.

10 Staff makeup, the racial hostility at the
11 University of Mississippi -- and I don't want to dump --
12 because I love Mississippi. I'm from Mississippi, and I
13 graduated from the school there.

14 But the fact is that there's a problem at the
15 University of Mississippi, and it's a racial problem. And
16 I had to give to you all -- and I'll brief the facts, but
17 the judge basically was laboring under a misapplication of
18 the law. And he found facts based on the standard that
19 was sold to him by our opponent here. And that was
20 basically the standard is you -- you do not -- you
21 implement -- well, you declare on paper open admission
22 policies and you make -- you know, you make a good faith
23 effort to come up with something that is race neutral.

24 Now what that does, as I see it, is not -- we're
25 not talking about race neutral. What you're talking about

1 under Brown and the cases that this Court has dealt with,
2 we -- we've talked about the "make whole." What is it?
3 Louisiana v. United States, where the Court has a right
4 and obligation, a duty to eradicate.

5 QUESTION: Thank you, Mr. Chambliss.

6 MR. CHAMBLISS: Thank you.

7 CHIEF JUSTICE REHNQUIST: The case is submitted.

8 (Whereupon, at 11:00 a.m. the case in the above-
9 entitled matter was submitted.)

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CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:

90-1205 and 90-6588 UNITED STATES, Petitioner, v. RAY MABUS, GOVERNOR OF MISSISSIPPI, ET AL., and JAKE AYERS, ET AL., Petitioners, v. RAY MABUS, GOVERNOR OF MISSISSIPPI, ET AL.

and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

BY Michelle Sander

(REPORTER)

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