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Dudley Morris to Parker, Time Inc., 28 September 1962

Dudley Morris

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to: Parker, time inc, wux atlanta, atlanta wants re-run.

for: Nation (requested)

interposition. (the following is filed in conjunction with marsh clark's talk with attorney general patterson. judge russel moar of hinds county is one of barnett's brain trust. "trusters" and legal advisors. everything in the file may be used any way you see fit, but moar requested that under no circumstances would there be any reference to him.)

interposition

the tangled legal web that surrounds the drama of james meredith's attempt to desegregate the university of mississippi is the doctrine of interposition.

only it is not really a doctrine; merely a legalistic way of explaining a state government's refusal to comply with the federal judiciary. the justification of interposition is the defiance itself. said judge russel moar of hinds county, mississippi, "the rational for defying the federal courts and supporting barnett is interposition itself."

but the state of mississippi, said moar interposed its power between the university and meredith, and the federal government to block meredith's admission to classes, because meredith, "interposition was the only recourse left and it was a legal recourse. it invested in the people a faith in their..."
faith in the governor and prevented mob violence."

But Moar argued there was ample legal precedent for the State's action. The first act of interposition he said (all his facts should be checked he was hazy on dates), was by the State of Kentucky in 1799 when the state legislature passed a resolution and interposed itself between the people and the Federal government to nullify the alien-sedition act. A year later James Madison drew up a similar resolution for Virginia which was also sanctioned by the legislature. And in 1810, the Judge said, several New England States met at Harford and passed an interposition act against taking part in the war of 1812. None of these acts were ever tested. The alien sedition laws were revoked, the war of 1812 turned out to be a stalemate.

Then in the 1850's a midwestern State (Moar could not remember which) issued a writ of habeus corpus to rescue a newspaper man who had been arrested by a Federal Marshal for leading a group of people who had been freeing slaves. A ten year court battle followed that was finally decided by the civil war. Then in 1880 there was a contest between State and Federal authority in Iowa over the legality of land grants made to the railroads. The State Supreme Court affirmed the grants. The case was appealed to the
United States Supreme Court and affirmed. Sometime later the State's Supreme Court membership was changed, and the case was heard again. It was reappelaed to the U.S. Supreme Court which reversed and affirmed the grants. Then the same thing happened again. After the third time around, the U.S. Government just gave up the fight.

More thought that this was ample legal precedent. And he pointed out that it really did not matter if it had always been successful in the past as laws were only as successful as the men who carried them out. Or defy them we would add. So Mississippi feels that the doctrine of interposition can be successful and valid only if the State vigorously applies it. This the governor is doing.

In defiance of the Supreme Court to protect the constitution. The Meredith case they argue, has little to do with it. They claim that the motivating force behind the proclamation was neither racial nor political but a desire to preserve state's rights. "What we want is a constitutional instrument," said the Judge.

And after the State lost out in court the only way to continue it was to use interposition. (State officials feel they are on solid...
Barnett's constitutional rational for invoking interposition is that the 10th amendment says that all powers not specifically granted to the Federal government are reserved for the states. And by this he means that all powers which are not granted in writing, there for the Federal government in his thinking is enroaching on state perogitive by trying to desegregate the schools. The little matter of the 14th amendment is glossed over.

Moar said that he saw no conflict between the two.
for defying the *government*. "This was something that was much in need.

If the 10th amendment is no longer a provision of the constitution, "said
Moar, "then we ought to know it. We have a true instance of a test of this, because basically the University is
something operated solely by the State."

The argument continues that if the Federal government
can regulate schools, they can regulate churches, and pretty soon they
will be regulating everyone's home life. In the land of the White
Citizens Council this struck as a little off key. Moar continued
to explain that interposition was declared because the crisis was
a constitutional question. The difficulty he said was in getting
it viewed as such. The race issue he complained obscured the real issue.

But the real issue is race, though there is certainly
a good deal of strong states rights sentiment. Mainly there is just
sentimental though, no Haywood Barmett's position fails to recognize
that the Supreme Court on numerous occasions has held the doctrine null
and void, and that all this was really settled by the Supreme Court.

"However, they are convinced they are right, and whether or not they
have adequate reasons to back up their case they are bound and
determined to see this thing through."

Moar was not to talkative and...